Best practice guide – Italy

Trial Waiver Systems in Europe
Associazione Antigone

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Index

Introduction

The Trial Waiver Systems in Europe (TWSE) project aims to gather comprehensive and comparative information and on the basis of that to develop country-specific guidance on use of trial waiver systems without compromising defence rights. This information will also serve as a basis for wider discussion on reform on the EU level.

There are various procedural forms in modern criminal procedures, which aim at accelerating the procedure and increasing its efficiency. In this project, trial waiver is a term to mean: "a process not prohibited by law under which criminal defendants agree to accept guilt and/or cooperate with the investigative authority in exchange for some benefit from the state, most commonly in the form of reduced charges and/or lower sentences." There are many different names for the very varied practices falling within this definition, including "plea bargaining", "guilty pleas", "summary procedures" and "abbreviated trials", among others. What these systems have in common, however, is the agreement by the defendant to waive full trial rights in exchange for a concession by the state.

In the EU context, the objective of the project is to provide comparable data and analysis on the implementation of safeguards provided for in the EU Directives. This data would allow us to identify potential common threats trial waiver systems pose to the right to a fair trial across the Member States and candidate countries and make recommendations to address them. This information will also be used to engage EU policy makers in the need for reform.

At the national level, the project seeks to identify risks and best practices specific to each jurisdiction. Each country covered in this project has a unique set of legal, social, economic and other circumstances in which trial waiver systems operate. The objective of the project is to develop practical, country-specific understanding of the impact of trial waiver systems on the right to a fair trial and develop guidance on best practices adapted to each country. This will be used as an essential tool for empowering domestic actors to bring about sustainable change.

The Italian research focused on the plea bargain (*patteggiamento*) and the abbreviated judgement (*rito abbreviato*), both on the normative aspects and problems, but also on issues related to fair trial rights and the application of European Directives to trial waiver systems.

In the framework of the abbreviated judgement, the defendant may request that the trial be defined at the preliminary hearing on the basis of the evidence available at that time. This means that the judge will be called to establish a verdict or conviction or acquittal on the basis of the evidence that is presented at the preliminary hearing. At the end of the discussion taking place at the preliminary hearing, the judge issues the sentence which may be of acquittal or conviction (in fact, it is not necessary for the defendant to confess the crime in order to benefit from this alternative to a full trial), in which case the penalty, determined taking into account all the circumstances, is reduced by one third in case of a crime and by half in case of a misdemeanor (*contravvenzione*).

In the plea bargain, the defendant, its lawyer by proxy or the Public Prosecutor can suggest an agreement to the other party proposing a certain sentence for the crime on which the investigations have been conducted. According to the code, the sentence proposed can be an alternative to detention[1] or a pecuniary penalty, reduced by up to one third, or a custodial sentence which, reduced by up to one third, does not exceed five years of imprisonment.
The outcomes of this project are a research and a best practice guide.

The former is made of a desk-based research integrated with other activities here summarised. Interviews with justice actors (6 lawyers, 1 judge, 1 prosecutor) and 2 former defendants. One focus group with other 12 lawyers, 2 law professors and 1 regional guarantor of the rights of detainees aimed at exploring in depth some of the issues that were already highlighted during the interviews. The review of 10 casefiles: 3 regarded the plea bargain and 7 the abbreviated judgement. Also, the research used the available data on the two alternatives to the judgement to evaluate their use and all available breakdowns. Finally, an experience sharing event that gathered feedback on the report and recommendations of 5 professors, 2 lawyers, 1 former prosecutor at the Court of Cassation, 1 Surveillance Judge (and President of a Magistrates' Association), 1 president of the Bologna Surveillance Tribunal and at present Guarantor of the rights of people deprived of liberty for the city of Milan.

Finally, the aim of this best practice guide is to collect the main problems identified in the research, point out the best practices that were found during the meetings and interviews and issue recommendations or, in alternative, the possible solutions. The guide and recommendations are aimed at different stakeholders. Some address the more systemic problems, so they are aimed at the authorities (either the government or the judicial authorities) and some address the everyday problems faced by judicial actors.

[1] Alternatives to detention are the so-called substitutive sanctions of short detention sentences, provided for by the Law, 24/11/1981, No. 689 and subsequent modifications. In this case, the judge, in pronouncing the sentence of conviction and if deciding to determine the duration of the detention within two years, can substitute such penalty with that of the semi-detention, which entails, in any case, the obligation to spend at least ten hours a day in prison. When the the judge determines the detention within the limit of one year, s/he may also replace it with supervised liberty, which entails a ban on leaving the city of residence unless authorised and the obligation to report periodically to the local police station. When he deems it necessary to determine it within the limit of six months, s/he may replace it with a proportionate fine determined according to certain pre-established criteria. Any other alternative measures to detention may be requested by the defendant or his lawyer during the execution of the sentence after the final conviction.

