

## **State Guaranteed Legal Aid in Lithuania**

Most probably everybody has had some legal problems, such as a dispute about land or a divorce case, but you did not have enough money to receive legal consultation or to hire a lawyer. Therefore we will inform you about the state-guaranteed legal aid.

Up to 2001 Lithuania did not have the so called "legal aid" (free legal assistance provided by the State). Theretofore legal aid in Lithuania was covered from the state budget and was provided only in the procedure of criminal cases and only when the mandatory presence of a lawyer in interrogation, preliminary investigation or in proceeding was set by the Code of Criminal Procedure. The subject of providing legal assistance was started to discuss in 1999. A working group, which drafted a conception of the system of the state-guaranteed legal aid, was formed under a decree of the premier of Lithuania. The working group also drafted the Law of the State-Guaranteed Legal Aid and the law was adopted by the Seimas of the Republic of Lithuania in March 2000 and entered into effect on 1 January 2001.

As it is known, Article 6 of Convention of Protection of European Human Rights and Freedoms regulates a person's right to a fair process, establishes the State's duty to provide free legal assistance if a person can not afford a lawyer and when the interests of justice require so. This provision of the Convention is basically oriented to the criminal procedure. Nevertheless, attention should be paid to the fact that, interpreting a person's right to court provided for in Part 1 of Article 6, the European Court of Human Rights has adopted decisions that the State violates this right if it does not guarantee legal assistance in the procedure of civil cases. The jurisprudence of the European Court of Human Rights emphasizes that legal assistance is not provided in the procedure of criminal cases, but the jurisprudence of this court does not provide the basis to state, that the States are not obliged to provide legal assistance to persons in the procedure of civil and criminal cases.

Regulating the exemption from the stamp-duty, Article 83 of the Code of Civil Procedure of the Republic of Lithuania provides basis to exempt welfare recipients from the stamp-duty in cases that are examined by courts. A welfare recipient is a person, who receives income support and also persons, who are maintained by the state in the stationary foster institutions. However, the exemption of welfare recipients from the stamp duty is just a partial solution of the problem regarding the financial drawbacks to appeal to court. Most people in Lithuania can not protect their violated rights effectively not only due to big rates of the stamp-duty but also because they do not have enough recourse to hire a lawyer. As material differentiation is developing rapidly in the society, formal equality of the parties does not mean equal possibilities. Given material differentiation, one party shall hire a lawyer and the other shall not. It is obvious that a party represented by a layer in a trial procedure based on the emulation principle is more likely to win the case than the party which does not have a lawyer. This suggests a conclusion that when determining that violated rights can be protected only under judicial order, the state must consider the real circumstances, that is consider the fact, that the possibilities of the residents of the state to protect their rights under judicial order are not equal due to different financial circumstances. Therefore it was endeavored to create such a system of the state-guaranteed legal aid in Lithuania, which would allow compensating material inequality and would at least partially create equal possibilities for the needy and for the wealthy to protect their rights and legal interests.

It was necessary to create the system of the state-guaranteed legal aid in Lithuania not only considering the real living standards but also considering the international standards. The system of free legal aid was and is necessary also due to other international obligations of Lithuania.

As it was mentioned before, the Law on the State-Guaranteed Legal Aid of Lithuania entered into effect on 1 January 2001. The aim of this law is to establish the State-Guaranteed legal aid to the citizens of the Republic of Lithuania and to foreigners who domicile in Lithuania also to persons without citizenship (if the Laws of the Republic of Lithuania or international agreements do not provide otherwise), to persons who cannot properly protect their rights and law protected interests because of their insufficient financial situation. The state-guaranteed legal aid includes legal information, legal consultations, defense and representation in the procedure of cases.

Under this law Lithuania guarantees legal aid only to natural persons. This legal aid is guaranteed to the citizens of the Republic of Lithuania and to foreigners who domicile in Lithuania also to persons without citizenship. These persons have a right to receive the state-guaranteed legal aid provided: 1) they can not protect their rights and law protected interests because of their insufficient financial situation; 2) when laws of the Republic of Lithuania or international treaties provide for the legal aid independent of financial situation. The law also sets that the state-guaranteed legal aid shall not be provided to persons who have the right to the insurance payments of court expenses.

