

LEGAL AID

QUALITY ISSUES FROM THE PERSPECTIVE OF AN AUSTRIAN (DEFENCE) LAWYER



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RECHTSANWALTSBÜRO
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BASICS

ACCESS TO LEGAL ADVICE BEFORE INTERROGATION

“National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings. In such circumstances, Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation.”

ECtHR (GC) Salduz v. Turkey, 27/11/2008, 36391/02, § 52.

ACCESS TO LEGAL ADVICE WHEN DEPRIVED OF LIBERTY

“In accordance with the generally recognised international norms, which the Court accepts and which form the framework for its case-law, an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being questioned [...].”

ECtHR, Dayanan v. Turkey, 13/09/2009, 7377/03, § 32.

IMPACT OF ACCESS TO LEGAL ADVICE

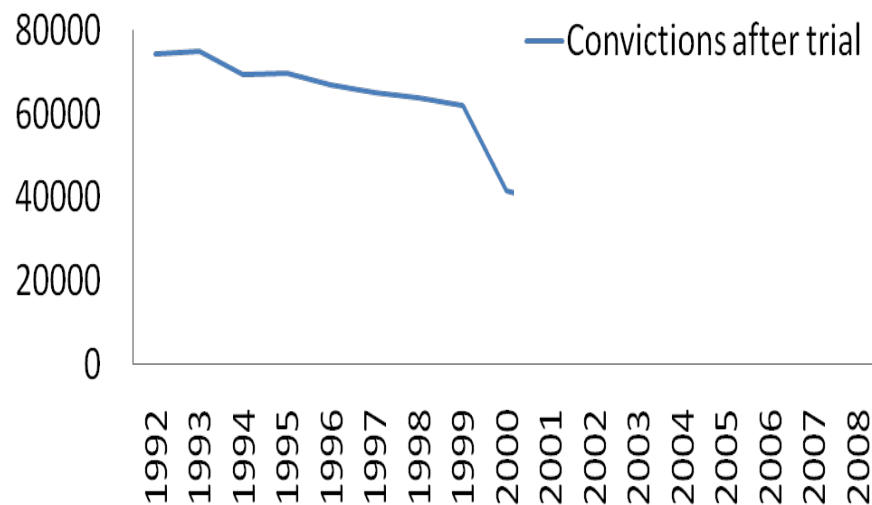
“Having been denied legal assistance, the applicant was unable to make the correct assessment of the consequences his decision to confess would have on the outcome of the criminal case

In the absence of assistance by counsel who could have provided legal advice and technical skills, the applicant could not make full and knowledgeable use of his rights afforded by the criminal-procedural law.”

ECtHR, Pishchalnikov v. Russia, 24/09/2009, 7025/04, § 85.

„THE EARLIER THE BETTER“

- De facto continuum from pre-trial to main trial and verdict
- Pre-trial often final stage of proceedings



