

CASE STUDY – AN AMERICAN AN AUSTRIAN CUSTODY – Guidance for Facilitators

Findings of the Court/ Important Aspects to be addressed

The case is partly based on ECtHR, **KAMASINSKI v. AUSTRIA**, Application no. [9783/82](#), Judgement 19.12.1989, [https://hudoc.echr.coe.int/tur#{"itemid":\["001-57614"\]}](https://hudoc.echr.coe.int/tur#{)

Relevant Articles of the Directives

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

Article 7

The right to communicate with consular authorities

1. Member States shall ensure that suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. However, where suspects or accused persons have two or more nationalities, they may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with whom they wish to communicate.

Directive (Eu) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings

Article 7

Quality of legal aid services and training

1. Member States shall take necessary measures, including with regard to funding, to ensure that:

- (a) there is an effective legal aid system that is of an adequate quality; and
- (b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.



4. Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.

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

Article 2

Right to interpretation

2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

Article 3

Right to translation of essential documents

1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

8. Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

Follow-Up Question

If participants do not address it independently, it should/could be asked, if they deem access to a lawyer as guaranteed. Is there a need for an effective access to a lawyer?



Breaking THE BARRIERS

TRANSNATIONAL PARTICIPATORY
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

Guidance for facilitators

- The facilitator distributes the Case Studies to participants divided into in groups of 3 to 4.
- The participants should read the facts of the case, the background info and discuss the questions.
- After the participants have discussed the questions, the facilitator should present the findings of the court, eventually ask the follow-up question.
- The participants should discuss the findings and the follow-up question(s).
- The results of the working group will subsequently be presented in the plenum.

Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.



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