

# JUSTICE-ILAG

## Legal aid newsletter

No 4: February 2009

### Around the globe: legal aid in January 2009

#### Theme of the month

Unsurprisingly, January was generally a quiet month for legal aid developments. Funding continued to be a problem in countries as diverse as Canada, the Cayman Islands and the United States – particularly where, as in the US, funding was directly impacted by plummeting interest rates. In India, the row over legal aid for the alleged surviving Mumbai terrorist, carried on. Dinko Kanchev from Bulgaria raises, however, a new issue of potential breaches of client confidentiality. This is not without resonance elsewhere. Last year, a major row erupted when it transpired that interviews between a Member of Parliament, who had been a human rights lawyer before election, and a person in custody were being taped by the police.

#### Reports from correspondents

Recipients of the newsletter are encouraged to send a paragraph or two on relevant developments in their jurisdiction to [rsmith@justice.org.uk](mailto:rsmith@justice.org.uk). Pieces may be edited for publication.

**Bulgaria:** *The confidentiality of the relations between the criminal defence lawyer and the client is seriously threatened by a recent amendment of Bulgarian Special Surveillance Means Act*

The discussions during the recent Maastricht conference on effective criminal defence rights (November, 2008) stressed, *inter alia*, the importance of the “client-lawyer relationship” for the efficient exercise of criminal defence rights. There should be no doubt that the mutual trust on the part of the lawyer and the client is an essential element of the relationship. Therefore, criminal defence rights depend on a large scale on the protection of the confidentiality of the “client-lawyer relationship”. The European Court of Human Rights has held that insufficient protection of confidentiality could raise serious questions under Article 6 and Article 8 of the European Convention for Protection of Human Rights and Fundamental

Freedoms (“the Convention”). On the other hand, the basic paper for the Maastricht conference noted that *‘the current focus of national and regional (EU) policies on amplifying the State powers under the pre-text of addressing the increased complexity and globalization of crime, and the growing popularity of the “tough on crime” political rhetoric are putting fair trial rights at serious risk’.*

One of the recent amendments of Bulgarian **Special Surveillance Means Act** (State Gazette, No. 109/23 December 2008) appears to be a sad example of “amplifying the State powers” disproportionately to interfere with the confidentiality of the relations between the lawyer and the client.

*Prior to the amendment Article 12 (1) of the Act read:*

**Article 12 (1).** Special surveillance means shall be applied with reference to:

1. Persons, for whom information has been obtained, and there are grounds to presume, that they are preparing to commit, committing or have committed grave criminal offences;
2. Persons, for whose activities information has been obtained, and there are grounds to presume, that the persons under item 1 are making use of them, whereas the former are not aware of the criminal character of the performed activity;
3. Persons and objects related to national security.”

*The amendments introduced a new item 4:*

*“4. Objects where the identity of persons pointed out in item 1 or item 2 is to be specified.”*

It is natural for the criminal defence lawyer to be often visited in her/his office by persons, for whom information could be obtained, and there could be grounds to presume, that they were preparing to commit, committing or had committed grave criminal offences. Therefore, the new rule under *Article 12 (1)“4”* of Bulgarian Special Surveillance Means Act provides for the lawful opportunity to apply special means of surveillance with reference to the lawyers’ premises, thus enabling the authorities to have free and unsanctioned access to all the information that could be exchanged between the lawyer and the client.

Thus, the Bulgarian State considerably “amplified” its powers to be capable to receive information on what could be going on in criminal defence lawyers’ offices by means “provided for by the law”. There could hardly be a more flagrant, although “lawful”, interference with the right to confidentiality of the “client-lawyer relationship”. Hence, what could happen with the exercise of the effective criminal defence rights in Bulgaria is rather an answer than a question.

Dinko Kanchev, Lawyer, Sofia Bar Association, Bulgarian Lawyers for Human Rights Foundation

## Cases

None this month.

## Reports from legal aid funders

Canada: Legal Aid Ontario publishes year end review:  
[http://www.legalaid.on.ca/en/about/story/0812\\_yearend.asp](http://www.legalaid.on.ca/en/about/story/0812_yearend.asp).