■ E.g. Austria

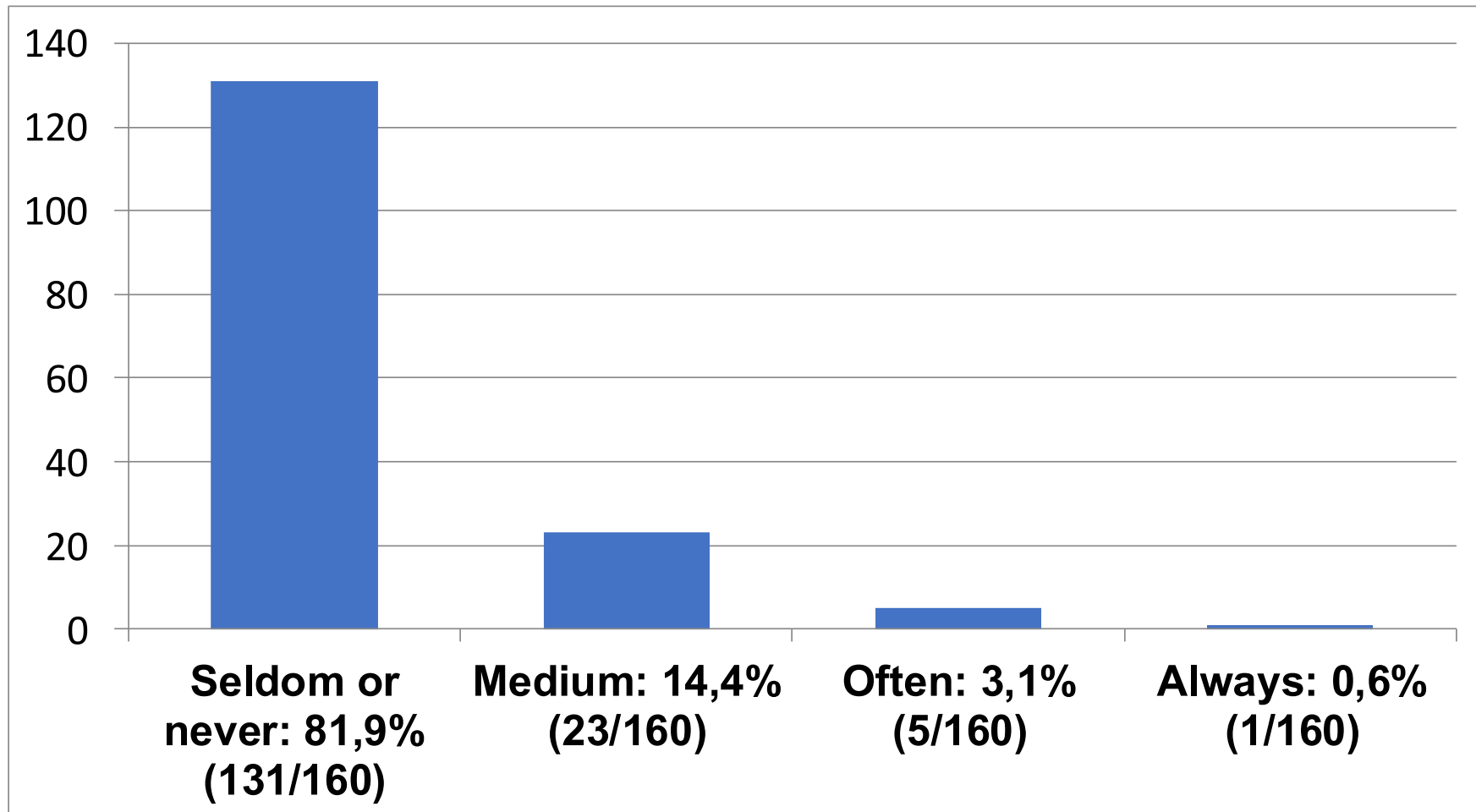
- Extended measures of diversion pre-trial since 2002 led to
- Decrease of convictions after trial

Source of data: http://www.statistik.at/web_de/statistiken/soziales/kriminalitaet/verurteilungen_gerichtliche_kriminalstatistik/index.html

