

Reforming Legal Aid In Lithuania

*Report of a Conference held in Vilnius, Lithuania,
April 22, 2004, including Agenda and
list of participants.*

April 2004



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Lithuania is about to embark on comprehensive reform of its legal aid system, following successful experimenting in recent years with new “public defender offices” (PDOs). The Lithuanian reforms were the subject of an international meeting in Vilnius on April 22, 2004, organized by the Lithuanian Ministry of Justice, the Parliamentary Committees on Legal Affairs and on Human Rights, and the Open Society Justice Initiative. The event was attended by Members of Lithuania’s Parliament, the Minister of Justice, and experts, both government and nongovernmental, from other countries.

Lithuanian government participants were strongly supportive of reform proposals. Minister of Justice Vytautas Markevičius stated his department’s determination to ensure “broader access to justice” for all. Aloyzas Sakalas, Chairman of the Lithuanian Parliamentary Committee on Legal Affairs, made a ringing call for reform: “We need to have immediate, targeted action.... We still don’t have a viable model in Lithuania [for the delivery of legal services to the poor].... I am very enthusiastic about this. We don’t need to think any more. Parliament must act. Our people need legal aid.”

Lithuania, which joined the European Union on May 1, 2004, introduced public defender offices for criminal legal aid in 2000, the first of the latest crop of EU members to do so. Reforms began with the introduction of a new law on legal aid delivery in 2000. Although an improvement on paper, the law proved difficult to implement. Two trial PDOs in Siauliai and Vilnius demonstrated that problems were systemic and that a more comprehensive overhaul was needed. In 2003, a Working Group was established to develop ideas to that end. The Working Group’s concept paper, delivered in July 2003, was accepted by the government with some modifications in November. By the time of the April meeting, a draft law to implement the new system was being finalized.

The existing draft provides for two major innovations to the system: a new national Legal Aid Coordination Council and the institutionalization of public defender offices countrywide as the main providers of legal aid, alongside private lawyers. The creation of a special institution for the overall management and coordination of legal aid is a regional first, and an indication of the Lithuanian Government’s strong commitment to making access to justice real. The main reforms, endorsed by the Lithuanian Parliament in spring 2004, were presented and discussed at the meeting. Experts from countries with functioning legal aid systems offered examples of possible use in improving Lithuania’s.

Summary of Papers Delivered

The Conference consisted of three panels to discuss, first, Lithuania’s reforms in view of the systems in place in other EU countries, second Lithuania’s experience to date compared to England, the Netherlands and Israel, and, third, the evolution of European and international standards of quality and cost-efficiency in providing legal assistance to the poor.

Vytautas Markevičius, Lithuania’s Minister of Justice, opened the conference by affirming the need for reform and the Ministry’s determination to carry it out. He hoped discussions would

examine legal aid reform from a human rights perspective, in order to ensure “broader access to justice” for all. In a democracy, the burden is on government to fulfill human rights and ensure legal defense. Legal aid, in civil as well as criminal matters, has long been a priority for the government, but the quality of representation must be improved. The Working Group had made some considerable progress; foreign expertise is welcome, and Lithuania and other EU countries can learn from one another. *Aloyzas Sakalas, Chairman of the Lithuanian Parliament’s Committee on Legal Affairs*, emphasized the inter-departmental nature of legal aid provision, vital to creating an open society. Members of parliament frequently receive letters complaining of a shortage of legal representation in both civil and criminal cases. In criminal cases, more people actually get legal aid. Less so in civil cases, where the outcome often depends on the availability of aid. *Gediminas Dalinkevičius, Chairman of the Parliamentary Committee on Human Rights*, added that clarity is needed on who gets legal aid, under what circumstances, and how. Current distrust of the courts and the justice system is largely a result of the disinterest and indifference of lawyers in the system as it has operated until now. It can and must be improved.

