

JUSTICE-ILAG

Legal aid newsletter

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Around the globe: legal aid in December 2008

Theme of the month

The capture of the alleged lone surviving gunman involved in the Mumbai shootings has precipitated a debate on the grant of legal aid that will be familiar, in different variations, to a number of jurisdictions. Must a state pay for the defence of someone generally agreed to be manifestly guilty of heinous crimes? And, as a related question, to what extent is it ethically proper for a lawyer undertaking criminal work to refuse to act for a particular client? The case of Mohammed Kasab has exposed divisions among India's legal community. The local Bar endorses a refusal to ensure him representation, presumably on the ground that he is obviously guilty as charged. The chief justice points out that all defendants have a constitutional right to representation. Meanwhile in Mumbai, a nationalist group – the Shiv Sainiks - has sought to intimidate lawyers by demonstrating against those that they think may be contemplating providing representation for Kasab. His position is complicated by the fact that he claims a Pakistani citizenship and also legal assistance from a foreign government not yet ready to concede his identity and nationality. But it does not really make much difference: the chief justice must surely be right.

Roger Smith

News: report

Recipients of the newsletter are encouraged to send a paragraph or two on relevant developments in their jurisdiction to rsmith@justice.org.uk. This is from Alan Houseman of the Center for Law and Social Policy in Washington, DC.

'Alan Houseman has been heading the Legal Services Corporation (LSC) Agency Review Team as part of the Transition Process for President-Elect Obama. This process actually started in September and had two phases – a pre-election phase and a post-election phase. During the pre-election phase, the transition team produced an initial guide about the key funding, personnel, legislative, regulatory and policy issues affecting LSC. After the election, Alan and his team were charged with the responsibility to thoroughly review LSC and provide

the President-Elect and his key advisors with the information necessary to make strategic policy, budgetary and personnel decisions prior to the inauguration. In addition, his team was charged with the responsibility to ensure that appointees to the LSC Board have the information necessary to oversee LSC and to navigate the Senate confirmation process.

The Post-Election LSC Transition efforts involved two fundamental activities: (1) reaching out to all key stakeholders to obtain their views about LSC; and (2) spending time inside LSC reviewing information and interviewing all relevant LSC staff and key LSC Board members. The team met with virtually all key stakeholder groups and reached out to literally hundreds of individuals and interest group representatives. The team also spent two full days at LSC interviewing LSC President Helaine Barnett and her senior staff as well as many more hours reviewing information that LSC had provided. The LSC Transition Team has produced a post-election Strategy Memo, a summary memo, a detailed agency review file and shorter documents about LSC. Now the team is focusing on identifying possible LSC Board candidates to be presented to the President Elect in January.

Some relevant background may be helpful. President Obama appoints the LSC Board but not the LSC President and staff. After January 20, President Obama could appoint an entirely new board for LSC because the terms of all current board members have expired, although board members continue to serve until new board members are confirmed by the Senate. In addition, the new President will be proposing a Budget for FY 2010 which will include a short section about LSC, although, unlike other federal entities, LSC submits its budget directly to Congress. Finally, the Obama transition team is crafting an economic recovery package with the leadership of the Congress and will also be weighing in on the FY2009 appropriation bills which have not yet been adopted for the entire year. LSC funding is an issue in both.'

Cases

European Court of Human Rights

***Panovits v. Cyprus* (no. 4268/04)**

The applicant, Andreas Kyriakou Panovits, is a Cypriot national who was born in 1982 and is currently serving concurrent sentences of 14 and six years' imprisonment at Nicosia Central Prison for manslaughter and robbery.

Relying on Article 6.1 and 3 (c) (right to a fair trial), Mr Panovits made a number of complaints about the unfairness of the criminal proceedings against him. The Court held by six votes to one that there had been a violation of Article 6.1 and 3 (c) on account of the lack

of legal assistance in the initial stages of the applicant's questioning by the police. It also held, by six votes to one, that there had been a violation of Article 6 § 1 due to the use of the applicant's confession in his main trial ... The decision, thus, follows *Soyuz v Turkey*, reported last month, on the importance of pre-trial representation during initial police interview.

News: summaries and links

These reports are largely compiled from news reports on the internet on the basis of a simple search under the words 'legal aid'. Readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will fail after a period of time.

Legal aid and administration

Canada: UN committee singles out British Columbia for criticism over cuts to legal aid for discrimination cases: <http://www.amherstdaily.com/index.cfm?sid=196302&sc=509>.

Cayman Islands: report argues against cuts to legal aid and for establishment of duty counsel:

Canada: UN committee singles out British Columbia for criticism over cuts to legal aid for discrimination cases: <http://www.amherstdaily.com/index.cfm?sid=196302&sc=509>.

England and Wales: 'People's champ slams "political mismanagement" of legal aid': <http://www.amherstdaily.com/index.cfm?sid=196302&sc=509>.

