



**FAX TRANSMITTAL**

**TO:** Mr S Prebensen, Deputy Grand Chamber Registrar  
(+33 (0)3 88 41 27 30)

**FROM:** Libby McVeigh, Legal and Policy Director

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**PAGES:** 15 pages, including cover

**RE:** Application No. 18030/11 *Magyar Helsinki Bizottság v Hungary*  
Third Party Intervention of Fair Trials International

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Please note that a hard copy of the intervention including the annexes has been couriered to be delivered on 22 September 2015.



**THIRD PARTY INTERVENTION:  
Magyar Helsinki Bizottság v Hungary (App. No. 18030/11)**

1. These written comments are submitted by Fair Trials, in accordance with the permission to intervene granted by the Deputy Grand Chamber Registrar by letter of 4 September 2015 in accordance with Article 36(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'Convention') and Rule 44(2) of the Rules of the Court.
2. Fair Trials' primary focus is on the right to a fair trial protected by Article 6 of the Convention. However, we intervene in this case because it demonstrates the relevance of respect for other rights to the protection of the right to a fair trial. Specifically, access to information, as protected by Article 10 of the Convention, may help to drive good practice by criminal justice institutions (and the refusal of such access leave bad practice undetected, at the expense of many unheard individual holders of Article 6 rights).

**INTRODUCTION**

3. The questions addressed to the parties ask whether or not Article 10 of the Convention is applicable in this case and whether the organisation's complaint relates to a failure of the respondent State to fulfil its positive obligations or to comply with its negative obligation under Article 10. This intervention provides an assessment of the latter, examining whether a restriction on access, by an NGO, to information relating to appointments of ex officio lawyers under a legal aid system, where this restriction is founded on the privacy of legal services provided by a lawyer, is compatible with Article 10(2) of the Convention.
4. As set out in *Társaság a Szabadságjogokért v. Hungary*,<sup>1</sup> the permissibility of an interference under Article 10(2) is assessed by reference to three elements: 'whether it was 'prescribed by law', whether it pursued a 'legitimate aim' and whether it was 'necessary in a democratic society'.<sup>2</sup> Fair Trials will focus solely on the final element of this test. We note that, in relation to the 'necessity in a democratic society' element, the Court has developed general principles, with certain more specific lines of case-law relating to different kinds of restrictions and issues.
5. The general principles were recently restated in *Animal Defenders International v. United Kingdom*<sup>3</sup> as follows (we paraphrase): (i) freedom of expression constitutes one of the essential foundations of a democratic society; exceptions are to be construed strictly and the necessity of interferences convincingly established; (ii) the restriction must be justified by a 'pressing social need'; states enjoy a margin of appreciation but the Court has a supervisory jurisdiction embracing both the legislation and the decisions applying it; and (iii) the Court looks at the interference complained of to determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'.<sup>4</sup>

6. In applying these general principles, the Court has then developed further lines of authority, including in relation to interferences pursuing the aim of the 'protection of the reputation or rights of others'. In that context, the Court 'may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention', i.e. Article 10 and Article 8<sup>5</sup>). The Court has, so far, dealt with this balancing exercise in the context of publications with adverse consequences on individual reputations. This case raises the question of the balancing of these rights in relation to the access to information held by public authorities which may pertain to individual identities.
7. This intervention seeks to assist the Court in finding the right approach to this case, making the following observations: (A) 'watchdog' scrutiny of police appointments of legal aid lawyers is an essential indirect guarantor of respect for fair trial rights, so information as to such appointments is important public interest information calling for utmost protection under Article 10; (B) the countervailing interest relating to the privacy of lawyers' identities is limited, due to their voluntary involvement, in their capacity as members of a profession, in a process involving public scrutiny; and (C) to the extent that any truly private information is involved, national authorities are required to conduct a balancing exercise, which requires adequate reasons for any limitation of the activities of watchdogs seeking to scrutinise the justice system.

**(A) THE ARTICLE 10 RIGHT**

8. The Court considers states' margin of appreciation to interfere with Article 10 rights particularly narrow where an issue of 'general interest' is at stake, including the functioning of justice.<sup>6</sup> In the same way, access to public information regarding legal aid appointments by police should, without question, merit utmost protection under Article 10. As explained below, (1) legal aid is a fundamental component of fair justice, as recognised in international instruments, and concerns as to police appointments are a matter of general concern. Further, (2) due to the vacuum of direct control over legal services quality arising from the confidentiality of lawyer-client relations and the limited scope for effective use of complaints mechanisms, external scrutiny of a system by NGOs represents an important guarantee of respect for Article 6 at large.

