

THE LEGAL PROFESSION IN ESTONIA

by Timo Ligi

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1. Basic organization and structure of the legal profession

1.1. The Bar Association

The providers of legal services¹ are in general divided into two groups: advocates and other professional providers of legal services. Advocates are members of the Estonian Bar Association, while other professional providers of legal services are not - only members of the Estonian Bar Association may provide legal services as advocates. Generally advocates provide legal services on equal bases with other professional legal services providers, but there are some very clear distinctions specified in the law. For example, only advocates can provide state legal aid² and in the cassation procedure a participant in the proceeding is permitted to perform procedural acts, and submit petitions and requests in the Supreme Court only through a sworn advocate³.

The Estonian Bar Association, founded on 14 June 1919, is the only self-governing professional association in the country which organises the provision of legal services in private and public interests and protects the professional rights of advocates⁴. The competence of the Bar Association includes :

- 1) admission of members to and exclusion of members from the Bar Association;
- 2) supervision over the professional activities of the members of the Bar Association and their compliance with the requirements for professional ethics;
- 3) supervision over the professional activities of advocates of foreign states who are practising in Estonia and their compliance with the requirements for professional ethics;
- 4) organising in-service training for advocates;
- 5) provision of state legal aid;
- 6) administration of the assets of the Bar Association;
- 7) resolution of other matters relating to advocates' professional activities⁵.

Among other matters, the Bar Association organises relations between advocates, state companies and several local and foreign organisations and actively participates in legislative drafting.

The bodies of the Bar Association are the general assembly, the Board, the Chairman, the audit committee, the court of honour and the professional suitability assessment committee⁶. The ordinary general assembly convenes at least once a year and consists of all members of the Bar Association. Sworn advocates and senior clerks of sworn advocates

¹ According to Bar Association Act § 40 (1) legal services mean providing legal counselling, representing and defending a person in court or in pre-trial proceedings or elsewhere, preparing a document for a person or performing other legal acts in the interests of a person as professional activity.

² State Legal Aid Act § 5 (1).

³ Code of Civil Procedure § 677 (4).

⁴ Bar Association Act § 2 (1).

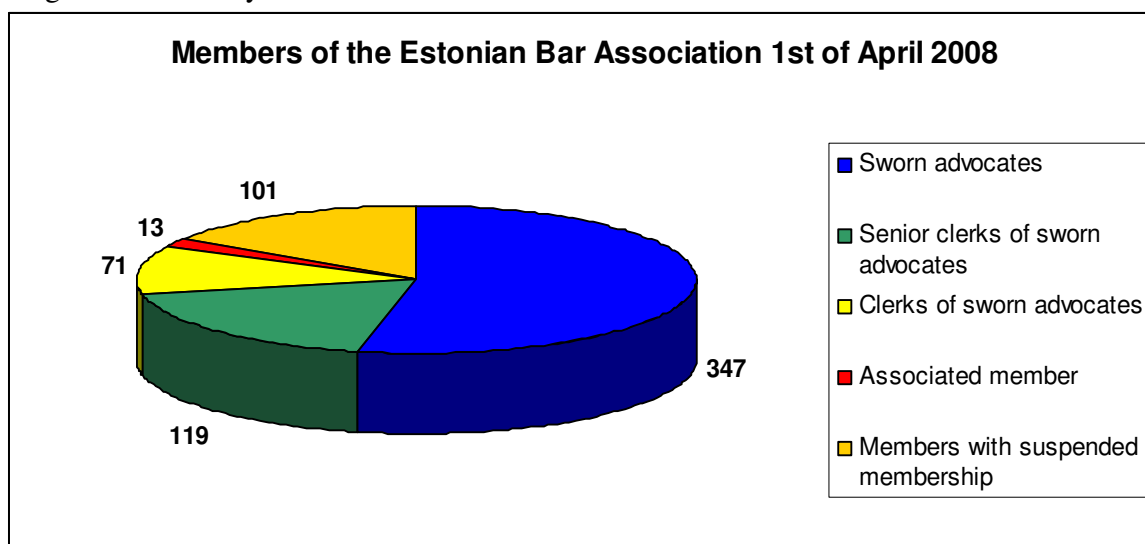
⁵ Bar Association Act § 3.

⁶ Bar Association Act § 6 (2)

have the right to vote⁷. The general assembly, among other duties, elects the Chairman, the members and alternate members of the Board and of the audit committee and the members and alternate members of the court of honour who are advocates. The Chairman is elected from among sworn advocates for a term of three years and represents the Bar Association in all legal acts⁸. The Chairman belongs to the Board of the Bar Association, organises the activities of the Board and chairs the sessions of the Board. The Board is a permanent governing body of the Bar Association, consisting of at least seven members who are elected from among sworn advocates for a term of three years⁹. The board, among other duties, administers the assets and organises the accounting of the Bar Association and appoints a Chancellor who shall perform the executive and organisational duties assigned by the Board.

