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Access to Justice in Lithuania

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Linas Sesickas

Abstract

This article examines the state of the Lithuanian legal system ten years after its independence and offers suggestions for reforms that would increase citizens' access to justice. The article addresses issues arising from the increasing legal and economic complexity of Eastern Europe and the corresponding increased need for legal advice. Finally, the article notes the difficulty in achieving individualism and human rights goals while socio-economic disparity is increasing.

ACCESS TO JUSTICE IN LITHUANIA

Linas Sesickas

INTRODUCTION

Lithuania is a country belonging to the region of Central and Eastern Europe. It is a post-communist country, which on March 11 of the current year, celebrated its tenth anniversary of regaining its independence. In 1988, it was one of the first countries in the region where the singing, or velvet, revolution started. The revolution later spilled over to other Central and Eastern European countries and resulted in a number of fundamental changes in the arena of international politics, such as the dissolution of the Soviet Union, the break up of the socialist camp, the end of the cold war and the bipolar system of international relations, the collapse of communist ideology, and even, as it has been noted by well-known scholar Francis Fukuyama, the "end of history."¹

This decade of freedom brought numerous essential changes to life in the post-communist societies such as the establishment of Western-type democratic political constitutional regimes, independent judiciaries, check and balance mechanisms, the emergence and strengthening of civil societies, the modernization of public administration systems, the shift from command economies to market-driven ones, the privatization of state property, incremental foreign investments, growing numbers of private enterprises, etc. The list of changes is too long to be further enumerated. To explain this fundamental qualitative transformation, it is enough to say that all ten countries of Central and Eastern Europe, including Lithuania, had been officially invited to the Tampere Meeting last year to start negotiations with the European Union for formal entry.² It also is important to underline that all of them are determined to expedite this multidimensional, far-reaching process to the furthest extent possible.

1. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1991).

2. Special Meeting of European Council in Tampere, Oct. 15, 1999.

I. *SOCIO-ECONOMIC MILIEU IN CIVIL CASES, THE LEGAL PROFESSION, AND ACCESS TO JUSTICE*

After the restoration of independence, Lithuania has made significant progress in many spheres. The pace of progress, however, is far from even—in some spheres, it surpasses even optimistic prognoses, in others, it disappoints the hopes of many people.

During the years after the restoration of independence in 1990, real Gross Domestic Product ("GDP") more than halved. In the midst of the 1990s, the economy started to bottom out with successive growth figures of 3.3% in 1995, 4.7% in 1996, and 7.3% in 1997. Meanwhile, inflation fell from over 1000% in 1992 to one-digit levels in 1997 and is now one of the lowest among the transition economies. The period from 1995-97 also saw a rapid growth of exports and their continued reorientation towards Western Europe. Accelerated, large-scale privatization supported the growth of Foreign Direct Investment ("FDI") to record levels in 1998.

These positive developments, however, did not hide structural weaknesses of the economy. First, Lithuania's current account deficit soared, reaching around 10% of GDP during 1995-97, before rising further to 12% of GDP in 1998. Second, Lithuania made limited progress in controlling hidden quasi-fiscal deficits in the form of contingent liabilities to the energy, agriculture, and banking sectors. While the current account deficit had so far been financed by FDI plus medium and long-term loans, these public sector problems remained sources of concern that made Lithuania vulnerable to external shocks and internal policy reversals.

This became painfully evident in the aftermath of the so-called Russian crisis of August 1998. The Baltic States plunged into an unexpected recession in 1999, primarily caused by the loss of key export markets after the Russian crisis. The recession seems to be deepest in Lithuania, which saw its GDP fall by about 5% during the first three quarters, on a year-on-year basis.

For the first time since the country regained independence in 1990, registered unemployment in Lithuania broke the 10% threshold in December 1999, three percentage points higher than at the start of the year. Labor force surveys indicate that real unemployment may be twice as high. Although none have

yet been announced, government layoffs are expected to add to the problem in 2000. Planned cuts in wages for government employees may amount to up to 15%, depending on the department.

Due to far lower than projected tax revenues and higher expenditures, the budget deficit soared from 1.8% in 1997 to about 8% of GDP during 1999. This expansionary fiscal policy also placed further pressure on the current account deficit, which remained above 10% of GDP. Given these arrangements, the government seems to have, in the short run, few choices other than cutting expenditures or raising revenues. Painful measures in health, education, social security, and other human development sectors are planned in order to bring the budget deficit back to about 3% of GDP in 2000.

Development of the economy in such transitional post-communist societies like Lithuania casts a considerable part of the population aside without providing them with an adequate amount of jobs, even during periods of growth. Moreover, structural changes in the economy have devaluated the knowledge and skills many employees have acquired through the course of many years. Not all people manage to retrain quickly, and the State does not allocate enough resources to help them. While opening markets to the world provides the Lithuanian people with greater choice, it also increases the competitive pressure on the vulnerable segments of the population. Due to various reasons, some people do not benefit from the economic progress: they are elderly; they are in a non-marketable profession; they have insufficient education; they have a heavy family burden, or they are disabled.

The gorge of the transitional recession was even deeper than the Great Depression that America experienced in the 1930s. Despite the initial aspirations of the government, resources were far too limited to compensate people for the plunge of their income. Furthermore, the income distribution has widened considerably.