**(1) Legal aid and concerns about police appointments**

**Legal aid: a condition *sine qua non* to a fair trial**

9. If legal defence were represented as Maslow's pyramid of human needs, funding for assistance by a lawyer would be the bottom layer: the precondition without which further considerations are essentially theoretical. Funding enables the exercise of the right of access to a lawyer, which, as the Court noted in *A.T. v Luxembourg*,<sup>7</sup> we regard as the 'gateway' to the enjoyment of other

rights, such as interpretation and translation, access to the case file, seeking alternative investigative steps etc. – i.e. the ‘whole range of services specifically associated with legal assistance’ in the Court’s words.<sup>8</sup> In the case of a person who cannot afford a lawyer, accessing this service depends upon legal aid. As explained below, the right to legal aid is recognised by authoritative instruments as a cornerstone of justice.

10. The General Assembly of the United Nations, at its plenary session of 20 December 2012, unanimously adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems<sup>9</sup> (UNPGs). The UNPGs are premised on the basis that ‘legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process’.<sup>10</sup>
11. In 2009, the European Union adopted a Resolution on a roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings (the ‘Roadmap’). Pursuant to that plan, three Directives have been adopted to date further to the Roadmap: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;<sup>11</sup> Directive 2012/12/13 on the right to information in criminal proceedings;<sup>12</sup> and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings<sup>13</sup> (the ‘Access to a Lawyer Directive’).
12. The Roadmap originally envisaged a measure combining the right of access to a lawyer and the right to legal aid (the so-called ‘Measure C’), reflecting the interconnection of the two. In order to make progress, however, Measure C was ‘de-coupled’ and the Access to a Lawyer Directive adopted first in October 2013. The following month, the European Commission (the ‘Commission’) brought forward a further proposal for a directive on ‘provisional legal aid’<sup>14</sup> (the ‘Proposed Directive’), combined with a Commission Recommendation<sup>15</sup> relating to legal aid more generally (the ‘Recommendation’).
13. The Proposed Directive, in the form put forward by the European Commission, was limited in scope, applicable only to persons deprived of liberty and directed at so-called ‘provisional legal aid’, essentially the mechanism for ensuring access to a legal advice at the early stages following arrest. Though Fair Trials considered this approach unduly narrow, it does of course correspond to the emphasis on early assistance by a lawyer in *Salduz v. Turkey*<sup>16</sup> which underlined the particular vulnerability of the suspect at the early stages of proceedings – usually at a police station following arrest – which can only be compensated by the presence of a lawyer to protect them against self-incrimination and irreversible prejudice to their rights of defence.<sup>17</sup> The European

Parliament has since proposed expanding the scope of the Directive to cover all cases (not just those deprived of liberty) and to cover the entire criminal proceedings.

14. As explained further below, these instruments emphasise the role of quality control systems to ensure that legal aid services perform their function effectively. First, however, we set out the major concerns about quality and effectiveness in legal aid systems, as revealed by members of the Legal Experts Advisory Panel (an EU-wide network of over 140 criminal justice experts representing all 28 EU Member States and coordinated by Fair Trials) and other materials.

