



Pro Bono Practices and Opportunities in Liechtenstein¹

INTRODUCTION

With a population of around 37,000, Liechtenstein is the fourth smallest country in Europe and the sixth smallest country in the world.² Liechtenstein currently does not have a formally regulated culture of providing pro bono legal services and apparently lacks any specific platforms to do so. This may be due to the remarkable wealth that Liechtenstein and most of its inhabitants enjoy. Liechtenstein currently boasts the third highest gross domestic product per capita adjusted on a purchasing power parity basis.³ Furthermore, its sophisticated system of state-funded legal aid arguably minimizes the need for individual lawyers to provide pro bono services.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

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Liechtenstein is a constitutional, hereditary monarchy with an elected Parliament that enacts law. The Constitution sets out two forms of direct democracy: initiatives and referendums. The Government is the country's executive body. Comprising the Prime Minister and four Ministers, the Government is a collegial body reporting both to Parliament and to the Reigning Prince. The Constitution of the Principality of Liechtenstein forms the supreme law of Liechtenstein, and was last amended in 2003.⁴ Liechtenstein has a civil law system and many of its laws are highly similar to those of its neighboring countries, Austria and Switzerland.⁵

In addition to its own country-specific laws, as a member of the European Economic Area ("EEA"),⁶ Liechtenstein is obliged to implement most European Union ("EU") regulations.

The Courts

Court System

The Liechtenstein court system is made up of ordinary courts, the Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Staatsgerichtshof*). The ordinary courts hear general civil and criminal matters, while the Constitutional Court reviews cases where any court orders or judgments are allegedly in breach of a party's constitutionally guaranteed rights.⁷

Appointment of Judges

There are three levels of ordinary courts: the High Court (*Landgericht*), the Court of Appeal (*Obergericht*), and the Supreme Court (*Oberster Gerichtshof*).⁸ All courts are located in the capital, Vaduz.⁹

¹ This chapter was prepared with the support of Lampert & Partner Attorneys at Law Ltd, Vaduz, Liechtenstein.

² See <http://www.liechtenstein.li/en/country-and-people/society/> (last visited on September 4, 2015).

³ See <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited on September 4, 2015).

⁴ See Constitution of the Principality of Liechtenstein available at <http://www.llv.li/files/rdr/Verfassung-E-01-02-2014.pdf> (last visited on September 4, 2015).

⁵ See <http://www.chambersandpartners.com/guide/europe/7/133/1> (last visited on September 4, 2015).

⁶ See <https://www.gov.uk/eu-eea> (last visited on September 4, 2015).

⁷ See Dispute Resolution: Liechtenstein, Practical Law, <http://uk.practicallaw.com/0-502-2520> (last visited on September 4, 2015).

⁸ See <http://www.liechtenstein.li/en/country-and-people/state/courts/> (last visited on September 4, 2015).



Proceedings before the High Court are conducted by a single judge, while proceedings before the Court of Appeal are heard by a panel of three judges and proceedings before the Supreme Court are heard by a panel of five judges.¹⁰ When acting as a Criminal Court, proceedings before the High Court may be conducted by a panel of five judges or a single judge, depending on the severity of the punishment for the criminal act.

For non-contentious matters, including specific family matters, the Law on Extra-Judicial Procedures (*Ausserstreitgesetz*) applies. Such proceedings are less formal than the proceedings of contentious cases, and the judge has more *ex officio* powers.

Up until July 1, 2015, Liechtenstein law provided for compulsory pre-trial settlement proceedings (*Vermittlung*), which were conducted through judges of the peace. These proceedings were very similar to the Swiss conciliation proceedings conducted by justices of the peace.¹¹ Today, before filing any lawsuit, an optional conciliation procedure before the High Court is provided by the Liechtenstein Code of Civil Procedure.

Judges are proposed by the Judicial Selection Commission and elected by Parliament. The Judicial Selection Commission comprises the Reigning Prince, one member of each Parliamentary group represented in Parliament and the Minister of Justice, as well as additional members. The Commission is chaired by the Reigning Prince who also has the casting vote (Law on Appointment of Judges, *Richterbestellungsgesetz*). The Judicial Selection Commission is governed principally by the qualifications and personal suitability of the candidates. Special knowledge in the relevant areas of law and relevant professional experience are taken into account.

