

National Report - Norway

Legal aid boycott:

An important principle in a state governed by the rule of law is that citizens shall have access to qualified legal aid meeting high professional standards, thereby enabling citizens to claim their rights. The rights of the economically disadvantaged are secured through rules granting these groups a free legal aid service.

Citizens granted free legal aid choose their own solicitor. The solicitor thereafter receives his payment from the state based on a public hourly rate determined by the government. The hourly rate of NOK 970 - equivalent to approximately 110 EUR or 80 GBP - has remained nearly unchanged since 1999.

Those who are financially able to cover their own legal expenses, must do so at an hourly rate that is well above the hourly rate determined for the free legal aid clients. Thus most solicitors in Norway tend to prefer these clients and avoid free legal aid cases.

The result is an unbalance in the legal aid offered to the economically and the non-economically disadvantaged. The differences are discernible in free legal aid cases where the state is the opposing party. The citizen receiving free legal aid must settle with whichever solicitor willing to take a case honored by public rates, while the state itself hires solicitors that charge their clients, the state, an hourly rate well above the hourly rate offered the opposing counsel.

The Norwegian Bar Association therefore decided to carry out a boycott from the 24th to the 29th of August this year where solicitors working with criminal law was urged to participate. The boycott entailed that no solicitors would attend remand hearings brought before Oslo and Bergen District Courts. The boycott was conducted with broad support from solicitors all over the country.

The goal was to improve the legal aid situation through a raise in the hourly rate in free legal aid cases.

It remains to see if next year's state budget will include a raise in these hourly rates and thereby proving the boycott a success.

The right to a free solicitor – now also during police questioning:

According to Norwegian law, the accused has a right to a solicitor payed by the public, either during the trial, or before, namely if he/she is remanded in pre-trial custody. Apart from this, the accused have practically no rights to a free solicitor.

Contrasting this practice is the fact that it is during the period of investigation, and especially during police questioning, the outcome of many cases in reality is determined for the accused.

The Norwegian Supreme Court this summer therefore accepted two cases where the lawfulness of this practice was examined especially in light of *Salduz v Turkey* (2008). I was the proceeding council for one of these.

The question raised in the case, was whether the accused at the pre-trial stage, namely during police questioning, had a right to assistance of counsel, paid by the government if need be, regardless of whether the accused was in custody or not.

The Norwegian Supreme Court concluded that the accused not only had the right to the assistance of counsel, but also that the state should bear the costs for this assistance. This decision was primarily built on article 6 in the European Convention on Human Rights and jurisprudence and case law of the European Court of Human Rights. However, emphasis was also placed on EU directives and accompanying proposals regarding right to lawyer and legal aid. Also worth mentioning is that the outcome of this case is in accordance with the *Cadder* case from the British Supreme Court of October 2010.