INSIGHTS

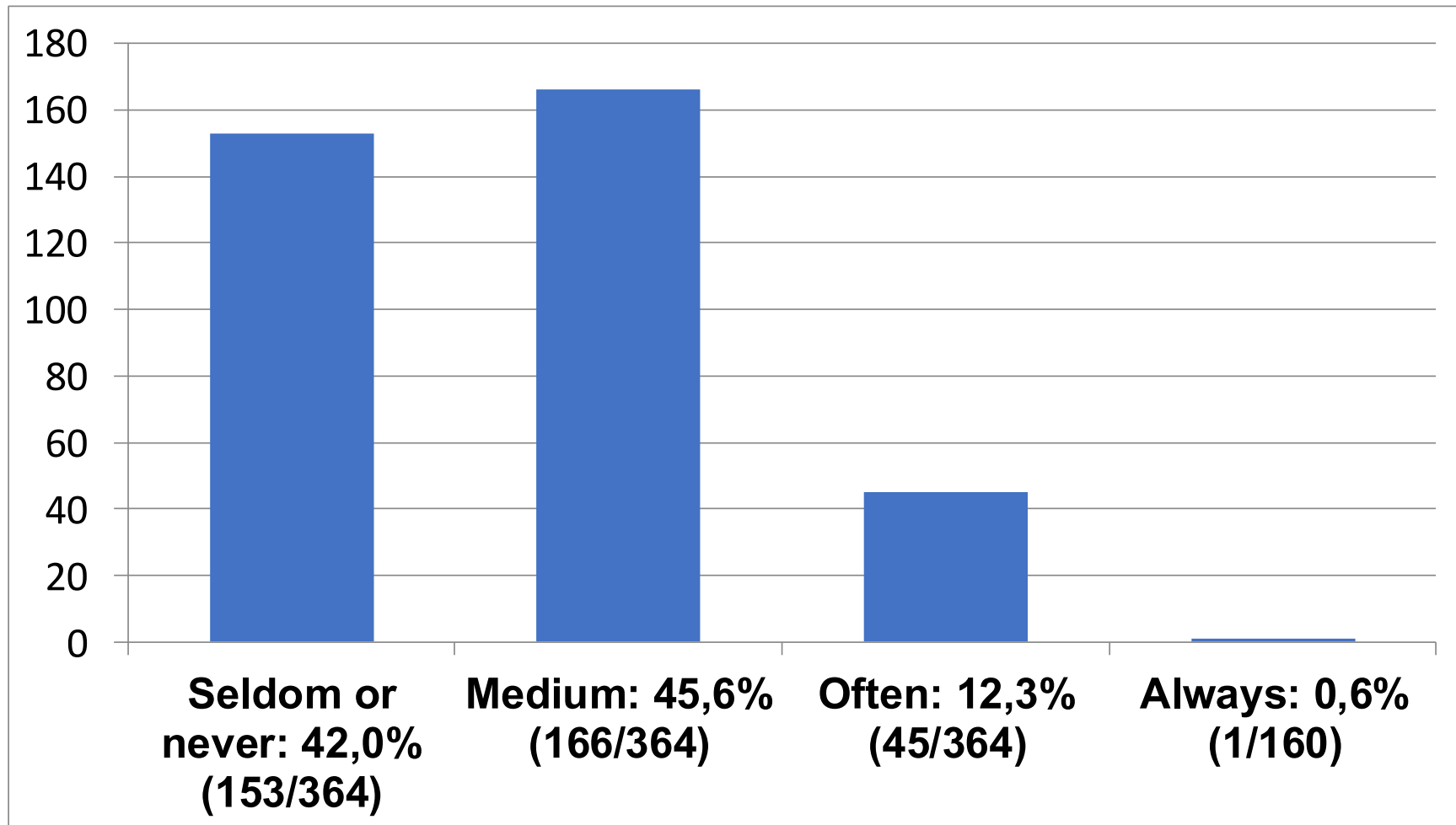
LAWYER CONSULTATION (PED 2010/12)

