



**REPORT WITH RECOMMENDATIONS ON SETTING UP THE MECHANISM OF THE
PARTIALLY FINANCED STATE LEGAL AID**

under

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access to the judiciary system project**

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Preface

The Report with Recommendations on Setting up the Mechanism of the Partially Financed State Legal Aid was prepared in the context of Activity 2.3.1 “Development of the mechanism of the partially financed state legal aid”. It analyses the current situation of partially financed state legal aid in Moldova, presents practices of other European states and gives recommendations for setting up partially financed state legal aid in Moldova. To prepare the Report, desk research was combined with the information collected during the meetings of the Field Mission.

This Report is structured into three main parts. The Report starts with an overview of the current legal aid regulation model in Moldova. It identifies the main legal acts and responsible institutions, and discusses the current situation of partially financed legal aid.

In its second part, comparative research into the regulation of partially financed legal aid in selected jurisdictions is performed. Several jurisdictions were identified by the participants of the meeting as the jurisdictions of interest; other jurisdictions were selected by the expert, taking into account the good practices available in those jurisdictions and accessibility of information. During the Field Mission, it was agreed that in order to ensure a holistic approach, at least in some jurisdictions, the expert should also analyse the provisions allowing to refuse legal aid, especially in cases where a person is already receiving legal aid, regulation of recovery of legal aid, models of ensuring that the legal aid client pays the part of legal aid fee that he/she is required to pay in cases of partially financed legal aid.

Finally, the Report presents recommendations on setting up the mechanism of the partially financed legal aid in Moldova. During the Field Mission, it was suggested that the recommendations of the expert should take into account the need to balance the introduction of partially legal aid and the tools needed to improve the current legal aid system, in particular with regard to the current situation where the finances are limited, and there is a possible misuse of legal aid (one person receiving legal aid in multiple civil/administrative cases). This is reflected in the expert’s recommendations.

The Report was prepared by Dr Agne Limante, a Short-Term Expert for the Component 2 of the Project. Dr Limante is a researcher in the field of law, focusing, inter alia, on the right to legal aid.

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LIST OF ABBREVIATIONS

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| Law on State Guaranteed Legal Aid | Law on State Guaranteed Legal Aid of the Republic of Moldova No. 198/2007 |
| NLAC | National Legal Aid Council |
| MoJ | Ministry of Justice |

1. Legal aid and partially financed legal aid in Moldova: an overview of the current situation

The right to legal aid in Moldova was first recognised in 1994 when the Parliament adopted the current Constitution of Moldova. Article 26 of the Constitution guarantees the right to be assisted by a lawyer, either chosen or appointed *ex officio*. This right was further developed in the relevant laws.

1.1. Regulation of legal aid

In 2007, the legal aid system in Moldova was redesigned by adopting the **Law on State Guaranteed Legal Aid No. 198/2007**¹. It still serves as the primary legal document governing the essential elements of legal aid. Another relevant law is the Law on the Bar (No. 1260 of 19 July 2002).

Several binding resolutions adopted by the Government and the Ministry of Justice specify the rules on the provision of legal aid.

Relevant **resolutions adopted by the Government:**

- Resolution on approval of the Regulation on the methodology for calculating income in order to obtain qualified legal aid guaranteed by the state (No. 1016 of 1 September 2008).

Relevant **Ministry of Justice (MoJ) resolutions:**

- Order of the MoJ approving Regulations on National Legal Aid Council (No. 18 of 24 January 2008).

More specific questions are covered by legal acts adopted by the **National Legal Aid Council:**

- Decision approving the Regulation on the activities of public advocates (No. 18 of 6 October 2008);
- Regulation on the procedure for requesting and appointing a lawyer to provide urgent legal assistance (of 14 July 2008);
- Resolution approving the Regulation on monitoring the quality of state-guaranteed qualified legal assistance provided by lawyers (No. 20 of 25 June 2015);
- Decision approving the Regulation on the amount and manner of payment for the services of lawyers providing qualified legal assistance guaranteed by the state (No. 22 of 19 December 2008);
- Resolution approving the Regulations on paralegal activities (No. 27 of 29 October 2014);
- Decision approving the Regulations on the administrative office of the National Legal Aid Board, guaranteed by the state (No. 15 of 24 September 2012);
- Decision approving the Regulation on the Functioning of the Territorial Offices of the National Legal Aid Council (No. 15 of 30 July 2008).

In 2022, the MoJ created an extended working group that shall include representatives from the Moldova Bar Association, the Superior Council of Magistrates, the Superior Council of Prosecutors, as well as other

¹ https://www.legis.md/cautare/getResults?doc_id=123162&lang=ru

interested institutions. The working group aims to review the criteria for granting state legal aid to the beneficiaries, the grounds of refusal, and the mechanism for recovering the costs of state legal aid. As noted during the interviews with the representatives of the MoJ, several draft amendments are being finalised.

1.2. Institutional framework

The Ministry of Justice is responsible for overall guaranteeing the implementation of the right to legal aid. It formulates state policy on state-guaranteed legal aid; drafts regulations in the field of state-guaranteed legal aid; monitors the process of implementation of norms in the field of state-guaranteed legal aid and the process of evaluating the quality of such aid; develops and submits to the Ministry of Finance a draft budget for the provision of state-guaranteed legal aid; and performs other functions defined by law (Article 9 of the Law on State Guaranteed Legal Aid).

The National Legal Aid Council (the NLAC or the National Council)² and its Territorial Offices are the main bodies administering the legal aid system in Moldova. Members of the National Legal Aid Council are appointed by the MoJ, the Ministry of Finance, the Bar Association, and the Supreme Council of Magistrates. One member is selected on a competitive basis from the non-governmental sector or academia. Ordinary meetings of the NLAC take place once in three months. NLAC's activity is regulated by the Regulation on National Legal Aid Council, approved by the Minister of Justice order No. 18 of 24 January 2008. Territorial Offices of the NLAC manage the appointment of legal aid providers.

The NLAC performs a wide list of functions provided for in Article 12 of the Law on State Guaranteed Legal Aid. For instance, it manages the process of providing state-guaranteed legal aid; assesses the cost and plans the costs of providing state-guaranteed legal aid and submits proposals to the MoJ for inclusion in the state budget; develops a methodology for calculating income and determines the level of income eligible for qualified legal aid and submits them to the Government for approval; approves the forms of documents for receiving and providing legal assistance guaranteed by the state, etc.

In addition, the Bar Association plays an important role in legal aid provision and supervision of its quality. In particular, it participates in the development of criteria for the selection of advocates for the provision of such assistance; participates in the establishment of criteria for assessing the quality of such assistance; participates in the monitoring of the activities of advocates who provide such assistance; imposes disciplinary sanctions on advocates under the Law on Advocates and the Law on State Guaranteed Legal Aid; and performs other functions defined by law (Article 10 of the Law on State Guaranteed Legal Aid).

1.3. First line and second line legal aid

In Moldova, the law provides for first line legal aid and second line legal aid. First line legal aid (primary legal assistance) is provided by paralegals. Their activities are regulated by the Regulations on paralegal activities

² <https://cnajgs.md/en>

(No. 27 of 29 October 2014) adopted by the NLAC. Under Article 2 of the Law on State Guaranteed Legal Aid, it includes services as: informing about the legal system of the Republic of Moldova, normative acts in force, rights and obligations of subjects of law, ways of exercising and enjoying rights in court and out of court; legal counselling; assistance in drafting legal documents; other forms of assistance not falling under the definition of second line legal aid (in Moldova called 'qualified legal assistance').

Second line legal aid (qualified legal assistance) is provided by public defenders (lawyers providing legal aid full time and receiving a fixed salary for the services) and by private practitioners who take assignments to represent people eligible for legal aid. The Regulation on the activities of public advocates (No 18 of 06 October 2008) adopted by the NLAC regulates their activities in more detail.

As indicated in the Annual Report of the NLAC³, during 2021, a total of 61 354 cases of state-guaranteed legal aid were registered. Of the total 61 354 cases, 47 990 were qualified legal aid cases and 13 364 were primary legal aid cases. Overall, there is a constant increase in legal aid applications in the country.

Out of the total number of cases of granting qualified legal assistance, emergency legal assistance was granted in 3,524 cases.⁴ In other 44,466, qualified legal assistance was granted in criminal, administrative offence (misdemeanour) and civil cases. The number was traditionally predominated by criminal cases with a share of about 82% of the total number. Thus, 36 461 (82 %) constituted criminal cases, 4 133 (9 %) civil cases and 3 872 (9 %) administrative offence (misdemeanour) cases.

With reference to the cases of granting state-guaranteed legal assistance depending on the applicant's income level, in 2021, 912 decisions to refuse the granting of state-guaranteed legal assistance were registered. Compared to previous years, the number of refusals increased as a result of the fact that the Territorial Offices were connected to databases³ and could check information on the person's income.