Data on trial waiver systems

Problem

In Italy, the digitization of criminal trial files and the management of Courts' work via technological means is still an ongoing process and challenge. The civil trial is more advanced in this regard. Since many information are only available in analogical format, this has an impact on the type, quality and quantity of information that can be digitally gathered for research purposes.

In the case of alternatives to the trial, the Italian National Agency for Statistics (ISTAT) collects data from the Ministry of Justice also on the status of criminal trials and data is made available to the public through the ISTAT website. For this reason, it was not necessary to file a FOI request for the purposes of the TWSE project. Unfortunately, data on criminal trials are not automatized and are still collected by each tribunal individually; for this reason, data on alternatives to the trial are not very extensive and almost no breakdown is available.

Data that were openly available on the website included the total number of criminal cases and a breakdown labelled "riti alternativi" (alternatives to the trial) that seemed to include all alternatives to the trial; therefore, we asked for the breakdown of that category via the personalized requests to ISTAT. The breakdown of the data that we received included the plea bargain and the immediate judgement (that it was decided not to analyse in this research, since it does not fulfil the requirements of a trial waiver) instead of the abbreviated judgement. After a request for clarification, we received the confirmation that data on other trial waivers was not available. Therefore, it is not possible to make an estimate of the use of the abbreviated judgement but only on the plea bargain. More breakdown of data should be made available regarding the demographics of the suspects or accused involved so that researches can be made on this specific issue.

Best practice

The positive path that civil justice system is tracing on the issue of the digitization is already a good practice. Among the data available for the civil trial is e.g. the case backlog indicating the number of proceedings that are reaching or exceeding the limit for the excessive length of trials while these statistics are not available for criminal proceedings due to their lower level of digitization.

Recommendation

The criminal justice system is catching up with the digitization but more still needs to be done. In particular, to assess the impact of trial waiver mechanisms on the life and rights of the persons involved there is need for systematic data collection on the part of national authorities.

In particular, national authorities should collect data on:

- Percentage of trial waiver procedures (both plea bargain and abbreviated judgement) compared to full trials.
- Acquittal and sentencing rates per type of procedure (full trial, plea bargain, abbreviated judgement), to understand and address potential disparities.
- Sentence type and length per type of procedure (full trial, plea bargain, abbreviated judgement), to understand and address potential disparities.
- Use of trial waiver mechanisms by age, gender and nationality, to understand and address disparities between demographic groups.
- Sentence length after a trial waiver by gender and nationality to understand and address disparities between demographic groups.
- Number of cases dealt with by criminal courts each year, to assess if the latter have fulfilled their initial objective of reducing court workload.
- Procedural length difference between full trials and trial waiver proceedings, to assess if trial waiver systems have fulfilled their initial objective of reducing procedural length.

Reasons behind the choice of the type of trial

Problem

In the Italian judicial system, the choice of benefitting from an alternative judgement is of the defendant; however, defendants might have various reasons aside from the circumstances of the trial to avail themselves of these types of judgement.

Interviews with lawyers highlighted several different reasons, but not all lawyers interviewed agreed with all these reasons.

One of the reasons is the speed of the trial. As it is known, unfortunately, one of the problems of the Italian criminal justice system is the excessive length of criminal trials, that can last years and years. In this sense, an alternative to the ordinary /full trial can be much quicker (only a few hearings) and, as a result, also much cheaper. However, this means that the use of alternatives to the judgement can be explained by the need to make up for the inefficiencies of the system.

> According to an investigative report, in the penal justice system, the average number of days needed to reach the first judgement is 392, an appeal can last 840 days while proceedings at the Court of Cassation can on average last 170 day.
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> The most recent data on the numbers of penal proceedings that are at risk of breaching the principle of reasonable duration date back to 2017. The reasons behind such an outdated data collection can be found in the fact that, differently from the civil sector, it hasn't been possible yet to develop a modern data collection technology.
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> According to those data, in 2017, 19% of the cases awaiting a first judgement were beyond the three-year threshold, the situation of the Appeal Courts was of 39.4% of

cases beyond the two-year threshold, while the Court of Cassation had only 1.3% of cases beyond the one-year threshold. The Tribunal for Minors also had a three-year threshold and 14.9% of the cases were lasting longer.