before pre-trial interrogation in Austria



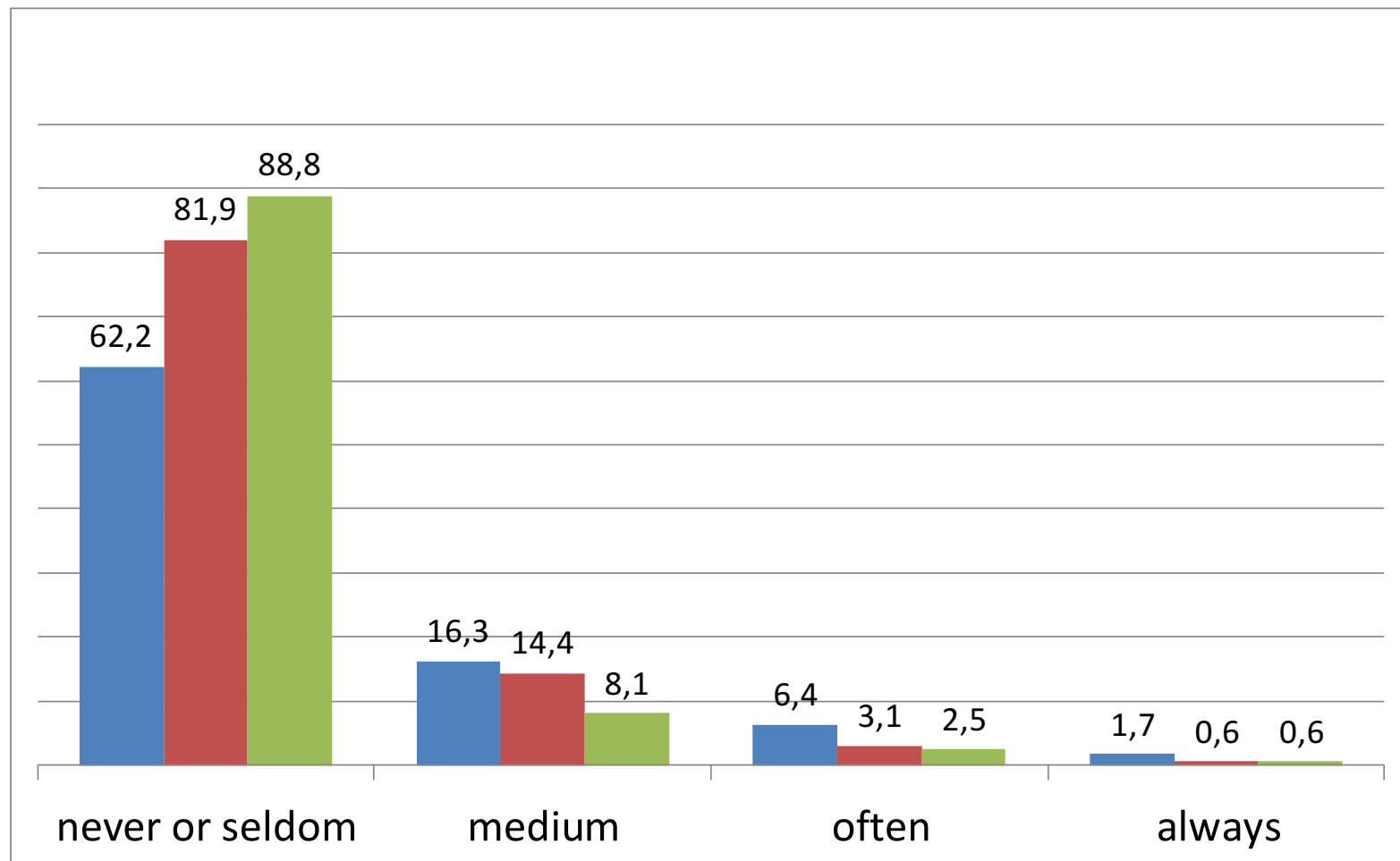
LAWYER CONSULTATION (PED 2010/12)

before pre-trial interrogation in Germany



LAWYER CONSULTATION (PED 2010/12) IN AUSTRIA (%)

on arrest / before interrogation / before informal questioning



QUALITY ISSUES

LEGAL AID CORE QUESTIONS

■ Why?

- Means and merits test?

■ When?

- Pre-trial vs main trial?

■ Who?

- Who orders, who chooses?

■ Renumeration?

■ Quality of defence?

- How to improve and to guarantee?

LEGAL AID and MANDATORY DEFENCE: AUSTRIA vs GERMANY

Austria

§ 61 CCP

■ Mandatory Defence

- Enumerative list
 - Chosen barrister or
 - Legal aid lawyer
- In general, only in main trial

■ Legal aid

- Means and
- Merits test, especially
 - Mandatory defence
 - Difficult factual or legal case
- On application,
- In each stage of proceedings possible

Compare Germany

§§ 140 f CCP

■ Mandatory defence

- Enumerative list
- On application or ex officio, especially
 - Mandatory defence
 - Difficult factual or legal case

- Replacing legal aid (follow-up decision on means test)**

NEWS and NEEDS

AT THE EARLY BEGINNING ... NEWS!

Access to a lawyer (PED 2010/2017)	Before police interrogation	During police interrogation	Courts hearing On ordering pre-trial detention or not	During pre-trial detention
Austria	Duty lawyer-pilot project Since Jan 1, 2017, Duty lawyer by law § 59/4 CCP	Duty lawyer-pilot project Since Jan 1, 2017, Duty lawyer by law § 59/4 CCP	None Since Jan 1, 2017, Duty lawyer by law § 59/4 CCP	Mandatory defence. Legal aid.

QUALITY OF DEFENCE – NEEDS!

Status quo in Austria

- **Legal Aid service in Austria is granted by Lawyers which are generalists**
 - Special qualifications requested by defendants in general are not granted

- **No approved Specialist-Lawyer-System in Austria**
 - e.g. “Fachanwalt für Strafrecht“ in Germany
 - Austria as a „small country“ with rural regions and small cities except of Vienna

- **No specific training obligations for legal aid**
 - Every lawyer has the duty to up-date his knowledge and skills, but no directives and control exist

THANK YOU FOR YOUR ATTENTION!

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