Before the transitional recession, income distribution was similar to that in North and Western Europe with the so-called Gini-coefficient of about 23%.³ During the early 1990s, the ine-

3. *Gini-Coefficient* (visited July 20, 2000) <<http://www.ciesin.ee/UNDP/nhdr/figure81.html>> (on file with the *Fordham International Law Journal*). According to the Gini-

quality rose strongly and was even higher than in the United States. The Gini-coefficient rose to 34%, or even 37%. Although not fully comparable, most recent data shows some decrease to 31% in 1997. In a European perspective, this is still relatively high. The richest 10% of Lithuanians still earn ten times as much as the poorest 10%.

Under the twin impact of declining average incomes and rising inequality, poverty emerged as a relatively new phenomenon. Being virtually absent before the transition, it rose up to about 30% of the population in 1994. After that, the number of poor stabilized and decreased slowly. Still, more than 600,000 Lithuanians live on less than US\$4.00 a day, and account for 16% of the total population.

This is the poverty line which international organizations, such as the World Bank and United Nations Development Programme, use for Central and Eastern Europe. This poverty level is estimated by using the relative poverty line and is the main indicator of poverty. At least 30,000 people, or almost 1% of the Lithuanian population, live in extreme poverty.

The average unemployment rate in 1999 was 8.4% (6.4% in 1998). The average gross monthly salary in December 1999 was 1123 Litass (1152 Litass in December 1998).⁴

Problems with the affordability and accessibility of education in a broad sense (covering costs, transport, housing, and access to information technology) are getting more and more acute. The table below reflects the changes in numbers of pupils and students in educational establishments.⁵

A. Structure of Legal Education

The main precondition for becoming a lawyer in the Republic of Lithuania is receiving a high school-level education in law. Law is taught in three institutions—the law faculties of Vilnius University and Law Academy, the former Police Academy, and Vytautas Magnus University in Kaunas.

If a student opts to study at a law faculty of Vilnius Univer-

Coefficient, the distribution of income is considered to be relatively even if its value falls between 0.2 and 0.35. *Id.*

4. Four Litass are equivalent to US\$1.00.

5. Department of Statistics of the Government of the Republic of Lithuania, Education, 10 (Vilnius 1998).

At the beginning of academic year	Total numbers of students, (thousands)	Number of students who attended			
		Comprehensive schools	Vocational schools	College type schools	Higher schools (universities)
1970/71	722	572	28	65	57
1975/76	794	623	40	68	63
1980/81	793	599	55	68	71
1985/86	744	556	62	61	65
1990/91	686	525	48	46	67
1991/92	661	517	46	37	61
1992/93	641	513	42	31	55
1993/94	633	511	45	24	53
1994/95	644	524	45	24	51
1995/96	665	538	49	24	54
1996/97	688	551	52	26	59
1997/98	717	566	54	30	67
Per 10,000 population					
1985/86	2082	1556	173	171	182
1990/91	1831	1400	128	124	179
1991/92	1756	1380	124	99	162
1992/93	1709	1371	113	83	148
1993/94	1701	1371	122	66	142
1994/95	1732	1408	121	65	138
1995/96	1790	1447	133	65	145
1996/97	1856	1487	139	71	159
1997/98	1935	1527	146	81	181

sity and Law Academy, he first must pass the entrance examinations. The applicant is then accepted to study at the law faculty, where he will have a five-year graduate course at Vilnius University and four year bachelor studies at Law Academy (he also may continue to study law at a two year master's program), whose aim is to give him knowledge of all the basic areas of law and its theory, as well as a history of law. The course culminates in a final state examination and oral defense of the student's diploma work.

There are no official statistics about the total number of lawyers in the country. The only data provided in the Statistical

Yearbook of Lithuania for 1999,⁶ as of January 1, 2000, is as follows: 794 prosecutors, 503 judges, 603 advocates, and 192 notaries.

B. *Requirements for Legal Professions*

Requirements for different legal professions such as prosecutors, attorneys, or judges vary. Different laws defining and regulating such legal institutions as the bar, the prosecutor's office, or the courts provide the requirements for each profession.

Article 7 of the Law of the Republic of Lithuania on the Bar⁷ sets forth the following requirements to become an advocate: a) citizenship of the Republic of Lithuania; b) possession of a bachelor or master's degree in law or a professional degree of law (one-level legal university education); c) possession of not less than five years experience working as a prosecutor, investigator, or other law-related work, according to the list of posts approved by the Government of the Republic of Lithuania, or completion of one year practice as an assistant advocate; d) possession of an irreproachable reputation; e) command of the State language; f) passing of qualification exams of an advocate; g) lacking mental disorders which would hinder the performance of an attorney's duties; and, h) previously not been an employee of the State Security Committee of the USSR.

Article 22 of the Court Law of the Republic of Lithuania⁸ ("Court Law") sets forth the following requirements for becoming a judge of the district court. The Court Law requires that a successful candidate is: a) of at least twenty-five years of age; b) a citizen of the Republic of Lithuania; c) in possession of a master's degree in law or a professional degree of law; d) in possession of an irreproachable reputation. The Court Law also requires that a candidate have completed one year of practice as a candidate to the position of judge and have passed the qualification exam for judges.