The law 24 March 2001, n. 89 - so called *"legge Pinto"* - introduced the possibility to receive compensation for the excessive length of judicial proceedings. However, according to the latest report published by the Ministry of Justice, the offices that elaborate the payments are also falling behind due to the high number of sentences in favor of the applicant, the limited budget allocated to these payments and chronic understaffing. This further delay of payments caused in 2019 an increase of the number of litigation cases against the administration.

A second reason regards whether the defendant is in pre-trial detention. Pre-trial detention might have an impact, as it could make a person more "tired" and ready to use plea bargain in order to get out of prison, especially if it is the first detention. Another issue related to pre-trial detention that might influence the choice of an alternative to the trial is the possibility to request, once the trial phase is over, the mitigation of pre-trial measures. Indeed, it is possible, but not guaranteed, that the judge will consider that the conditions for the application of such a measure will be removed once the first instance trial will be concluded. Therefore, this may explain the need, also for the defendant, to reach a judgment as soon as possible.

There can also be cases in which defendants are advised by their lawyer against their case. For example there have been instances of ex officio lawyers who resort to plea bargain, even when defending non-EU foreigners, without taking into account that a final conviction will seriously affect the legitimacy of their stay.

A fourth reason indicated by lawyers, that is also connected to the first one, is the economic condition of the defendant. When the defendant is at economic disadvantage, s/he could be more prone to use an alternative to the judgement rather than the full trial that can require much more time and resources.

However, not only economic reasons, but also the social and cultural status may affect the choice of the procedure. In fact, it is very difficult for people who don't know the language or the criminal justice system to make an informed choice on the procedure to use.

Finally, the fact of being a foreign national might also impact the choice of the trial, in fact a foreign national might want either a quick resolution of the case, hence might opt for an alternative to the trial. On the other hand, a foreign national without a valid residence permit who commits a crime might exploit the excessive length of trials to postpone the repatriation at the end of the serving of the sentence.

Best practice

In all these cases, the best practice that lawyers adopt is to make their clients aware of the consequences of their choices. However, they also make time to understand the client's full situation in order to better understand their needs.

Recommendation

Indeed, since it is the choice of the defendant to ask for a plea bargain or an abbreviated judgement, it is critical that the choice be made in a fully informed way starting from the immediate consequences of the length of trial, possible detention measures or alternatives to the detention, but also other consequences that might fall in the civil area. Lawyers need to inform their clients in making this choice.

Co-defendants' choices of trial waiver

Problem

In cases that involve co-defendants, if one of them chooses an alternative to the trial, this will not affect the choice of those who have not and vice versa.

If one or more co-defendants opt for a different procedure - in this case, one or more co-defendants opt for the plea bargaining and one or more co-defendants opt for the ordinary procedure - the criterion of evaluation of the two procedures will also be different, so that it is physiologically possible and legitimate that opposing outcomes may be reached. The prevailing jurisprudence, for example, with reference to the contrast of judgments involving a plea bargain, excludes that the acquittal or conviction of the co-defendant who has opted for a different procedure constitutes a contrast of judgments. This means that there might be cases in which the co-defendants who choose an alternative to the trial have to serve some kind of sentence and later on, those who choose the full trial (that lasts longer than the alternatives to the trial) are acquitted for the same charges.

Best practice

One example of the best practices identified during the project comes from Argentina. Argentinian law prescribes that in co-defendant cases all co-defendants have to make a unanimous decision on the kind of judgement and if one of them does not agree to waive trial, a full trial will be used.

Recommendation

In the Italian case, since it is possible for co-defendants to choose different kinds of judgements, it is recommended that an automatic mechanism be put in place for the review of sentences in cases of acquittal.

Limitations to the appeal in the plea bargain

Problem

In the case of the plea bargain, the judgment cannot be appealed (ex Art. 448 para. 2 c.p.p.). The Prosecutor and the defendant may submit the case to the Supreme Court of Cassation “only for reasons related to the expression of the suspect's will, to the lack of correlation between the request and the sentence, to the incorrect legal classification of the fact and the illegality of the sentence or of the security measure” (Art. 448 para. 2-bis c.p.p.).