The Practice of Law

Education

For admission to the Liechtenstein bar, Liechtenstein lawyers are required to complete their legal studies at a university or college recognised by the Liechtenstein government. The government recognises universities or colleges providing studies of law that teach the general principles of the Liechtenstein legal system and last for at least four years.¹² As there are currently no universities or colleges that teach Liechtenstein law, almost all Liechtenstein lawyers are educated in Austria or Switzerland, both of which have very similar legal regimes to that of Liechtenstein.¹³

Licensure

Once admitted to the Liechtenstein bar, Liechtenstein lawyers are free to practice all forms of Liechtenstein law and may appear before all types of Liechtenstein courts.¹⁴

Demographics

Due to the size of Liechtenstein, there are very few lawyers. The Liechtenstein bar association only names 161 lawyers and 16 established European lawyers.¹⁵ This equates to approximately 0.005 lawyers per capita.

⁹ *ibid.*

¹⁰ See <https://www.gov.uk/eu-eea> (last visited on September 4, 2015).

¹¹ See *id.*

¹² See <http://www.lirak.li/en/index.php?submenu=Zulassung&src=gendocs&link=Zulassung&category=Main> (last visited on September 4, 2015).

¹³ See <http://www.chambersandpartners.com/guide/europe/7/133/1> (last visited on September 4, 2015).

¹⁴ See Dispute Resolution: Liechtenstein, Practical Law, <http://uk.practicallaw.com/0-502-2520> (last visited on September 4, 2015).

Legal Regulation of Lawyers

Lawyers in Liechtenstein have to abide by the Code on Lawyers (*Rechtsanwaltsgesetz*), the Professional Guidelines of the Liechtenstein Chamber of Lawyers (*Standesrichtlinien der Liechtensteinischen Rechtsanwaltskammer*),¹⁶ and the Code of Conduct for Lawyers in the EU (*Berufsregeln der Rechtsanwälte der Europäischen Union*).¹⁷

In Liechtenstein, lawyers' fees are freely negotiable.¹⁸ However, contingency fees are prohibited. Only a surcharge to the fees in the case of successful litigation may be agreed (i.e. mixed fee agreements). Generally, compensation is based on a statutory tariff for legal services and a set of professional rules governing the fees that lawyers may charge. Within this system, a lawyer's fee is based on the "value of the dispute" (*Streitwert*), e.g., the amount of the damages claim or the consideration in a transaction, the degree of difficulty, as well as the nature and the amount of the necessary legal services.

If a lawyer and client have agreed upon the tariff system, only specific services provided in court may be charged, (e.g. court briefs such as complaints or appeals and attendance at court hearings (the "basic charges")). Other "out-of-court" services (including meetings, telephone conversations, correspondence, review of files, legal research, etc.) are usually remunerated by means of a "flat charge" (*Einheitssatz*) that is a percentage of the basic charge. The flat charge is then added to the basic charge. Alternatively, a lawyer may ask the client to pay for each out-of-court service separately. In such a case, the client agrees to pay the basic charge plus fees related to any additional services performed. When enforcing a judgement, however, the successful party's lawyer may claim from the opposite party only the basic charge plus the flat charge.

Like most continental European states, Liechtenstein follows the "loser pays" system, according to which the losing party in a litigation matter has to bear all costs and legal fees. If a plaintiff's case is only partially successful, he or she is entitled to receive from the other party a percentage of costs and court fees in proportion to the extent to which the plaintiff or defendant has succeeded with the complaint or defense, respectively.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Access to legal services by those unable to afford them is ensured by a system of state-subsidized legal aid (*Verfahrenshilfe*).¹⁹ Although legal aid was traditionally reserved for natural persons, as of December 2015, it will now be extended to legal persons as well.²⁰ Legal aid is available for both criminal and civil cases, in the form of legal advice and representation in court²¹. In respect of litigation matters, legal aid is

¹⁵ See http://www.lirak.li/en/index.php?submenu=Anwaltsverzeichnis&src=directory&view=Membership&view=Memberships_list (last visited on September 4, 2015).

