

ILAG 2013. Poland. Country report.

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Introduction

There is system of legal aid delivery in Poland in all kinds of cases being dealt by the courts (common, administrative, constitutional). The system is not coherent and in each type of procedure (civil, criminal, administrative, constitutional, cross border) it operates on a different basis. Provisions of procedural codes (civil, criminal) are subject to constant changes and the scope of the legal aid also changes frequently.

There is no public system of the delivery of out of court legal advice. Several attempts of reforming the legal aid system have been undertaken by introducing law on out of court legal advice as well as administration of the system (see below). Despite several draft laws, nothing was passed and the system in its core has remained unchanged for years.

Type of legal system

Poland is a parliamentary democratic republic located in central Europe (with the territory of 312.000 square kilometres, population of 38 million people, and capital city of Warsaw).

The three-level system of local administration includes: ca. 2500 municipalities (gmina), 380 districts (powiat) and 16 regions (województwo).

Poland is a civil law country (continental legal system) with strong influences of German, Austrian and French legal systems.

The court system comprises common courts (district, regional and appellate), the Supreme Court, separate system of administrative courts (consisting of 16 courts at the level of voivodships and Supreme Administrative Court) and Constitutional Tribunal (there are also military courts).

The legal profession is divided into two Bars – Advocates and Legal Advisors – legal professions with very similar competences and only minor differences (legal advisers might be employed on labour contract and may not represent clients in felony cases etc.). As of early 2013, there were 13833 persons registered as advocates and 27531 persons registered as legal advisors (some of them were inactive).

Advocates and legal advisors do not specialise in legal aid cases but have legal and ethical obligation to conduct legal aid cases if appointed. Additionally, patent agents and tax advisors can provide legal aid assistance before administrative courts.

Population¹

As of 21 March 2011	38 512 000
of which adults	31 391 900

GDP²

Gross domestic product in 2011	1 523 245 mln PLN	372 432 mln EUR ³
GDP per capita (nominal)	39538 PLN	9667 EUR ⁴

Average annual salary (full time work)⁵

	Avg. monthly salary		Avg. annual salary ⁶	
As of 2011	3404 PLN	832 EUR ⁷	40848 PLN	9987 EUR ⁸

Administration of legal aid

There is no central, national institution that would administer or oversee the system of legal aid delivery. Legal aid is being administered on the level of particular courts. Persons eligible for legal aid apply to the particular court to be granted ex officio lawyer.

Depending on the procedure the court assigns a particular lawyer (advocate or legal advisors, only members of one of the two Bars), accepts lawyer proposed by the party or grants ex officio lawyer but delegates appointment of the particular lawyer to the local Bar.

The merit and means test is conducted by the court (judges or court registrars /*referendarz*/). The fee is paid by the court (or partly by the prosecution office in the criminal cases).

No special quality control system exists apart from traditional Bar disciplinary mechanisms (general rules of professional conduct and disciplinary boards within the profession).

Ministry of justice does collect some data (see in other parts of this report) on number

¹ Source: The Statistical Yearbook of the Republic of Poland, edition 2012

² Source: The Statistical Yearbook of the Republic of Poland, edition 2012

³ By 2012 average exchange rate of 1 EUR = 4,09 PLN

⁴ By 2012 average exchange rate of 1 EUR = 4,09 PLN

⁵ Source: The Statistical Yearbook of the Republic of Poland, edition 2012

⁶ Calculated for the purposes of this report as twelvefold of monthly salary as reported in The Statistical Yearbook of the Republic of Poland, edition 2012.

⁷ By 2012 average exchange rate of 1 EUR = 4,09 PLN

⁸ By 2012 average exchange rate of 1 EUR = 4,09 PLN

of cases and cost of legal aid, but it does not prepare strategy, control quality, nor engage in research and evaluation. There is no public body that would play the role of the host of this subject matter. In the recent years some draft laws (mainly focused on establishing the system of out of court legal advice) envisaged the establishment of the Legal Aid Board, possessing various competences (depending on particular draft).

There is no special law on legal aid (a separate Act of Parliament). Since 2005 some draft laws on legal aid have been proposed, but none of them has been passed (see below). As a result, the regulations regarding legal aid are scattered across big number of legal acts.