Article 23 of the Court Law⁹ sets forth the following require-

6. STATISTICAL YEARBOOK OF LITHUANIA 1999 (Methodical Publishing Centre, Vilnius, 1999).

7. Law of the Republic of Lithuania on the Bar, No. 64-1840, (1998), as amended by No. 104-2975, (Dec. 8, 1999) [hereinafter Law on the Bar].

8. Court Law of the Republic of Lithuania, No.46-851 (1994), as amended by No.15-382 (Feb. 23, 2000) [hereinafter Court Law].

9. *Id.* art. 23.

ments to become a judge of the area court and Court of Appeal: a) judges cannot have less than five years work experience as a judge of the district court, prosecutors cannot have less than ten years work experience as a prosecutor or investigator, and advocates cannot have less than ten years work experience as an advocate if they are of irreproachable reputation; b) completion of five months of practice in courts according to the order established by the minister of justice; and c) one must have passed the exam for judges. A person can be appointed to the position of the judge of the Court of Appeals if he possesses less than five years experience working as a judge of an area court.

Article 24 of the Court Law¹⁰ stipulates that a person can be appointed to the position of the judge of the Supreme Court if he satisfies any of the following requirements: a) at least five years experience working as a judge of area court or Court of Appeal; b) work experience as a judge of the Supreme Court, who was relieved from his post voluntarily, or was elected to other post or was transferred to other work upon his consent, c) a PhD degree in law and at least ten year work experience as a lawyer according to the list of posts approved by the Government of the Republic of Lithuania; or d) prosecutor of the office of the Prosecutor General to the Supreme Court who has not less than ten year experience working as a prosecutor.

Article 20 of the Law of the Republic of Lithuania on Prosecutor's Office¹¹ stipulates the following requirements for the officers of the prosecutor's office: a) citizens of the Republic of Lithuania, who have command of the State language and possess the educational, physical, and moral qualities necessary for the profession, may be appointed officers of the prosecutor's office; b) the Prosecutor General or his deputies, chief prosecutors and their deputies, prosecutors of divisions of the Office of the Prosecutor General, and investigators may be persons who have been trained in law; c) persons who are thirty-five years of age and over and who have served for at least ten years as prosecutors, investigators, or judges may be appointed as the Prosecutor General or his deputy; d) persons who have served for at least three years as prosecutors, investigators, or judges may be appointed as

10. *Id.* art. 24.

11. Law of the Republic of Lithuania on Prosecutor's Office, No. 81-1514 (1994), as amended by No. 22-543 (Mar. 15, 1997).

chief prosecutors; and, e) persons who have no practical work experience in the legal profession shall undergo a one-year probationary work period as officers of the prosecutor's office.

C. *Current Status of Affairs of Access to Justice*

It is necessary to emphasize that, for the time being, legal assistance is guaranteed by the state especially in criminal *ex officio* mandatory defense cases in Lithuania. This section will only describe the currently operational legal/institutional arrangement designed to provide state-guaranteed legal aid.

1. Legal Framework

a. Constitutional Provisions

Article 31 paragraph 6 of the Constitution of the Republic of Lithuania¹² establishes that a person suspected of a crime and the accused are guaranteed the right to a defense, from the moment of their detention or the first examination, and the right to have a defender. Despite the fact that the Constitution of the Republic of Lithuania guarantees the right of the defender to participate in the criminal procedure, this does not ensure the positive duty of the state to make the services of a defender accessible to certain groups of persons.

On May 14 1993, the Republic of Lithuania signed the European Convention for the Protection of Human Rights and Fundamental Freedoms¹³ ("Convention"). Article 6, part 3(c) of the Convention guarantees the right for every person charged with a crime to a defense either by himself or through his chosen defender, or, if he does not have sufficient means to pay the defender, he is entitled to free legal assistance as required by justice.¹⁴ By this article, the Convention provides more rights to a person charged with a crime than the Constitution of the Republic of Lithuania by obligating the state to provide legal assistance to an indigent defendant as required by justice.

12. KONSTITUCIJA [Constitution] art. 31, ¶ 6 (Lith.).

13. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950 213 U.N.T.S. 221 (ratified by the Seimas (Parliament) of the Republic of Lithuania in 1995).

14. *Id.* art. 6, part 3(c).

b. Criminal Procedure Code

The provisions of the Criminal Procedure Code of the Republic of Lithuania¹⁵ ("Criminal Procedure Code") establish that a defender is allowed to participate in the case at the request of the suspect or the accused from the moment of their detention or the first examination. The request or refusal of the suspect or the accused to have a defender is recorded in the minutes and signed by the suspect or the accused, as well as the investigator or interrogator.

The defendant may have several defenders. Lawyers may act as defenders. The same person cannot be the defender of two or more suspects, accused, or defendants if the defense interests of one of them are contrary to the defense interests of another. The defender is requested by the suspect, the accused, the defendant, their legal representative, as well as other persons authorized by, or with the consent of, the suspect, the accused, or the defendant.

At the request of the suspect, the accused, or the defendant, the participation of a defender is guaranteed by the investigator, interrogator, judge or court. If the defender chosen by the suspect, the accused, or the defendant cannot participate in the proceedings for more than five days, the interrogator, investigator, judge, or court have the right to advise the suspect, the accused, or the defendant to request another defender or appoint another defender from among the lawyers.