1.4. Free legal aid

In Moldova, legal aid can be provided in criminal, administrative and civil cases, as well as cases of administrative offences (misdemeanors). There is no possibility of legal aid in mediation proceedings.

Under Article 19 (Persons entitled to qualified legal assistance) of the Law on State Legal Aid, the following persons are entitled to second line legal aid:

- persons who need legal aid in criminal cases where the interests of justice so require, but do not have sufficient means to pay for such services;
- persons who need urgent legal assistance in case of application for protection measures under Article 278⁶ of the Code of Civil Procedure of the Republic of Moldova or Article 215¹ of the Code of Criminal Procedure of the Republic of Moldova or in case of a complaint of domestic violence or sexual offence;

³ https://cnajgs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf

⁴ Emergency legal assistance is provided 24/24, regardless of the person's income level, in the event of their detention in a criminal or administrative offence (misdemeanor) case, including during the examination of the arrest warrant, as well as for victims of domestic violence and sexual crimes at the filing stage complaints.

- persons who are entitled to compulsory legal assistance on the basis of paragraphs (2) to (13) of paragraph (1) of Article 69 of the Code of Criminal Procedure of the Republic of Moldova;
- persons who are entitled to compulsory legal assistance under Article 77(a) and (c) of the Code of Civil Procedure of the Republic of Moldova, as well as Article 151 of the Civil Code of the Republic of Moldova
- persons who are in need of legal assistance in administrative, civil and administrative cases, but do not have sufficient means to pay for such services, even if the cases are legally or procedurally complex.
- children who are victims of crime, victims of domestic violence, and victims of sexual offences are entitled to qualified legal aid, regardless of their income level.

In certain cases provided by law, the legal aid is assigned without assessing the financial situation of the person in question. In other cases, the means criteria are applied, and a person has to show that his/her family income is below the set criteria. For instance, when the participation of a defence lawyer in the proceedings is mandatory, no means test is applied.

Article 69 of the Criminal Procedure Code

1. The participation of a defence lawyer in the proceedings is mandatory if:

- this is required by the suspect, the accused, the defendant;
- it is difficult for a suspect, accused, defendant to independently exercise his/her right to defence due to dumbness, deafness, blindness, other significant impairment of the functions of speech, hearing, vision, as well as other physical or mental disabilities;
 - the suspect, the accused, the defendant does not speak or does not speak the language in which the proceedings are conducted;
- the suspect, the accused, the defendant is a minor⁵;
- the suspect, the accused, the defendant is a military serviceman;
- the suspect, accused, defendant is charged with committing a grave, especially grave or exceptionally grave crime;
 - the suspect, accused, defendant, detainee is arrested as a measure of restraint or they are sent for forensic psychiatric examination in a hospital;
- there are contradictions between the interests of the suspected, accused, defendants, and one of them has a defence counsel;
 - the defender of the victim or the civil plaintiff participates in the proceedings;
- the participation of a defence counsel in a court session of a court of first instance, appellate and cassation instances, as well as when considering a case in an exceptional appeal procedure, the interests of justice require;
 - criminal proceedings are conducted against a person who is unable to account for his/her actions or manage them, who is charged with committing an injurious act, or against a person who has become mentally ill after the commission of such an act;
 - criminal proceedings are conducted for the purpose of rehabilitation of a person who died at the time of the consideration of the case;

⁵ A person under 18 years old.

- it is necessary to ensure the protection of the suspect, the accused, the defendant in the process of interrogation of a minor in accordance with Article 1101;
- criminal proceedings are conducted in the absence of the accused, defendant, who evades criminal prosecution or court.

1.5. Partially financed legal aid

Article 22 of the Law on State Legal Aid provides for the possibility to grant partially free qualified legal assistance for persons whose income is higher than the threshold set by the Government to receive fully funded legal aid.

Article 22

Qualified legal aid shall also be provided in cases where a person whose income is higher than the income level established by the Government for receiving legal aid in accordance with this law is able to pay part of the costs of legal aid. In this case, qualified legal assistance may be provided with the financial participation of the person to whom assistance is provided, if the person's contribution does not exceed his/her financial and material capabilities.

The procedure and conditions for the provision of partially free qualified legal assistance are established by the National Council.

However, no implementing legal acts were adopted, and this provision of the Law on State Guaranteed Legal Assistance remains only theoretical. Consequently, there is a stringent need to develop recommendations in setting up the partially financed state legal aid mechanism.

It should be noted that a partially financed state legal aid mechanism is beneficial. For the persons that do not have sufficient resources to cover the legal aid fees fully, it helps to cover legal costs. For the state, it gives it a chance to cover a bigger proportion of legal aid needs in the country. Moreover, requiring a partial financing (contribution) of the legal aid client limits the overuse of the right to legal aid and deters the legal aid clients that do not have a valid claim from going to court.

1.6. Limitations to receive legal aid (refusal to provide qualified legal aid)

Under Article 24 (Grounds for refusal to provide qualified legal aid) of the Law on State Legal Aid No. 128/2007, persons who otherwise would have a right to free legal aid shall not be provided with qualified legal assistance, if:

- the application for legal aid is manifestly unfounded;
- they do not possess the right for the protection of which legal aid is sought and this is evident from the documents submitted;

- they are in a position to cover the full cost of providing legal aid out of their assets, except for assets that cannot be foreclosed on under the applicable law.

Moreover, the provision of qualified legal aid in cases of administrative offences (misdemeanor), civil and administrative cases may be refused if:

- the claim relates to the applicant's business activity;
- the value of the claim is lower than half of the subsistence minimum calculated in accordance with the procedure approved by the Government;
- the applicant is already provided with qualified legal assistance in the case;
- the claim relates to the compensation of damages caused to his/her honour, dignity and business reputation;
- the application relates to a violation of the right of a neighbourhood, except in cases concerning the elimination of a threat of collapse, observance of distances for buildings, and boundary disputes.

Under Article 24(2), the refusal to grant qualified legal assistance shall be justified and may be appealed to the administrative court within 15 working days from the date of notification of the decision.

1.7. The mechanism for recovering expenses for legal assistance guaranteed by the state

In 2018, for the first time, the mechanism for the recovery of costs for state-guaranteed legal aid in cases provided for by law was implemented. Therefore, it is a relatively new mechanism and, as indicated in the Annual Report of the NLAC⁶, should be improved.

Reimbursement of the costs of providing qualified legal assistance is regulated in Article 23 of the Law on State Guaranteed Legal Aid. It provides that in case of a court ruling in a civil or administrative case in favour of a person receiving qualified legal assistance, the cost of providing such assistance shall be borne by the losing party (Article 23(1)). Moreover, a person who has received qualified legal assistance as a result of submitting false or misleading information, in particular on his/her financial situation, thereby misleading a territorial bureau, shall be obliged to reimburse the costs of the provision of legal assistance (Article 23(2)). Under Article 23(3), if in the course of the trial or execution of the court decision the financial situation of the person has changed in the sense of a total or partial loss of the right to qualified legal assistance guaranteed by the state, of which the territorial bureau has not been informed, the person shall be obliged to reimburse the costs for the provision of such assistance incurred since the improvement of his/her financial situation.

In 2021, cases of recovery of expenses for state-guaranteed legal assistance were registered, but great difficulties are encountered in terms of identifying the cases that require the recovery of expenses, checking the information on the beneficiaries' incomes and motivating the decisions to recover expenses, other technical and enforcement aspects. Moreover, in 2019-2021 only 52.1% of the decisions to recover legal aid costs issued by the territorial offices were executed, and only 49% of the expenses incurred are recovered.

In September 2022, a draft amendment to the Law on State Guaranteed Legal Aid and the Enforcement Code of the Republic of Moldova (No. 443/2004) was developed by the Ministry of Justice and shared with the

⁶ https://cnaigs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf

Project team. It is linked to the Action Plan for the implementation of the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025, which, inter alia, provides for “Development and improvement of the mechanism for the recovery of expenses for state-guaranteed legal aid”. The draft suggests changing the mode of recovery of expenses for the provision of state-guaranteed legal assistance. In particular, the draft offers to foresee that in the cases referred to in Articles 22 (which is partially funded legal aid) and Article 23 of the Law on State Guaranteed Legal Aid, the coordinator of the territorial office shall issue a decision on the recovery of expenses for the granting of legal aid guaranteed by the State, which should be properly delivered to the addressee. Should the amounts due are not paid in time (30 days after communication of the decision) voluntarily, the decision on the recovery of expenses for the granting of legal aid should be enforced in accordance with the Regulation on the Procedure of Enforcement of Monetary Claims Based on Public Law Provisions (Government Decision No 618/2019) and not in accordance with the Enforcement Code of the Republic of Moldova as it is currently. This draft developed by the MoJ will now be submitted for public debates.