1.2. Members of the Bar Association

The members of the Bar Association can be grouped into three main groups: sworn advocates, senior clerks of sworn advocates and clerks of sworn advocates. In addition, associated members¹⁰ are also members of the Estonian Bar Association and members of the general assembly.



As of the 1st of April 2008 the Estonian Bar Association has a total of 651 members¹¹:

- 1) 347 sworn advocates;
- 2) 119 senior clerks of sworn advocates;

⁷ Bar Association Act § 7

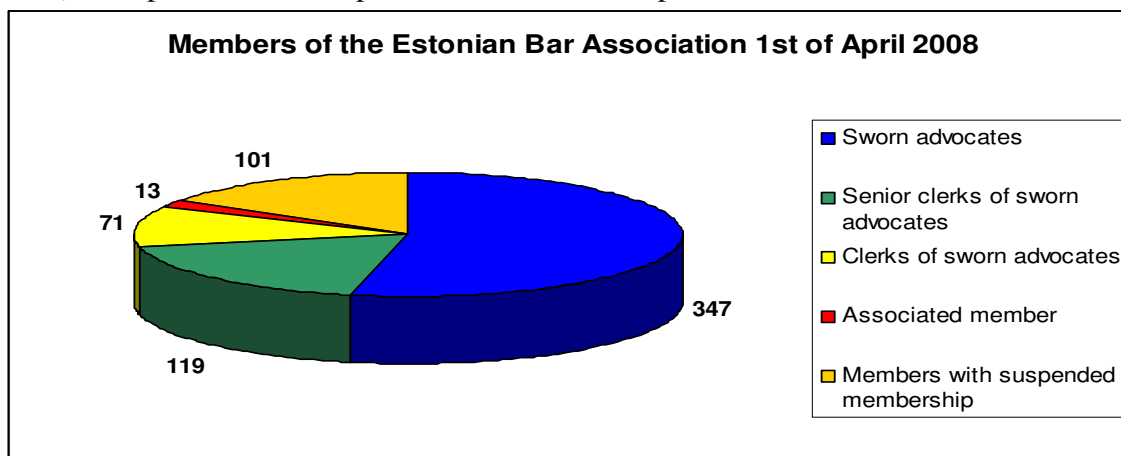
⁸ Bar Association Act § 10

⁹ Bar Association Act § 11.

¹⁰ The right to act as an associate member of the Bar Association is granted, on the basis of an application, to a person who is a citizen of a member state of the European Union and who has the right to practise as an advocate on a permanent basis in a member state of the European Union (§ 66 (1) of the Bar Association Act).

¹¹ Currently there is no exact statistics about the number of other legal service providers (in addition to the members of the Bar Association), in 2004 their number was estimated to be around 150-200, but it probably has decreased with the implementation of the State Legal Aid Act and the increase in the number of advocates.

- 3) 71 clerks of sworn advocates;
- 4) 13 associated members
- 5) 101 persons have suspended their membership¹².



A sworn advocate is competent to¹³:

- 1) represent and defend clients in court, in pre-trial proceedings and elsewhere in Estonia and in foreign states;
- 2) collect evidence;
- 3) in the provision of legal services, freely choose and use the means and methods which are in conformity with law;
- 4) receive information necessary for provision of legal services from state and local government agencies, have access to documents, receive copies of and extracts from such documents, unless the receipt of the information or documents by the advocate is prohibited by law;
- 5) in the framework of provision of legal services to a client, to verify for the client transcripts of and signatures on documents to be submitted to the court and other state offices;
- 6) act as an arbitrator or conciliator;
- 7) act as a trustee in bankruptcy.

Sworn advocates' clerks and senior clerks have the competence of sworn advocates with some distinctions provided by law. For example, a sworn advocates's senior clerk or sworn

¹² According to § 35 of the Bar Association Act the membership in the Bar Association shall be suspended by a resolution of the Board if a person:

- 1) is temporarily unable to provide legal services for six consecutive months due to health reasons or other reasons;
- 2) has failed to perform the obligation to undergo in-service training prescribed in § 34¹ of this Act and six years have passed since he or she passed the last advocate's examination or his or her professional suitability was assessed;
- 3) joins public service or commences work under an employment contract or a contract of service in an office or position which requires completion of studies of higher education in law;
- 4) is elected to the Parliament or as a Member of the European Parliament or as the President of the Republic;
- 5) is appointed as a member of the Government of the Republic.

¹³ Bar Association Act § 41 (1).

advocate's clerk is not competent to act as an arbitrator or conciliator or represent or defend a client in the Supreme Court unless otherwise provided by law. A sworn advocate's clerk is not competent to act as a trustee in bankruptcy. Sworn advocate's clerks may provide legal services only under the supervision of his or her patron who is a sworn advocate¹⁴.

The population of the Estonian Republic is 1 340 602 as of the 1st of January 2008¹⁵, so there is one advocate per 2059 people in Estonia. The number of advocates and the members of the Bar Association increased quite extensively during the last couple of years (by about 200 members since the end of 2004). The main catalyst for this has probably been the enforcement of the State Legal Aid Act in the March of 2005, according to which only advocates could provide state legal aid¹⁶.