Schemes of legal aid

1. Primary legal aid.

There is no state system of out of court, pre-litigation primary legal aid (apart from right to legal aid in cross border disputes thanks to the implementation of the relevant EU directive). The implementation of the directive created a situation where foreigners have access to the pre-litigation advice, and Polish citizens do not.

Despite the lack of a coherent system, different possibilities exist for persons in need of obtaining free legal information or advice.

a/ Non-public bodies.

A successful network of the **university law clinics** exists (with an umbrella organization – the University Law Clinics Foundation (FUPP, <http://fupp.org.pl>) – setting up the common standards, publishing textbooks, facilitating the research and educational projects. University law clinics are well established and became the norm in law departments, at both public universities and private law schools. Currently there are 25 clinics dealing with circa 13.000 cases a year.

There is also the network of **Citizen Advice Bureaux** (Biura Porad Obywatelskich, BPO) with an umbrella organization – Union of the Citizen Advice Bureaux (<http://zbpo.org.pl>). In the 90ties and early 2000s, the movement was on a rising tide, however at some point several BPOs were closed, Union lost its influence and limited its activities. There are still around 30 BPOs, rather independent than collaborating entities. They use both private and public funding (from local government and EU funds). In recent years BPOs dealt with ca. 35.000 cases a year (this number is estimate based on previous years rather than exact figure).

Apart from that, a large number of individual **NGOs** exist which declare that they provide legal advice. Scope of their activity varies, with some being very active and

specialising in particular areas of law. A number of those NGOs act as Citizen Advice Bureaux while remaining outside of the Union and receiving EU funding within legal and citizen advice grant mechanism. In 2011, 65 NGOs that received this type of support declared to have provided information/advice in 95.000 of cases.

Finally, legal profession undertakes some **pro bono** activities (including both regular programmes – like the “crime victims' support week” as well as individual actions).

b/ Public bodies.

In principle all public bodies have the obligation to provide legal information, some also legal advice. The most important ones are the following:

- The Ombudsperson (Commissioner for Citizens Rights) with the staff of ca. 300 persons and 27.000 new issues a year,
- Clients desks/counters in common courts, which have been established over last few years. The scope of their activity is however limited to legal information – they must not provide legal advice,
- The Labour Inspection which has a well-developed network of local offices and sufficient competences to provide legal advice in labour issues. According to Inspection's own declaration, this entity provides as many as 670 000 instances of legal information/advice per year,
- Consumer protection spokesmen (self-governmental institutions active at the level of districts, usually one employee serving part time as a spokesman apart from other work), dealing with consumer protection issues. In 2010 they declared to have completed 415 000 instances of legal information/advice,
- Social Welfare Centers (Ośrodki Pomocy Społecznej) at the level of municipalities and District Family Assistance Centers (Powiatowe Centra Pomocy Rodzinie) at the level of districts, dealing mainly with humanitarian help and social care. Apart from that they may also provide legal information and advice. The exact scope of this phenomenon remains unknown but in 2011 centers supported 144.000 families with “specialised advice”: including legal advice, psychological advice and family advice),
- Network of 16 regional Centers of Support for Victims (Ośrodki Pomocy Pokrzywdzonym Przystępstwem). In 2011 they provided legal advice ca 14.000 times,
- State tax offices and State Tax Information Hotline providing information regarding tax issues,
- Public prosecution offices (Prokuratura). Public prosecutors may initiate or take part in any kind of the proceedings, civil or administrative, including on behalf of the citizen. This possibility is not used often and there is no information on the number of cases on behalf of persons without financial means, but there are in fact thousands of cases a year that were initiated by prosecutors,

- Specialised institutions, such as The Ombudsperson for Children (Rzecznik Praw Dziecka) with ca 30.000 issues per year, The Patients' Ombudsperson (Rzecznik Praw Pacjenta) with ca 20.000 issues per year, The Insured Persons' Ombudsperson (Rzecznik Ubezpieczonych) with ca 14.000 issues per year,

2. Secondary legal aid - scope of legal aid and financial eligibility

There are 5 separate schemes of secondary legal aid - in 5 different fields – administrative, civil, criminal, constitutional and cross border disputes, as a result of which 5 different procedures apply. Most important are administrative, civil and criminal.