2. Comparative research into partially financed legal aid in selected jurisdictions

2.1. Lithuania

In Lithuania, the legal aid system is organised nationally. The main rules are defined in the Law on State-guaranteed Legal Aid of the Republic of Lithuania.⁷ Legal aid in Lithuania is foreseen in civil, administrative, criminal and constitutional cases. It is also available for mediation as of 2019. Legal aid is administered by the State-guaranteed Legal Aid Service (SGLAS), which is a state institution under the Ministry of Justice.

The Lithuanian legal aid system provides for two levels of legal aid – first line (primary) and secondary legal aid. First line legal aid includes legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. It is provided free of charge in the municipal institutions (there are 60 municipalities in Lithuania) by the employees of a municipality and is granted irrespective of one's financial situation. The applicants are consulted in person upon their arrival at the municipality. In certain cases, however, municipalities prefer to conclude agreements of provision of primary legal aid with lawyers (in 2019, this option was chosen by 2 out of 60 municipalities). In addition, public institutions which have concluded agreements on the provision of primary legal aid with a municipal institution or the State-guaranteed Legal Aid Service have the right to provide primary legal aid. All citizens of Lithuania, citizens of other EU Member States, as well as other natural persons legally residing in Lithuania and other EU Member States, as well as other persons specified in international agreements concluded by Lithuania and directly applicable legal acts of the EU are entitled to first line (primary) legal aid.

Second line (secondary) legal aid is provided by lawyers (advocates, in certain cases by associates) and is funded by the state. It covers legal services related to representation in courts (including drafting of documents, defence and representation in proceedings), including enforcement proceedings. Second line legal aid may be entirely or partially financed by the state.

I. Free legal aid

Second line (secondary) legal aid is based on means and merits tests. In certain cases, only the merits test is applied; in others – both need to be fulfilled. The following persons are entitled to secondary legal aid:

- citizens of Lithuania, citizens of other EU Member States of the European Union, as well as other natural persons legally residing in Lithuania and other EU Member States whose assets and annual income do not exceed the levels of assets and income for legal aid established by the Government;
- citizens of Lithuania, citizens of other EU Member States, as well as other natural persons legally residing in Lithuania and other EU Member States, specified in Article 12 of Law on State-guaranteed Legal Aid (Persons entitled to secondary legal aid regardless of assets and income);

⁷ An earlier version of the law (without most recent modifications) is available at <https://vgtp.lt/en/legal-information/legislation>

- other persons specified in international agreements of the Republic of Lithuania and directly applicable legal acts of the European Union, whose assets and annual income do not exceed the levels of assets and income established by the Government for receiving legal aid under this Law or who are specified in Article 12 of the Law (Persons entitled to secondary legal aid regardless of assets and income).

Overall, legal aid can be provided as a result of a situation of mandatory defence, in cases when the interest of justice so requires, or upon the application of a person who shows that he has income and assets below a certain threshold.

Article 51 of the Code of Criminal Procedure establishes a list when mandatory representation is required. In such cases the means test is not applied.

Article 51. Mandatory participation of the lawyer

1. Lawyer's participation is required:

- 1) in the examination of cases where a suspect or accused is a minor;
- 2) in the examination of cases involving persons who are blind, deaf, are unable to talk, as well as other persons who are unable to exercise their rights of defence due to physical or mental defects;
- 3) in the examination of cases of persons who do not know the language of proceedings;
- 4) when there are contradictions in the defence interests of suspects or accused, and at least one of them has a lawyer;
- 5) in the examination of cases of crimes which may lead to life imprisonment;
- 6) when the case is examined in the absence of the accused in accordance with the procedure established in Chapter XXXII of this Code;
- 7) when deciding on the arrest of the suspect or accused, as well as in the investigation and examination of cases where a suspect or accused person is arrested;
- 8) when deciding on extradition of a person or on transfer to the International Criminal Court or under the European Arrest Warrant;
- 9) when the case in court is examined under an accelerated procedure;
- 10) when a person is temporarily arrested in accordance with Art 140 of this code;
- 11) in other cases, provided for in this Code.

2. The pre-trial investigation officer, the prosecutor (by reasoned order) or the court (by a reasoned ruling), has the right to state that the participation of a lawyer is also necessary in other cases, if in their opinion, without the help of the lawyer, the rights and legitimate interests of the suspect or accused are not adequately defended.

3. In the cases referred to in this Article, as well as in the cases referred to in Article 50 (4) of this Code, if the suspect, accused or convicted person (or other persons on his/her behalf or upon his/her instructions) has not invited the lawyer, the pre-trial investigation officer, prosecutor or court must notify the authority responsible for the provision of state-guaranteed legal aid or its designated coordinator of the need for a lawyer for the suspect, accused or convicted person and to appoint a lawyer chosen by that authority. During non-working days and state holidays, as well as during non-working hours of the institution organizing the provision of state-guaranteed legal aid, a defender shall be appointed by the pre-trial investigation officer,

prosecutor or court on the basis of the lists of the lawyers on duty providing state-guaranteed legal aid in criminal cases which is compiled by this institution. The suspected, accused or convicted person shall be notified of the appointment lawyer immediately by serving or sending a copy of the order or decision to appoint a lawyer.

4. Upon the disappearance of the circumstances referred to in Article 50 (4) of this Code and paragraph 1 or 2 of this Article, due to which the suspect, accused or convicted person has been granted state-guaranteed legal aid, the pre-trial investigation officer, the prosecutor (by order) or the court (by a ruling) shall terminate the provision of state-guaranteed legal aid.

Paragraphs 3 and 4 of Art 51 provide that in case of mandatory defence, where a person has no lawyer yet, the authorities should inform the legal aid institution (SGLAS) about the need for a lawyer and the lawyer should be appointed. In case the reasons for which legal aid was provided disappear, the provision of legal aid is stopped.

In addition, in certain other cases, legal aid is provided regardless of assets and income.

Article 12 of Law on State-guaranteed Legal Aid: Persons entitled to secondary legal aid regardless of assets and income

The right to receive secondary legal aid, regardless of the levels of assets and income established by the Government for receiving legal aid under this Law, shall be granted to:

- 1) persons who have the right to receive legal aid in criminal proceedings pursuant to Article 51 of the Code of Criminal Procedure (Mandatory participation of the lawyer);
- 2) victims of terrorist offences, trafficking in human beings, domestic violence, criminal offences against the freedom and integrity of the human person, sexual freedom, organized crime or criminal organization, as well as when criminal acts are committed for the purpose of expressing hatred with regards to person's age, sex, sexual orientation, disability, race, nationality, language, origin, social status, religion, belief or opinion;
- 3) victims other than those specified in paragraph 2 of this Article in cases of compensation for damage caused by criminal acts, including cases when the issue of compensation for damage is resolved in a criminal case;
- 4) persons who have been granted a social benefit in accordance with the Law of the Republic of Lithuania on Monetary Social Assistance to the Deprived;
- 5) persons maintained in inpatient social care institutions;
- 6) persons who have been diagnosed with a severe level of disability or who have been declared incapacitated for work or have reached the retirement age, for whom the level of high special needs has been established in accordance with the procedure established by legal acts, as well as guardians (caretakers) of these persons to represent and defend the rights and interests of the person they take care of;
- 7) persons who have submitted evidence that due to objective reasons they cannot dispose of their property and funds and therefore their property and annual income, which they may freely dispose of, do not exceed the levels of property and income established by the Government to receive legal aid under this Law;

- 8) persons whose involuntary hospitalization and treatment or its extension is being resolved in accordance with the Law on Mental Health Care of the Republic of Lithuania, as well as persons subject to compulsory hospitalization and/or isolation or whose compulsory hospitalization is being extended in accordance with the Law of the Republic of Lithuania on the Prevention and Control of Communicable Diseases and their guardians (caregivers) when state-guaranteed legal assistance is needed to represent the person they take care of;
- 9) debtors in enforcement proceedings when recovery is directed to their last dwelling in which they live;
- 10) parents or other representatives of minor children when resolving the issue of their eviction in accordance with law;
- 11) minor children, when, in cases established by law, they independently apply to a court for the protection of their rights or interests protected by law, except for those who have entered into a marriage in accordance with the procedure established by law or are recognized by the court as fully emancipated;
- 12) minor children who have been victims of criminal offences against human health, liberty, sexual freedom, criminal offences against child and family, morality and in other criminal cases, when a pre-trial investigation officer, a prosecutor (by a motivated ruling) or court-(by order) has been recognized that the participation of a lawyer is mandatory;
- 13) persons who are requested to be declared incapacitated in a certain field in cases concerning the declaration of incapacity of a natural person in a certain field; as well as persons declared incapable in a certain field in custody cases; in cases of review of a court decision declaring a person incapacitated or incapacitated in a certain field; as well as guardians of such persons in cases related to the incapacity of the person they take care of;
- 14) persons in cases concerning birth registration;
- 15) persons in proceedings concerning the return of a child who has been wrongfully removed or retained in accordance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction;
- 16) the parents of the child, in cases of limiting or revoking their parental responsibilities; as well as the parents of the child or his/her legal representative in cases regarding permission to take a child from them;
- 17) the adoptive parent(s) or guardian (custodian) of the child, who has submitted an application for adoption or permanent custody (care) to the competent state authority and has the approval of this authority regarding the suitability to become the adoptive parent or guardian (custodian), or adoptive parent(s) or guardian (custodian) of the child, whose application for adoption or permanent custody (care) is being examined by a court;
- 18) persons recognised as whistleblowers under the Law on the Protection of Whistleblowers of the Republic of Lithuania or their family members in cases related to the protection of the interests of such persons under the Law on the Protection of Whistleblowers;
- 19) persons acting as public entities within the meaning of Regulation (EC) 4/2009 for the purposes and in the circumstances referred to in Article 64 of Regulation (EC) 4/2009;
- 20) other persons in the cases provided for in international agreements of the Republic of Lithuania.