#### **Concerns regarding police appointments of legal aid lawyers**

15. Fair Trials' 2012 report, 'The Practical Operation of Legal Aid in the EU'<sup>18</sup> (the '2012 Report'), based on consultations with the Legal Experts Advisory Panel, points out that, where legal aid lawyers were appointed by police, there were concerns that their advice might be prejudiced as they are unlikely to be instructed in the future if they challenge the investigation. This is a similar phenomenon to that described by defence lawyers in relation to police station interpreters, whose independence is questioned due to the existence of commercial relationships arising from their working regularly with the relevant police force.<sup>19</sup>
16. This is not an abstract, theoretical issue. The judgments of the Court themselves associate police appointments of lawyers with defence rights violations. For instance, in *Martin v. Estonia*,<sup>20</sup> a 19 year-old suspect 'waived' his right to be assisted by the family-appointed lawyer, mandated instead a publicly funded lawyer he maintained he had been pressured to mandate by the police, and while represented by the latter made admissions resulting in his conviction and imprisonment, resulting in a breach of Article 6(3)(c) of the Convention. In *Dvorski v. Croatia*,<sup>21</sup> a 21 year-old suspect appointed a lawyer (a former police officer) suggested by police after the family-appointed lawyer was denied access to him and made confessions which contributed to his conviction and imprisonment; this raised 'serious concerns' as to respect for Article 6(3)(c).<sup>22</sup>
17. The United Nations document 'Early access to legal aid in criminal justice processes: a handbook for policy-makers and practitioners'<sup>23</sup> (the 'UNPGs Handbook'), designed for the implementation of the UNPGs, recognises the risk to independence linked to police appointments, noting that '[e]xperience in a number of countries where criminal legal aid is provided by lawyers in private practice shows that independence may be compromised by the way in which lawyers are assigned to cases, as well as by the methods of remuneration' and discusses whether lawyers are able to 'resist improper influences' where they are 'dependent for their livelihood on the police or judiciary'.<sup>24</sup> It continues, in relation to systems where police are responsible for appointments, that 'a police officer or prosecutor will have a direct interest in the appointment of a lawyer to advise and assist a suspect or accused person, and it is difficult to ensure that appointment decisions are

made according to proper and appropriate criteria'.<sup>25</sup> Citing a report from Hungary, it points out that 'there is evidence from a number of countries that such schemes facilitate or encourage improper relationships between lawyers and those appointing them, resulting in corruption or poor quality of legal aid provision'.<sup>26</sup>

18. Another concern is the quality of legal aid service provision. The 2012 document and Fair Trials' position paper<sup>27</sup> on the Proposed Directive highlighted that, since the remuneration of legal aid services is often very low, services of this nature are often not of sufficient quality. Practitioners note that such lawyers may be young and inexperienced, and less able to assert themselves against police (particularly given that, as reported in other Fair Trials documents,<sup>28</sup> lawyers' ability to participate in questioning is currently not always clearly regulated and may depend upon the skills, confidence and experience of the individual lawyer). Thus, lawyers acting in this context are less able or willing to protect their clients against infringements of their rights, and it cannot, of course, be excluded that police will take account of the competences of a given lawyer when making a selection under the national system. So even in the absence of a real 'commercial' independence issue, police appointments of lawyers may oppose fair trial interests.
19. There is no uniform practice as to the organisation of appointments under legal aid schemes. For the purposes of this intervention, we sought information from members of the Legal Experts Advisory Panel as to how legal aid systems operated in their countries. We were told as follows:
  - a. In Luxembourg, a pool of lawyers are available on standby under a *permanence* (duty lawyer system) operated by the bar association, one of two (one for police, one for hearings before the investigating judge. While police are responsible for selecting a lawyer from the list and making contact with them, lawyers are assigned to the permanence on a rotating basis, half a dozen at a time.
  - b. In Estonia, the police make a request to the Bar Association, which operates an electronic solution which operates on a random basis, selecting from among approximately 130 lawyers of the 900 registered to practice in Estonia, though there are concerns as to the quality of lawyers acting in such cases.
  - c. In Poland, though the formal system of court appointment intervenes only after the first appearance before a judge (leaving many people unrepresented in police questioning), Regional Bar Associations operate lists of duty lawyers to enable early assistance and they (the bar associations) make appointments from that list.
  - d. In the Czech Republic, legal aid lawyer appointments are made by the court (including for the purposes of questioning by police). The court cannot appoint any lawyer but has to

proceed according to the sequence of names of the attorneys in the list of lawyers who have agreed to provide these services; the court must proceed go through in order.

20. As these examples show, allocation of competences to bar associations and other safeguards may provide some protection. However, in the absence of safeguards of this nature, if police are responsible for appointments, concerns will necessarily be more severe, emphasising the role of parties seeking to monitor their exercise of their powers (see point 2 below).

**(2) The watchdog role in relation to pre-trial justice and legal aid**

21. Given the above, the control of independence and quality is crucial to the fair operation of justice. Yet, due to the vacuum of other controls over the adequacy of legal aid provision (arising from the confidentiality of lawyer-client relationships and the limitations of individual complaints mechanisms), control driven by individual enforcement is necessarily limited. Instead, there is an emphasis on external control, including through the involvement of watchdogs.