There is no uniform rules governing the awarding of secondary legal aid, in particular no explicit income criteria are set. The matter is decided by individual courts according to general tests of eligibility established in procedural law, particularly Code of Criminal Procedure (sec. 78-81), Code of Civil Procedure (sec. 117-117¹) and Law on Procedure before Administrative Courts (sec. 243-263). The wording of provisions is rather vague, largely leaving the decision on granting legal aid to the discretion of judges.

Civil procedure

In civil procedure, eligible for ex-officio representation are both natural and legal persons if they have already been granted a partial or full exemption from court fees (sec. 117(1) of Code of Civil Procedure). Other natural persons may also request ex-officio representation if they “file a statement” according to which “they are unable to cover attorney fees without damage to the necessary maintenance of themselves or their family”. Similarly, legal persons and other entities may demand legal aid if they “prove” that they “do not have sufficient funds to cover attorney fees”. According to sec. 117¹, natural persons need to disclose “detailed information on their family status, property, income and sources of maintenance”, using a form established by Minister of Justice⁹. Requests for legal aid should be submitted to the court where proceedings are pending or where proceedings ought to be initiated. Party may also submit the motion orally during the hearing to the presiding judge (the written declaration should follow). In any case, court only grants legal aid if it “finds the presence of an attorney needed” (sec. 117(5)).

The law does not clarify what criteria should be applied to evaluate the “need” of professional representation in the case. According to the commentaries and jurisprudence, those criteria include legal or factual complexity of the case as

⁹ The form requires the party to disclose the following information: their personal data, property they possess (stating legal title), immovables (including apartments, houses and farm estates), savings, securities, valuable objects worth more than 10000 PLN (approx. 2500 EUR) each, sources of income and other information the party deems fit.

assessed by the court, and helplessness of the applicant. The “need” to involve an attorney may also stem from principles of an adversarial trial system when one party is assisted by an attorney and the other is not. There are no standard rules governing the decision making and no financial limits, the decision on which rests with the court. It may happen (and happens in practice) that person in similar (if not identical) financial situation might receive legal aid in one court and be refused in other court.

Finally it is up to the court to decide whether the “Statement about family status, property, income and means for living” is adequate and provide enough information. If court decides to further investigate the issue all relevant documents proving the accuracy of “statement” might be presented (including tax declarations, salaries statements, proves of taking social benefits etc.).

Legal aid granted by the court of first instance may automatically extend to appeal and execution proceedings. If there is no legal aid in the court of first instance, the applicant may still submit an application in the second (and further) instance.

If ex officio lawyer has been appointed, the scope of services provided should include all actions related to the case, including for instance interim injunction procedure, settlement, execution. In each case however the decision on granting legal aid specifies its scope. Legal aid cover both court costs and legal fees.

When appointing a lawyer, courts notifies local bar (advocates or legal advisors). Local bar appoints particular person and informs client about the name and business address of the lawyer (client may suggest particular lawyer but this is not binding). There is a possibility for applicant to change appointed advocate but only when it is justified with the circumstances. The new lawyer is also appointed by local bar.

Administrative procedure

In administrative cases, the right to free legal aid appears only during court procedure before the administrative courts (first and second instance). There is no scheme for receiving legal aid during the first two administrative instances before organs of public administration.

The ex-officio representation is granted to both natural and legal persons, together with exemption from court fees or separately (sec. 246 of Law on Procedure before Administrative Courts). In the former case, natural persons “must prove that they are unable to cover any costs of proceedings”. In the latter they “must prove that they are unable to cover full cost of proceedings without damage to necessary maintenance of themselves and their family”. As far as legal persons are concerned, they bear the burden of proving that they, respectively, “do not have resources to cover any costs of proceedings” or “do not have sufficient resources to cover full costs of proceedings”.

The parties are required to “state” “detailed information on their material situation and income” and in the case of natural persons, also “detailed information on their family status”. This information is provided using specially designed forms¹⁰.