India/Pakistan: Mohammed Ajmal Amir or Kasab, the detained alleged perpetrator of the Mumbai bombings, has requested legal aid in a letter to the Pakistan High Commission <http://edition.cnn.com/2008/WORLD/asiapcf/12/13/india.mumbai.suspect/>. Dinesh Mota, the lawyer appointed by Maharashtra Legal Aid Centre allegedly refused to act for him: <http://www.sindhtoday.net/south-asia/43382.htm>. Legal opinion suggests, however, that he has a right to legal aid under the Indian constitution and in line with Supreme Court judgements:

http://timesofindia.indiatimes.com/India/Kasab_cant_be_denied_legal_aid_say_experts/articleshow/3836854.cms;

http://timesofindia.indiatimes.com/Mumbai/Kasab_trial_hangs_in_balance_as_lawyers_shy_away_from_defence/articleshow/3830391.cms.

Bombay Magistrates Court Bar Association asserts right to boycott Amir's representation in face of criticism from variety of lawyers including chief justice: [http://www.outlookindia.com/full.asp?fodname=20081229&fname=ATerrorist+Legal+Defence+\(F\)&sid=1](http://www.outlookindia.com/full.asp?fodname=20081229&fname=ATerrorist+Legal+Defence+(F)&sid=1). Pakistan refuses to accept Kasab's alleged Pakistani nationality until further

proved and refuses legal aid support for him: <http://www.zeenews.com/southasia/2008-12-25/493737news.html>.

India: Government agrees to amend legislation so that free legal aid available to senior citizens (subject to means limit), and relatives of terrorist crimes: http://timesofindia.indiatimes.com/India/Free_legal_aid_for_senior_citizens_kin_of_terror_victims/articleshow/3793947.cms. National Legal Services Authority grants free legal aid to dependants of victims of Mumbai attack: http://www.telegraphindia.com/1081210/jsp/nation/story_10229215.jsp. Goa college participates in legal literacy and awareness campaign established by National Legal Services Authority <http://www.prlog.org/10148784-legal-aid-society-services-of-vm-salgaocar-college-of-law-goa-india.html>.

Jamaica. Legal Aid Council announces education drive for police officers to understand need for duty counsel at initial questioning of suspects; http://www.jamaicaobserver.com/news/html/20081223T200000-0500_144065_OBS_POLICE_SENSITISED_ON_SUSPECTS_RIGHT_TO_LEGAL REPRESENTATION.asp

New Zealand: public defender service goes permanent after pilot programme on 1 December: <http://www.lsa.govt.nz/PublicDefenceService.php>. Legal aid delays are lawyers' problem says NZ court: <http://www.scoop.co.nz/stories/PO0812/S00243.htm>.

Rwanda: conference endorses expansion of legal aid: <http://allafrica.com/stories/200812030329.html>.

South Africa: Legal Aid Board expands in opening nine new satellite offices, making total of 62 justice centres and 51 satellite offices: <http://www.citizen.co.za/index/article.aspx?pDesc=84734,1,22>. US (Minnesota): annual Santa run for legal aid: <http://www.tcdailyplanet.net/article/2008/12/05/santa-run-saturday-minneapolis.html>.

US: client/trust account income for legal services could drop by 50 per cent in 2009 from 2008 national figure of \$370m: <http://philanthropy.com/news/index.php?id=6412>. Legal aid society of Louisville makes it to 87 years old: <http://www.courier-journal.com/article/20081215/OPINION01/812150347>. US (Kansas and Colorado): fraudsters impersonate legal aid and genuine provider has to take enforcement action: <http://www.kansascw.com/Global/story.asp?S=9445235>.

US: Michigan court limits retrospective effect of Supreme Court decision in Halbert that allows legal aid for criminal appeals from an originally uncontested finding of guilt: <http://www.battlecreekenquirer.com/article/20081222/NEWS01/312220028/1002>.

Legal aid and lawyers

US (Texas): 80 public interest lawyers receive loan grants of up to \$400 a month, double the previous number: <http://www.fwbusinesspress.com/display.php?id=8988>.

US: Legal Aid Society of New York, facing new cuts to its funding for crime, announces nine 'externships' in criminal work for lawyers in private practice to work for the society: <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202427029408>.

Research and Events

Do send it notice of relevant research and events to rsmith@justice.org.uk.

'Delivering legal aid services across diverse communities', ILAG, 1-3 April 2009, Wellington, New Zealand.

And finally

This is the third of three test newsletters. Overall feedback has been positive and this experiment will continue, at least until the ILAG conference in April. If you would like to be taken off the circulation list; add someone or contribute some content: contact rsmith@justice.org.uk.

ILAG was established in 1992 as a way of bringing together academics, administrators and others interested in the development of legal aid. ILAG is constructing a website at www.ilagnet.org. JUSTICE is a UK-based human rights and law reform organisation dedicated to advancing human rights, access to justice and the rule of law. Its website is www.justice.org.uk.