**The vacuum of direct control of quality**

22. The Court's case-law recognises that the conduct of defence is primarily a matter between lawyer and client (see, inter alia, *Czekalla v. Portugal*<sup>29</sup>). Indeed, as for all matters which form part of the lawyer-client relationship, these are protected by professional confidentiality. Concretely, where quality and independence issues might arise – e.g. in relation to advice given and decisions made – the state is positively prohibited from monitoring these (see, in this regard, Article 4 of the Access to a Lawyer Directive, which imposes an unqualified confidentiality obligation). Thus, it is in principle not for the state to monitor the actual quality in a specific case.
23. In addition, the possibilities of controlling quality on a case by case basis are limited. While a state bears ultimate responsibility for securing fair trial rights (see *Czekalla v. Portugal* above, paragraph 65), state authorities' obligation to intervene in a case arises only where a manifest deficiency becomes known, e.g. the failure of a lawyer to take a key procedural step which deprives the client of defence opportunities. Absent a glaring error, it will generally depend upon the individual concerned to identify an issue and raise an issue before the courts. A beneficiary of legal aid, by definition, does not have access to alternative legal advice and may not be in a position to identify a failure in the legal services they are receiving, still less to complain effectively about them before the courts (or other avenues). In any case, such mechanisms are by definition *ex post facto* responses which, in relation to the early stages of proceedings, can intervene only after prejudice may have occurred to the rights of the defence.

**The need for systemic-level safeguards**



24. This vacuum of other controls places a particular focus upon systemic-level control and external scrutiny of legal aid systems. This is recognised in the international instruments mentioned earlier. Section 3 of the Recommendation deals with 'Effectiveness and Quality of Legal Aid', specifying that 'Legal assistance provided under legal aid schemes should be of high quality in order to ensure the fairness of proceedings. To this end, systems to ensure the quality of legal aid lawyers should be in place in all Member States'.<sup>30</sup> The Recommendation suggests systems of accreditation and training, and in relation to the appointment of legal aid lawyers suggests that there should be 'transparent and accountable mechanisms to ensure that suspects or accused persons can make an informed choice on legal assistance under the legal aid scheme, free from undue influence'.<sup>31</sup> The European Parliament, in its report adopted 18 May 2015,<sup>32</sup> proposed incorporating similar provisions into the Proposed Directive itself, inserting Article 5a which would require Member States to implement systems of accreditation and continuous professional training, and to ensure that appropriate training is provided to all staff involved in the decision-making on legal aid in criminal proceedings.
25. The UNPGs deal more specifically with the issue of appointments and independence, suggesting that states should create an independent body to administer legal aid services, which should be 'independent of the Government in decision-making related to legal aid and not be subject to the direction, control or financial intimidation of any person in the performance of its functions'.<sup>33</sup> It being clear that the system of appointments is crucial to the fair operation of a legal aid system, effective external oversight of an appointments system by a 'watchdog' will help control whether such a system is operating fairly in practice.

#### **Data transparency as a driver of good practice**

26. In that regard, it may be noted that the Proposed Directive includes a data collection obligation requiring Member States to collect data with regard to how the right to legal aid has been implemented and to forward this information to the Commission.<sup>34</sup> Alternative linguistic versions have been put forward by the Council of the European Union and the European Parliament, but there is no proposal to remove this obligation, showing that there is agreement between the EU institutions and Member States as to the need for data collection in order to monitor effectively the implementation of the right to legal aid. The UNPGs also favour data collection, affirming that 'States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid'.<sup>35</sup>
27. This recourse to data collection in legal aid is a reflection of the fact that detecting unsatisfactory practice, as opposed to individual violations, may require data analysis. For instance, there may be a certain number of violations of Article 5(4) of the Convention by some Member States due to the

failure to provide access to the case file in criminal proceedings, and remedies may be afforded in some cases. But this picture is complemented by reports such as that of the Helsinki Foundation for Human Rights,<sup>36</sup> detailing – based on requests for access to information – the statistical prevalence of refusals of access to the case file. Indeed, the documentation of such practices is, at some level, the underlying basis for the Roadmap, seeking to strengthen control of justice systems by, *inter alia*, submitting national legislation to Commission scrutiny.

