



EUROPEAN COOPERATION IN CRIMINAL MATTERS

TEXT 5

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RIGHT OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND IN EUROPEAN ARREST WARRANT PROCEEDINGS

Author: Denisa Petriláková

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REPUBLIKA SLOVENIJA
MINISTRSTVO ZA PRAVOSODJE
CENTER ZA IZOBRAŽEVANJE V PRAVOSODJU



REPUBLIKA HRVATSKA
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Justičná akadémia
Slovenskej republiky



Key terms (*English – Czech*)

1. *disciplinary proceedings*:
Kárné řízení An administrative proceeding considering the suspension or expulsion from a profession of a licensed individual, as the result of a crime for which he or she was convicted, or of a disciplinary infraction such as a breach of a code of ethics.
2. *impartial*:
nestranný not biased; fair; just:
3. *implicit bias*:
implicitní podjatost An unconscious predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination;
4. *service of document*:
doručování dokumentů The delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved.
5. *to recuse*:
odstoupit, odvolat sám sebe To disqualify or remove oneself as a judge over a particular proceeding because of one's conflict of interest.
6. *undue delay*:
zbytečné průtahy excessive delay in proceedings
7. *vested interest*:
vedlejší zájem A special interest in protecting or promoting that which is to one's own personal advantage

Day 3:

AIM: focus on Grammar Structure in order to practise and recycle the structures used in formal legal texts

Target: to be able to comprehend, recognise and effectively use the structures not commonly used in common and ordinary texts but often used in formal and legal texts.

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings: <http://eur-lex.europa.eu/eli/dir/2013/48/oj>



Day 3: Grammar Input

Task 1: Please try and use the following structure in sentences using the prescribed form:

To protect victims of harassment

Past tense

Future simple tense

Present perfect tense

Reported speech

Past perfect

Passive voice

Conditional construction

Modal verb followed by a perfect infinitive

Clues

Which one of the following is a perfect infinitive:

He has **pleaded** not guilty. (**both forms of “plead” are acceptable**)

He may **plead** guilty.

He might have confessed.

Choose passive constructions:

He lost the case.

The case is being heard by an Appellate Court.



They will award compensation.

He is prosecuting this case.

The compensation has been awarded.

He must confess to human trafficking.

The decision has been delivered.

They must have delivered the judgement.

Reported speech or not?

He asked the applicant to come to the UK.

He said she should assist him.

I asked when she would come.

I asked for a drink.

I felt she was right.

I felt cold.

She argued with him all night.

She argued he had made a mistake.

Task 2: Follow the text designated by the lecturer (THE UK Supreme Court text on rights of victims or the Directive text) and find examples of reported speech:

Day 4: Right to Legal Aid

Task 3: Please read the Convention and see if you can find the below mentioned Rights - which Article would they be covered by?

Right to efficient administration of justice

Right to personal freedom and liberty



Right to family life
Right to freedom of speech and expression
The doctrine of presumption of innocence
The right to be presumed innocent
The right to remain silent
The right to protection from self - incrimination
Right to asylum or international protection -
Right to protection from persecution and / or inhuman and degrading treatment or punishment
Obligation imposed by procedural legal source to exhaust all available domestic remedies (effective)
Admissibility criteria
Right to effective investigation
Right to legal aid and representation
Right to due process
DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings
DAY 3: AIM: read the authentic legal text and practice your memory loop in order to enhance short term retention of both legal structures and vocabulary within meaningful legal context.
Task 4: Memory exercise: Read and try to give a summary:
This Directive of the European Parliament and the Council aims to set common minimum standards on the right to provisional legal aid for suspects or accused persons in criminal proceedings when they are deprived of liberty and for provisional legal aid and legal aid for persons subject to proceedings pursuant to Framework Decision 2002/584/JHA on the European arrest warrant ("requested persons").



Right to Legal Assistance under the European Convention : <http://justice.org.uk/article-6-right-fair-trial/>

AIM: Read and discuss an authentic text referring to the right to legal aid under the Convention and having comprehended the fundamental facts of the case and acquired the relevant vocabulary discuss the case with legal expert while the linguistic expert will be able to collect items to be corrected in order to improve your use of lexis and grammar structures.