¹⁰ The form requires the natural persons to disclose the following information: their personal

The decision on granting or refusal to grant legal aid are made by court or court registrars. If the ex officio legal aid is granted by court the individual representative is appointed by local bar association, local association of legal advisers, National Council of Tax Advisers or National Council of Patent Agents. Legal aid granted includes the execution phase.

Legal aid may include: exemption from court cost; partial exemption from court cost; appointing of legal advisor; appointing of advocate; appointing of tax advisor; appointing of patent agent.

Criminal procedure

According to sec. 78 of Code of Criminal Procedure, the defendant demanding ex-officio representation “must duly demonstrate that he is unable to bear the costs of defence without damage to the necessary maintenance of himself or his family”.

As soon as the defendant demonstrates this fact, the president of the court shall appoint an *ex officio* defense counsel (the same regulation applies, *mutatis mutandis*, to victims). However the requirements to be met by the defendant applying for an *ex officio* defense counsel have not been stated with precision. As a result, it is unclear exactly what evidence can be treated as reliable (e.g., official certificates from the tax office or local social welfare center, the applicant’s own statement, etc.). According to a commentary: “If the application is insufficiently documented, the president of the court should call upon the defendant to supplement that application with evidence (documents) reflecting his / her current material and family situation”.¹¹

There is no official standard form for legal aid application (as it is in civil and administrative cases). However some courts develop their own forms and send it to the applicant together with the above mentioned request for the supplementation of the application¹².

The present regulations make it possible for the court to refuse legal aid without clearly stating the grounds on which the decision is based – and, it should be stressed, there is no possibility to appeal that decision.

Further provisions of the criminal procedure code provide that ex-officio representation is also granted regardless of the outcome of the financial test in certain cases – the legal representation is mandatory in following cases:

data, immovables they possess (including apartments, houses, farm estates and other immovables), other resources (including savings and securities), valuable objects worth more than 3000 EUR each, economic situation of other persons in the parties’ household, sources and amounts of monthly income of all persons in the household, as well as other information the party deems fit.

In case of legal persons, the following information must be stated: details of the party, type of their activity, details of their economic situation, including capital stock, tangible assets, the amount of loss or gain, state of bank accounts, other information the party deems fit.

¹¹ Kodeks Postępowania Karnego – Komentarz (*Code of Criminal Procedure – Commentary*), P. Hofmanski (ed.) et. al., Warsaw 1999, v.1, p. 366.

¹² For instance one of those documents includes urges the applying party to provide information on: income of the applicant and family members (also information about Personal Income Tax paid for last year), bank accounts, savings, property (movable and not-movable), occupational activities of the applicant and family members (salaries, benefits etc.).

- if the defendant is a juvenile;
- if the defendant is deaf, blind, or mute;
- if there are reasonable doubts as to the defendant's sanity (attorney might be revoked when doubts as to the sanity disappear due to medical examination);
- if the court finds it necessary in view of circumstances that may hamper the defense (ex officio decision by court);
- if the proceeding is pending in the first instance before a regional court, and the defendant is charged with a felony (acts punished with the statutory penalty of at least three years' imprisonment) or is deprived of liberty (detained or serving a term for another offence – the attorney may be revoked if the person is released).

In such instances, having ascertained that the defendant does not have a defense counsel of his or her choice, the court's president will appoint an *ex officio* counsel after the charges are presented to suspect.

Additionally some situations involve "obligatory assistance" by an attorney when access to a court depends on access to a lawyer. The Code of Criminal Procedure provides for obligatory assistance in the following cases:

- private indictment,
- appeal to the Court of Appeal of a judgment passed in the first instance by a regional court,
- cassation filed before the Supreme Court,
- motion for reinstatement of procedure.

In petty crimes proceedings the legal representation is mandatory in following cases:

- if the defendant is deaf, blind, or mute;
- if there are reasonable doubts as to the defendant's sanity (attorney might be revoked when doubts as to the sanity disappear due to medical examination).

Legal aid might be obtained from the moment when the person becomes officially suspected i.e. after initial presentation of charges. From that moment legal aid might be obtained at any stage of the procedure – preparatory, court or executive procedure after the judgement.