28. This should be read against what can be identified as a general trend towards enabling external commentators to monitor performance of justice systems through statistical data. Under the auspices of the Council of Europe, the European Commission for the Efficiency of Justice, aimed at the 'improvement of the efficiency and functioning of justice', collects and analyses data relating to the administration of justice, e.g. budgets, number of legal aid cases, number of courts etc.<sup>37</sup> Within the European Union, the Justice Scoreboard,<sup>38</sup> drawing on a wide range of sources (e.g. Eurostat, World Bank, contact points in national justice systems etc.), evaluates matters such as length of proceedings in different kinds of cases, time for determination of appeals etc. The World Justice Rule of Law Index<sup>39</sup> compiles a ranking to quantify states' observance of the rule of law, including in the area of justice.
29. The reality is that such systems are indirect drivers of observance of fair trial rights protected by Article 6 at large. One can cite, for example, comments of Council of Europe experts regarding the independence of judiciary in Georgia, noting a 99.99% conviction rate between 2007 and 2010 *vis à vis* 50-60% internationally.<sup>40</sup> An individual accused may gain little from invoking their Article 6 right to an impartial tribunal, but external scrutiny by watchdogs may serve, over time, to address the systemic cause of injustices. The Court has several times recognised that protecting the Article 10 right of the press to report on court proceedings is consistent with the requirement under Article 6(1) for trials to be public, indicating that this weighs in the balance. Article 10 right-holders, likewise, help ensure compliance with Article 6 at a more general level.

#### **(B) THE LIMITED COUNTERVAILING ARTICLE 8 RIGHT**

30. In relation to the Article 10/8 balancing exercise, the Court has regard to the particular status of the person concerned (e.g., in publication cases, whether the person invoking Article 8 rights is a politician or has volunteered themselves to scrutiny).<sup>41</sup> In line with this approach, it is important to distinguish between the role of a lawyer as an agent of a public justice system and the privacy of the client-lawyer relationship itself.
31. In several responses to our enquiry for this intervention, respondents confirmed that public lists were available with the names of those eligible to provide legal aid services, such that lawyers can be said to have waived privacy rights to some degree. It is true that their inclusion in a list is

different from their involvement in a specific case. But one may note that a witness in a public trial – compelled by law to attend – also has to accept that their involvement in the case will be known, and it would seem illogical for a lawyer, acting of his/her own volition and deriving financial benefit from public funds, to enjoy greater protection, particularly in relation to the early stages of criminal proceedings which the Court recognises are key to the fairness of the proceedings as a whole<sup>42</sup> and where ‘watchdog’ scrutiny of the system is most valuable. Nor does the publication of information concerning the appointment of a lawyer encroach upon the confidentiality of their client relationships (the names of clients are not needed, so even basic information about the lawyer-client relationship will not be known).

32. It follows from the above that the Court should be slow to recognise whether the ‘rights of others’ can properly be invoked as a justification at all, with respect to the identities of lawyers voluntarily participating in a public service. Only at the most tangential level does this information relate in any way to the private activity of a lawyer, in so far as it may enable conclusions as to any commercial relationship with the police due to frequency of appointments. This being precisely the object of the public interest enquiry protected by Article 10, a balancing exercise is needed.

#### **(C) AS TO THE BALANCING EXERCISE ITSELF**

33. To the extent that a countervailing Article 8 interest is recognised, the Court must verify whether the national authorities have established a ‘pressing social need’ for the restriction, struck a fair balance between the Article 8 and 10 rights at issue, and given ‘relevant’ and ‘sufficient’ grounds for their decisions, extending to those of independent courts.

34. We note, in this regard, that the Court essentially takes the view that the outcome of an application should not, in principle, vary whether it is brought by the Article 10 right-holder or the Article 8 right-holder, since the margin of appreciation should be the same.<sup>43</sup> From that perspective, guidance can be drawn from cases before the Court of Justice of the EU brought on the basis of EU data protection provisions to oppose publication of information (derived from the Court’s own case-law on Article 8), which point to an approach consistent with the above suggestion:

- a. *Österreichischer Rundfunk*<sup>44</sup> concerned legislation enabling the communication of information to the public concerning salaries of civil servants, including the names of persons receiving such salaries; this was found permissible provided that the inclusion of the names was considered necessary to the legitimate aim of ensuring control of public spending. The direct link between a lawyer’s identity and the exercise of a state function calls for a similar approach, with the necessity of any interference amply justified by the preponderant interest in ensuring external ‘watchdog’ control of fair trial rights.