In all other circumstances (not falling under Article 12 of the Law on State-guaranteed Legal Aid: Persons entitled to secondary legal aid regardless of assets and income), persons may apply to the SGLAS, which assesses their wealth and income in accordance with set criteria and decides whether to grant legal aid. The Resolution of the Government of the Republic of Lithuania No 468 of 27 April 2005 “On Determining the Levels of Assets and Income of Persons (Families) to Receive Secondary Legal Aid” determines the levels of income and assets to receive legal aid. The document proving a person's right to receive secondary legal aid is a signed declaration for secondary legal aid.

In 2020, free representation was granted to Lithuanian citizens whose annual income did not exceed EUR 4710,32 (or EUR 392,53 per month). If annual income was between EUR 4710,32-7 065,48, a person had to cover 50 % of the legal aid costs. In addition, the number of dependants is taken into account.⁸

II. Partially financed legal aid

As noted above, secondary legal aid, except for cases provided in Article 12 of the Law on State-Guaranteed Legal Aid (Persons entitled to secondary legal aid regardless of assets and income) depends on the income and assets of the person in question. It can be fully or partially free.

The income and property of persons seeking to receive legal aid are classified in two levels that are set by the Government (Article 14(5) of the Law on State-guaranteed Legal Aid):

- Where “I level” of Assets and Income is established, the legal aid services are granted free of charge⁹.
- **Where “II level” Assets and Income is established, the legal aid services are covered partially (50 percent)**¹⁰.

In general, a person wishing to receive secondary legal aid shall submit to the SGLAS an application for secondary legal aid, documents substantiating his/her claim, documents proving his/her entitlement to secondary legal aid and the consent of a specific lawyer if the applicant wishes to have secondary legal aid provided by a lawyer who is not included in the list of lawyers providing legal aid. The requisites and the form of the application for secondary legal aid are approved by the Minister of Justice.¹¹ The applicant should indicate in the application for legal aid if he/she agrees to pay a certain part of the legal aid costs (should only partially financed legal be available).

Article 19 of Law on State-guaranteed Legal Aid: Specific features of the provision of secondary legal aid where the applicant pays a fixed proportion of the costs of secondary legal aid

1. An application for secondary legal aid shall indicate the applicant's agreement to pay the costs of secondary legal aid in the event that it is established that he/she is required to pay 50, 70 or 85 per cent [*the applicant*

⁸ SGLAS calculators: <http://vgtpt.lrv.lt/lt/asmenims-norintiems-gauti-valstybes-garantuojama-teisine-pagalba/kam-teikiama-valstybes-garantuojama-teisine-pagalba>

⁹ Please see *Section III Cascade of legal aid in multiple legal aid cases* below. Free legal aid is provided in the first legal aid case. In case legal aid is provided in more than one case, except criminal cases, the applicant might be required to partially fund legal aid.

¹⁰ Please see *Section III Cascade of legal aid in multiple legal aid cases* below. 50 percent coverage applies to the first legal aid case. In case legal aid is provided in more than one case, except criminal cases, the applicant might be required to fund legal aid at a rate of 85 percent.

¹¹ <https://www.e-tar.lt/portal/lt/legalAct/aba5d390c76411ea997c9ee767e856b4>

might be required to pay 70 or 85 percent of legal aid costs in case legal aid is provided in more than one case] of the costs of secondary legal aid pursuant to this Law. Where the application is assisted or completed by persons providing State-guaranteed legal aid, the applicant shall be informed of his/her obligation to pay 50, 70 or 85 % of the costs of secondary legal aid in accordance with this Law and shall be informed of the indicative amount of the possible costs, to be calculated in accordance with the procedure laid down by the Minister for Justice.

2. The applicant shall pay 50, 70 or 85 per cent of the costs of secondary legal aid for the defence and representation of cases, calculated in accordance with the procedure laid down by the Minister of Justice, upon receipt of a notification from the Office. The Office shall inform the applicant of the amount of the secondary legal aid costs to be paid, the account to which the applicant shall pay the amount and the time limit for payment. If the applicant fails to pay the costs, they shall be recovered in accordance with the procedure laid down by law. On a reasoned application by the applicant, the Office shall take a decision on the staggering of the amount of the secondary legal aid costs to be paid.

3. An applicant who is liable for 50, 70 or 85 per cent of the costs of secondary legal aid shall also be liable for 50, 70 or 85 per cent of the other costs of the proceedings (the costs of the proceedings and the costs of the proceedings) within the time limits and in accordance with the procedure laid down by the law on proceedings.

The income and property levels

Except for the cases of mandatory representation and representation of vulnerable groups (listed in Article 12), when legal aid is requested due to the financial situation of the applicant (Article 12(7)), income and property of the applicant are assessed.

Secondary legal aid is available to citizens whose (family) assets and annual income do not exceed the levels of assets and income established by the Government of the Republic of Lithuania.¹² As noted earlier, there are two levels of assets and income, the I Level of Assets and Income and the II Level of Assets and Income.

I Level of Assets and Income

For the I Income Level, the income of the person and the number of dependents are taken into account. A person's annual income must not exceed 37.68 SSI (SSI is the State Supported Income, which currently stands at €147), i.e. an annual income of €5 538.96. For each dependent, add 14.13 SSI per year (EUR 2 077.11).¹³

For example, if a person has one dependent, the I Level of Income would be: $37.68 \times 147 + 14.13 \times 1 \times 147 = 7\,616.07$ €.

A person with two dependents would have a I Level of Income of

$37,68 \times 147 + 14,13 \times 2 \times 147 = 9\,693,18$ €.

¹² <https://www.e-tar.lt/portal/lt/legalAct/TAR.1E9AFC503DE6/asr>

¹³ <https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/Turto%20ir%20pajamu%20lygio%20nustatymas%202022-06-01.pdf>

If a person's income in the last 12 months did not exceed EUR 7 616,07 with one dependent or EUR 9 693,18 with two dependents, etc., then he/she would be granted a 100 % State funded lawyer.

Dependents include:

- children (adopted children) up to the age of 18 years living with and dependent on the applicant;
- unmarried children (stepchildren) aged between 18 and 24 who are not employed and who are not living with another person, and who are following full-time general education;
- other persons living with the applicant and dependent on the applicant.

I Level of Assets is determined by assessing the person's (family's) assets (real estate and movable assets (cash, etc.)) and the number of dependents.¹⁴ Article 16 of the Law on Financial Social Assistance to Needy Residents of the Republic of Lithuania regulates the calculation of the property value standard.

II Level of Assets and Income

For the II Level of Income, a person's annual income must not exceed 56.52 SSI, i.e. an annual income of EUR 8 308.44. For each dependent, 20,74 SSI per year (EUR 3 048,78) is added.¹⁵

For example, if a person has one dependent, the II Level of Income would be:

$$56,52*147+20,74*1*147= 11\ 357,22\ €.$$

A person with two dependents would have a second level of income of

$$56,52*147+20,74*2*147= 14\ 406\ €.$$

If a person's annual income with one dependent exceeds EUR 7 616.07 but does not exceed EUR 11 357.22, and with two dependents exceeds EUR 9 693.18 but does not exceed EUR 14 406, etc., then he/she would receive a 50% State funded lawyer.

The II Level of Assets is obtained by multiplying the I Level of Assets by 1.5 times.

A person can only receive secondary legal aid if the value of both assets and income is at I Level or II Level. Where a person has different levels of assets and income (assets - the I Level; income - the II Level, or vice versa), the applicant shall be assigned to the II Level of assets and income, and secondary legal aid shall be provided at 50 per cent of the cost of secondary legal aid, guaranteed by the State. If at least one norm (assets or income) exceeds the norm of the II Level, the provision of state-guaranteed secondary legal aid is refused.