Regarding the issue of the expression of the defendant’s will, for example, the Court of Cassation, with judgment no. 15557 of 6 April 2018 stated that, on the subject of the plea bargain, the appeal to the Court of Cassation on grounds relating to the expression of the defendant's will pursuant to the new Article 448 par. 2-bis c.p.p., must contain a specific indication of the acts or circumstances that led to the violation, under penalty of inadmissibility. The Court stated that the judge's verification of the defendant's will is superfluous when he is present at the hearing at which the agreement between the parties is reached.

There are two main issues with regard to the right to appeal.

The first is the fact that an appeal can be filed only in the case of procedural issues but not on the merits of the case and this could have an impact in the case of co-defendants. If there are co-defendants who have received an acquittal after a full trial, it is not possible to appeal the plea bargain judgement for the review of the sentence.

The second issue pertains the procedural possibility to appeal the sentence only at the level of the Court of Cassation. This could constitute a problem because not all lawyers have the requirements to file an appeal to the Court of Cassation and this could discourage many applicants to do so.

Recommendation

As it was mentioned in the previous entry, the criminal justice system could become fairer if an automatic mechanism were put in place for the review of sentences in cases of acquittal in co-defendant cases. Furthermore, it would be important to introduce the possibility for the appeal on

the merits and, finally, to change the court that deals with the appeal from the Court of Cassation to the regular Court of Appeal.

Checks on the voluntariness of the choice of an alternative to the trial

Problem

One of the peculiarities of trial waiver systems in the Italian criminal justice system is that in both cases, the proposal to use these alternatives to the judgment has to be filed by the defendant (or their lawyer).

In the case of the abbreviated judgment, the request has to be filed until the conclusions of the preliminary hearing are formulated (or in the case of a fast-track trial, the request can be made orally directly during the hearing). The request of the abbreviated judgement may only be made by the defendant, either personally or through the lawyer (provided that the lawyer has received by the defendant a special authorization called "*procura speciale*"), orally or in writing. The judge analyses the request in light of the circumstances of the case (e.g. taking in considerations the cases of non punishability) and considering (if s/he has not enough elements to make a decision or if the defendant requested so) the acquisition of further evidence and its compatibility with the shortened procedure (e.g. if the defendant requests the acquisition of too many pieces of evidence, the judge may decide to reject the request to proceed with the abbreviated trial and proceed with the full proceeding). It is not the task of the judge to check if the defendant has understood the outcome of their choice and whether this choice is voluntary.

The plea bargain may be requested during preliminary investigation and until the conclusions of the preliminary hearing before the beginning of the trial which, when a fast-track trial is used, takes place immediately after the preliminary hearing. Also in this case, the request is made by the defendant in person or by the lawyer with a *procura special*, but the lawyer is the one that has to reach the agreement with the prosecutor. Also in this case, the proceeding is voluntary and can never be imposed by any public authority. If appropriate, the Judge can order a personal appearance of the defendant at the hearing in order to verify its actual will (the defendant's participation is not compulsory but the participation of his lawyer is at all times) and the voluntariness of its request or consent (Art. 446 para. 5 c.p.p.).

The second peculiarity is the key role of the lawyer. The right to a lawyer can never be waived and the lawyer is the key guarantee against abuses against their client; however, the Italian criminal justice system does not provide for a further compulsory check by the judge on the voluntariness of the choice and the full comprehension of the consequences of the choice.

Recommendation

It would be important to prescribe another compulsory check by the judge of the voluntariness of the defendant to proceed with an alternative to the judgement and that they have completely understood the repercussions of their choice.

Admission of guilt in the plea bargain

Problem

All the stakeholders interviewed for the project agreed that the code does not require the defendant to explicitly acknowledge his responsibility at the moment in which he requests the plea bargain or subscribes to the agreement with the Public Prosecutor. However, it is undeniable that there are different jurisprudential approaches to the meaning of the plea bargain in terms of guilt and also different problems that could stem from the conclusion of a plea bargain agreement.

The first approach considers that the plea bargain judgment implies an admission of guilt; the second approach considers that, according to articles 444 and 445 c. 1 bis of the Code of Criminal Procedure, the plea bargaining judgment is equivalent to a conviction, but does not have any effect in civil or administrative proceedings; the third approach adopts a strictly literal interpretation of article 444 of the Code of Criminal Procedure, excluding that the plea bargaining judgment constitutes an admission of guilt.

Unfortunately, in practice there can be some repercussions in the civil field for many of the defendants. For example, in the case of foreigners, the plea bargain causes them repercussions on their resident permits.