## 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.

Australia: Law Council deplores legal aid funding shortfall:  
<http://www.theaustralian.news.com.au/story/0,25197,24910266-5006785,00.html>;

Canada: steep staffing cuts proposed for BC legal aid:  
<http://www.theprovince.com/staff+fall+victim+hard+times+legal+society/1173683/story.html>;

Canadian Bar Association complains: <http://www.marketwire.com/press-release/Canadian-Bar-Association-British-Columbia-938787.html>. Local bar organisations complain as well: <http://www.marketwire.com/press-release/Trial-Lawyers-Association-Of-British-Columbia-939223.htm>. Ontario appeal court holds that 'Going into debt to obtain legal representation through Legal Aid cannot be equated with a denial of legal representation by Legal Aid'. Thus, Legal Aid Ontario can require repayment of legal aid by defendant with low income but above free income limits: <http://www.thestar.com/News/GTA/article/573862>

Cayman Islands: legal aid runs out of money half way through year:  
<http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=1036681> but deal comes through with more cash: <http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=1037116>.

India: Kasab, the lone surviving alleged Mumbai terrorist, applies for legal aid from Pakistan for a second time:  
[http://timesofindia.indiatimes.com/India/Kasab\\_again\\_seeks\\_legal\\_aid\\_from\\_Pak/articleshow/3943436.cms](http://timesofindia.indiatimes.com/India/Kasab_again_seeks_legal_aid_from_Pak/articleshow/3943436.cms); Pakistan Human Rights Commission says it will seek to get representation for him from India human rights organisations:

<http://www.ndtv.com/convergence/ndtv/mumbaiterrorstrike/Story.aspx?ID=NEWEN20090079561&type=News;>

Israel: cabinet promises free legal aid to those accused of war crimes in Gaza: <http://www.imemc.org/article/58629>.

New Zealand; cost of criminal legal aid rises 40 per cent since 2003: [http://www.newstalkzb.co.nz/newsdetail1.asp?storyID=150866;](http://www.newstalkzb.co.nz/newsdetail1.asp?storyID=150866)

United Kingdom: Birmingham housing duty solicitor scheme expanded to cover more victims of recession: <http://www.birminghampost.net/birmingham-business/birmingham-business-news/legal-business/2009/01/08/more-aid-for-birmingham-victims-of-credit-crunch-65233-22639026/>; Minister defends legal aid against accusation that it is a 'sink service' <http://www.timesonline.co.uk/tol/comment/letters/article5613813.ece>. Critical report on Northern Ireland Legal Services Commission: <http://www.belfasttelegraph.co.uk/news/local-national/legal-aid-body-is-damned-in-report---no-audited-accounts-since-2003-14163148.html>.

United States: problems with cuts in IOLTA funding: nationally [http://www.nytimes.com/2009/01/19/us/19legal.html?\\_r=1&hp](http://www.nytimes.com/2009/01/19/us/19legal.html?_r=1&hp) and, as examples, Oregon <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090104/NEWS/901040328>; Ohio [http://dispatch.com/live/content/local\\_news/stories/2009/01/04/legal\\_aid.html?sid=101](http://dispatch.com/live/content/local_news/stories/2009/01/04/legal_aid.html?sid=101);

## **Research and Events**

Do send it notice of relevant research and events to [rsmith@justice.org.uk](mailto:rsmith@justice.org.uk).

### *Past*

Access to Justice and Legal Aid in Africa, Kigali, Rwanda, 1-4 December, organised by the Danish Human Rights Commission, Rwandan Legal Aid Forum and The East African Law Society. The conference was designed to follow from the adoption, at a 2007 conference in Kiev, of a declaration on legal aid and to:

- promote exchange amongst legal aid service providers in Sub-Saharan Africa;
- identify, share and document best practices for the promotion and protection of human rights through the provision of legal services;

- identify strategic directions and advocate for a more comprehensive, results based approach to access to justice and legal aid policy;
- gather support both from governments and donors to promote quality and accessible legal aid services through policy development and sustainable financial support.

#### *Forthcoming*

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

#### **And finally**

*This newsletter is an experiment that will continue until the ILAG conference in April. It will then be reviewed. If you would like to be taken off the circulation list; add someone or contribute some content: contact [rsmith@justice.org.uk](mailto: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](http://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](http://www.justice.org.uk).*