Possibility of additional evaluation of individual's situation

The law also provides for the possibility of additional individual evaluation. In particular, where the person's (family's) assets exceed the levels of personal (family) assets established by the Government or where the SGLAS adopts a decision to refuse to provide secondary legal aid, the applicant has the right to apply to the

¹⁴ Article 16 of the Law on Monetary Social Assistance to Deprived Residents of the Republic of Lithuania

¹⁵

[https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/Turto%20ir%20pajamu%20lygio%20nustatymas%20NAUJAS\(3\).pdf](https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/Turto%20ir%20pajamu%20lygio%20nustatymas%20NAUJAS(3).pdf)

SGLAS with a reasoned written request for an additional assessment of his/her individual situation and to submit documents and/or information in support of this request.

The applicant's individual situation shall be assessed by taking into account the applicant's standard of living and financial situation, the applicant's ability to represent himself/herself effectively, the costs of legal aid, the complexity of the case in which secondary legal aid is requested and the amount of the claims (pecuniary interests), the applicant's procedural position in the case and the possible adverse consequences for the applicant. In this case, the SGLAS shall take a decision in accordance with the procedure laid down by the Minister of Justice (Article 11(11) of the Law on State-guaranteed Legal Aid).

The SGLAS has the right to grant secondary legal aid (in exceptional cases, taking into account the applicant's request and after assessing the applicant's individual situation) notwithstanding the fact that the person's (family's) property exceeds the levels of the person's (family's) property set by the Government (Article 11(10) of the Law on State-guaranteed Legal Aid).

III. Cascade of legal aid in multiple legal aid cases

In Lithuania, there are also rules on partially coverage of legal aid in situations where a person is already receiving legal aid in one or more cases. Then, the applicant might be required to cover 70 or 85 per cent of the costs of secondary legal aid.

For an applicant whose personal (family) assets and income correspond to the I level of assets and income, or who is entitled to receive secondary legal aid in accordance with Article 12(2) to (18) of this Law, and for whom, in accordance with the decisions of the SGLAS, secondary legal aid has already been provided in one case, the state shall pay 30 per cent of the cost of the provision of the secondary legal aid in other cases (Article 14(7)).

| I Level of Assets and Income | |
|-------------------------------------|---|
| First case | 100 per cent state-funded legal aid |
| Second and subsequent cases | 30 per cent state-funded legal aid The applicant covers 70 per cent of the legal aid costs |

**such limitation of legal aid in further cases does not apply for legal aid needed in criminal cases.*

For an applicant whose personal (family) assets and income correspond to the II level of assets and income and for whom, according to the decisions of the SGLAS, secondary legal aid has already been provided in one case, the State shall pay 15 per cent of the costs of secondary legal aid for the provision of secondary legal aid in other cases (Article 14(8)).

| II Level of Assets and Income | |
|--------------------------------------|---|
| First case | 50 per cent state-funded legal aid |
| Second and subsequent cases | 15 per cent state-funded legal aid The applicant covers 85 per cent of the legal aid costs |

**such limitation of legal aid in further cases does not apply for legal aid needed in criminal cases.*

IV. Limitations to receive legal aid (refusal to provide qualified legal aid)

In line with Article 11(7) of the Law on State-guaranteed Legal Aid, the second line legal aid is not provided if:

1. the applicant's claims are manifestly unfounded;
2. the representation in the case is not viable¹⁶;
3. the applicant is claiming non-pecuniary damage to his or her honour but has not suffered any pecuniary damage;
4. the application relates to a claim arising directly out of the applicant's commercial activity or his/her independent professional activity;
5. the applicant is able to obtain the necessary legal services without recourse to publicly guaranteed legal aid;
6. the applicant is not applying for the violation of his/her own rights, except in the case of representation by law;
7. the claim in respect of which secondary legal aid is sought has been assigned to the applicant for the purpose of obtaining State-guaranteed legal aid;
8. the applicant is abusing State-guaranteed legal aid or his/her substantive or procedural rights;
9. the applicant does not agree to pay the required part of the costs of secondary legal aid (in case of partially financed legal aid);
10. the substantive examination of the claim reveals that the potential costs of secondary legal aid would exceed the applicant's financial claims (pecuniary interests);
11. the applicant has been granted partially financed secondary legal aid in another case but has not paid the required costs of the secondary legal aid or part of them by the prescribed deadline; however, in such a situation, an applicant may apply for an additional assessment of his/her situation¹⁷;
12. it is established that the applicant is capable of exercising or defending his/her rights or protecting his/her interests on his/her own, without the assistance of a lawyer;
13. the applicant did not submit all the documents referred to in Article 18(1) of the Law within the time limit set by the SGLAS;
14. the dispute for which secondary legal aid is requested is being resolved by mediation in accordance with the procedure laid down in the law or has been resolved by mediation and the parties to the dispute have concluded a conciliation agreement, but the applicant has not agreed to submit it to the court for approval;

¹⁶ In the practice of the Supreme Administrative Court of Lithuania it has been repeatedly stated that the viability of a case in deciding on the termination of secondary legal aid should not be determined by the analysis of the evidence in a particular case carried out by the defendant, but by other grounds, such as, for example, an obvious violation of the procedure (the time limit for lodging a complaint has expired and it has not been applied for to be renewed, the limitation period for lodging a complaint is expired, and so on) (see, e.g., the ruling of the Supreme Administrative Court of Lithuania of 12 February 2013 in administrative case No A556-209/2013, the ruling of the Supreme Administrative Court of Lithuania of 2 December 2010 in administrative case No A756-1390/2010, etc.).

¹⁷ The Constitutional Court of the Republic of Lithuania by its Resolution No KT20-N11/2018 of 11 October 2018 (Case No 17/2017), recognised that without such a possibility of additional assessment, the right to a lawyer would be undermined.

15. the applicant needs legal aid in his personal insolvency proceedings.

When deciding whether to grant secondary legal aid, the SGLAS has the right to request a lawyer's opinion as to whether there are grounds for not granting secondary legal aid as set out above.

It should be noted that in certain cases some points from the above do not apply. The points (1), (2), (3), (4) and (10) do not apply to the provision of secondary legal aid in cases of administrative offences (misdemeanours), where secondary legal aid is requested by a person held administratively liable, and in criminal cases, with the exception of applications for the reopening of proceedings, procedural documents for the filing of which the statutory time limit for the filing of the proceedings has expired. Point (11) does not apply to the provision of secondary legal aid in criminal proceedings. The points (1), (2), (3), (4) and (10) apply to the provision of secondary legal aid before international judicial institutions only in cases where the assessment is made as to whether the application to international institutions meets the established admissibility criteria.

V. [The mechanism for recovering expenses for legal assistance guaranteed by the state](#)

In criminal cases

According to Article 106(2) of the Code of Criminal Procedure, after finding the accused guilty, the court shall, when passing sentence, decide to recover from the accused the costs of State-guaranteed legal aid incurred as a result of the necessary participation of a defence counsel, taking into account the financial situation of the accused, except for the cases referred to in Article 51(1)(1) and (2) of this Code ((1) cases where a suspect or accused is a minor; (2) cases involving persons who are blind, deaf, are unable to talk, as well as other persons who are unable to exercise their rights of defence due to physical or mental defects). In addition, the court shall have the power to order the defendant to pay the costs incurred by the victim and the civil claimant in respect of the services of a lawyer or a lawyer's assistant who participated in the proceedings as the victim's or civil claimant's representative.

However, this is not an imperative rule. The court may, having regard to the financial situation of the convicted person, refrain from imposing such costs on the accused or reduce the amount of such costs.

In civil cases

According to Article 99(2) of the Code of Civil Procedure, the costs of the legal aid are recovered in the same way as other litigation costs, which means that legal aid costs are recovered from the lost party. The court shall award these costs on its own initiative, upon receipt of data on the costs of state-guaranteed legal aid calculated by the SGLAS. If the issue of reimbursement of the costs of state-guaranteed legal aid has not been settled by a court decision on the merits of the case, the SGLAS has the right to apply to the court for a supplementary decision.

In administrative cases

Under Article 42 of the Law on Administrative Proceedings of the Republic of Lithuania, if a party to proceedings in whose favour a decision has been rendered has been awarded state-guaranteed legal aid, the court shall, on its own initiative, after receiving from the SGLAS data on the estimated costs of legal aid, decide

on the issue of reimbursement of the costs of state-guaranteed legal aid to the State. If the issue of reimbursement of the costs of state-guaranteed legal aid has not been resolved by the decision on the merits of the case, the SGLAS has the right to submit an application to the court for reimbursement of the costs of the state-guaranteed legal aid to the state not later than within fourteen calendar days from the date on which this decision becomes final. In that case, the court shall decide on the question of the reimbursement of the costs of the State-guaranteed legal aid by means of a supplementary decision.