The 651 advocates have organised themselves into 182 offices (as an average 3,6 advocates per office). 64% (116 offices) are registered in Tallinn (the capital) and the rest (66 offices) in other towns. About 30% of the country's population is also situated in Tallinn (nearly 400 000 people) and an additional 125 000 people in the county surrounding the capital.

A little bit less than half of the offices in Tallinn (55 to be exact) are solo practices, but in the other towns 2/3 of the offices (44 to be exact) are solo practices. This can be explained with the fact that the main business is situated in Tallinn and that the volume of business is large enough to form larger offices and to specialise.

2. Admission to the legal profession

2.1. General requirements

Members are admitted to the Bar Association by a resolution of the Board. A person may be admitted to the Bar Association, if he or she:

- 1) has active legal capacity;
- 2) resides in Estonia or is a citizen of the Republic of Estonia or of a Member State of the European Union;
- 3) has fulfilled an accredited law curriculum of academic studies

¹⁴ Bar Association Act § 42.

¹⁵ <http://www.stat.ee/pohinaitajad>

¹⁶ As an implementation procedure of the act, it was possible for persons who immediately prior to joining the Bar Association had provided, for at least three consecutive years, legal services as a sole proprietor or through a company whose areas of activity included the provision of legal services and in which he or she is a shareholder or a unit-holder and who had completed the national curriculum of academic legal studies and, to be admitted to the Bar Association as a sworn advocate's senior clerk, if he or she passed the examination of a sworn advocate's senior clerk. Such a person could provide legal services and act as the management of a law office on the same bases with a sworn advocate. The person still had to comply with most the requirements for advocates set in the law and had to apply for admission within six months after the enforcement of the State Legal Aid Act. In addition, the person will lose the right to provide legal services and act as the management of a law office, if he or she does not pass the examination of a sworn advocate within two years as of joining the Bar Association. The examination of a sworn advocate cannot be passed before one year has passed after admitting the person as a member of the Bar Association as a sworn advocate's senior clerk (State Legal Aid Act § 38).

- 4) has oral and written proficiency in Estonian;
- 5) is honest and of high moral character¹⁷.

In order to be admitted to the Bar Association, a person must submit a written application and pass an advocate's examination. In the application, a person must certify that the following circumstances do not exist with respect to the applicant :

- 1) he/she does not comply with the requirements for advocates;
- 2) he/she has been disbarred or removed from the position of a notary;
- 3) he/she has been punished pursuant to criminal procedure for an intentionally committed criminal offence;
- 4) he/she is in public service, is employed under an employment contract or a contract of service, belongs without the permission of the Board of the Bar Association to the management board or supervisory board of a company, except a company of advocates, or is the director of a branch of a foreign company, except a branch of a foreign company of advocates, is a partner or shareholder who holds the right of representation of an undertaking or a procurator of an undertaking¹⁸;
- 5) he/she is a bankrupt;
- 6) he/she operates in a profession which is contrary to the requirements for the professional ethics of advocates or the principle of independence;
- 7) he/she has been deprived of the right to be an advocate, judge, prosecutor, notary or operate as an undertaking by a court judgment¹⁹.

The professional suitability assessment committee of the Bar Association, consisting of eleven members²⁰ formed for a term of five years, examines persons who apply for admission to the Bar Association or for qualification as sworn advocates. In addition, the committee carries out an aptitude test for education acquired in a foreign state and assesses the professional suitability of an advocate periodically or at the request of the Board²¹.

2.2. Examination

Advocate's examinations are divided into three: the examination of a sworn advocate's clerk, examination of a sworn advocate's senior clerk and examination of a sworn advocate. In order to be admitted to the Bar Association as sworn advocates' clerks, it is necessary to pass the examination of a sworn advocate's clerk. Accordingly, the professional title of a sworn advocate's senior clerk may be granted to a member of the Bar Association on the basis of a written application if he or she has worked as a sworn advocate's clerk for at least

¹⁷ Bar Association Act § 23.

¹⁸ Working in teaching or research capacity shall not prevent a person from being admitted to the Bar Association.

¹⁹ Bar Association Act § 27.

²⁰ The professional suitability assessment committee shall consist of:

- 1) six sworn advocates appointed by the Board of the Bar Association;
- 2) two judges elected by the Court en banc;
- 3) a representative of the Ministry of Justice, appointed by the Minister of Justice;
- 4) a public prosecutor elected by the Prosecutors' Assembly;
- 5) a jurist appointed by the council of the Law Faculty of the University of Tartu.

²¹ Bar Association Act § 30.

one year and has passed the examination of a sworn advocate's senior clerk. Finally, to become a sworn advocate, the person has to be at least 24 years old, and as a member of the Bar Association, pass the sworn advocate's examination after practicing as a sworn advocate's clerk for at least two years, or as a sworn advocate's senior clerk for at least one year²².