**Provision of the state-guaranteed legal aid to persons who can not protect their rights and law protected interests because of their insufficient financial situation**

The Law on the State-Guaranteed Legal Aid of Lithuania sets that due to insufficient financial situation state-guaranteed legal aid shall be provided to persons, whose property and annual income agrees with the property and income levels set by the Government of the Republic of Lithuania regarding the provision of legal aid. Under the first level 100 percent of the expenses of legal assistance are covered, under the second level – 95 percent, under the third – 80 percent, under the fourth – 65 percent, under the fifth level – 50 percent of the expenses are covered. As it can be seen the bigger the income and property level, the smaller the part of the expenses of legal assistance covered by the state.

Whether a person has a right to receive the state-guaranteed legal aid and which level agrees with a person's property and annual income is seen from property and income declaration which is filled before asking for the state-guaranteed legal aid. If the provision of the state-guaranteed legal aid takes more than a year, the property and income declaration must be submitted every year. If a person's property and income level changes during the period the state-guaranteed legal aid is provided, the part of the expenses covered by the state changes accordingly.

Under the law the person's, who has submitted a request for the state-guaranteed legal aid, property and income is considered. The law provides that while providing legal assistance the person, who has appointed legal assistance, has a right to ask for additional written evidences about the financial situation of the family members of the person, to whom legal assistance is provided. However, it is not obligatory to

consider family's income when appointing legal aid. This provision of the law is negotiable. Today a spouse who does not work has a right to receive the state-guaranteed legal aid regardless of his spouse's income and person, who has enough money, may not receive legal aid even though the other members of his family do not work. Besides, a person, who does not receive any income but has enough property, will not receive the legal aid either.

### **Provision of the state-guaranteed legal aid to persons regardless of a person's financial situation, when it is provided for by the laws of the Republic of Lithuania or international treaties**

Article 31 of the Constitution of the Republic of Lithuania guarantees to every person, suspected of committing a crime or formally accused of committing a crime, the right to defense and the right to have a lawyer.

If, in the cases set down in Article 56 of the Criminal Code of Procedure, a suspect, an accused or a defendant themselves, or other persons by their order, have not invited a defender, legal assistance carried out by a lawyer is provided to them. The laws that are in effect now, do not relate the allocation of a defender to the suspect, the accused or the defendant's financial situation, when the presence of a lawyer is mandatory in the cases set down by the law.

### **Types of the state-guaranteed legal assistance**

The Law on State-Guaranteed Legal Aid of the Republic of Lithuania provides for three types of the state-guaranteed legal aid: primary legal assistance, state legal assistance and legal assistance provided by public institutions.

Primary legal assistance – legal information and legal consultations are guaranteed by executive institutions of local governments to the persons whose annual income correspond to the first level of income. Executive institutions of local governments issue dispatches to receive primary legal assistance to persons who live in their territory. In order to guarantee qualified legal assistance the law establishes, that legal assistance can be provided by advocates and their assistants. The law limits the period of provision of legal aid and issues dispatches to receive up to one hour of primary legal assistance.

State legal assistance is state-guaranteed defense and representation in legal proceedings. After the Law on State-Guaranteed Legal Aid of the Republic of Lithuania came into effect state legal assistance is provided not only in criminal cases to suspects, the accused, defendants and prisoners but also to the aggrieved and civil claimants in criminal cases, to claimants, respondents and third parties in civil cases, and to declarants in administrative cases. State guaranteed legal aid is assigned by pre-trial investigation officers, public prosecutors, judges or the court. State-guaranteed legal aid is provided by lawyers and their assistants. The expenses of the state legal assistance are covered from the state's budget.