- b. *Schecke GBr v Hessen* and *Eifert v Hessen*<sup>45</sup> found invalid provisions of legislation which, in relation to natural persons who are beneficiaries of EU aid, imposed an obligation to publish their personal data ‘without drawing a distinction based on relevant criteria such (...) *the frequency of such aid* or the nature and amount thereof’ (our emphasis); by contrast, with regard to legal persons, the obligation to publish identifying details was proportionate as legal persons were in any case subject to more onerous obligations in relation to publication of their data. The involvement of a lawyer in a legal aid case or cases, in their capacity as members of a profession engaged in the delivery of justice, is closer to the legal person than the natural person and similarly calls for limited protection.
35. Of course, for present purposes, what matters is the autonomous meaning of the Convention, as opposed to definitions elsewhere – or under national law (see, by analogy, *Tatár and Fáber v. Hungary*<sup>46</sup>), as to whether a gathering was an ‘assembly’ within the meaning of Article 11 of the Convention). Further, the Court notes that it is only ‘where a balancing exercise (...) has been undertaken by the national authorities *in conformity with the criteria laid down in the Court’s case-law*’<sup>47</sup> (our emphasis) that it will be slow to interfere with the decision.
36. If a national authority categorises information as to appointments as private information, and not public interest information connected to the exercise of a state function requiring protection under Article 10, and does not therefore seek to balance the relevant interests at issue, it follows that the Court will not be in a position to identify ‘relevant’ or ‘sufficient’ reasons. That is to say, if a state is going to restrict access to this information so important for controlling fairness of a core part of the criminal justice system, it has to justify doing so by reference to the countervailing interests protected by Article 10(2); it may not meet that obligation if it applies the national freedom of information law in such a way as to exclude the information from its scope outright, such that no balancing act is carried out. Indeed, without such an analysis the national authority cannot consider compromise solutions – e.g. replacing names data with numbers to enable checks as to repetitive appointments while protecting lawyers’ identities – in order to strike a fair balance.
37. If such a balancing exercise is carried out, Fair Trials suggests that it necessarily favours the disclosure of information regarding police appointments of lawyers, as access to this information ensures crucial external oversight and indirectly safeguards compliance with Article 6 of the Convention. Far greater justification than the protection of the identity or commercial activity of a lawyer would be required, and any such justification would need to be well substantiated. The reality of justice in today’s Europe is that injustice in legal aid cases is not easily detected on a case by case basis: the watchdog is needed and its activities must be protected.

## REFERENCES

- <sup>1</sup> *Társaság a Szabadságjogokért v. Hungary* App. No 37374/05 (Judgment of 14 April 2009), paragraphs 30-39.
- <sup>2</sup> *Társaság a Szabadságjogokért v. Hungary*, paragraphs 30-39.
- <sup>3</sup> *Animal Defenders International v. United Kingdom* App. No 48876/08 (Judgment of 22 April 2013).
- <sup>4</sup> *Animal Defenders International v. United Kingdom*, paragraph 100.
- <sup>5</sup> *Axel Springer A.G. v. Germany* App. No 39954/08 (Judgment of 7 February 2012), paragraph 43.
- <sup>6</sup> See, for instance, *Roland Dumas v. France* App. No 34875/07 (Judgment of 15 July 2010), paragraph 43.
- <sup>7</sup> *A.T. v. Luxembourg* App. No 30460/13 (Judgment of 9 April 2015), paragraph 58.
- <sup>8</sup> See *Dayanan v. Turkey* App. No 7377/03 (Judgment of 13 October 2009), paragraph 32.
- <sup>9</sup> United Nations Office on Drugs and Crime, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ('UNPGs'), New York 2013, available at [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf) (see Annex 1).
- <sup>10</sup> UNPGs, preamble, point 1.
- <sup>11</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434981815696&uri=CELEX:32010L0064>.
- <sup>12</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434981883175&uri=CELEX:32012L0013>.
- <sup>13</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434981954911&uri=CELEX:32013L0048>.
- <sup>14</sup> Proposal for a directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (COM(2013) 824 final), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0824>.
- <sup>15</sup> Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings (OJ 2013 C 378, p. 3), available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2013.378.01.0011.01.ENC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.378.01.0011.01.ENC) (see Annex 2).
- <sup>16</sup> *Salduz v. Turkey* App. No 36391/02 (Judgment of 27 November 2008).
- <sup>17</sup> *Salduz v. Turkey* paragraph 54.
- <sup>18</sup> Fair Trials, *The Practical Operation of Legal Aid in the EU*, July 2012, available at [http://www.fairtrials.org/wp-content/uploads/2012/09/Legal\\_Aid\\_Report.pdf](http://www.fairtrials.org/wp-content/uploads/2012/09/Legal_Aid_Report.pdf) (see Annex 3).

