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Legal Aid for intervenors in proceedings before the European Court of Human Rights[#]Edita Gruodytė¹, Stefan Kirchner²

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“Legally enforceable rights and duties underpin a democratic society, and Access to justice is essential in order to make these rights and duties real.”³

T. Blair

Abstract

Article 36 of the European Convention on Human Rights (ECHR) enables third parties to intervene in cases before the European Court of Human Rights (ECtHR). Access to justice is a very important principle which has been developed both in international law and in the context of the ECHR. There is, however, no clear answer regarding the question of how legal aid is accessible for third persons who are affected by proceedings without being a party to them. Taking the example of German law introducing Legal Aid for affected third parties, the authors ask if such a national act is necessary from the perspective of the access to justice. The law described here adds an additional national layer to internationalized proceedings and the authors seek to answer the question how helpful the enacted law could be in practice. In light of recent controversies concerning permits for major infrastructure projects in Germany the question of legal aid is also of importance for corporate applicants before the European Court of Human Rights because affected third persons who may be eligible for legal aid under the new law can also be those who had, in Administrative Law courts, challenged permits issued to the person who then is the applicant in proceedings before the European Court of Human Rights. The authors also look at the right to legal aid for affected third parties under the European Union’s Charter of Fundamental Rights and the potential divergence between the Charter and the European Convention of Human Rights against the backdrop of the potential accession of the European Union to the Convention and conclude that, notwithstanding some small shortcomings, the new law is necessary and should be sufficiently effective in assistance of third persons intervening before the ECHR.

JEL classification: K40, K41, K20, K23

Keywords: Legal aid, European Court of Human Rights, intervenors, Germany, the European Charter of Human Rights, corporations, affected third parties

Introduction

Legal aid is often an essential element for the effective protection of rights. This is particularly true in instances in which the person who is in need of financial support finds him- or herself already in a structurally weaker position than the other party, for example in

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³ David Bean, *Law Reform for All* (1996), p xii, in: Hilary Sommerland, Some Reflections in Relationship between Citizenship, Access to Justice, and the Reform of Legal Aid, in: 31 *Journal of Law and Society* (2004), pp. 345-368, et seq., p. 345.

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