Recommendation

Since the Italian system does not require the admission of guilt in order to benefit from the plea bargain and that it is not the duty of the judge to check on the presumption of guilt of the defendant, it would be possible to apply the most favorable jurisprudential orientation to all plea bargain cases. This would require the intervention of the legislator.

Fair trial rights

Timing issues and confidentiality of the consultation

Problem

In the course of this research, several lawyers pointed out some issues that have already been highlighted in previous researches regarding the respect of fair trial rights. In particular, regarding the problems posed by the unlimited and unsupervised access to their clients, the time they have to prepare for a hearing and the confidentiality of their meetings, lawyers pointed out different circumstances that affect their work. There are three different case-scenarios in case of a new criminal case: the first one entails no arrest and no pre-trial detention. The second one entails the arrest and a fast-track trial and the third one entails the arrest and no fast-track trial.

In the "no arrest and no pre-trial detention" case, the procedure usually starts with the reception by the indicted person of the notification of the start of a procedure against him/her, then the indicted person appoints a lawyer (or an ex officio lawyer if s/he doesn't have one) and since there is no deprivation of liberty, access to a lawyer is not hindered and there are no specific problems related to eventual alternative trials (both abbreviated judgement and plea bargain) that the defendant and lawyers might request. Indeed, the choice of the judgement can be discussed by lawyer and client and after making the decision, the lawyer files the request to proceed with an alternative trial.

The second case is the one of the arrest and no fast-track trial. In this case, the person is arrested, the validation hearing is carried out and the preliminary hearing is set. The judge might issue a pre-trial detention order, so the defendant will be held in prison until the trial. Lawyers indicated that if their client is held in prison, no particular issues can be raised regarding the access to their client, consultation conditions, access to the casefile or time to prepare for the hearing.

The third case is the one that poses the most problems. It usually takes place when the person is arrested *in flagrante delicto*. In this case, after the arrest, the validation hearing takes place within a very short time and the arrested person meets his/her lawyer (often a lawyer called *ex-officio* with whom there is no level of trust) only a few minutes before the validation hearing. Also, the prosecutor might be able to hand the casefile over to the lawyer only five minutes before the beginning of the validation hearing, so the lawyer has very little time to study it and only a few minutes to meet with the client; the consultation might even take place in the corridor before entering the court hearing with very little privacy and limited possibility to have interpretation services to assist in case of a non-Italian speaking person. Because the person was caught *in flagrante delicto*, the prosecutor may request the use of a fast-track trial (*giudizio per direttissima*) that takes place right after the validation hearing. The lawyer might in this circumstance ask to proceed with an alternative trial (more often with a plea bargain) that usually is carried out immediately.

As already mentioned, this latter case is the one that poses the most difficulties to lawyers because the very short timeframe and pressure gives them little time to establish a trusting relationship with their client, assess their needs and situation as well as making them aware of the choices that they have. Furthermore, there are only few tribunals with areas specifically designed for lawyer-client consultations and in most cases, consultations take place in the corridors out of the courtroom within earshot of other justice actors.

Best practice and recommendation

In a few tribunals, it is possible to carry out confidential consultations in dedicated areas that should be established everywhere by judicial authorities.

Also, in order to establish trust between client and lawyer, who might have met for the first time in that moment, as well as to better study the case, lawyers have the possibility to ask for *termini a difesa*, that is the postponement of the hearing to a later date.

Translation and interpretation

Problem

The legislative decree n. 32/2014 following the Directive 2010/64 on the right to interpretation and translation on criminal procedures transposed and set some linguistic guarantees in the code of criminal procedure for the persons which do not understand or do not speak Italian.

In the law, there is no distinction between translators and interpreters which might lower the professional standards since one is not necessarily good doing both task. The code of criminal procedure regards translation and interpretation as two overlapping entities, whereas it addresses translation of documents, while competencies for these two tasks are different in nature.

From the interviews of this research and other researches carried out beforehand, it resulted that translators and interpreters are often not adequately trained, in fact, there is no specific training for being a translator or an interpreter for judicial purposes. Experts can develop their competencies in any field, completely unrelated to providing services in court. This point is more than crucial, since what is at stake when translating or interpreting is the suspect's liberty.