The suspect is to be instructed, before the first interrogation as a suspect, of his or her right to defense and to be assisted by a defense counsel, in addition to other rights, by the agency in charge of pre-trial proceedings (police or prosecution).

From the description above it appears that suspect has the right to apply for ex officio lawyer at the pre-trial phase of the proceedings. However it would be difficult to argue that this is primary legal aid since in reality everything is directed at representation before the prosecution and the court. The ex officio representation at pre-trial stage is in fact in most cases limited to preparation for the defense.

In theory, if the defendant has been granted an *ex officio* attorney in the court of first instance, the same attorney continues to represent him or her through all appeals, until the final judgment is delivered. However, in cases of *ex officio* defense, the defendant is often represented by a different attorney. The courts of second instance,

especially appellate courts, may be located far from the first attorney's place of residence. Therefore, it often happens that the court appoints a different attorney only for appearance before the court of second instance, even though the appeal was filed by the first attorney (it is done on the motion of *ex officio* lawyer).

The judgment of the court of second instance is legally valid. For that reason the cassation submitted to the Supreme Court is an extraordinary measure and is permitted only in exceptional situations – e.g., gross violation of the law. The cassation must be filed by an attorney. The indigent defendant must submit an additional motion for appointment of an *ex officio* attorney for preparing and filing the cassation. The attorney appointed is not obliged to file a cassation, but if the attorney declines to do so, he or she must inform both the court and the client about the decision. Filing a manifestly frivolous cassation is a violation of rules of professional ethics.

Local bar provides the court with the list of all attorneys in the particular jurisdiction. The court appoints particular lawyer for particular case from the list (in general according to alphabetical list, in practise in some cases they decide which lawyer to appoint due to other reasons).

As of the time of writing of this report a substantial reform of legal aid in criminal cases is being proposed by the government. In line with general efforts to make criminal procedure more contradictory and following international standards, it is proposed that *ex-officio* legal representation is granted in any criminal case the defendant demands it. The proposed law provides however that in case of conviction attorney fees covered by the state are collected from the convicted defendant.

Legal aid in cross border disputes

The European Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes was implemented into Polish law in 2004. The law originally did not cover pre-litigation or extra-judicial advice, appropriate amendment came into force in 2006. „Law on legal aid in civil proceedings taking place in European Union member states and on legal advice in order to reach a settlement prior to bringing such a proceedings“ (2006) covers pre-litigation advice “with a view to reaching a settlement prior to bringing legal proceedings”. The law requires the Minister of Justice to issue a model of the “standard form” for legal aid applications (the “standard form” is available in 19 languages at Ministry of Justice's website). The law in many elements refers to the Polish law on civil procedure (see above).

Legal aid before Constitutional Tribunal

In cases of individual constitutional complaints (in Polish system one can challenge the law only being the ground for the individual final decision), indigent persons may apply to the district court for an *ex officio* lawyer. Relevant rules of the Code of Civil Procedure (as described above) are applicable.

Statistics

a\ Number of cases in which legal aid was granted

Due to the dispersed nature of primary legal aid in Poland, no statistics on the number of cases where such aid was provided is available, other than figures stated in self-reports of individual state institutions and NGOs (see above). Divergent methodologies of such reports and different purposes they serve render data largely inconsistent and thus difficult to compare.

Also as far as secondary legal aid is concerned, no comprehensive source of statistics exists. Data on the number of cases in which secondary legal aid was granted have been gathered by a number of institutions using divergent methodologies and for that reason may or may not be consistent (see footnotes below). Available information pertaining to legal aid in different types of legal proceedings has been compiled in the following table.

Year	Criminal	Civil	Other	Administrative ¹³
1995 ¹⁴	35584	4726	647	NA
2000	52053	6822	6108	NA
2005	67665	10875	1203	2379 ¹⁵
2008	63920	12492	1948	3617 ¹⁶
2009 ¹⁷	68491	NA	NA	NA
2010	65556	NA	NA	NA
2011	61057	NA	NA	3488 ¹⁸
2012 ¹⁹	58904	10753	NA	NA

¹³ Information on legal aid in administrative cases is provided by Supreme Administrative Court and published in SAC's yearly reports (<http://www.nsa.gov.pl/index.php/pol/NSA/Sprawozdania-roczne2>). Numbers in the table refer to cases in which the motion to award an ex-officio representative was "fully" or "partially" successful.