Case facts:

Sandiford arrested/ video: <http://youtu.be/sYFatZpz4ZE>

Sentencing video :<http://youtu.be/Gd3OVMP2WF0>

Task 5: Case of Lindsey Sandiford : based on:

<https://www.supremecourt.uk/cases/docs/uksc-2013-0170-judgment.pdf> and

<https://www.judiciary.gov.uk/judgments/sandiford-sec-state-fco-judgment-22052013/>

The NEW case we started looking into concerned the right to legal counsel for a citizen of a country abroad (57 year old British national who was apprehended in Indonesia smuggling cocaine for about 4 million pounds) - and claims that the possibility of **death sentences represents a prerogative of funding of her legal defence** by the state (UK) or else **her right to life would be breached:**

Please read the facts of the submission:

The appellant, a British national 57 years of age, was in prison in Bali, Indonesia, awaiting execution by firing squad, following her conviction for drug offences. That followed her arrest in May 2012 and her subsequent trial on 22 January 2013 in the District Court of Denpasar. She had admitted the offences, but claimed that she had been coerced by threats to her grandson's life.



Following her **arrest, she had co-operated with the police, leading to the arrest of four others**. Following various unsuccessful appeals, her **only legal options to avoid execution were an application to the Supreme Court In Indonesia to reopen the case (de novo application) , and an application to the president for clemency**. The time-limit for both expired in August 2014 and she required legal help to prepare her case.

The **defendant secretary of state** had provided substantial **consular assistance, including putting the appellant in contact with an experienced local lawyer who was willing to conduct the appeal on an expenses-only basis**. However, he had declined to pay for legal help, relying on what was said to be a rigid policy. The **blanket policy, recently reviewed, was motivated largely by domestic policy and funding considerations**. The department (Relevant State Department of UK) had considered the points put forward as justifying exceptional treatment of the claimant, but had decided not to accept them.

The appellant initiated judicial review proceedings in England, **challenging the validity of the secretary of state's policy of refusing to provide funding for legal fees and expenses to British nationals who were facing the death penalty abroad**. The court dismissed the appellant's application for judicial review and she appealed. The Court of Appeal, Civil Division, dismissed the appeal and the appellant appealed to the Supreme Court.

The central issue was the legality of that approach, either under domestic law, or (if it applied to her case) the European Convention on Human Rights. The Convention issues included, whether the appellant was within the jurisdiction of the UK for the purpose of article 1 of the Convention. It was article 6 of the Convention, enshrining the right to a fair trial, alone on which reliance was placed.

The case advanced was that the UK could and **should secure to the appellant free legal assistance under article 6(3)(c) of the Convention, in circumstances where she could not afford to fund herself and no such assistance was available to her in Indonesia**. The common law issue was whether the UK government's blanket policy to refuse to consider providing such funding in any case, including the appellant's, was unlawful and/or unconstitutional and/or (if material) disproportionate.



The issue which divided the parties was, whether there existed, in relation to prerogative powers, any principle paralleling that which, in relation to statutory powers, precluded the holder of the statutory power from deciding that he would only ever exercise the power in one sense. The basis of the statutory principle was that the legislature, in conferring the power, rather than imposing an obligation to exercise it in one sense, had to have contemplated that it might be appropriate to exercise it in different senses in different circumstances.

Task 6: Summarise the facts of the case and discuss which Articles of the European Human Rights Convention the Applicant might attempt to refer to?

Task 7: The Judgement: please read and underline the reasoning of the Court with respect to the arguments and submissions of the Applicant: Sandiford Judgement delivery video:<http://youtu.be/Rd3N5hbistk>

Lindsay Sandiford (on the application of Sandiford) v Secretary of State for Foreign & Commonwealth Affairs [2013] 168 (Admin) – read judgment

On 22 April 2013 the Court of Appeal upheld the decision of the Foreign and Commonwealth Office in refusing to pay for a lawyer to assist Lindsay Sandiford as she faces the death penalty for drug offences in Indonesia. Last Wednesday, they handed down the reasons for their decision.

On 19 May 2012 Lindsay Sandiford was arrested at Ngurah Rai International Airport in Bali following the discovery of almost five kilograms of cocaine in the lining of her suitcase. A number of southeast Asian countries take a notoriously hard line on drugs offences, and following her conviction on 19 December 2012, Ms Sandiford was sentenced to death. Many media outlets have reported that in Indonesia, death sentences are generally carried out by a firing squad.



