

## Pro Bono Practices and Opportunities in Lithuania<sup>1</sup>

### INTRODUCTION

The system of free legal aid in the Republic of Lithuania (“**Lithuania**”) has evolved extensively since Lithuania’s accession to the EU in 2004 and the transposition of the EU’s requirements for the provision of state-subsidized legal aid<sup>2</sup> into Lithuanian legislation. A strong culture of pro bono assistance has also developed in the legal community as certain law firms, university students and NGOs provide free legal services to applicants who may not qualify for state legal aid, all of which continues to strengthen access to justice in Lithuania.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

With a view to ensuring fair and impartial court decisions, the Constitution of the Republic of Lithuania (the “**Constitution**”)<sup>3</sup> and the Law Amending the Law on Courts, May 31, 1994, No. I-480 (the “**Law on Courts**”) establish that in the administration of justice, courts are independent from other government institutions, officials, political parties, organizations and other persons. Interference with the administration of justice is a civil offence. Court decisions may only be reviewed by courts of a higher instance and in accordance with the procedure prescribed by law. The system of courts, their competence and the system of court organization, activity and administration, as well as the system of self-governance by the courts, the status of judges, their nomination, career, liability and other issues related to judicial activities are regulated by the Constitution, the Law on Courts and other legal acts.

##### The Courts<sup>4</sup>

##### Types and levels of courts

The court system of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction. The Supreme Court of Lithuania, the Court of Appeal of Lithuania, five regional courts and 54 district courts are courts of general jurisdiction dealing with civil and criminal cases. District courts also hear cases of administrative offences falling within their jurisdiction by law. The Supreme Administrative Court of Lithuania and five regional administrative courts are courts of special jurisdiction, which hear disputes arising out of administrative legal relations.

District courts are the courts of first instance for criminal cases, civil cases, administrative offences assigned to the jurisdiction of the district court by law, property cases involving mortgage disputes, and cases relating to the enforcement of judicial decisions and sentences. District court judges also function as pre-trial and enforcement judges.

Regional courts are the courts of first instance for criminal and civil cases assigned to their jurisdiction by law. They also hear appeals from judgments, decisions, rulings and orders of the district courts. The president of a regional court organizes and controls the administrative activities of the district courts and their judges in accordance with the procedure prescribed by law.

The Court of Appeal is the appeal court for cases heard in the regional court where the regional court is acting as a court of first instance. It also hears requests for the recognition of decisions of foreign or

<sup>1</sup> This chapter was drafted with the support of Sorainen.

<sup>2</sup> European Council Directive 2003/8/EC of January 27, 2003.

<sup>3</sup> The Constitution was adopted by the citizens of Lithuania in the referendum of October 25, 1992.

<sup>4</sup> See Lithuanian Courts <<http://www.teismai.lt/en/courts/judicial-system/>> (last visited on September 4, 2015).



international courts and arbitration awards. The president of the Court of Appeal organizes and controls the administrative activities of regional courts and their judges in accordance with the procedure prescribed by law.

The Supreme Court of Lithuania is the highest appellate court (or “court of cassation”) for judgments, decisions, rulings and orders of courts of general jurisdiction. As such, it ensures the uniform development of case law regarding the interpretation and application of laws and other legal acts. Specifically, it has the authority to determine whether the laws and other legal acts adopted by the Parliament (*Seimas*) are in conformity with the Constitution and whether the legal acts adopted by the President of Lithuania (the “**President**”) and executive conform to the Constitution and laws of Lithuania.<sup>5</sup>

Regional administrative courts are courts of special jurisdiction established for hearing complaints (“**petitions**”) with respect to administrative acts and omissions by public entities. Regional administrative courts hear disputes in the field of public administration and deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes and other legal issues relating to public administration. Before applying to an administrative court, individual complaints may be resolved using the pre-trial procedure. In this case, disputes are investigated by municipal public administrative dispute commissions, district administrative dispute commissions and the Supreme Administrative Dispute Commission.

The Supreme Administrative Court is the first and final instance court for administrative cases assigned to its jurisdiction by law. It also functions as the appeals court for decisions, rulings and orders of regional administrative courts and for district court decisions regarding administrative offences. The Supreme Administrative Court also hears petitions on the reopening of completed administrative proceedings, including those of administrative offences, as specified by law. Like the Supreme Court of Lithuania, it ensures the uniform development of cases under its jurisdiction.

#### Appointed judges

The Law on Courts provides for the selection, nomination and appointment of judges by the President, on the recommendation of a special committee of judges (which also advises on the dismissal of judges), following a rigorous selection process.<sup>6</sup> Justices of the Supreme Court as well as its president are nominated and dismissed by the Parliament on the recommendation of the President. Judges of the Court of Appeal and its president are nominated by the President with the consent of the Parliament. Judges and presidents of local, regional and specialized courts are nominated, and their places of work are changed, by the President.