Alternately, a person may be admitted to the Bar Association as a sworn advocate if he or she has passed the sworn advocate's examination and is a professor of law or has been a sworn advocate and becomes a member of the Bar Association within five years after he or she was excluded from the Bar Association based on his/her own application or based on the fact that the advocate had not practised as an advocate for more than three consecutive years due to health or other reasons. A person may also be admitted to the Bar Association as a sworn advocate if he or she has acted as a justice of the Supreme Court for at least three years²³.

An advocate's examination consists of an oral and a written part. The written part of an examination consists of legal case analyses. In the oral part of an advocate's examination, the theoretical knowledge of the examinee is verified by random questions. Whether the personal characteristics of a person who applies for admission to the Bar Association are suitable to exercise the activities of an advocate is assessed on the basis of an essay written on a given legal topic, and a conversation. In assessing the suitability of personal characteristics, the committee may take into consideration other information concerning the person who applies for admission to the Bar Association which is relevant to the performance of advocate's duties²⁴.

The results of the parts of an advocate's examination are evaluated on a ten-point scale. Separate grades shall be given for the results of the written examination and to the answers in each branch of law in the oral examination. The grade for an examination shall be the average of the grades given by the members of the committee, rounded to the whole number. A grade below five is deemed to be non-satisfactory. If an examinee receives a non-satisfactory grade for the written part of an examination or for at least one branch of law in the oral part of the examination, the examinee is deemed to have failed the examination.

The personal characteristics of a person who applies for admission to the Bar Association are graded by the committee as suitable or unsuitable. If the committee has graded the personal characteristics of an examinee as unsuitable, the examinee is deemed to have failed the examination. The committee must give reasons for such resolution²⁵.

In 2006 the passing rate of the sworn advocates' exam was 100% (24 out of 24). The passing rate of the sworn advocates' senior clerks' exam was 75% (27 out of 36) and for the sworn advocates' clerks' exam 96% (25 out of 26). In 2007 the passing rate for sworn

²² Bar Association Act § 26 (1).

²³ Bar Association Act § 26 (3¹).

²⁴ Bar Association Act § 32.

²⁵ Bar Association Act § 33.

advocates' exam was 97% (29 out of 30), for sworn advocates' senior clerks' 89% (25 out of 28) and for sworn advocates' clerks' 79% (11 out of 14). The total passing rate for 2007 was 90% (65 out of 72).

There has been no formal procedure for gathering feedback about the examination. However, the Board while issuing the Bar Association membership certificates and advocates' certificates has asked for feedback on the examination and it has been positive. Special praise has been given to the fact that the examination of a sworn advocate takes into account the specialisation of the applicant. The possible branched for specialisation are : constitutional law and administrative court procedure, private law, civil court procedure and administrative court procedure, penal law and criminal procedure.

2.3. Cost of admission to the Bar Association

There is no cost for admission to the Bar Association. However, when admitted, a member has to pay an monthly fee. For sworn advocates, sworn advocate`s senior clerks and associated members have to pay a fee of 950 EEK a month (about 60 Euro), sworn advocate`s clerks have to pay a fee of 750 EEK a month (about 48 Euro). The average monthly income of Estonia in 2007 was a little bit more than 11 000 EEK (about 700 Euro). So the fee of a sworn advocate is about 9% of the average monthly income. There is no official statistic on the average monthly income of advocates, but it is considered to be higher than 11 000 EEK (about 700 Euro).

In comparison, in 2004 the monthly fee for sworn advocates and sworn advocate`s senior clerks was 750 EEK (48 Euro), for sworn advocate`s clerks it was 375 EEK (24 Euro). The monthly fee of 750 EEK (48 Euro) for associated members was added in 2006 and all the fees were raised to the current level in March 2008.

3. Cost of services and legal aid

3.1. General information

The cost of legal services is set by the market. The average hourly rate in the Estonian legal services' market is about 2000 EEK (including value added tax 18%), it equals 127,8 Euro²⁶. The actual rate depends on the complexity of the issue and, of course, also on the advocate or the law office. Some offices differentiate the hourly rates based on the actual service provider in the law office – sworn advocates and especially partners have a higher fee than sworn advocates' clerks and sworn advocates senior clerks. For example, the hourly rate of a sworn advocate could be up to 25% higher than that of a sworn advocates' clerk.

²⁶ The Ministry of Justice administers the provision of legal services for state agencies in Estonia. In order to be able to provide legal services for state agencies a law firm usually has to be added to the official list of providers of legal services. The list also includes the hourly rates of all the law offices added to it. For the period of 2007-2008 there are 65 law offices in the list and their hourly rates vary from 1180 EEK up to 3068 EEK (75-196 Euros), with most of the law firms' hourly rates around 2000 EEK (<http://www.kohus.ee/12313>).