Article 56 of the Criminal Procedure Code of the Republic of Lithuania¹⁶ establishes the basis for the compulsory participation of the defender: 1) in cases where the suspect or the accused is a minor; 2) in cases where crimes are committed by the blind, the deaf, or other persons who cannot avail themselves of their right to defense due to their physical or mental disability; 3) when the suspect, the accused, or the defendant does not know the language used in the proceedings; 4) in cases where capital punishment may be imposed for the crime;¹⁷ 5) when there are contradictions between the legal interests of the suspects, the accused, or the defendants, if at least one of them has

15. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF LITHUANIA.

16. *Id.* art. 56.

17. Capital punishment was abolished and replaced by life imprisonment by Law No. VIII-983 of December 21, 1998 which came into force on December 31 1998.

a defender; or 6) in cases where the state prosecutor is participating. The defender's participation is guaranteed from the moment the circumstances envisaged in part one of this article transpire. In cases provided for in this article, if the suspect, the accused, or the defender have not requested the defender themselves, or if this has not been done with their authorization or consent by other persons, the defender must be appointed by the interrogator, the investigator, the judge, or the court.

Article 56 of the Criminal Procedure Code also establishes the procedure for relief from payment for legal assistance. When the interrogator, the investigator, the prosecutor, the judge, or the court relieve the suspect, the accused, or the defendant of payment for legal assistance, the services of the lawyer are reimbursed by the state according to the procedure established by the Government of the Republic of Lithuania.

The Criminal Procedure Code currently in force does not meet the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁸ The Criminal Procedure Code does not provide socially needy or indigent persons access to justice during criminal proceedings. Thus, if someone falls outside of Article 56 of the Code, he is not entitled to receive free legal aid even though he is in an extremely difficult socio-economic situation. Furthermore, if someone possesses a good income or property, he nevertheless can receive legal aid free of charge provided he is entitled to it pursuant to Article 56 of the Code and is willing to get it. Additionally, the list of conditions requiring compulsory defender's participation is a final cause for concern as well.

2. Institutional Capacities

Currently, legal aid in criminal *ex officio* mandatory defense cases is provided solely by private attorneys. Given the absence of plea negotiations or other dispute settling alternatives, the processing of criminal cases is frequently lengthy, cumbersome, and fairly expensive. The hourly compensation established is low, at approximately 14 Litass (equivalent to US\$3.50) on average. In principle, all practicing attorneys are obliged to take *ex officio* criminal cases. Distribution of cases, however, is very often

18. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 13.

uneven and disproportionate. In other words, some attorneys receive *ex officio* criminal cases on a regular and continuous basis while others manage to evade this responsibility quite frequently or all the time. To a large extent, private attorneys view this duty as a burden imposed by the government. Many attorneys do not even request the compensation for the legal services provided in these cases. *Nolens volens*, one will have to conclude that they are obliged to work *pro bono publico*.

D. Funding

In 1999, public funds allocated to cover legal aid costs were 2,975,000 Litas (US\$743,750), while the actual expenditures incurred (or more precisely—requested to be reimbursed) constituted a sum of 2,163,100 Litas (US\$540,775).

E. Quality of Legal Aid

The National Soros foundation¹⁹ (officially called the Open Lithuania Fund) contracted with a human rights non-governmental organization ("NGO") named the Lithuanian Association for Human Rights ("Association") to conduct a survey based on the experience and results of the Bulgarian Helsinki Committee, in order to assess the quality of free legal aid in *ex officio* criminal mandatory defense cases. During the survey, 731 respondents completed the questionnaire.²⁰ The survey was completed by mid-August 1999.

During the survey, interviews were conducted in eleven institutions of confinement. There were all types of convicts among the respondents, including persons held in pre-trial detention centers, women, minors, officers, persons convicted for unintentional crimes and for non-payment of child alimony, as

19. See Open Lithuania Fund (visited July 23, 2000) <<http://www.osi.hu/colpi>> (on file with the *Fordham International Law Journal*). The Open Lithuania Fund, also called the National Soros Foundation, is a non-profit organization created in October of 1960 to support the development of open democratic civil society in Lithuania. *Id.*

20. The composition of respondents was as follows: Vilnius Lukišk's Pre-trial Detention Centre—44, Vilnius Lukišk's Prison—57, Vilnius Special Regime Correctional Labour Colony (Sniego St.)—54, Vilnius Strict Regime Correctional Labour Colony (Ras. St.)—85, Pravienišk's Ordinary Regime Correctional Labour Colony—100, Pravienišk's Special Regime Correctional Labour Colony No. 1—97, Pravienišk's Special Regime Correctional Labour Colony No. 2—63, Kybartai Correctional Labour Settlement Colony—38, Panev'ys Women's Prison—99, Kaunas Educative Labour Colony—69, Kaunas Juvenile Pre-trial Detention Centre—25.

well as other convicts who serve their punishment in ordinary, special, and strict regime prisons. The participants in the survey were asked to fill in an anonymous questionnaire, written in Lithuanian, which was comprised of twenty-seven questions. If a person did not understand the questions in Lithuanian, the questions were translated orally into Russian. At first, the respondents were answering the questions themselves by underlining appropriate answers. However, after it was noticed that many convicts found it difficult to understand the questions and answer them in a consistent manner, the structure of the questionnaire was made simpler and the questionnaire was filled in with the help of members of the staff of the Association.