In case the provision of the secondary legal aid has been withdrawn or there was a change in the situation of the legal aid client

Under Article 23 of the Law on State-guaranteed Legal Aid, the provision of secondary legal aid shall be terminated if:

1. it appears that the person to whom secondary legal aid is provided is not entitled to receive secondary legal aid;
2. the person seeking secondary legal aid has provided information on the merits of the dispute or case, his/her (family's) property or his/her income, knowing that this information is incorrect;
3. the circumstances which led to the person being classified as a possible legal aid recipient change;
4. the level of a person's property and income changes and the person ceases to be entitled to receive secondary legal aid;
5. the applicant abuses state-guaranteed legal aid, his/her substantive or procedural rights, or requires a lawyer to exercise or defend his/her rights in unauthorised ways;
6. in the event of a change of circumstances, it is established that the potential costs of secondary legal aid would exceed the amount of the applicant's financial claims (financial interests) or that the applicant is able to exercise or defend his/her rights or legally protected interests independently, without the assistance of an advocate;
7. the applicant submits an application for the termination of the provision of secondary legal aid;
8. representation in the proceedings is not viable¹⁸;
9. the person receiving secondary legal aid does not cooperate with the service or the lawyer providing secondary legal aid;
10. the applicant does not agree to pay the fixed part of the costs of secondary legal aid;
11. following the decision to grant secondary legal aid, the dispute has been settled by mediation in accordance with the procedure and a conciliation agreement has been concluded, but the applicant does not agree to submit it to the court for approval;
12. the applicant dies.

¹⁸ In the practice of the Supreme Administrative Court of Lithuania it has been repeatedly stated that the viability of a case in deciding on the termination of secondary legal aid should not be determined by the analysis of the evidence in a particular case carried out by the defendant, but by other grounds, such as, for example, an obvious violation of the procedure (the time limit for lodging a complaint has expired and it has not been applied for to be renewed, the limitation period for lodging a complaint is expired, and so on) (see, e.g., the ruling of the Supreme Administrative Court of Lithuania of 12 February 2013 in administrative case No A556-209/2013, the ruling of the Supreme Administrative Court of Lithuania of 2 December 2010 in administrative case No A756-1390/2010, etc.).

If the provision of secondary legal aid has been terminated for the reasons referred to in points (1), (2), (5) and (9), the costs of secondary legal aid shall be recovered from the person to whom the aid was provided in accordance with the procedure established by law.

Moreover, if secondary legal aid is provided to persons entitled to legal expenses insurance benefits, which, according to the insurance contract, are paid after the expenses have been incurred, the costs of secondary legal aid provided shall be reimbursed to the State budget not later than one month after the payment of the legal expenses insurance benefit. The costs of secondary legal aid to be reimbursed shall not exceed the amount of the legal expenses insurance benefit.

Finally, if secondary legal aid was provided to a person persons who have provided evidence that, for objective reasons, they are unable to dispose of their (family's) assets and funds and that, as a result, their (family's) personal assets and their (family's) annual personal income, which they are able to dispose of freely, do not exceed the levels of assets and income set by the Government, and the circumstances have changed, but this person cannot be classified as a person in financial need, such person shall be obliged to reimburse the costs of the provided secondary legal aid to the State budget within the time limit set by the SGLAS. If the person fails to reimburse these costs, they are recovered in accordance with the procedure established by law.

2.2. Estonia

In Estonia, legal aid is regulated by the State-Funded Legal Aid Act¹⁹. In general, state-funded legal aid is offered for out-of-court or pre-trial proceedings (in civil, criminal and misdemeanour matters), judicial proceedings (in civil, criminal, misdemeanour and administrative matters), enforcement proceedings, administrative proceedings, constitutional review proceedings, preparation of a legal document, for another legal assistance or representation. A natural person may receive state-funded legal aid where the person is unable to pay for competent legal services due to the person's financial situation at the time the person needs legal aid or where the person is able to pay for legal services only partially or in instalments or where the person's financial situation does not allow for meeting basic subsistence needs after paying for legal services.

State legal assistance means that the legal service is initially paid for by the state; however, upon providing legal assistance, an obligation may be put on the person to pay for the legal assistance in part, or to repay the legal expenses in part or in full after the end of the court action.

I. Free legal aid

The criteria for receiving state legal aid depends on the type of proceedings for which legal aid is applied.

In certain cases, a person may receive state legal aid regardless of his or her financial situation:

¹⁹ <https://www.riigiteataja.ee/en/eli/531052021004/consolide>

- in criminal proceedings, a suspect or accused who is a natural person has the right to the appointment of a criminal defence counsel both in pre-trial proceedings (during a preliminary investigation) and in court;
- in misdemeanour proceedings, a person subject to proceedings who is a natural person has the right to the appointment of a defence counsel in court, if the person subject to proceedings is 14 to 18 years of age or is unable to represent himself or herself due to a mental disorder;
- in surrender proceedings and extradition proceedings, a natural person subject to surrender or extradition to another state has, as of his or her arrest, the right to the appointment of a counsel.²⁰

If the means test is applied (the financial situation is evaluated), legal aid is not granted if the costs of legal services do not presumably twice exceed the applicant's average monthly income that is calculated on the basis of the average monthly income in the last four months preceding the submission of the application, from which taxes and compulsory insurance payments, amounts earmarked for the fulfilment of a maintenance obligation arising from law and also reasonable housing and transport costs have been deducted.

Upon assessing the financial situation of an applicant, the applicant's assets and income and the assets and income of the family members who live together with the applicant, the number of dependants of the applicant, reasonable housing costs and other relevant circumstances are taken into account. Property belonging to the applicant which, in accordance with the law, cannot be subject to a claim for payment, is not taken into account. The housing or a necessary vehicle belonging to the applicant, which is used on a daily basis by the applicant and the family members who live together with the applicant, is not taken into account where the number and value of the housing and vehicles equitably correlate to the size, driving needs and income of the family. Where an applicant applies for state-funded legal aid to file a claim against a family member who lives together with the applicant, neither the income of the said family member nor assets belonging to the applicant are taken into account upon assessing the financial situation of the applicant.

In most cases, an application shall be submitted in order to receive state legal aid. In proceedings, where the participation of a lawyer is required by law, the official conducting the proceedings is required to arrange the appointment of an advocate for the person and submission of application by such person is unnecessary.

The participation of a lawyer in a court proceeding is mandatory in the following cases:

- participation of criminal defence counsel in criminal proceedings shall be mandatory during the entire proceeding (both in pre-trial investigation and court hearing of the matter) if, at the time of the commission of the criminal offence, the person being defended was a minor; due to his or her mental or physical disability, the person is unable to defend himself or herself or if the defence is complicated due to such disability; the person is suspected or accused of a criminal offence for which life imprisonment may be imposed; the interests of the person are in conflict with the interests of another person who has a counsel; the person has been under arrest for at least six months; proceedings are conducted in the criminal matter pursuant to expedited procedure (Article 45 of the Code of Criminal Procedure²¹);

²⁰ <https://www.riigioigusabi.ee/frequently-asked-questions#Is-the-provision-of-state-legal-aid-free-of-charge>

²¹ <https://www.riigiteataja.ee/en/eli/530102013093/consolide>

- in criminal proceedings as of the examination of a criminal file (after the completion of pre-trial proceedings);
- in court proceedings regarding a criminal matter;
- in surrender proceedings or extradition proceedings to another country as of the arrest of the person;
- in court proceedings regarding a misdemeanour matter, if the person subject to proceedings is 14 to 18 years of age or is unable to represent himself or herself due to a mental disorder.²²

II. Partially financed legal aid

State legal aid is not always free of charge. As noted above, when a person is granted legal aid, he or she may be required to pay part of the cost or to reimburse all or part of the legal costs after the end of the litigation.

State legal aid may be granted in one of the three following manners (Article 8 of the State-Funded Legal Aid Act):

- without the obligation to compensate for the state-funded legal aid fee or state-funded legal aid costs;
- with the obligation to partially or fully compensate for the state-funded legal aid fee and state-funded legal aid costs in a lump sum;
- with the obligation to partially or fully compensate for the state-funded legal aid fee and state-funded legal aid costs in instalments.

Upon grant of state legal aid with an obligation to fully or partially compensate for the state legal aid fee and state legal aid costs, a court may require a recipient of state legal aid to pay an advance payment. Upon failure to pay the advance payment, state legal aid shall not be granted to the person. The necessity and extent of the compensation for state legal aid fees and state legal aid costs are determined in the ruling on the grant of state legal aid.

III. Limitations to receive legal aid (refusal to provide qualified legal aid)

State legal aid shall not be granted in the following cases (Article 8 of the State-funded Legal Aid Act):

- the applicant is able to protect his or her rights himself or herself;
- the applicant is not entitled for the protection of right regarding which he or she is applying for state legal aid;
- the applicant could bear the costs of legal services out of his or her existing property, which can be sold without any major difficulties;
- 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 preceding the submission of the application, from which taxes and compulsory insurance payments, amounts prescribed to fulfil a maintenance obligation arising from law and also reasonable housing and transport costs have been deducted;
- the possibility of the applicant to protect his or her rights is clearly unlikely due to the circumstances;

²² <https://www.riigioigusabi.ee/frequently-asked-questions/#Is-the-provision-of-state-legal-aid-free-of-charge>

- state legal aid is applied for in order to file a claim for compensation for non-proprietary damage and there is no predominant public interest regarding the matter;
- 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;
- 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;
- 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;
- 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;
- the provision of legal services is guaranteed for the applicant by a legal expenses insurance contract or on the basis of compulsory insurance;
- 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.