3.2. Who is eligible for legal aid and in what circumstances (areas)?

State legal aid shall not be granted if²⁷:

- 1) the applicant is able to protect his or her rights himself or herself²⁸;
- 2) the applicant cannot have the right for the protection of which he or she is applying for state legal aid;
- 3) the applicant could bear the costs of legal services out of his or her existing property which can be sold without any major difficulties²⁹;
- 4) the costs of legal services do not, presumably, exceed twice the applicant's average monthly income calculated on the basis of the average monthly income of the last four months before the submission of the application, from which taxes and compulsory insurance payments and amounts prescribed to fulfil a maintenance obligation arising from law have been deducted;
- 5) the possibility of the applicant to protect his or her rights is clearly unlikely due to the circumstances;
- 6) state legal aid is applied for in order to file a claim for compensation for moral damage and there is no predominant public interest regarding the matter;
- 7) the dispute is related to the business activities of the applicant and does not damage his or her rights which are unrelated to his or her business activities;
- 8) state legal aid is applied for to protect a trade mark, patent, utility model, industrial design or a layout-design of integrated circuits or another form of intellectual property, except rights arising from the Copyright Act;
- 9) state legal aid is applied for in a matter in which the applicant clearly has joint interests with a person who is not entitled to receive state legal aid;
- 10) state legal aid is applied for to protect a right transferred to the applicant and there is reason to believe that the right was transferred to the applicant in order to receive state legal aid;
- 11) the provision of legal services is guaranteed for the applicant by a legal expenses insurance contract or on the basis of compulsory insurance;
- 12) the profit possibly received by the applicant upon adjudication of the matter is unreasonably small in comparison to the estimated cost of legal aid borne by the state.

²⁷ The following restrictions do not apply for suspects or for the accused in criminal proceedings or for persons subject to proceedings in a misdemeanour matter, in whose matter the participation of a defence counsel is required by law or who in criminal proceedings applies for the participation of a defence counsel.

²⁸ State legal aid may be granted without this restriction if the assistance of an advocate is clearly necessary for the correct adjudication of the matter in order to ensure the equality of the parties or due to the complexity of the matter.

²⁹ Except housing or a necessary vehicle belonging to the applicant which is used daily by him or her and family members who live together with the applicant, if the number and value of the housing and vehicles equitably correlate to the size, driving needs and income of the family (State Legal Aid Act § 14 (2)).

State legal aid can be granted without an obligation to compensate for the fees and costs, or with an obligation to partially or fully compensate for the fees and costs in a single payment or in instalments.

| Requirements for receiving legal aid³⁰ | Civil proceedings | Criminal/misdemeanour proceedings | Administrative proceedings |
|--|--|---|-----------------------------------|
| Natural person | a) if the person is unable to pay for competent legal services due to his or her financial situation at the time the person is in need of legal aid; b) is able to pay for legal services only partially or in instalments; c) whose financial situation does not allow meeting basic subsistence needs after paying for legal services. | | |
| | | A suspect or accused or a person subject to proceedings in a misdemeanour matter, who has not chosen a defence counsel by agreement and in whose matter the participation of a defence counsel is required by law or who in criminal proceedings applies for the participation of a defence counsel may receive state legal aid regardless of his or her financial situation. | |
| Non-profit organisation or foundation | A non-profit association or foundation may receive state legal aid in order to prevent possible damage to the rights of a large number of people which are protected by law if: <ul style="list-style-type: none"> a) it is entered in the list of non-profit associations or foundations benefiting from income tax incentives or is equal thereto; b) it is insolvent; c) it applies for state legal aid in the field of environmental protection or consumer protection, or there is other predominant public interest for the grant of state legal aid. | | |
| Legal person | | An insolvent legal person may receive state legal aid as a suspect or accused or as a person subject to proceedings, when: <ul style="list-style-type: none"> b) it has not chosen a defence counsel by agreement and the participation of a defence counsel is | |

³⁰ State Legal Aid Act § 6.

| | | | |
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| | | required by law; c) it applies for the participation of a defence counsel. | |
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3.3. The provision of legal aid

State legal aid is provided by advocates. State legal aid is usually granted on the basis of an application by a person. A suspect who is a natural person is not required to submit an application to receive state legal aid in criminal matters if the participation of a criminal defence counsel is required and the suspect has not chosen a defence counsel by agreement. Also, in court proceedings regarding misdemeanour matters, a natural person subject to proceedings is not required to submit an application for state legal aid, if the participation of a defence counsel is required and the person has not chosen a defence counsel by agreement³¹.

Generally, if the person is applying for state legal aid in court proceedings (including the preparation of a claim, a petition or an appeal) or in the form of representation in pre-trial proceedings or extrajudicial proceedings (including preparation of a legal document or other legal counselling or representation) the application must be submitted to the court conducting proceedings in the matter or the court whose jurisdiction would include conducting proceedings in the matter or the county court of the applicant's residence or seat or of the presumed location of provision of legal services.

If the participation of a criminal defence counsel throughout a criminal proceeding is not required and a suspect has not chosen a counsel but requests the participation of a criminal defence counsel, the suspect shall submit an application for state legal aid to an investigative body or a Prosecutor's Office. An application for state legal aid in the form of representation in enforcement proceedings shall be submitted to the court competent to process an appeal against the activities of a bailiff conducting enforcement proceedings³².