1. Participation of Defense Lawyers in Criminal Process

According to the survey, during pre-trial investigation 58% of respondents had an officially appointed defense lawyer and 27% hired one by themselves. The number of persons who did not have a defense lawyer at the court of appeal, as indicated in the survey, may, in actuality, be smaller, because not all convicts attend the hearings of the court of appeal, and they simply do not see their defense lawyer participating in their trial.

2. Severity of the Sentence/Participation of the Defence Lawyer

It was impossible to establish a direct link between the participation of a defense lawyer in the pre-trial investigation process or the trial and the severity of the sentence on the basis of the survey results as the results lack factual data. Therefore, it was necessary to analyze the length of the punishment imposed on the convicts compared to the corresponding paragraphs of the criminal code. First, the length of punishment depends on the type of crime and on the participation or the absence of a defense lawyer. It is possible that sentences are less severe when the defense lawyer participates during the investigation or the trial, because a lawyer can reveal mitigating circumstances and require additional evidence that would prove the innocence of the defendant in particular episodes of the crime.

Violence, which is widely used, and the absence of a lawyer allows one to presume that the accused slandered themselves during the investigation. This self slander during the investiga-

tion often leads to a severe sentence. It is a well known fact that defendants often repudiate their evidence during the trial saying that they gave it under duress. Judges have to decide which evidence should be accepted—that given during a pre-trial investigation or a trial. Besides, long pre-trial detention under hard conditions also is a form of pressure to slander oneself, because the accused know that their lives will become easier in prison.

3. Participation of a Defense Lawyer/Use of Violence

Violence is most often used in police-stations and, less often, during pre-trial investigation. This is due to the more aggressive behavior of police, as compared to other professions; the practice of the repressive regime in the past; and also the absence of a defense lawyer or lack of contact with the family. Participation of a defense lawyer has an impact on reducing the use of violence against the accused. The defense lawyer's effect can be proven by a smaller number of cases of violence during pre-trial investigation with the participation of a defense lawyer. As a rule, when a hired defense lawyer participates consistently in the investigation process from the very first hours of detention, violence is not used against the accused because he is defended unofficially. An analysis of particular groups of accused and convicts noted that violence was used somewhat less often against persons who committed negligent offences or avoided paying child alimony. A short period of pre-trial detention, crimes that are recorded easily, and clear evidence give no grounds for the use of violence. In their replies, women and juveniles complained about psychological pressure against them rather than physical abuse.

During the survey, it turned out that the appointment of an official lawyer for the investigation procedure does not eliminate the use of violence. This is because violence is not used in the presence of the interrogator or the state-appointed lawyer, but by police officers at the request of the investigator. Usually the state-appointed defense lawyer does not meet the defendant, advise, or counsel him if no investigation actions are taken. As the accused does not know his rights and has no personal contact with the officially appointed defense lawyer, he never complains in the presence of the investigator about the violence used

against him;²¹ only 7% of defendants complained to the investigator, and 5% to the court.

The use of violence against the accused is made easier because only about 17% of detainees were examined by doctors immediately after detention and another 13% after they complained about their health. Also, because about 46% of detainees could not get in touch with their families at all, violence was made easier. Therefore, a medical examination and the possibility to get in touch with the defendant's family may contribute considerably to the reduction of violence used by the police.

4. Assessment of the Quality of Legal Defense

During the survey it turned out that both the suspects and the convicts are not satisfied with the services rendered by defense lawyers, because they are sentenced to real imprisonment. According to the data of the Correctional Works Department to the Ministry of Interior, the average duration of imprisonment in Lithuania is more than 4.5 years. The survey revealed that about half of the convicts (56%) are sentenced to less than five years of imprisonment and another half (44%) to more than five years of imprisonment.

When analyzing the extent of participation of defense lawyers, it appeared that only 16% of defense lawyers participated throughout the entire pre-trial investigation. As many as 12% of the interviewees maintained that the defense lawyer appointed by the state did not visit them at all. When the case reaches the court of first instance the situation changes completely—40% of defense lawyers participated throughout the trial.

Regarding the awareness of the respondents of their rights and their desire to defend them, as many as 62% of interviewees who had no defense lawyers during pre-trial investigation expressed their wish to have one, and even 40% of them insisted on this. In the court of first instance the situation was different: here 35% expressed their wish to have a defense lawyer, of whom 19% insisted on having one. Such a drop in the number of those wishing to have a defense lawyer was determined by the fact that in the very beginning the investigator refused to appoint a lawyer. For the sake of truth it should be added that, if compared with the other data of the questionnaire, the answers

21. This group comprises as much as 74% of the accused.

to the questions about the request to appoint a defense lawyer and to include this request into the minutes of the court hearing are the least reliable.

F. *Legal Aid in Civil Cases*

As said earlier, a system for providing the basic civil legal services is non-existent so far. Moreover, the institute of relief of legal expenses, which does not include expenses of hiring a lawyer, is unable to guarantee completely the right to legal defense. Legal defense still remains inaccessible to the larger part of the society due to the difficult material situations of the indigent members of society.