Persons nominated to the judiciary must take an oath promising to be faithful to the Republic of Lithuania and to administer justice only according to the law.

#### The Practice of Law

The legal profession encompasses judges, prosecutors, attorneys, assistant attorneys, jurists, notaries and bailiffs. A legal education in Lithuania can be obtained in universities or colleges, but only a university degree grants a person the right to become an attorney, notary, bailiff, judge, civil servant or in-house company lawyer. Persons who obtain a law degree from a college may not become attorneys or judges.

The difference between “attorneys” and “jurists” lies in their admission to the Lithuanian Bar Association (the “**Bar**”), which is contingent upon five or more years of practice (or at least two years of practice as an assistant attorney) and passing the Bar examination. Every attorney must be a member of the Bar, which is headed by elected members, and attorneys must follow the professional rules of conduct. These are legal obligations under the Law on the Bar of the Republic of Lithuania (the “**Law on the Bar**”).<sup>7</sup> An attorney is treated as an independent servant of justice rather than as a commercial actor. An attorney therefore is responsible not only to his or her client, but to the judicial system as a whole.

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<sup>5</sup> See Ministry of the Interior of the Republic of Lithuania <<http://www.vrm.lt/index.php?id=808&lang=2>> (last visited on September 4, 2015).

<sup>6</sup> Law on Courts, Arts. 51-55.

<sup>7</sup> Adopted on March 18, 2004, Nr. IX-2066.



Attorneys have the right to provide legal advice and represent any person or entity in court. The number of attorneys is not limited and there are over 2,800 practising attorneys and over 800 assistant attorneys in Lithuania at present.

By contrast, jurists are not admitted to the Bar but they can still practise law as in-house counsel to public institutions or companies, and as such jurists can only give legal advice to and represent their employer in court.

## LEGAL RESOURCES TO INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The system of free legal aid in Lithuania has evolved extensively over the past decade. One of the main reasons for this has been Lithuania's accession to the EU in 2004 and the transposition of the EU's requirements for the provision of legal aid into Lithuanian legislation. The cornerstone of this process was the adoption of the Law on State-Guaranteed Legal Aid (the "LSGLA") by the Parliament in 2000, which was last amended in 2014.

Until the LSGLA came into force on January 1, 2001, persons had a constitutional right to legal assistance in criminal matters only,<sup>8</sup> while the Civil Procedure Code guaranteed legal aid only in certain civil cases.<sup>9</sup> Currently, in accordance with the LSGLA, state-subsidized legal aid covers all criminal, civil and administrative matters and can be provided to citizens of Lithuania, citizens of EU member states, other natural persons lawfully residing in Lithuania or in other EU member states, and other persons referred to in international treaties to which Lithuania is a party.<sup>10</sup>

### State-Subsidized Legal Aid

The LSGLA provides for two types of state legal aid: primary and secondary. Primary and secondary legal aid can only be provided to natural persons, i.e. legal entities are not entitled to such aid.

Primary legal aid is out-of-court aid, which includes the provision of legal information, legal consulting and drafting of legal documentation (for example, as required by municipal or police authorities) and applications for secondary legal aid.<sup>11</sup> Such legal aid also includes advice on out-of-court settlements, actions for amicable settlements of disputes and drafting of agreements for amicable settlements.<sup>12</sup> This type of legal aid must be provided immediately upon the application being made (or by scheduling an appointment within five days), either orally or in writing, to a municipal executive authority irrespective of the applicant's financial status. However, an individual is only allowed up to one hour of free legal advice or information on that matter. An extension of time may be granted by a decision of the municipal executive authority or its officer. Primary legal aid can be provided by municipal officers or public institutions as well as attorneys on the basis of an agreement with the municipal authority, but in practice, primary legal aid is provided mainly by municipal officers.

Primary legal aid is unavailable where the applicant's claim is clearly ungrounded, the applicant has already received detailed advice on the issue from an attorney, or it is clear that the applicant can obtain such advice without recourse to primary legal aid.<sup>13</sup>

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<sup>8</sup> Constitution, Art. 31, para. 6; Criminal Procedure Code, Official Gazette, no. 37, March 14, 2002, Art. 51.

<sup>9</sup> Civil Procedure Code, Official Gazette, no. 36, February 28, 2002, Art. 20.

<sup>10</sup> This would capture, for example, refugees: LSGLA Art. 11, paras. 1-2.

<sup>11</sup> See <<http://www.teisinepagalba.lt/lt/pirmine/tm/kastaip/>> (last visited on September 4, 2015).

<sup>12</sup> LGSLA, Art. 2, para. 2.

<sup>13</sup> LGSLA, Art. 11, para. 4.