Following on comments by *Gintas Bartkus, Chairman of the Open Society Fund–Lithuania*, final opening remarks were made by *James A. Goldston, Executive Director of the Open Society Justice Initiative*, who noted that poor compliance by states with the international obligation to provide legal aid impacts the entire justice system. Advocates of improved and expanded legal aid must develop tools to measure costs and effectiveness, ensure efficiency, and establish sound management structures. Lithuanian partners have been making progress in each of these areas, and Lithuania is entering the EU as an emerging leader in the field of legal aid. Whatever the result of Lithuania’s ongoing discussion, it will benefit from empirical research, analysis of comparative models, and careful deliberation.

Panel I: Lithuania’s New Management Model and EU Member States’ Experience

Linas Sesickas, Consultant with the Open Society Justice Initiative, talked about the current status of legal aid in Lithuania and the rationale for reform. Lithuanian commitment to improving legal aid had already provided a model for other Central European countries. The legal basis for aid was laid in the 2000 Law on Legal Aid, implementing the requirements of Lithuania’s 1992 Constitution (Article 31), and of the European Convention on Human Rights (ECHR) and other Council of Europe Recommendations. Problems soon became apparent in legal aid provision and management. The original system was entirely dependent on private lawyers, appointed ex officio, but offered few incentives to provide quality representation. The new PDOs in Siauliai and Vilnius offered alternatives to the existing system. A study carried out by the Lithuanian Law Institute in May-July 2003 revealed a great demand for criminal legal aid, but low quality provision with little attention to eligibility criteria and frequent substitution of lawyers midway through cases. Aid in civil and administrative cases, on the other hand, was both requested and delivered rarely. Funding is low and there is a near total absence of quality monitoring; basic statistical data; professional training; and administrative procedural transparency. The Working Group has, since the adoption of its concept paper in November, helped the Ministry of Justice to redraft the law on legal aid with a view to establishing a new management and delivery system: the Legal Aid Coordination Council and Legal Aid Department under the Ministry of Justice intended together to administer and monitor legal aid, to be provided by a network of five countrywide public defender offices involving both public defenders and private lawyers.

Read Linas Sesickas' article in the February 2004 edition of Justice Initiatives

Tomas Baranovas, Director of the Department of Legal Institutions, Ministry of Justice, Lithuania, spoke about the status of the current draft amendment to the 2000 law. Its main objectives are to improve the legal framework, simplify procedures, and improve the coordination of legal aid. There will be two levels of eligibility instead of the present five, and some groups will not need to prove their eligibility—including asylum seekers and refugees, people on social welfare, disabled individuals, those lacking means, and those requiring mandatory defense. State legal aid will also be available for victims of crimes and those on pensions. The local tax authority will assess the financial status of other applicants, and eligibility will be decided by lawyers employed by the municipalities. Eligible persons will be referred either to a private lawyer or to a public defender office. The PDOs will provide and manage legal aid in criminal cases. A new Legal Aid Coordinating Council under the Justice Ministry will coordinate the system and develop policy. A Legal Aid Department in the Ministry will provide administrative support. The draft law has been submitted to all relevant stakeholders and should be considered by Parliament in May.

Frans Ohm, Director, Legal Aid Board, Amsterdam, the Netherlands, spoke about Dutch provision of free legal advice and civil and criminal legal aid. The Netherlands is still learning. The Dutch experience is that statistics are helpful in discovering whether, how and why people seek legal aid—and also why not. Five regional Legal Aid Boards (LABs) were created to separate policymaking from execution in order to avoid possible abuses. The regional directors work together as a management team. The LABs are accountable to the Ministry for Justice and are fully state-funded. Clients may have to contribute towards legal costs. Legal aid "Front Offices", the first contact points with the public, are specialized in different areas of law, such as labor, housing, social welfare and social security. Staff include mainly paralegals. There are thirty Front Offices in the country, offering simple advice and providing an efficient screening function. The main actors in the legal aid system are: the Parliament, which sets overall policy and the budget; the Justice Ministry, which details policy and drafts and proposes the budget; the LABs, who execute policy, advise the Ministry and Parliament and monitor the system; and the Front Offices. The LABs issue certificates to aid lawyers, pay their fees and ensure that supply meets demand. They also plan and control the Front Offices, conduct monitoring and research, and advise Parliament and the Ministry.