Article 102 of the Civil Procedure Code of the Republic of Lithuania,²² which regulates relief of stamp duty, establishes that in cases investigated by the court, natural persons are relieved of the stamp duty who, *inter alia*, are recognized as socially needy in the procedure established by the Government. The court or the judge, taking into account the property status of the natural person, may relieve him partially of stamp duty. The request to relieve a natural person partially of the stamp duty must be grounded. Proof confirming the necessity of partial relief of the stamp duty must be attached to the application.

Apart from taking into account the property status of the natural person, the court or the judge may defer or spread out the payment of legal expenses to be recovered from one or both parties for the benefit of the state budget.²³ The existing laws do not provide such possibilities to legal persons. Moreover, the system for relief of legal expenses, which does not include expenses of hiring a lawyer, is unable to guarantee completely the right to legal defense.

A 1999 resolution,²⁴ referring to Article 102, Part 1, Item 39 of the Civil Procedure Code,²⁵ established the concept of a "socially needy person who is relieved of stamp duty." Such persons are those who either receive social benefits²⁶ or are in full-time

22. CIVIL PROCEDURE CODE OF THE REPUBLIC OF LITHUANIA, art. 102.

23. *Id.* art. 103.

24. See Republic of Lithuania, Resolution Concerning the Recognition of Natural Persons as Socially Needy, No. 194 (Feb. 23, 1999).

25. CIVIL PROCEDURE CODE OF THE REPUBLIC OF LITHUANIA, art. 39.

26. See Republic of Lithuania, Resolution Concerning the Confirmation of the Principles of Allocation and Payment of Social Benefits, No. 808 (July 5, 1996).

care institutions on state benefits. Socially-needy persons who go into court have to produce the above mentioned certificates proving their status.

At the written request of natural persons on social benefits, municipal and regional officials have to issue certificates confirming that these persons receive social benefits. These certificates are valid for the entire period of payment of the social benefits, which should be indicated in the certificate.

Persons on state benefit who are in full-time care institutions are issued certificates confirming that these persons are on state benefits. The certificates are issued by heads of full-time care institutions or persons authorized by them and are valid for the entire period of the person's stay at the full-time care institution.

The only available free legal aid in civil cases is provided by human rights NGOs like the Legal Assistance to Socially Vulnerable People Project affiliated with the Lithuanian Red Cross, the Lithuanian Center for Human Rights, the Lithuanian Association for Human Rights, and the legal clinics of Vilnius University and Law Academy.

II. *STRATEGIES TO IMPROVE ACCESS TO JUSTICE*

In order to guarantee professional legal assistance to the socially needy, the newly revised Outline of the Legal System Reform includes a provision in the Civil Procedural Code by which the state guarantees lawyer's assistance to such persons. The Outline of the Legal System Reform maintains that the Government of the Republic of Lithuania supports the establishment of public organizations that provide legal services to socially needy persons.

A. *Legislative Reform*

At present, a draft of the Law on State Guaranteed Legal Assistance²⁷ ("Draft Law") has been prepared by the working group set up as the basis of Order No. 27 of the Minister of Justice dated 29 January 1999,²⁸ and submitted to the Lithuanian

27. Draft Law on State Guaranteed Legal Assistance [hereinafter Draft Law]. The Law on State Guaranteed Legal Assistance (No. VIII-1591) was adopted on March 29, 2000.

28. Minister of Justice, Order No. 27, Jan. 29, 1999 (Lith.).

Parliament for parliamentary debates and eventual adoption. The law was mainly initiated because of the willingness of the Ministry of Justice to ensure that individuals who, due to their economical status, cannot afford to contract with a lawyer, receive free legal aid.

The Draft Law defines the following forms of legal assistance: 1) primary legal assistance; 2) state legal assistance; and 3) legal assistance provided by public institutions. Legal assistance is defined as the provision of legal information, legal advice, defense, and representation in the court proceedings.

The Draft Law defines persons who are entitled to primary legal assistance as either persons whose annual income and property is within the limits of property and income as established by the Government of the Republic of Lithuania making the person eligible to receive legal assistance in accordance with this law or other persons in cases provided for in international agreements.²⁹ Legal assistance shall not be provided to persons entitled to legal expenses and insurance benefits.

The Draft prescribes different levels of compensation of costs related to the rendering of legal assistance. Expenses of legal assistance to persons shall be covered by the state according to the level of the person's property and income: 1) first level—100% 2) second level—95%; 3) third level—80%; 4) fourth level—65%; and, 5) fifth level—50%. If the level of a person's property and income makes the person eligible for legal assistance according to this law, changes during the provision of legal assistance, the proportion of expenses of state financed legal assistance shall be changed accordingly.

Primary legal assistance shall be provided by attorneys and assistants of attorneys. The local government's executive institution shall provide information and refer persons residing in its area to attorneys and assistant of attorneys for primary legal assistance. The local government's executive institution shall refer individuals for one hour primary legal consultation. Referrals issued by the local government's executive institutions for primary legal assistance shall be issued and registered in the procedure established by the Government of the Republic of Lithuania or an institution authorized thereby. The refusal of the local government's executive institution to refer individuals for pri-

29. Draft Law, art. 4.

mary legal consultation shall be appealed against to the district administrative court in the procedure established by law.