Another problem is constituted by the very low wages of interpreters and that the paycheck also comes very late, sometimes even two years later. The low remuneration coming late makes the work unattractive for more qualified interpreters or translators, the salary being far below actual market prices. Linguistic assistance is free of charge for the assisted. Since interpreters are paid for by the State, their remuneration is regulated by law n.319 8 July 1980. Remuneration follows the

so called “vacazioni”, (services) of two hours each, for a maximum of four vacazioni each day, the demeaning measure of the wages is fixed with D.M. 30 May 2002 (art.1) at 14,68 euro for the first lapse of time and 8.15 euro for each of the following, with a chance for doubling in case of a very challenging and urgent job under the judicial authority’s discretion. Such remuneration, according to the law, should have been redetermined every three years, according to the consumer price index, but that never happened. Moreover, the payment is performed through an online procedure that many consider to be very cumbersome, and often happens with serious delays, even up to two years.

Professionalization and remuneration are therefore the issues on which we think it would be worth insisting and addressing an advocacy action.

Best practice

Some tribunals or even sections of tribunals have set up a specific list of trusted interpreters who are quickly available in case of need. In some cases, tribunals have made cooperation agreements with Universities to employ competent translators and interpreters.

Recommendation

It is recommended to the Government to set up a national register of translators and interpreters in order to ensure greater professionalism in the exercise of this profession, which is essential to ensure the full participation in criminal proceedings of defendants and suspects who are not Italian native speakers, also in order to be able to give informed consent to alternative proceedings.

The Minister of Justice is recommended to prescribe adequate training for interpreters and translators who provide linguistic assistance in criminal proceedings, in particular on legal language and vocabulary, providing elements of criminal law and procedure.

Access to the casefile

Problem

In implementing Directive 2012/13/EU, the Legislative Decree 101/2014 did not include any provisions dedicated to the rights of access to the case’s materials. The Italian legislator considered the pre-existing procedural norms as already sufficient to ensure the right and

therefore maintained that. However, even if the law as it stands does regulate extensively such rights, the doctrine has often raised concerns over the lack of clarity of the discipline. In line with these considerations, probably a more organic legislative intervention could have been a wiser option.

Access to the materials of the case is granted always or at least in the majority of cases. Such materials may include documents, photographs, video and audio-recordings as well as information by police officers and prosecutors.

One critical element, which in some situations can represent an obstacle to files' access, is the extraction costs. The extraction of copies, in fact, remains at the expense of the interested party with the sole exception of those who benefit from free legal aid. This may limit, in fact, the effectiveness of the right of access to the materials and documents of the case. Moreover, the prices of such extractions are not determined by law but by the registry of each judicial office and can therefore vary from one court to another, even significantly.

A second potential obstacle to the benefit of this right is represented by the timing of access to the file, which is fundamental for the preparation of the defense. In practice, suspects and defendants are generally granted access to the file's documents in time to exercise their rights of defense, but problems arise in cases that fall under the third scenario that was presented above.

Both in the abbreviated judgement and in the plea bargain, access to evidence and to the file is granted to the lawyer, as well as the right to make copies, without substantial differences from ordinary proceedings. Both in the abbreviated judgement and in the plea bargain there are no substantial differences in the timing of disclosure compared to ordinary proceedings. The disclosure normally takes place: at the time of the first act that the lawyer has the right to attend and, in any case, before the interrogation (art. 369 bis c.p.p.) or, at the latest, with the notification of the conclusion of the preliminary investigations (art. 415 bis c.p.p.).

Best practice and recommendation

In some tribunals, especially as a result of the Covid-19 pandemic, was introduced the possibility to obtain some elements of the casefile electronically, either via certified email or the expansion of the use of a portal that was set up by the Ministry of Justice. However, tribunals have the possibility to decide how to grant access to the materials of the case, so the praxis varies from one tribunal to another.

Extraction costs also vary from tribunal to tribunal and in some cases might be very high. However, in some tribunals the possibility to extract copies of documents in a digital format has lowered the cost of the copies. However, in other cases this has not affected the cost, that has often remain very similar.

Legal aid

Problem

Article 98 c.p.p. establishes that the suspect can ask to be admitted to benefit from free legal aid according to the norms that regulate it. D.P.R. n.115 of 30 May 2002, which (among other things) regulates the expenses of the State regarding legal aid, establishing that legal aid is granted to all persons (citizens, foreigners and stateless) that have an income lower than 11.500 euro. It is possible to benefit from legal aid during all phases of the proceedings.

However, the lawyers interviewed pointed out that some problems for lawyers working in the legal aid framework concern, as it happens with a regular trial and not only with alternatives to the trial, the late payment of legal aid fees that also results in limitations in being able to benefit from useful means to carry out defensive investigations.

Recommendation

It is recommended to the government to take steps to address the issues of the late payments of legal aid fees so that legal aid lawyers may carry out their work in the best way possible.