See Frans Ohm's outline of the Dutch legal aid system online (PPT)

Roger Smith, Director, JUSTICE, looked at the historical development of legal aid. The current generation of legal aid, now present in Lithuania, is the fifth, which adopts a human rights perspective. The "right to legal aid" is laid out in numerous human rights instruments, including those of the UN, the Council of Europe, and the EU—in its future "Constitution" as part of the Charter of Fundamental Rights (article 46). In England and Wales, the first generation of legal aid was the work of charitable organizations. The second was the incorporation of legal aid into the welfare state structure. This was an initiative of the Law Society, beginning with work in relation to divorce. There were various expansions, the last being in the mid 1980s with the statutory funding of "duty solicitors" in police stations. The third generation came out of the U.S., as an instrument of political rights. The fourth generation arises in the age of management and

administrative control. The scheme begun by the Law Society in England became universal in criminal cases, and costs spiraled. Today cost-control is top of the British government's agenda.

[Read Roger Smith's paper on the English legal aid system online](#)

Panel II. Legal aid delivery scheme in Lithuania. Comparative experience

Audrone Bugeleviciene, Deputy Chairperson, Lithuanian Bar Council, gave an overview of current legal aid delivery in Lithuanian criminal cases. The scale of legal aid provision is great: 95 percent of cases surveyed by the Lithuanian Law Institute were tried with state-assigned lawyers. At present lawyers are registered with the Bar Association, which makes appointments ex officio from a list of professionals. Until recently, this system did not function properly—law enforcement officers could effectively appoint whomever they wished. On 2001, an agreement was reached to introduce coordinators as an interface between the Bar and the lawyers. Coordinators in major towns appoint ex officio private attorneys from existing lists, and countersign for payments. So far, there have been no complaints of absentee lawyers. Yet, despite better organization, the quality is still low. Remuneration is problematic and burdensome. Important provisions are vague or absent. There are hidden costs and violations, often difficult to track. The current system clearly needs improvement. The draft law now under discussion must provide for planning and control of funds. In creating a coordinating body, the rules of procedure will be important—there is much to learn from international and foreign experience. PDOs will play a major role in improving the quality of defense in a cost-effective manner.

Andrius Dubinas, Head of the Vilnius Public Defender Office, described the pilot Vilnius PDO, the second in the country—the first was opened in Siauliai in April 2000—created to advance equality of arms in the legal system, and to ensure both justice and value for money. The existing ex officio system has many hidden costs—if the full scope of work were calculated, costs would be significantly more than current fees to ex officio lawyers. The advantages of PDOs are being explored in Vilnius. First lawyers are dedicated to public defense and stand to become proficient. Second, the work becomes more prestigious, improving the personal and professional gains for individual lawyers. Third, the desire to gain a reputation is an incentive to strive on behalf of clients. Fourth, an emphasis on teamwork means that the offices generate better ideas and solutions. Fifth, standards of quality and management are being developed consciously. At the same time, the office has encountered difficulties. In its first year it did not have the respect of police, prosecutors or courts, who were slow to comply with the ex officio assignment procedure—this only improved in the last year, with the introduction of coordinators. The payment scheme needs to be more closely aligned to actual time and effort spent on defense. While providing legal aid, the pilot PDOs are also developing and demonstrating a future model of criminal legal aid delivery. They carry out education campaigns, collect statistics and produce analysis, all of which will provide guidance for the forthcoming countrywide PDO system. The Vilnius office cooperates with private lawyers (they now have a list of 34 names). The objective is to work together, not in competition. Ultimately, the standards for defense developed at the Vilnius office will prove useful to the courts, prosecutors and others in the justice system.