Attorneys and assistants of attorneys shall provide primary legal assistance according to the referrals for primary legal assistance issued by local government's executive institutions. Terms and conditions of provisions for, and reimbursement of, primary legal assistance rendered by attorneys, assistants of attorneys, and local government's executive institutions shall be established by agreements on the provision of primary legal assistance concluded between lawyers and local government executive institutions. A standard form of agreement shall be approved by the Minister of Justice. Primary legal assistance shall be financed from the budget of the local government.

It is envisaged in the Draft Law that state legal assistance will be provided by attorneys. Persons indicated in Article 4³⁰ of this law shall be eligible for state legal assistance in cases established by law when this is required by justice, if these persons are: 1) suspects, the accused, defendants or convicts in criminal cases; 2) victims and suitors in criminal cases; or 3) suitors and defendants in civil cases and claimants in administrative cases. The person who is eligible for state legal assistance, has to file an application with an official or an institution that adopts decisions concerning the provision of legal assistance.

State legal assistance shall be financed from the budget of the State. The size of and procedure for remuneration to the lawyer who provides legal assistance in criminal cases or civil cases by the appointment of the investigator, interrogator, prosecutor, judge, or court, shall be established by the Government of the Republic of Lithuania or an institution authorized thereby.

The following public institutions which would provide legal assistance are enumerated in the Draft Law: 1) public establishments; and 2) legal assistance centers and other public institutions. A legal clinic is defined in the Draft Law as a public institution, the main goal of which is to provide law students with an opportunity to gain experience of providing legal assistance and to provide legal assistance. Legal clinics shall provide legal assistance in the procedure established thereby and approved by the Ministry of Justice. Legal clinics may conclude agreements with

30. Minister of Justice, Order No. 27, Jan. 29, 1999, art. 4 (Lith.).

local government executive institutions for the provision of primary legal assistance.

Legal assistance centers and other public institutions shall provide, on the basis of the laws regulating their activities, free legal assistance in the procedure established by these institutions and approved by the Ministry of Justice. This Law shall not regulate the provision of assistance by public institutions to their members. Public institutions that provide legal assistance shall be supported in the procedure stipulated by the Law of the Republic of Lithuania on Charity and Support. For their activities public institutions that render legal assistance in accordance with this law may be paid, by agreement, with non-dwelling premises and other property of the state and local governments.

It is worthwhile to mention that the Draft Law is silent about the *modus operandi* of the new free legal aid system. In spite of the fact that it is said in the Draft Law that municipalities will refer indigent people to private attorneys, it is not clear who will administer the entire system in terms of determining eligibility, legally assessing the validity of request, quality-control, arranging the payments, etc. The experiences of more advanced countries show that rendering state-guaranteed legal aid through the offices of the private attorneys requires more and more financial resources which eventually makes the institutional scheme unbearably expensive.

At this point, the Ministry of Justice of the Republic of Lithuania estimates that when a Law on State-Guaranteed Legal Aid enters into effect, public funding in rendering legal aid will increase up to approximately 8,000,000 Litas (US\$200,000) per year. It may require, however, considerably larger financial resources.

B. *Institutional Reform: Setting Up of a Pilot Public Attorney's Office*

Parallel to the Government's efforts to establish a regulatory framework, an institution-building project had been launched by the Open Lithuania Fund³¹ jointly with the Constitutional and Legislative Policy Institute ("COLPI") based in Budapest. The project aims to establish a pilot public attorneys' office in order primarily to effectuate quality legal aid in criminal *ex officio*

31. Open Lithuania Fund, *supra* note 19 and accompanying text.

mandatory defense cases. The project focuses on the imperative to improve legal aid in *ex officio* criminal mandatory defense cases. However, it also has the potential to extend to civil and administrative cases. If this model project is successful in terms of legal quality provided and administrative costs related then the Lithuanian Government may consider the idea of organizing state-guaranteed legal aid in criminal, civil, and administrative cases through the offices of public attorneys throughout the country.

The project establishing a public attorneys' institution seeks to ensure more effective and better quality defense of human rights in criminal proceedings by supplementing and diversifying the current system of *ex officio* representation in criminal proceedings. The aim of the project is to prove that free, mandatory legal assistance provided by the state in the form of the public attorneys' institution is fairly cost effective and of higher quality than the current system based on private attorneys. The experience of other states shows that, by being a part of the system of mixed legal services, the public attorneys' institution may offer good (if not better) services at a lower cost.

The founders of the public attorneys' office are the Ministry of Justice, the Lithuanian Bar Association, and Open Lithuania Fund.³² The founding agreement was signed on December 13, 1999. The legal status of this institution is as a public establishment. It is located in the city of Šiauliai (the fifth biggest city). The first public attorneys' office in Šiauliai was opened on March 31, 2000.