Secondary legal aid covers the drafting of legal documents, defense and representation in court, as well as representation in out-of-court dispute settlements if mandated by law or the court.<sup>14</sup> It also includes coverage of civil and administrative litigation costs.<sup>15</sup> The provision of this type of legal aid is subject to the following conditions:

- **Financial Criteria:** All persons requesting secondary legal aid must submit a declaration of property and income to local tax authorities. Depending on which of the two statutory levels of property and income the applicant falls within, they will either be granted aid covering 100% or 50% of the expenses of secondary legal aid (including court costs and disbursements).
- **Merit Criteria:** The LGSLA stipulates that secondary legal aid cannot be provided where: (a) the applicant's claim is clearly unfounded; (b) representation in a lawsuit has no reasonable prospect of success; (c) the applicant brings an action for non-pecuniary damage related to the defense of the applicant's honour and dignity, and the damage suffered is not material; (d) the application for legal aid relates to a requirement arising directly from the commercial or professional activities of the applicant; (e) the applicant could receive necessary legal services without relying on state-subsidized legal aid; (f) the applicant is applying on behalf of a third party for a violation of that third party's rights, except where representation for the third party is required as a matter of law; and (g) the claim for which secondary legal aid is being sought lapsed while legal aid was being sought.<sup>16</sup>
- In addition, secondary legal aid may be refused if: (a) the possible costs of pursuing the applicant's claim would significantly outstrip the financial value of the claim itself; (b) a non-pecuniary claim is not material; (c) the applicant is clearly able to defend their interests without the help of an attorney; or (d) the applicant has insurance which may cover the legal costs.<sup>17</sup>
- These requirements do not apply to administrative cases, to applicants who are the subject of a criminal investigation where, by law, the participation of an attorney is mandatory ("*ex officio*" criminal cases)<sup>18</sup> or where an applicant is determined to be "socially vulnerable".<sup>19</sup>
- Applicants who are refused secondary legal aid can appeal that refusal in accordance with the procedure stipulated in the Law on the Amendment of the Law on Administrative Proceedings, January 14, 1999, No. VIII-1029.

## Mandatory Assignments to Legal Aid Matters

Secondary legal aid is mainly provided by full-time legal aid attorneys who receive monthly remuneration from the state legal aid budget. If necessary, individually practising attorneys can also provide secondary legal aid. Their fees will depend on the complexity of the case, the stage at which they become involved and various other factors. These attorneys are selected following a regulated selection process approved by the order of the Minister of Justice.

Full-time legal aid attorneys are generally required to accept matters assigned to them by the state-subsidized legal aid service. In exceptional circumstances, an attorney may submit a written application stating why they cannot represent the appointed client, which if sufficient (for example, because there is a conflict of interest) may result in an amendment to the appointment, at the discretion of the legal aid service.

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<sup>14</sup> LGSLA, Art. 2, para. 1.

<sup>15</sup> LGSLA, Art. 2, para. 3.

<sup>16</sup> LGSLA, Art. 11, para. 6.

<sup>17</sup> LGSLA, Art. 11, para. 6 and para. 8.

<sup>18</sup> Code of Criminal Procedure of the Republic of Lithuania (2002), Art. 51.

<sup>19</sup> This category includes, inter alios, persons eligible for welfare payments from the government, persons residing in residential care establishments, persons with a recognized disability or incapacity for work, and their guardians and persons suffering from serious mental disorders: LGSLA, Art 11, para. 7 and Art. 12.



## Unmet Needs and Access Analysis

Although state-subsidized legal aid is broadly available to a fairly wide range of applicants, access to legal aid is impaired due to a general lack of public awareness. Further, as state-subsidized legal aid is only available to natural persons, NGOs are unable to make use of this service.

## Alternative Dispute Resolution

The LGSLA provides that both primary and secondary legal aid must include steps to help clients seek an amicable solution to their legal issues, which as per the Council of Europe Committee of Minister's Recommendation No. R(93)1<sup>20</sup> includes alternative dispute resolution methods such as mediation and conciliation.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

Certain NGOs, for example the Lithuanian Association for Human Rights, provide pro bono legal assistance. The legal departments of certain universities also give students the opportunity of participating in pro bono legal clinics. Among such departments are the Mykolo Romeris University legal aid centre, which provides primary legal aid,<sup>21</sup> and the Vilnius University legal clinic, which in partnership with the law firm, Lideika, Petrauskas, Valiūnas and partners LAWIN, provides primary legal aid, including legal advice on civil, employment, social welfare, administrative and other legal issues (with the exception of criminal legal issues) to all natural persons regardless of their financial status.<sup>22</sup> As mentioned below, some private law firms also offer and promote pro bono services on a case-by-case basis.