Gaynor Ogden, Head of Public Defender Service, Cheltenham, England, gave an account of recent English experience with its pilot Public Defender Service (PDS). The Legal Services Commission

(LSC) directly employs public defenders, who are salaried. The main purpose of setting up trial public defender offices in England was to benchmark quality and cost. The government found, after extensive research, that private services are better where there is a good PDS. The rationale was to provide a high quality, value for money service, giving examples of excellence; to recruit and educate new criminal lawyers and to share examples with private practice. During the four year pilot, PDS offices (in five regions) are independent within the LSC. At a minimum, they must meet the same quality standards as a private service. The structure consists of an office head, duty solicitors, accredited representatives and administrative staff. They use a computerized case management system. All types of criminal cases are covered, from minor offences to the most serious. The PDS has been successful on behalf of clients in appeals to both the Court of Appeal and the High Court. To preserve independence a code of ethics for defenders was included in the 1999 Access to Justice Act, including duties to avoid discrimination and conflicts of interest and to observe confidentiality. In future, the PDS intends to include an immigration advice service, and may later branch into other publicly funded areas, such as family, children, housing, debt and welfare benefit. The PDS is also working with law graduates to train and certify them in accordance with England's Police Station Accreditation Scheme.

[Read Gaynor Ogden's paper on the English Public Defender Service online](#)

Moshe Hacohen, Head of Public Defender Office Jerusalem, Israel, described that country's public defender scheme. Israel has two parallel systems, for criminal and civil cases. There are three basic categories for eligibility for criminal legal aid. First, mandatory aid, is available for those accused of capital crimes and very severe offenses, for physically or mentally handicapped defendants, or those remanded by the state. Second, legal aid "as of right" is provided to those accused of an offense carrying a prison term of over five years who can't afford a private lawyer, to juveniles, and to pre-trial detainees lacking the means. Third, discretionary aid appointments are possible whenever needed to prevent a miscarriage of justice. Legal aid in both civil and criminal cases includes legal advice and research, representation throughout court procedures, and the costs of trial, including fees for expert witnesses and translations. A low fixed contribution by the client is requested in proportion to his/her salary. The criminal legal aid system is mixed, combining public defenders in PDOs, external attorneys remunerated on a per case basis, and private contractors. The civil system draws exclusively on a list of "external attorneys" paid per case. Ethical rules of conduct for lawyers are specified in the Israeli Bar Code. Lawyers in both the PDOs and the Civil Legal Aid Office are required to attend training sessions. PDOs must respond to the cases and charges brought by police and prosecutors, which is difficult to predict and properly budget for. To better manage and monitor the system, computerized case management has been developed. Independence can also be a problem. Given that criminal PDOs are under the Ministry of Justice, a separate Board of Public Defenders was set up to supervise them. However, as the Board sets neither the budget nor overall policy, it is in practice only semi-independent. A similar problem exists with the civil public defender service, where no board exists: government influence has been seen in continuous attempts to cut expenditure. There may be a lesson in this for Lithuania, to ensure reasonable guarantees of independence from the first.

[Read Moshe Hacohen's paper on the Israeli legal aid system online](#)

Panel III. Developing standards and lessons learned on access to competent legal assistance for the poor