Primary legal assistance as well as state legal assistance is provided by lawyers and their assistants. In order to assure that legal assistance to a person is provided by an acceptable lawyer, the law sets down that, on the person's application, legal assistance to him will be provided by a lawyer the person has indicated, provided the lawyer agrees.

As has already been mentioned, the Law on State-Guaranteed Legal Aid of the Republic of Lithuania provides for the third type of legal aid - legal assistance provided by public institutions. As the financial situation of the State did not allow to provide primary legal assistance and State legal assistance to all who needed, a very important role was played by private initiatives. As a result of these initiatives, legal aid centers and law clinics were established in the bigger cities of Lithuania. The Fund of Open Lithuania actively participates in the implementation of these projects.

After establishing a legal aid center in Vilnius municipality, the Law University was among the first who started implementing the project of rendering legal assistance for socially supported people. Students have an opportunity to work in these institutions. Vilnius University followed the example and established the Law Clinic. Legal aid provided by these centers includes legal consultations, preparation of legal documents, and representation in courts. These clinics also have another aim - to create possibilities for law students to practice provision of legal aid.

In April 2001 the Legal Aid Center for socially supported people was officially opened in Kaunas. The implementation of this initiative was supported by the Fund of Open Lithuania and the project itself was implemented by the lawyer college of Kaunas. The establishment of the center has two aims: to provide legal aid to persons who can not afford a lawyer and to create possibilities for masters of the law studies to gain practical knowledge.

We would like to note that the aforementioned centers are very popular among people. These centers render legal assistance to welfare recipients, pensioners and other socially supported people.

Establishing public attorney offices is the initiative of the Fund of Open Lithuania and of the Institute of Constitutional and Legal Policy (COLPI).

On 17 February 2000 the Fund of Open Lithuania, the Ministry of justice and the Council of the Lithuanian Bar signed an establishing treaty of Šiauliai Public Attorney Office which started its activities on 3 April 2000. Šiauliai Public Attorney Office organizes and coordinates the provision of legal aid in pre-trial institutions of Šiauliai city and region, in the district courts of Šiauliai city and region and in Šiauliai county courts. Judges, prosecutors and pre-trial investigation officers are in favour of the office activity and request for its further development.

On 11 October 2001 the Fund of Open Lithuania, the Ministry of justice and the Council of the Lithuanian Bar signed an establishing treaty of Vilnius Public Attorney Office which started its activities on 1 May 2002. Vilnius Public Attorney Office organizes and coordinates the provision of legal aid in Vilnius 2<sup>nd</sup> police commissariat, in Vilnius 2<sup>nd</sup> district court, Vilnius County Court and in the Appeal Court of Lithuania.

A commission formed under the decree of the Minister of Justice carried out an integrated evaluation of Šiauliai and Vilnius public attorney offices and deduced their advantages and disadvantages. The commission was in favour of the activities of Šiauliai and Vilnius public attorney offices and recognized its importance in the present system of the state-guaranteed legal aid and in its further development and approved the idea to establish public attorney offices in Kaunas, Klaipėda and Panevėžys.

On 25 November 2003 the Government ratified the draft of the improvement of the state-guaranteed legal aid, under the basis of which a working group is preparing legal acts related to them, paying attention to the primary legal aid and to the criteria to decide whether the person can receive the state-guaranteed legal aid.

The development of the state-guaranteed legal aid system and its successful implementation is very important to Lithuania. We expect that the projects which are being implemented will answer our hopes and positive changes will take place in the sphere of legal aid.

The Legal Services Corporation exists in the USA which acts as a private organization established by the American Congress, the key aim of which is to guarantee equal justice to all Americans. This corporation has a Board of directors, which is appointed by the President and approved by the Senate, and receives resources from the Congress every year and immediately distributes the money to regional independent programs rendering legal aid to socially supported people.

Appealing to statistics, one of five Americans needs legal aid. The corporation does not provide legal aid directly. On the other hand, its programs would most probably be able to provide the minimal legal aid. The corporation usually takes to such cases as family matters, provision of inhabitation, management of income, consumer rights, work/placement.