¹⁴ Data until 2008 (inclusive) pertaining to criminal, civil and "other" proceedings has been collected by Central Statistical Office by means of self-reports delivered by members of legal professions and thus refers to the number of cases in which members of the Bar were active and paid by the state. This methodology of data collection has been under criticism as inaccurate and eventually has been abolished by the CSO. Source of data: Statistical Yearbook of Republic of Poland, editions 1996-2009, Central Statistical Office, Warsaw.

¹⁵ Out of 5482 motions filed (43% success ratio).

¹⁶ Out of 5211 motions filed (69% success ratio).

¹⁷ From 2009 the figures refer to the number of cases heard in district and regional courts in which ex-officio legal aid has been granted. Data has been collected by Ministry of Justice as part of court statistics and obtained for the purposes of this report by a public information inquiry. Due to a change in calculation method, only data on legal aid in criminal cases is available.

¹⁸ Out of 6598 motions filed (52% success ratio).

¹⁹ In 2012 the data refers to number of ongoing cases in which legal aid was provided, Data has

No information is available on granting of legal aid in cross-border cases.

Given the number of cases heard by Polish courts each year, the number of cases where legal aid has been granted remains unimpressive. Table below presents rough estimates of the number of cases by type of proceedings, pending in courts of first instance in 2011²⁰.

Criminal ²¹	Civil ²²	Administrative	Labour and social security	Commercial	Juvenile
655 200	6 555 800	66 020	205 300	1 332 300	115 644

b\ Legal aid expenditure

Resources used to provide primary legal aid are obtained by individual providers or are included in general budgets of state institutions, whose competences include - but are not limited to – providing legal aid. For these reasons no information on the overall spending on primary legal aid can be obtained.

Expenditure on secondary legal aid is covered by the state budget and spent according to two separate schemes. First scheme, included in section 15 of state budget - „Delivery of Justice“ providing funding for the court system - covers the expenses on legal aid granted in court proceedings. This scheme provides approx. 99% of all money spent on secondary legal aid in Poland. The amounts spent over last 10 years are presented in the table below (data for 2007 is not available)²³.

been collected by Ministry of Justice as part of court statistics. This source only covers criminal and civil cases, information on legal aid in administrative cases is being collected by Supreme Administrative Court.

²⁰ Source of data: Statistical Yearbook of Republic of Poland, edition 2012.

²¹ Excluding petty offences and parole.

²² Including family cases and admonition. Admonition cases are approx. 40% of the number given.

²³ Source: Ministry of Justice in response to public information inquiries.

Year	Total expenditure on court system (thousands of PLN) ²⁴	Expenditure on legal aid (thousands of PLN) ²⁵	Expenditure on legal aid (thousands of EUR) ²⁶	3/2 %	Expenditure on legal aid - per capita (EUR) ²⁷
1	2	3	4	5	6
2003	3 420 629	93 382	22 832	2,7	0,60
2004	3 830 821	73 488	17 968	1,9	0,47
2005	4 173 557	71 974	17 598	1,7	0,46
2006	4 528 953	84 262	20 602	1,9	0,54
2007	-	NA	NA	NA	NA
2008	5 198 544	93 842	22 944	1,8	0,60
2009	5 356 819	89 480	21 878	1,7	0,57
2010	5 759 365	92 055	22 507	1,6	0,59
2011	5 876 441	93 484	22 857	1,6	0,59
2012	6 080 714	98 555	24 097	1,6	0,62
2013	6 303 076	22 319 (1Q) ²⁸	5457 (1Q)	-	-

The table reveals that despite the increase in the amounts spent on courts over last years, the legal aid budget remained relatively stable, coming to 1,6-1.9% of total amount spent on courts or approximately 0,6 EUR per capita.