If an advocate has agreed to provide state legal aid to the recipient in the given matter, the court, Prosecutor's Office or investigative body shall appoint the corresponding advocate as the provider of state legal aid and shall send the judgment, decision, ruling or order to the Bar Association for their information. If an advocate has not agreed to provide state legal aid in the given matter, the court, Prosecutor's Office or investigative body shall appoint an advocate who consents thereto or an advocate appointed by the Bar Association as the provider of state legal aid³³. If the court, Prosecutor's Office or investigative body appoints an advocate whose consent it has requested as the provider of state legal aid, the court,

³¹ State Legal Aid Act § 11.

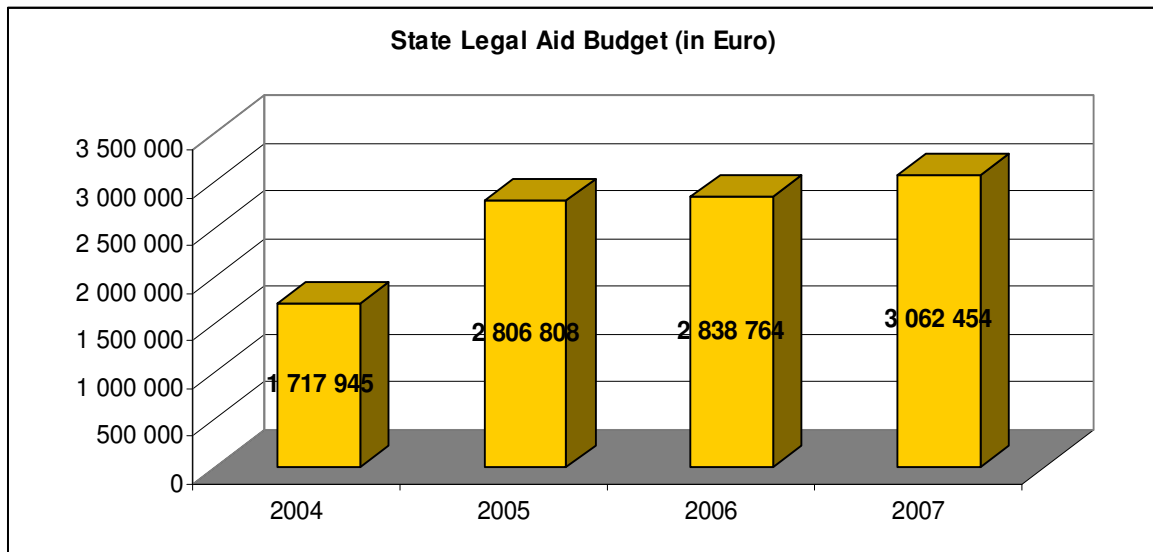
³² State Legal Aid Act § 10.

³³ In this case, the Bar Association appoints an advocate who provides state legal aid immediately after the receipt of an application from a court, Prosecutor's Office or investigative body.

Prosecutor's Office or investigative body shall send the judgment, decision, ruling or order to the Bar Association for their information³⁴.

3.4. The financing of the state legal aid system

The provision of state legal aid is financed from the state budget. Besides compensating the fees and costs of the advocates providing state legal aid, the state (within the limits of the funds prescribed in the state budget) also supports non-profit associations or foundations if their activities are important to improve the accessibility of general legal counselling and they can ensure the grant of quality legal aid to persons requiring the aid³⁵.



The bases for the calculation of fees payable for the provision of state legal aid, the procedure for the payment and the amount of such fees, and the extent of and procedure for compensation for the state legal aid costs is established by a regulation of the Minister of Justice, after having considered the opinion of the Board of the Bar Association³⁶. According to the current regulation, for example, the advocate's state legal aid fee in civil and administrative court proceedings (it applies for preparation and the hearing) is 420 EEK/an hour (about 27 Euro). In criminal court proceedings there is a distinction between preparing a case for the general procedure or simplified procedures. In general procedures a fixed fee of 900 EEK (58 Euro) is paid for the preparation. In addition, 250 EEK/an hour (16 Euro) is paid for the time spent in court hearings.