State legal aid shall also not be granted for review procedure if the grounds for review are not indicated in the application for state legal aid or if, based on the grounds for review indicated, it is evident that the applicant has obviously few opportunities to protect his or her rights or, if the term for submission of a petition for review has expired. The Supreme Court need not justify its refusal to grant state legal aid.

IV. [The mechanism for recovering expenses for legal assistance guaranteed by the state](#)

The mechanism for recovering expenses for legal assistance is regulated in Chapter 5 (Compensation for State-Funded Legal Aid Fee and State-Funded Legal Aid Costs) of the State-funded Legal Aid Act.

Upon deciding on the granting of state-funded legal aid, the court determines the exact scope of the compensation obligation of the recipient of state-funded legal aid and establishes a detailed procedure for compensation, taking into account the scope of the compensation obligation and the procedure for compensation and the advance payment required of the recipient. Under Article 25, after the termination of the legal aid services, the court determines the obligation of the recipient of state-funded legal aid to fully or partially compensate the state for the fee and costs paid to the attorney to the justified and necessary extent thereof.

In the event of significant changes in the financial situation or solvency of a recipient of state-funded legal aid, the court may, at the request of the recipient of state-funded legal aid or the Ministry of Finance or a governmental authority within its area of government, amend the scope of the compensation obligation of the recipient of state-funded legal aid or the procedure for compensation determined before the provision of legal services.

Upon provision of state legal aid to a person suspected or accused in a criminal matter or person subject to proceedings in the misdemeanour matter, the person receiving the state legal aid is obliged to compensate for the state legal aid fee and state legal aid costs, if the person is convicted in a criminal matter or in the

misdemeanour matter. In the case of an acquittal, procedure expenses shall be compensated for by the state (Article 180 and 181 of the Code of Criminal Procedure²³).

Under Article 27 (Release from the obligation to compensate for state-funded legal aid fee and state-funded legal aid costs), a recipient of state-funded legal aid does not need to compensate for the state-funded legal aid fee or state-funded legal aid costs and an advance payment paid for the performance of the compensation obligation is refunded to the recipient as follows where:

- in the adjudication of a civil case, the opposing party is ordered to pay the case costs in full or in part – to the extent the case costs are borne by the opposing party;
- a representative was appointed to the person in a non-contentious civil action by petition without the person’s request;
- the administrative court grants the person’s appeal in full or in part – to the extent the appeal is granted;
- the administrative court terminates proceedings in the case in connection with the approval of a compromise;
- the administrative authority grants the person’s intra-authority appeal in full or in part – to the extent the intra-authority appeal is granted.

A person who has received state-funded legal aid in criminal or misdemeanour proceedings is, in certain cases released from the obligation to compensate for the state-funded legal aid fee and state-funded legal aid costs (Chapter 7 of the Code of Criminal Procedure or § 23 and subsection 1 of § 38 of the Code of Misdemeanour Procedure).

2.3. The Netherlands

In the Netherlands, anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act²⁴. The Legal Aid Board (LAB) oversees the provision of legal aid across the country.

The Dutch legal aid system is basically a threefold model in that it encompasses three ‘lines’ that provide legal aid: (i) a public preliminary provision – Roadmap to Justice (*Rechtwijzer*), (ii) public first line legal assistance – Legal Services Counters and (iii) private second line help – private lawyer or a mediator.

A preliminary level of legal aid in the Dutch system is offered by Roadmap to Justice, which is an online self-help legal information portal (www.rechtwijzer.nl). It provides guidance on possible solutions for the most common legal problems, such as divorce.

The first line legal aid in the Netherlands is offered by Legal Services Counters that are fully financed by the LAB on the basis of a closed budget. Legal Services Counters (established as a separate body) have 30 offices around the country, which share a website and a call centre. There are several channels available by which

²³ <https://www.riigiteataja.ee/en/eli/530102013093/consolide>

²⁴ <https://wetten.overheid.nl/BWBR0006368/2022-01-01>

potential clients can apply to the Legal Services Counters for help: the website, e-mail, telephone²⁵, counter or referral to a consultation hour. All services are free of charge.

The second line (secondary) legal aid in the Netherlands is provided by private lawyers and mediators. A lawyer (or mediator) submits an application to the LAB on behalf of his/her client for a legal aid certificate. If legal aid is granted, a certificate is issued, which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the LAB to provide their services to clients of limited means. It should also be noted that following *Salduz* judgment (2009) of the European Court of Human Rights, suspects are entitled, prior to their questioning by the police, to consult a lawyer. For such and similar cases certificate system does not really work. Thus, besides certificates, the LAB also provides duty lawyers.

I. Free legal aid

The preliminary and first line legal aid is free. People seeking secondary legal aid are encouraged to visit the Legal Services Counter before approaching a lawyer (this encouragement is made by offering them a discount on the individual contribution – see below).

Individuals who have been arrested may receive the immediate assistance of a lawyer free of charge (urgent legal aid), regardless of the arrestee's income. However, after the initial arrest period is over, people must then apply for legal aid through the Legal Aid Board, which involves a means test to the individual, as well as a merits test of their case.

The second line (secondary) legal aid in the Netherlands is based on certificates. In order to obtain a certificate, a (LAB-registered) lawyer needs to submit an application to the LAB on behalf of his/her client. Then LAB tests whether the means test on income and assets is fulfilled.

The eligibility for legal aid is based on both the client's annual income and his/her assets. The LAB verifies the client's personal data with those in the municipal population register and checks the applicant's income and assets with the tax authorities. It is able to do so with the aid of a 'citizen service number' (BSN); this is a unique identification number, which every Dutch citizen receives when registering in the municipal population register. The online connection with the tax authorities allows the Legal Aid Board to rapidly obtain information concerning the applicant's income and assets.

If the means test is fulfilled, the LAB proceeds to the merit test – reviewing the significance of the legal problem. However, in case the lawyer cooperates on the basis of the High Trust²⁶, the merit test is automatically considered to be fulfilled – LAB trusts lawyers' evaluation.²⁷ In assessing the merits of the legal problem, the LAB takes into consideration the costs associated with the case and if hiring a lawyer or going to trial is necessary.

²⁵ A large call centre was opened some years ago, which employs approximately 40 people.

²⁶ High Trust method implies that the LAB and lawyers and mediators work together on the basis of transparency, trust and mutual understanding.

²⁷ At the end of 2020, more than three quarters of the certificates are issued to lawyers and mediators who work based on the principles of High Trust.

In case a person is deprived of freedom, is a victim of violent crime and sexual offences, or belongs to other vulnerable groups, the legal aid is free. In most other cases – the contribution (partial funding) of the legal aid recipient is required.

II. Partially financed legal aid

Usually, the costs of second line legal aid are not only paid by the LAB, but are partly covered by a contribution from the client himself/herself (Article 35 of the Legal Aid Act). Personal contribution, though often covering only a small part of the actual expenses, is meant to incite clients to carefully weigh the pros and cons of taking a matter to a lawyer and discourage frivolous cases. However, as stated above, exceptions often apply in criminal law where applicants are relieved from personal contributions (for those deprived of freedom, victims of violent crime and sexual offences, ‘have-nots’).

In 2020, contributions to be paid by clients varied from € 203 to € 853 per case (depending on income). As noted above, to encourage people to visit the Legal Services Counter before approaching a lawyer, a discount of € 53 on the individual contribution is offered for those seeking first line legal aid first.

Whether a person is entitled to legal aid (with exceptions in criminal cases), strongly depends on his/ her income. Individuals whose yearly household income exceeds € 41,600 (partner income included) or € 29,400 (single) are not entitled to legal aid. If the income is below this amount, the legal aid is partially financed by the state.

In 2020, the legal aid client had to pay the following contributions:

| Taxable annual income: married/ single with child(ren) | Client's contribution | | Taxable annual income: single |
|---|-----------------------|---------------|-------------------------------|
| | Without discount | With discount | |
| ≤ € 27,500 | € 203 | € 148 | ≤ € 19,800 |
| € 27,501 t/m €28,500 | € 373 | € 318 | € 19,801 t/m € 20,500 |
| € 28,501 t/m € 29,800 | € 533 | € 478 | € 20,501 t/m € 21,600 |
| € 29,801 t/m € 33,300 | € 694 | € 639 | € 21,601 t/m € 23,500 |
| € 33,301 t/m € 39,400 | € 853 | € 798 | € 23,501 t/m € 27,900 |

From: LAB Brochure “Legal Aid in the Netherlands”. Available at: <https://www.rvr.org/english/>

This table was a bit different (with higher/lower sums) for divorce cases, mediation and minor aid (legal aid of max 3 hours).