In two years, the Ministry of Justice will receive the activities report of the public attorneys' office. The report will contain the number of hours spent on cases (number of cases/hours spent on one case) and the administrative costs of the institution. Detailed information also should be collected from the Ministry of Justice about the provision of legal services in criminal cases by private lawyers. This information will help to weigh the costs and benefits of public and private forms of legal assis-

32. See Law on the Bar, art. 21, No. 64-1840 (1998), amended by No. 104-2975 (Dec. 8, 1999). Article 21 of the Law on the Bar states *inter alia* that the Government of the Republic of Lithuania, the Ministry of Justice or the Lithuanian Bar Council may found a lawyer's office to provide legal assistance to socially needy, indigenous persons in civil cases as well as legal assistance in criminal cases by appointment of the investigator or the prosecutor or the court.

tance from the point of view of cost effectiveness and level of quality. Currently there is no mechanism to control the level of quality of legal services provided in criminal *ex officio* cases by private lawyers.

As noted, it is hoped that public attorneys' offices might serve as adequate institutional alternatives for the Lithuanian Government to ensure that state guaranteed legal assistance is provided to indigenous people as stipulated in the Draft Law. When the Draft Law is adopted and put into effect (at this point of the time it is envisaged that it would happen from the start of 2001), the scope of legal aid provided by pilot public attorneys' office will be broadened, *i.e.* state guaranteed legal aid will be provided not only in *ex officio* criminal cases but in civil and administrative ones too.

C. Access to Justice in the Region of Eastern and Central Europe

According to Wiktor Osiatynski, member of the Board of Directors of the Open Society Institute and visiting professor of the Open Society University in Budapest, access to justice is one of the major drawbacks of the existing criminal justice systems of Eastern and Central Europe. During the transition period a marked deterioration was observed in the situation of persons in criminal proceedings (suspects, accused, and defendants). The legislative and institutional reforms aiming to improve access to justice coupled with pilot projects designed to establish an Office of Public Attorneys in Lithuania is important for the whole region of Eastern and Central Europe. Hopefully, positive experiences will give impetus to changes in this field in other countries of the region with the help of other national Soros foundations, COLPI, and, most importantly, national governments.

In many countries of Central and Eastern Europe litigants are entitled to several benefits promoting their access to justice. First, in certain types of civil cases, such as labor disputes, alimony, and other family cases, litigants are exempt from paying costs of the administration of justice. Second, individuals may be granted legal aid for free or reduced tariff if they lack adequate resources irrespective of the type of the case.

In such countries as the Czech Republic, Hungary, Poland, and Romania, litigants are entitled to free legal assistance. For example, in Hungary, persons who due to a lack of financial

means are unable to pay the expenses of the proceedings, are entitled to an exemption from paying taxes and the costs of the proceedings. They also are entitled to the appointment of an attorney acting on their behalf as a free protector. The litigants have these rights if their income does not exceed the current minimum amount of an old-age pension and if they do not possess any property beyond what is necessary for the normal conduct of life.³³

III. *INSTEAD OF CONCLUDING REMARKS*

One of the most fundamental changes in the transitional societies of Central and Eastern Europe is a change in the relationship between individuals and the state, which manifested into a gradual shift of the individual into the center of societal developments. To put it schematically, individuals in post-communist societies became a subject of political relations as opposed to the manipulative treatment of individuals as objects of political relations in the totalitarian or authoritarian regimes. This may be easily illustrated by a variety of international human rights agreements or treaties signed, acceded, or ratified by the Central and Eastern European states. However, the concept of human rights is meaningless, void, without an awareness of the existence of legal instruments to protect oneself and without a real and effective possibility to channel a complaint, to invoke legal remedies, and to access to courts.

As stated earlier, social stratification and polarization of post-communist societies that were allegedly claimed to be egalitarian (although nobody really believed that to be true since some were more equal among equals), caused the economic and social exclusion of certain segments of society while other ones emerged fairly, or unfairly, as *nouveaux riche*. The new, evolving structure of society increasingly deepened the gap between the rich and the poor. It is estimated that the gap between the incomes of the rich and poor in Lithuania in 1989 was 3.9 times, in 1996 it surged to 12 times, and up to 14 times in 1999.

One of the manifestations of these new realities is a deprivation of the opportunities in employment, education, adequate health care, and, last but not least, justice. Ironically, this social

33. Karoly Bard Vessela Terzieva, *Legal Services for Indigent Criminal Defendants in Central and Eastern Europe*, 5 *Parker Sch. J.E. Eur. L.* 236 (1998).

fact is reminiscent of the era of capitalism so sharply criticized by Karl Marx who noticed that "equality before the law" was just the invention of a richer social class to sustain socio-economic inequalities. What does equality mean for those who find themselves in marginalized situations in Central and Eastern European societies today?

In the modern life entered by the post-communist societies, rapidly evolving social and legal relations are indeed exceedingly complex. Just the restitution of the institution of private property immensely contributed to the emergence of new legal instruments and forms of enterprises without even mentioning virtual legal databases, e-commerce, etc. Sophisticated legal requirements and court procedures alienate individuals even further. In this context, to live and operate without qualified legal advice is almost impossible.

Paradoxically, the revived project of individualism and human rights in the newly emerged democracies of Central and Eastern Europe is trapped between incremental socio-economic disparities, alienation from legal institutions, and the inability of governments to balance the situation so far. It takes time to grasp that one of the effects of growing social injustice is a more and more hindered access to legal justice. It remains a clear, unquestionable imperative for the national governments of Central and Eastern Europe, including Lithuania, to address. Otherwise, the value of universal human rights will be limited to those who can afford to enjoy them, which in turn will shade the doubts on the universality of the concept.