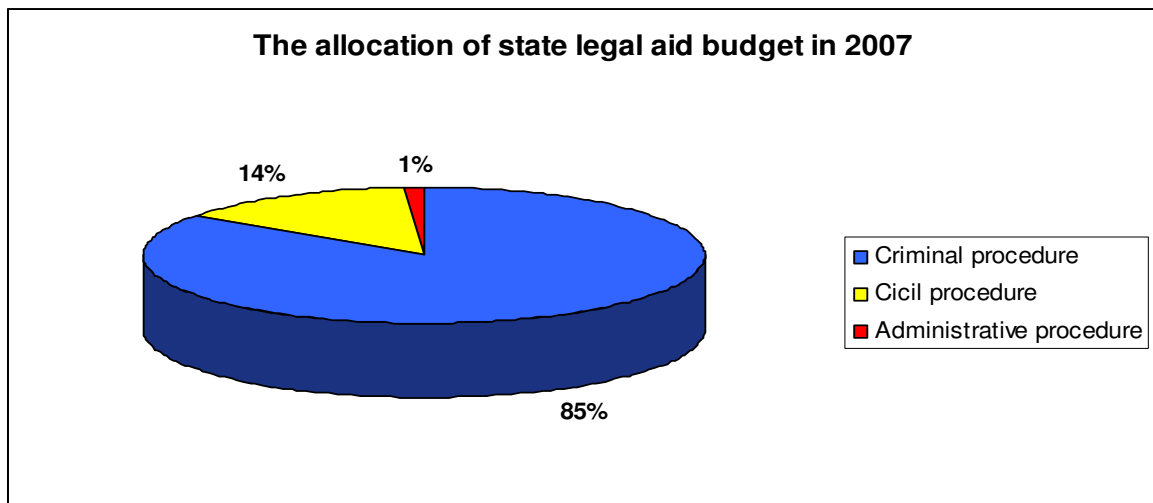
Each year the Ministry of Justice and the Bar Association sign an agreement on operating the funds allocated for state legal aid. According to the agreement the Bar Association has to operate the funds reasonably and economically. In addition, the Bar Association submits, not later than by the 1st of April each year, an overview to the Ministry of Justice about the

³⁴ State Legal Aid § 18.

³⁵ State Legal Aid Act § 31 (1).

³⁶ State Legal Aid § 21 (3).

provision of state legal aid in the previous year and payment of the state legal aid fee and state legal aid costs to advocates.



The agreement also includes a timetable for transferring the funds from the Ministry of Justice's budget to the Bar Association. The fees and costs of state legal aid are paid to the advocates by the Bar Association according to the bills presented by advocates. The bills must be accompanied with copies of the relevant order by the police, prosecutor or court.

3.5. Is the system perceived as satisfactory?

The current system has two major flaws, which have been discovered during the implementation of the current regulation of State Legal Aid act since March 2005 and inspected thoroughly during the audit performed by the Internal Audit Department of the Ministry of Justice in the beginning of 2008.

Firstly, in criminal matters, it is possible for the investigators and prosecutors to appoint an advocate suitable to them, if the recipient of state legal aid is not able to find an advocate by himself/herself. According to the results of the audit the most important criterion for investigators for selecting an advocate is how quickly it will be possible to find the advocate and carry out the necessary proceedings (59% of the investigators agreed to the criterion, only 9% said that the quality of the advocate is the most important). Therefore, investigators, prosecutors and judges tend to prefer advocates who have specialised solely on providing state legal aid, as they are usually available and are able to provide their services nearly instantly. Besides the issue of the investigator or prosecutor choosing the suitable advocate, which is not acceptable in a democratic state, there exists also the problem with the quality of the legal services, because the quality of services provided by advocates, who have specialised solely on state legal aid, tends to be lower than the average. In conclusion the current system of choosing the provider of state legal aid does not create the necessary presumptions for the recipients to receive state legal aid of good quality.

Secondly, the current system of financing state legal aid does not support sensible operation of the funds allocated from the state budget. As the fees for state legal aid are considerably lower than the market prices for similar legal services, the advocates mostly dealing with contractual clients are not interested in state legal aid. At the same, about 25% of the state legal aid budget is allocated between advocates who solely provide legal services in the form of state legal aid. Mostly these services include the simple kind of legal help. The fees should be more flexible and take into account the complexity of the case. Then it will be possible to attract the advocates currently not involved in providing state legal aid, and therefore create possibilities for increasing the quality of state legal aid.

Both of these flaws will be addressed in the reform proposal already sent to the government and explained in more detail in the next chapter of this document.

4. Reform agenda

4.1. State Legal Aid

4.1.1. State Legal Aid Act 2005

Even though according to the Bar Association Act the Bar Association's competence included the provision of State Legal Aid before the implementation of the State Legal Aid in March 2005³⁷, the categories of legal aid ensured by the state and the conditions and procedure for the receipt of such legal aid were not prescribed in the law until then. It was possible for courts in all court proceedings (civil, criminal, administrative proceedings and in misdemeanour matters) to relieve an insolvent natural person from paying for legal aid partially or in full also before the State Legal Aid Act (such provisions were in place in the codes of court procedure), but state legal aid was only limited to court proceedings and was not meant for legal persons.

Besides providing legal aid paid for by the state to those who were not able to pay for it, the general aim of the act was to help increase the quality of legal services. For that purpose the process of assessing the professional suitability of advocates was enhanced. According to the changes made into the Bar Association Act simultaneously with the implementation of the State Legal Aid Act, an advocate is required to undergo periodic in-service training. The Board of the Estonian Bar Association decides the bases and procedure for in-service training. Five years after passing the last advocate's examination, sworn advocates and a senior clerks of sworn advocates are required to submit information concerning the in-service training completed by the person during the that period to the professional suitability assessment committee. The committee assesses the compliance of the volume of the professional development of the advocate on the basis of the information submitted by the advocate. If the advocate has failed to perform the obligation to undergo in-service training and six years have passed since he or she passed the last advocate's examination or his or her professional suitability was assessed, his or her membership in the Bar

³⁷ The Bar Association Act § 3

Association is suspended by a resolution of the Board³⁸. As an additional measure to improve the quality of legal aid, it was prescribed that in order to act as a contractual representative in court proceedings the person has to complete the national curriculum of academic legal studies.