Caroline Morgan, Administrator, Directorate-General for Justice and Home Affairs, European Commission, outlined the latest developments in European Union standards for ensuring access to competent legal assistance. A draft EC Framework Decision on procedural safeguards provides standards in criminal proceedings throughout the EU. Its origins date to the 1998 Amsterdam Treaty's concept of an "area of freedom, security and justice". A number of measures have since been introduced for prosecuting offenses with transnational aspects, such as terrorism or trafficking. There are measures for mutual recognition of differing jurisdictional standards, and a new European Arrest Warrant. In dealing with prosecution (security), it became apparent that it was also necessary to deal with defense rights (justice). A draft green paper on procedural safeguards and the rights of defendants was posted on the Commission's website in February 2003. It included a right to legal aid, interpretation, and consular assistance, as well as special protection of vulnerable people and the distribution of "letters of rights." Following significant feedback from member countries' justice ministries, the Commission amended the paper and produced the draft Framework Decision. On legal aid, the proposal is that "suspected persons be given access to legal advice from a qualified lawyer as soon as possible". It should be free to minors, to those who cannot understand proceedings, and to those who would be in financial hardship if they do not receive it. States would be obliged to post in police stations, and supply to all arrested, a "letter of rights". In response to a query, Ms Morgan remarked that the draft Decision falls short of the ECHR on one standard—that access to a lawyer should be "as soon as possible" rather than from the moment of arrest. In other respects it is either equivalent to, or improves upon, the ECHR. It should therefore lead to an overall improvement in standards throughout Europe.

[Read Caroline Morgan's paper on European standards and the Framework Decision online](#)

Roger Smith, Director, JUSTICE gave a paper on "Lessons in Legal Aid Management and Delivery". The one constant everywhere is that the best legal aid systems are also the most expensive. Most governments have found it helpful to establish an intermediate body, such as a commission or board to administer legal aid, closely linked to, but formally independent of, government. This helps to preserve the independence of decision-making in individual cases and distances government from political attack in controversial cases. The "commission model" involves a government department responsible for resources and policy; an independent but government-appointed commission responsible for implementing that policy, depending to some extent on local circumstances; and practitioners who are paid directly or indirectly by the commission. Different jurisdictions take different views about the appointment of commissioners or board members. An independent commission can assist the process of budget control by being allocated a budget by its sponsoring department and then given responsibility to keep within it. Four general issues to pinpoint. First, good research is vital—for example rigorous research carried out in England and now Scotland, finds people often need aid for a "cluster" of reasons. People get "referral-fatigue," and stop looking for aid if sent elsewhere continuously. Second, the role of professional bodies. They must lead on quality. And they must demand proper remuneration for lawyers. This is a basic issue of prestige. Third, independence: any lawyer involved has to be independent of the state. Finally, any system which breaks advice from representation creates a

difficulty as we are finding in England, with the expansion of advice by non-profit organizations separated from lawyers, who both advise and represent. This raises the issue of the quality of advice and its relation to the representation.

[Read Roger Smith's paper on lessons learned online](#)

Concluding remarks

Aloyzas Sakalas, Chairman of the Lithuanian Parliamentary Committee on Legal Affairs, made a ringing call for immediate steps to adopt reform: “We need to have immediate, targeted action.... We still don’t have a viable model in Lithuania [for the delivery of legal services to the poor].... I am very enthusiastic about this. We don’t need to think any more. Parliament must act. Our people need legal aid.” *Raimundas Šukys, Deputy Chairperson of the Committee of Legal Affairs*, thanked participants and organizers and mentioned the final stages in the Working Group’s completion of the draft law to be presented to the Parliament in May. “Policymaking should be separate from policy implementation—and this should be inserted into the law.” The new coordinating body should have a supervision and monitoring function. This is a matter of gaining public trust. “But we need to celebrate that we have two draft laws, the process has started, we have kicked it off, and now we just need to find consensus on the issues we have been discussing here at this conference.” *Zaza Namoradze, Director of the Budapest Office of the Open Society Justice Initiative*, thanked all for participating. The process had generated very many ideas for discussion and thought on ways to improve access to competent legal aid for the poor. It takes time. In the Netherlands it has taken ten years, and is still being finetuned. It is important to create a good basis for reform and to recognize the main issues: quality, eligibility, good governance, finances. Creating a sound foundation for the new system will make it easier to finetune in future. Lithuania is on the way to providing an example, not only for its neighbors, but for the European Union as a whole and beyond in grappling with these issues.