Following this decision, Ms Sandiford sought assistance from the British Government. Specifically, she wanted the Government to pay for the services of a local Indonesian lawyer, to assist her as she navigated the various routes for challenging her sentence. Although the Government has a policy of opposing the death penalty (most recently set out in HMG Death Penalty Strategy: October 2010) it nevertheless refused to provide the financial assistance that Ms Sandiford was seeking.

She challenged this decision by way of judicial review in the High Court, but on 31 January 2013, Gloster and Davis JJ dismissed her challenge. She subsequently appealed to the Court of Appeal, renewing the arguments she had advanced at first instance, and asserting that the High Court's decision had been wrong. The Court of Appeal disagreed.

Limits of the Human Rights Act

In respect of Human Rights law, the case is an important one in demarcating **the jurisdictional limits of Article 1 of the European Convention on Human Rights**. The Court of Appeal reiterated the test for coming within the scope of that instrument, most recently expressed in the European Court of Human Rights decision in *Al-Skeini and others v United Kingdom* (2011) 53 EHRR 18. In that case, the Grand Chamber found that the UK's military actions in Southeast Iraq fell within the scope of the Convention, due to its assumption of responsibility for the maintenance of security in the region. The test is essentially one of sufficient control, and in Ms Sandiford's case, the Court of Appeal agreed with the High Court that the actions of consular and diplomatic officials to assist Ms Sandiford did not amount to the UK having a degree of control sufficient to engage its ECHR obligations. Ms Sandiford was therefore unable to challenge the decision to refuse legal aid on the basis of alleged breaches of Article 6, or for that matter Articles 2 or 3 of the Convention.

Lord Dyson explained:



A motif that runs through the cases is that it is a condition of the engagement of article 1 that the acts or omissions of which complaint is made come within the scope of an exercise of control and authority by the state in question. That is the governing principle in relation to diplomatic and consular activities... The mere provision of assistance by consular officials is not enough to engage the article 1 jurisdiction. Whether the involvement amounts to the exercise of control and authority sufficient to engage the jurisdiction is a question of fact and degree. But in circumstances where the individual is completely under the control of and detained by the foreign state, it is difficult to see how the necessary degree of authority and control can be exercised by diplomatic and consular agents who do no more than provide the kind of assistance that was provided to the appellant in the present case.

Pausing here, it was formerly explained the **Soering principle was held not to apply** by the High Court. That **principle provides that a signatory state could be liable under the ECHR “by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment”** (Soering v United Kingdom (1989) 11 EHRR 439 at paragraph 91), and it was decided that Ms Sandiford was not being exposed to a risk of death as a direct consequence of action taken in the UK. That argument was not reviewed in the Court of Appeal, but some have queried whether or not the High Court was right on this point. As was pointed out in a blog at the Huggington Post, where there is **statistical evidence that people without legal representation are significantly more likely to fail in their appeals against the death penalty, there is an argument that the risk of death they face is directly impacted upon by a decision not to grant legal aid**. The answer may be that there is a distinction between act and omission in these circumstances, or between creating a risk and materially increasing an existing risk, but as the issue was not re-examined, the decision of the High Court stands.

Ms Sandiford’s **argument in reliance on the Charter** was highly technical, and it is worth reading the judgment carefully for the details. In summary, it was not argued that the decision to refuse legal aid in itself amounted to an implementation of EU law. Rather, it was argued that logically prior to this decision was the decision of the Government not to exercise jurisdiction in Ms Sandiford’s case, and that it was that decision which amounted to an implementation of EU law under Framework Decision 2004/757/JHA of the Council of Europe (“the Framework Decision”), which lays down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.



Task 8: Read and remember the following phrases: prepare three questions asking your partner for an opinion regarding the case

Do you think...

Actually I think...

If you ask me..

Because

As / Since



Key to exercises: Grammar input

perfect infinitive: *He might **have confessed**.*

Passive constructions:

The case **is being heard** by an Appellate Court.

The compensation **has been awarded**.

The decision **has been delivered**.

They must have delivered the judgement. Not passive but perfect infinitive - see above

Reported speech or not?

He said she should assist him.

I asked when she would come.

I felt she was right.

She argued he had made a mistake.

Links:

Key terminology: https://quizlet.com/_2djelh

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