As an implementation procedure of the act, it was possible for persons who immediately prior to joining the Bar Association had provided, for at least three consecutive years, legal services as a sole proprietor or through a company whose areas of activity included the provision of legal services and in which he or she is a shareholder or a unit-holder and who had completed the national curriculum of academic legal studies and, to be admitted to the Bar Association as a sworn advocate's senior clerk, if he or she passed the examination of a sworn advocate's senior clerk. Such a person could provide legal services and act as the management of a law office on the same bases with a sworn advocate. The person still had to comply with most the requirements for advocates set in the law and had to apply for admission within six months after the enforcement of the State Legal Aid Act³⁹.

4.1.2. The amendment of the State Legal Act 2008

The implementation of the State Legal Aid Act was not an instant success. Even though the budget of the state legal aid increased 1,6 times compared to the budget before the act, more than 90% of the budget was still spent on legal aid in criminal procedure as it had been before the State Legal Aid Act. By 2007, the share of criminal procedure in the total budget had decreased to 85% with civil procedure being the second most popular area of applying for state legal aid (with 14%). There have been some minor changes to the act since its original implementation, which have been directed at making the application procedure less bureaucratic and applicant friendly. Still, the public perception of the quality of state legal aid has not been very good, mostly thanks to the widespread knowledge that state legal aid is supplied by advocates who have difficulties finding contractual clients.

One of the main reasons for this has been the relatively low level of fees paid to the advocates for giving state legal aid compared to the hourly rates on the market. Even though the bases for the calculation of fees and the amount of such fees have been established by the Minister of Justice, after having considered the opinion of the Board of the Bar Association, the Bar Association's view has always been that the system is flawed and the fees too small. In April 2008 the Ministry of Justice sent to the government a draft of the changes to the State Legal Aid, according to which the bases for the fees and the amount of the fees will be established by the Bar Association in the future, taking into account the amount granted to the state legal aid from the state budget. The Bar Association has the know-how necessary for creating a just regulation for calculating the fees in a flexible manner, taking into account among other things the complexity of the case. This will enable to attract a wider range of advocates to providing state legal aid and thereby increasing competition and quality of legal aid.

³⁸ The Bar Association Act § 34¹ & § 35 (1).

³⁹ The Bar Association Act § 38.

According to the second main amendment to the State Legal Aid Act the provider of legal aid will be appointed by the Bar Association, instead of the investigator, prosecutor or court as it has been so far. The Bar Association must appoint the advocate without delay upon receiving such an application, which can be sent by the investigator, prosecutor or court by phone, fax or e-mail and send the order for granting state legal aid afterwards. This amendment will also hopefully enhance the quality of legal aid, as the main criterion for selecting the advocate will not be the availability or the suitability of the advocate for the investigator, prosecutor or court. Together with the improved fee system, it will be possible to appoint advocates from a wider range.

4.2. Other ideas for reform

Unlike the reform of the State Legal Aid Act, the following ideas have not been put into the form of a draft yet. The aim of including them to this document is to give an overview of the ideas and directions we might be heading. When, in which form and whether at all these ideas will be implemented remains to be seen.

Firstly, the Ministry of Justice has been trying to set the principles according to which there will be a single and similar examination system for different legal professions (including advocates, judges, prosecutors, notaries etc) in Estonia. The aim is to make the movement of labour between different legal professions more flexible in order to attract the best candidates to the most important posts. According to the idea it will be possible to take the examination after obtaining master's degree in law from the university and the same examination could be used to apply for different posts among legal professions. The legal knowledge of the applicant will not be assessed when he/she decides to switch jobs between legal professions. However, besides the score of the exam, the personal characteristics and previous working experience etc will also be taken into account and an applicant with a lower exam score can be preferred, if his/her other important features are better than that of an applicant with the higher score.

Together with the examination the apprenticeship system will also be changed. The current posts of sworn advocate's clerk, prosecutor's aid, assistant judge etc will all be grouped as apprentices for legal professions. The apprenticeship for each profession will depend on the needs of the particular profession, but for example, once the applicant has passed the apprenticeship as an assistant judge he or she can start working as a prosecutor or sworn advocate without an additional apprenticeship period.

Thirdly, there have been ideas about differentiating the fee of the member of the Bar Association based on the turnover of the office. Currently the monthly fee is the same for all sworn advocates and sworn advocates' senior clerks, independent of the turnover of the office. Sworn advocates' clerks have a slightly smaller monthly fee. The idea is to set the minimum and maximum levels of the fee in the law, based on which the general assembly of the Bar Association will set the exact fee.

Last but not least, it is necessary to stress that the three ideas described in chapter 4.2. have not been put into the form of a draft law, so their implementation is not certain. Their content may change or they may even be dropped from further consideration.

References

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