The February 2004 issue of [Justice Initiatives](#), a publication of the Open Society Justice Initiative, is devoted to legal aid reform and access to justice. It can be viewed and read in full on our website: www.justiceinitiative.org

A G E N D A

Thursday, April 22

9:00 – 9:30 Registration, Coffee

Venue: Novotel, Gedimino ave. 16, Vilnius, Lithuania

9:30 – 10:00 Welcoming Remarks

- *Vytautas Markevičius*, Minister of Justice, Lithuania
- *Aloyzas Sakalas*, Chairman of the Committee on Legal Affairs of the Parliament
- *Gediminas Dalinkevičius*, Chairman of the Committee on Human Rights of the Parliament
- *Gintas Bartkus*, Chairman of the Open Society Fund - Lithuania
- *James Goldston*, Executive Director, Open Society Justice Initiative

10:00 – 11:30 Panel I. New Legal Aid Management Model in Lithuania (overview of the Draft Legal Aid Law). EU member states experience (Netherlands, England)

Moderator: *Gintas Bartkus*

Speakers:

Developing a new concept for reforming the legal aid system in Lithuania

Linas Sesickas, Open Society Justice Initiative Consultant, Lithuania

Scope of the draft law, new legal aid management model (Legal Aid Coordination Council's mandate and competencies, primary and state guaranteed legal aid, eligibility determination procedure)

Tomas Baranovas, Director of the Department of Legal Institutions, Ministry of Justice, Lithuania

Dutch Legal Aid System: management and delivery of free legal advice, civil and criminal legal aid

Frans Ohm, Director, Legal Aid Board Amsterdam, the Netherlands

English Legal Aid Management Model

Roger Smith, Director, JUSTICE, UK

Discussion

11:30 – 11:50 Coffee Break

11:50 – 13:20 Panel II. Legal aid delivery scheme in Lithuania. Comparative experience

Moderator: *Paulius Koverovas*, State Secretary, Ministry of Justice

Speakers:

Overview of the current system of legal aid delivery in criminal cases: Pilot Public Defender Offices and *ex-officio* appointed lawyers.
Role of Public Defender Offices in the new mixed system

Audrone Bugeleviciene, Deputy Chairperson, Lithuanian Bar Council

Pilot Public Defender Offices in Lithuania: mandate, office management, work with outside private lawyers

Andrius Dubinas, Head of the Vilnius Public Defender Office

England and Wales, Public Defender experiment: scope, expectations, *modus operandi*

Gaynor Ogden, Head of Public Defender Service, Cheltenham, England

Public Defender Office role in Israeli criminal justice system.

Delivery and management of civil legal aid

Moshe Hacohen, Head of Public Defender Office Jerusalem, Israel

Discussion

13:20 – 14:30 Lunch

14:30 – 16:00 Panel III. Developing standards and lessons learned on access to competent legal assistance for the poor

Moderator: *Zaza Namoradze, Director, Budapest Office, Open Society Justice Initiative*

Speakers:

Latest developments in European Union on standards for ensuring access to competent legal assistance for the poor

Caroline Morgan, Administrator, Directorate-General for Justice and Home Affairs, European Commission, Brussels

Lessons on Legal Aid Management and Delivery

Roger Smith, Director, JUSTICE, UK

Discussion

16:00 – 16:30 Concluding remarks

- *Paulius Koverovas, State Secretary, Ministry of Justice*
- *Aloyzas Sakalas, Chairman of the Committee on Legal Affairs of the Parliament*
- *Raimundas Šukys, Deputy Chairperson of the Committee on Legal Affairs of the Parliament*
- *Zaza Namoradze, Director, Budapest Office, Open Society Justice Initiative*

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OPEN SOCIETY

JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute, pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship, and anticorruption. Its offices are in Abuja, Budapest, and New York.

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