### Historic Development and Current State of Pro bono

#### Barriers to Pro bono Work and Other Considerations

##### Laws and Regulations Impacting Pro bono

In Lithuania, pro bono practice is allowed and is voluntary but it is not regulated. Therefore, pro bono services are not developed in a systematic or structured manner. Article 4(5) of the Law on the Bar stipulates that “[a]n attorney shall be entitled to provide legal services free of charge, i.e. to provide legal aid” but there is no official explanation of what constitutes the provision of legal services free of charge and/or how and when an attorney is allowed to provide such services. There is no official statistical data on the number of attorneys that provide pro bono services in Lithuania but most attorney and firm webpages refer to such services. An attorney of another EU Member State can represent pro bono clients in Lithuania under the Law on the Bar, provided that the relevant procedures for representation of a client in court are followed.

The Law on the Bar stipulates that an attorney must be insured for loss that exceeds €290, and that the mandatory minimum insurance coverage must be €29,000 per insured event. To the extent that actual loss exceeds an attorney's insurance coverage, the attorney is personally liable for the difference. An attorney must provide their insurance certificate and policy if a client so requests.

Persons who do not qualify for state-subsidized legal aid can obtain legal expenses' insurance to cover any costs relating to dispute resolution procedures, including for example, expenses relating to the

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<sup>20</sup> Adopted on January 8, 1993.

<sup>21</sup> See Mykolas Romeris University <[https://www.mruni.eu/lt/universitetas/fakultetai/teises\\_fakultetas/teisesines\\_pagalbos\\_centras/apie\\_centra/](https://www.mruni.eu/lt/universitetas/fakultetai/teises_fakultetas/teisesines_pagalbos_centras/apie_centra/)> (last visited on September 4, 2015).

<sup>22</sup> See Teises Klinika Vilnius University <<http://teisesklinika.lt/?>> (last visited on September 4, 2015).



provision of expert witnesses and inspections and other investigations, subject to the individual insurance company's specific terms and conditions (for example, a company may choose not to insure legal costs for claims that are less than €200 in value). Such insurance usually covers court costs relating to civil, administrative or criminal cases, and sometimes includes the costs of alternative dispute resolution procedures. Insurance policies covering non-contentious matters are not prohibited but there are no practical examples of such policies in Lithuania.

### Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

Albeit that pro bono services are not regulated or monitored by any public or private body, 12 attorneys were honoured by the Office of the Lithuanian President in 2011 for the provision of pro bono services during a conference on pro bono legal services and legal aid, which demonstrates the state's commitment to fostering pro bono work. The webpages of some of the Lithuanian law firms suggest that Lithuanian lawyers understand pro bono as an opportunity to provide legal services "for the public good," for example, where a court's decision may have a significant impact on the case law relating to a particular social group or where the potential client would not otherwise be able to afford legal services (but, perhaps, does not fall into the requisite category for state-subsidized legal aid).

Former Lithuanian Minister of Justice Remigijus Šimašius<sup>23</sup> has stated that pro bono legal aid offers distinct advantages in comparison with state-subsidized legal aid because it is tailored to the client, and because attorneys are free to choose (or decline) to act in individual cases. This makes it more likely that pro bono work is done in an area in which the attorney has a special interest or expertise. Further, the client is free to choose an attorney, all of which may result in greater client and attorney satisfaction. Lawyers providing state-subsidized legal aid will likewise assess the probability of their client's success in resolving a legal issue, but because clients who meet the relevant criteria are entitled to receive legal aid, and are not entitled to choose their attorney, the result of the case and the overall satisfaction of the attorney and the client is more varied.

The freedom to choose whether or not to engage in pro bono activities comes with an expectation that attorneys will treat pro bono requests ethically. For example, as a general rule of good practice, attorneys are expected to carefully consider individual requests for pro bono services rather than reject all such requests outright.

### Pro bono Resources

The following organizations may provide pro bono referrals and opportunities for lawyers to participate in education and research activities:

- Lithuanian Association for Human Rights: [www.lzta.lt](http://www.lzta.lt)
- Lithuanian Bar Association: [www.advoco.lt](http://www.advoco.lt)

## CONCLUSION

Lithuania has long been in need of a legal aid system that can serve its indigent citizens and recent legislative amendments have undoubtedly had a positive effect. However, much remains to be done as Lithuania seeks to further develop its pro bono culture, private pro bono initiative, common awareness of the existing pro bono opportunities and administrative mechanisms for the provision of legal services. While individual clients are served better under the pro bono model because the attorney will have a greater interest in the case, an interest which is not solely motivated by monetary reward, the Lithuanian approach seeks to ensure that everyone has access to legal advice.

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<sup>23</sup> See <<http://simasius.pop.lt/2012/06/01/protinga-teisine-pagalba-neturtingam-zmogui/>> (last visited on September 4, 2015).





## LATHAM & WATKINS<sup>LLP</sup>

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