Second financing scheme pertains to legal aid granted in preliminary criminal proceedings upon decision of a public prosecutor. Expenditure of this kind is covered by section 37 of state budget - "Justice", which also provides resources for all non-court justice institutions, such as the public prosecution offices (Prokuratura), prison system etc. For that reason, the amounts spent on legal aid under this scheme should not be added to expenditure on legal aid granted by courts for comparative purposes. For last ten years the amounts spent on legal aid under this scheme have nevertheless been minimal. While overall sum of 4 090 113 000 PLN – (approx. 1 000 000 000 EUR) was provided under section 37 in the year 2012, the amount spent on legal aid was merely 815 000 PLN (just below 200 000 EUR).

²⁴ Amounts for the years 2003-2011 are amounts spent. Amounts for the years 2012-2013 are maximum amounts specified in the state budget.

²⁵ Amounts spent.

²⁶ By 2012 average exchange rate of 1 EUR = 4,09 PLN

²⁷ By 2012 average exchange rate of 1 EUR = 4,09 PLN

²⁸ Includes 13634 in expenses in criminal matters and 8685 in civil matters

Reforming legal aid system

In the recent years (starting in 2005) a number of attempts on reforming the legal aid delivery administration were made, but none of the draft laws was passed. Description below shows different directions that were taken by different authors.

Two draft Acts of Parliament (created in 2005 and 2007) reached the final stage of preparation. Each aimed at setting up a different scheme of primary legal aid, but the first of them did also cover secondary legal aid. The first draft was withdrawn from the Parliament after initial discussion. The second was sent to Parliament but not discussed since soon after the Parliament dissolved itself and the work was discontinued.

Subsequent proposals reached the level of the Council of Ministers, but none was submitted to the Parliament.

Draft Law on Access to Legal Aid, 2005

(“Law on access to free legal aid granted by the state for natural persons”, March 2005).

The draft law on Access to Legal Aid envisaged the gradual organization of a network of Legal Aid Offices (LAO) in 42 towns - seats of regional courts, a National Legal Aid Office, and a Legal Aid Coordination Board. It foresaw the creation of LAOs in ten regions during the first year, ten more during the second year and the remaining twenty-two in the following years.

The LAOs would deliver “basic legal aid” – that is pre-litigation legal information and advice, as well as granting “qualified legal aid” – that is appointing outside lawyers for trial representation.

LAOs would grant legal aid in most kinds of cases: *i.e.* civil, criminal and family, with some exclusions: for instance, taxes and duties/customs, bank loans, managing enterprise, creation or activities of NGOs.

The LAOs would be in fact a new path for the provision of legal aid, without altering other laws and already existing procedures (throughout administrative, civil, and criminal procedure, the existing method of providing *ex officio* legal aid would continue). They would start, and gradually take over the other systems, to finally build a comprehensive one.

LAOs would employ law clerks (law graduates) and legal advisors (members of the Legal Advisors Corporation) – these two groups would work as basic legal aid providers. For trial representation, LAOs would appoint advocates and legal advisors on a case by case basis (from the lists provided by Profession of those members who committed themselves to this work and specified their specialization). LAOs would also be a place for internship and voluntary work of law students and law graduates.

According to the proposed criteria, legal aid would be available for those whose monthly income is lower than the so called “minimum of existence” determined by law, at the time approximately €124 for a single person living alone and

approximately €85 *per capita* for families (“minimum of existence” means that theoretically somebody below it should not survive; the so called “social minimum” is around twice this much).

The procedure of receiving legal aid would be quite formal (even for simple legal information) – written application with means test and formal administrative decision (to grant or not) with the possibility to challenge a negative decision in Regional Administrative Court and then in Chief Administrative Court. There was, however, foreseen an “emergency procedure” – immediate legal aid in special circumstances.

The Draft law obliged all institutions created to cooperate with NGOs working in the field. For instance, in the Legal Aid Coordination Board, consisting of 10 members, 4 seats would be taken by representatives of NGOs.

The proposed structure was hierarchical - the system would be managed by National LAO - Legal Aid Coordination Board would have the right to analyse and evaluate the work of the system and propose changes, recommend new solutions, etc.