¹⁶ See <http://www.lirak.li/en/clientuploads/docs/gesetze/ProfessionalGuidelines.pdf> (last visited on September 4, 2015).

¹⁷ See http://www.lirak.li/en/clientuploads/docs/gesetze/code2002_en.pdf (last visited on September 4, 2015).

¹⁸ See Code on Lawyers (*Rechtsanwaltsgesetz*) §§ 22 et seq. Available at <http://www.lirak.li/clientuploads/docs/gesetze/RAG01.09.2008.pdf> (last visited on September 4, 2015).

¹⁹ See Code of Civil Procedure (*Zivilprozessordnung*) §§ 63 et seq. available at <https://www.gesetze.li/Seite1.jsp?LGBIm=1912009a> (last visited on September 4, 2015).

²⁰ See <http://www.batlinergasser.com/en/about-us/news/2014/legal-aid-now-also-available-legal-entities-0> (last visited on September 4, 2015).

²¹ See <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2006/Liechtenstein.PDF> (last visited on September 4, 2015).



always granted by the court of first instance, even if it does not become necessary until the case reaches a higher court.

State-subsidized Legal Aid

Eligibility Criteria

Financial Means

A claimant must prove their indigence, i.e., the applicant must disclose his income and assets to determine whether full or partial aid or a deferral of fees or payment in installments may be granted (*Teilverfahrenshilfe*).

Merits

In civil cases, it is possible for a court to refuse legal aid for lack of merit.²² Therefore the claim or defense upheld must not be obviously willful or hopeless; the standard applied being the reasonableness test (i.e. whether a reasonable person would actually enforce the claim or defense at hand).

Mandatory Assignments to Legal Aid Matters

When legal aid is granted by the court, the Board of the Liechtenstein Bar Association appoints a lawyer to represent the applicant, taking care to ensure an equal allocation of mandates. Lawyers are obliged to take on legal aid cases which are delegated to them by the Liechtenstein Bar Association. However, the delegation may be refused on certain grounds, such as a conflict of interest. If legal aid is granted for all legal costs, the state will waive the court fees and pay the scheduled statutory fees to the attorney.

For disputes with banks, investment funds and asset managers there is a Conciliation Board and an appointed conciliator whose responsibility is to mediate conflicts and settle such claims out of court.²³

PRO BONO ASSISTANCE

Pro bono Opportunities

Law Firm Pro bono Programs

There is no documented pro bono work being undertaken in Liechtenstein at the moment, and it seems that Liechtenstein generally lacks a culture of providing formally regulated pro bono legal services, though lawyers provide pro bono work on a voluntary basis. As noted above, this is likely due to the country's significant wealth, coupled with readily available and fairly significant legal aid services.

Bar Association Pro bono Programs

However, there are no legal barriers to conducting pro bono work in Liechtenstein. As noted previously, lawyer's fees are freely negotiable within the limits set by the fee regulations of the Bar Association. A lawyer may provide his services for free, if he or she chooses to do so. However, this does not appear to be a common practice in Liechtenstein, and in most cases, lawyers will only agree to provide services without charge if the client is personally known to them.

Pro bono Resources

It appears that besides the Liechtenstein Bar Association there are no referral organizations, nongovernmental organizations ("NGOs") or clearing houses that are sources for pro bono opportunities

²² *ibid.*

²³ See at www.bankenombudsmann.li (last visited on September 4, 2015).



in Liechtenstein. Further information on legal practice in Liechtenstein may be provided by the Liechtenstein Bar Association.²⁴

CONCLUSION

While the legal framework and freely negotiable aspects of lawyers' fees allow for pro bono representation, there is no statistical data available with respect to pro bono work being undertaken in Liechtenstein at present. The well-established system of state-subsidized legal aid arguably minimizes the need for such efforts.

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This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

²⁴ See www.lirak.li (last visited on September 4, 2015).