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<sup>19</sup> See, in this regard, Fair Trials, *Communiqué issued after the meeting 'Defence Rights in the EU', 10 May 2013, Vilnius, Lithuania* ('Vilnius Communiqué') available at <http://www.fairtrials.org/wp-content/uploads/Fair-Trials-international-Lithuania-ADR-communication.pdf>, paragraphs 5, 15 and 18 (see Annex 4).

<sup>20</sup> *Martin v. Estonia* App. No 35985/09 (Judgment of 30 May 2013).

<sup>21</sup> *Dvorski v. Croatia* App. No 25703/11 (Judgment of 28 November 2013).

<sup>22</sup> No breach of the fairness of the proceedings as a whole was found, but two judges dissented. The judgment was referred to the Grand Chamber on 14 April 2014.

<sup>23</sup> United Nations Office on Drugs and Crime, *Early access to legal aid in criminal justice processes: a handbook for policy-makers and practitioners* ('UNPGs Handbook'), New York 2014, available at [http://www.unodc.org/documents/justice-and-prison-reform/cBook-early\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cBook-early_access_to_legal_aid.pdf).

<sup>24</sup> UNPGs Handbook, page 75.

<sup>25</sup> UNPGs Handbook, page 76.

<sup>26</sup> UNPGs Handbook, page 76.

<sup>27</sup> Fair Trials / Legal Experts Advisory Panel, *Position paper on the proposed directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings*, February 2015, available at <http://www.fairtrials.org/wp-content/uploads/Position-Paper-on-Legal-Aid.pdf> (see Annex 5).

<sup>28</sup> See, for instance, Vilnius Communiqué, cited above note 19, paragraphs 15, 49 and 61.

<sup>29</sup> *Czekalla v. Portugal* App. No 38830/97 (Judgment of 10 October 2002), paragraph 60.

<sup>30</sup> Recommendation, paragraph 17.

<sup>31</sup> Recommendation, paragraphs 19-22 and 26.

<sup>32</sup> European Parliament, Committee on Civil Liberties, Justice and Home Affairs, *Report on the proposal for a directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings*, 18 May 2015, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0165+0+DOC+PDF+V0//EN> (see Annex 6).

<sup>33</sup> UNPGs, guideline 11, paragraph 59(a).

<sup>34</sup> Proposed Directive, Article 6.

<sup>35</sup> UNPGs, guideline 17, paragraph 73.

<sup>36</sup> Helsinki Foundation for Human Rights, *Abuse of pre-trial detention in Poland as a result of the limited access of suspects and defence lawyers to case-files*, 2013, available at <http://programy.hfhr.pl/monitoringprocesulegislacynego/files/2014/01/Abuse-internet-1.pdf>.

<sup>37</sup> See [http://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej_en.asp).

<sup>38</sup> See [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm).

<sup>39</sup> See <http://worldjusticeproject.org/rule-of-law-index>.

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<sup>40</sup> EU / Council of Europe Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption" *Technical paper, Country Risk Assessment – Georgia*, available at [http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/2524-EaP-TP%209\\_2013\\_Risk%20Assess\\_GE%20Final.pdf](http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/2524-EaP-TP%209_2013_Risk%20Assess_GE%20Final.pdf), part 8.4.2.

<sup>41</sup> See, for instance, *Rjolo v. Italy* App. No 42211/07 (Judgment of 17 July 2008), paragraph 65.

<sup>42</sup> See *Salduz v. Turkey*, note 16 above and *Dayanan v. Turkey*, note 8 above.

<sup>43</sup> See *Axel Springer AG v. Germany*, cited note 5 above, paragraph 87.

<sup>44</sup> Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Ors* ECLI:EU:C:2002:662, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434986374254&uri=CELEX:62000CJ0465> (see Annex 7).

<sup>45</sup> Joined Cases C-92/09 and 93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen* ECLI:EU:C:2010:662, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434986493513&uri=CELEX:62009CJ0092> (see Annex 8).

<sup>46</sup> *Tatár and Fűber v. Hungary* Apps. Nos 26005/08 26160/08 (Judgment of 12 June 2012), paragraph 38.

<sup>47</sup> See *Axel Springer AG v. Germany*, cited above note 5, paragraph 88.