Finally, the authors of the draft law already envisaged detailed structure of LAOs – each office would employ 48 persons (around half of them would be legal aid providers: 10 Legal Advisors, 10 law graduates; and half of them administrative support staff). Each LAO should have 42 rooms (that is 800 square meter offices).

Draft Law on Access to Legal Aid, 2007

Final draft “Law on Access to Free Legal Advice for the Natural Persons” was accepted by Council of Ministers in April 2007 and was sent to the Parliament for legislative procedure.

Draft Law on Access to Free Legal Advice... (further as LLA) gave up the previous idea of creating extensive and expensive administrative structure detached from those in need. Instead of building public offices in only ca. 40 locations it envisaged organizing grant competitions for legal advice providers in all ca. 380 districts (powiaty).

Number of subjects could take part in the competition: advocates, legal advisors, law graduates, university law clinics and other NGOs specialising in providing legal advice.

Grant competition and administration of the whole system would be governed by National Legal Advice Council – body established by Minister of Justice (5-7 members plus office with supporting staff).

Possible legal advice providers would have to take part in the competition, prepare a proposal and if granted organize one or more (depending on the size of district) legal advice points. Formalities would include signing a contract, obtaining “malpractice insurance” and fulfilling some other criteria set by Ministry decree (for instance pertaining to ensuring accessibility of the office and advisor-client confidentiality).

LLA provided only for access to legal information and out of court legal advice (did not cover court representation and in this respect sustained existing system of *ex officio* legal aid). However, “legal advice” included preparation of the first court motion in a case (for instance claim to the court) or motion for court fee waiver and granting

an *ex officio* lawyer.

In comparison to the previous draft law financial criteria conditioning right to legal advice were changed. Legal advice would be available for those whose monthly income was lower than 150% of the above mentioned “minimum of existence”. In special circumstances this sum would be increased to 200% (for instance victims of domestic violence, homeless, disabled).

Legal advice would be granted in all legal matters with some exceptions including: economic activity, NGOs activities, preparatory criminal procedure (with the exceptions of victims), tax and customs issues.

LLA included a number of provisions related to foreigners and legal advice for people who are seeking refugee and other related status. In this respect it sought to implement EU directives: 2003/109/EC; 2004/38/EC and 2005/85/EC.

Compared to the previous draft law, the procedure of receiving legal aid has also been changed to be simpler. One would have to file a motion describing the legal problem and financial/material status. Decision whether to grant legal advice would be taken without undue delay and not later than within 7 days. The help should be provided without delay but not later than within 30 days. Refusal to grant advice could be challenged in a civil court.

Draft laws 2008-2011

There were also some other draft laws prepared in the following years but not submitted to the Parliament. They were stopped at the level of the Ministry of Justice or Council of Ministers.

Two of them were well-developed and reached almost final stage of the preparatory work (finally prepared by the Ministry of Justice but not submitted to the Parliament).

One draft law (2009) envisaged creation of a network of legal aid offices built based on existing institutions of self-government at the level of districts - District Family Assistance Centres. Centres would administer the system on the local level – they could provide primary legal aid themselves or, as would be the case in secondary legal aid, commission it to other organizations and lawyers. On the national level Legal Aid Board was to be established, with standardising, monitoring and quality control competences. The Council of Ministers decided that the state budget is lacking money for such a wide approach.

Second draft law (2011) was limited in scope. It envisaged the creation of the Legal Information Center – one institution (with possible branches) that would deliver legal information – so partly primary legal aid, but limited to information, and not individualised legal advice based on the analyses of the documents etc. Legal information would be delivered via Internet portal and other means including telephone information hotline to all – with no eligibility criteria set.

This report was prepared partly based on the research findings of INPRIS – Institute of Law and Society (inpris.pl) within the project „The development of a comprehensive and sustainable support mechanisms for primary legal aid delivery system in Poland” (systemic project that is being implemented under action 5.4.1 „Systemic support for the Third Sector”, Human Capital Programme, Priority V). The project is implemented by the Ministry of Labour and Social Policy (a leading partner) and four partner organizations including INPRIS.



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