III. Limitations to receive legal aid (refusal to provide qualified legal aid)

Under Article 12(2) of the Legal Aid Act, legal aid is not granted if:

- the application for it is manifestly without foundation;

- the costs associated with the legal assistance to be provided are not in reasonable proportion to the importance of the case;
- the legal aid application relates to criminal proceedings and it is likely, on the basis of the standard that has been violated, that a fine will be imposed which is low in relation to the income;
- the legal aid application is made by a legal person that has been established for the purpose of legal proceedings;
- the legal interest to which the application relates is the practice of an independent profession or business, unless (i) the continuation of the profession or business, insofar as it is not conducted in the form of a legal entity, depends on the result of the legal assistance applied for, or (ii) the profession or company was terminated at least one year ago, the applicant is or was involved in proceedings at first instance as a defendant and the costs of legal assistance cannot be refunded otherwise;
- it concerns a legal interest that is submitted to an international body charged with the administration of justice by a treaty or a comparable international body and the body itself provides for an entitlement to reimbursement of legal assistance;
- it concerns an interest which the applicant himself can reasonably be expected to represent, if necessary with the assistance of another person or institution whose activities do not fall within the scope of the Legal Aid Act.

Later on, LAB may alter, terminate or cancel an appointment of a legal aid lawyer, if (Article 33 of the Legal Aid Act):

- legal aid has been granted on the basis of inaccurate or incomplete information about the nature of or interest involved in the matter, or the applicant's financial capacity or place of residence;
- an applicant refuses to provide the cooperation required to ensure that his/her case is properly advanced;
- an applicant fails to pay the contribution for which he/she is liable or any other costs for which he/she is responsible, or to pay an advance in this respect if asked to do so;
- an applicant's financial capacity appears to have improved considerably before his/her legal aid ceases;
- it appears that some other appointment also covers the legal interest in respect of which this appointment has been granted.

IV. [The mechanism for recovering expenses for legal assistance guaranteed by the state](#)

Under Dutch law, if a legal counsel has been appointed pursuant to the Code of Criminal Procedure and if the sentence against the convicted person has become final, the LAB may claim the costs of provided legal aid from the convicted person whose financial capacity exceeds the amounts entitling a person to legal aid.

In the event that legal aid is terminated or cancelled since it has been granted on the basis of inaccurate or incomplete information about the nature of or interest involved in the matter, or the applicant's financial capacity or place of residence, the legal aid costs may be recovered from the legal aid client.

2.4. Belgium

In Belgium, the basic principles regarding legal aid and fundamental definitions, both regarding first line and second line aid, are set in Book IIIBis - First and second line legal aid (Articles 508/1 to 508/25) of the Judicial Code²⁸. Legal aid may be obtained in civil or criminal matters and in any proceedings (judicial, administrative or arbitral).

First line legal aid is granted in the form of practical information, legal information, a first legal opinion or a referral to a specialised body or organization. This falls within the competence of the communities. Concretely, it consists of a face-to-face consultation during a duty office or an appointment or a telephone consultation. First line legal aid is free of charge.

Second line legal aid refers to legal aid granted to a natural person in the form of a detailed legal opinion or legal assistance within or outside the framework of a procedure or assistance with a lawsuit, including representation. Second line legal aid is organised by the Legal Aid Offices (BAJ). A legal aid office is established in each Bar Association by the Council of the Bar Associations. The lawyers appointed by the legal aid offices to intervene in the framework of second line legal aid are those who are registered on the list drawn up annually by the Bar Associations. Second line legal aid may be free or partially free of charge.²⁹

I. Free legal aid

The Royal Decree of 18 December 2003 determining the conditions for access to totally or partially free second line legal aid and judicial assistance, defines the requirements for receiving totally or partially free second line legal aid and judicial assistance.

The following persons may benefit from legal aid entirely free of charge:

- a single person who proves, by any document to be assessed by the legal aid office, that his/her net monthly income is less than 1,426 euros;
- a single person with dependants or a person cohabiting with a spouse or with any other person with whom he or she forms a household, if he or she proves by any document to be assessed by the legal aid office that the net monthly income of the household is less than 1,717 euros.

For the determination of the income referred above, a deduction of 20% of the living wage is taken into account for each dependant.

It should be noted that in addition to professional income, the income that is taken into account also includes income from (im)movable property, capital or legal protection insurance and other insurance.

Some people are presumed not to have sufficient means of subsistence, such as the beneficiaries of a social integration income or social assistance, a guaranteed income for elderly people, persons in detention, asylum seekers, etc.

²⁸ <https://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101053/justel>

²⁹ On legal aid in Belgium, see also "Aide juridique", *Advocats.be*. Available at: https://carrefourdesstagiaires.com/wp-content/uploads/2021/09/Avocat_AIDE-JURIDIQUE_2021-6.pdf

Art. 508/13/1.

2. In the absence of proof to the contrary, it is presumed that a person does not have sufficient means of subsistence within the meaning of Article 508/13, paragraph 1:

1. the beneficiary of sums paid as a living wage or as social assistance, upon presentation of at least the valid decision of the public centre for social action concerned
2. the beneficiary of sums paid as guaranteed income for the elderly, upon presentation of at least the annual certificate of the National Pensions Office
3. the beneficiary of income replacement allowances for the disabled, upon presentation of at least the decision of the minister responsible for social security or the official delegated by him/her
4. a person who is dependent on a child receiving guaranteed family benefits, on presentation of at least a certificate from the regional family allowance body
5. the social tenant who, in the Flemish and Brussels-Capital Regions, pays rent equal to half the basic rent or, in the Walloon Region, pays a minimum rent, upon presentation of at least the last rent calculation sheet
6. the person in detention, on presentation of the documents proving the status of a detainee;
7. the accused referred to in Articles 216quinquies to 216septies of the Code of Criminal Procedure
8. the mentally ill person, with regard to the procedure provided for in the Act of 26 June 1990 on the protection of the mentally ill, upon presentation of supporting documents
9. a foreigner, for the submission of an application for a residence permit or an administrative or judicial appeal against a decision taken in application of the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners, upon presentation of supporting documents
10. an asylum seeker or a person applying for displaced person status, on presentation of supporting documents
11. an over-indebted person, upon presentation of a declaration by him/her that the benefit of second line legal aid is requested with a view to the introduction of a collective debt settlement procedure.
4. A minor is entitled to free access to legal aid upon presentation of an identity card or any other document proving his or her status

II. [Partially financed legal aid](#)

In case a person's income is above the limit for totally free legal aid, but below the set limit, he or she can benefit from partially financed legal aid. Partial legal aid is regulated in Article 508/13/2 of the Judicial Code.

Under Article 508/13/2 of the Judicial Code, the following persons may benefit from partial free legal aid

- a single person who proves, by any document to be assessed by the legal aid office, that his or her net monthly income is between EUR 1 426 and EUR 1 717;
- a single person with dependants, or a person cohabiting with a spouse or with any other person with whom he or she forms a household, if he or she proves by any document to be assessed by the legal aid office that the net monthly income of the household is between 1,717 euros and 1,907 euros.

For the determination of the income referred above, a deduction of 20% of the living wage per dependant shall be taken into account.

The person who receives partial free legal aid, has to pay part of legal aid expenses (own contribution). The amount of the contribution varies between 25 and 125 euros and amounts to the difference between his or her income and the amounts of the income thresholds for access to totally free legal aid.

The own contribution is paid to the lawyer. Under Art. 508/17 of the Judicial Code, the lawyer shall not commence his/her work until he/she has received payment of the contribution unless there is an exception, or unless the lawyer waives the collection of the contributions or grants a delay in payment.

III. Limitations to receive legal aid (refusal to provide qualified legal aid)

Applications concerning cases which appear to be manifestly inadmissible or manifestly ill-founded are refused (e.g. time limit for appeal has expired, querulous, etc.). The Legal Aid Offices (BAJ) may also appoint a lawyer to give an initial opinion (written or unwritten) as to whether or not the case is manifestly ill-founded/unacceptable. The decision to refuse legal aid is reasoned and may be appealed against at first instance before the Labour Court (Articles 508/15 and 508/16 of the Judicial Code).

Under Art. 508/18, the BAJ may, ex officio or at the reasoned request of the lawyer, terminate second line legal aid if it finds that the beneficiary did not or no longer meets the conditions laid down in Article 508/13 or if the beneficiary is manifestly not cooperating in defence of his/her interests. The legal aid office may also terminate second line legal aid at the reasoned request of the lawyer if the lawyer finds that his or her intervention would not add any value.

IV. The mechanism for recovering expenses for legal assistance guaranteed by the state

Under Article 508/20, the compensation allocated for second line legal aid may be recovered by the Treasury from the beneficiary of such aid:

- if it is established that there has been a change in the beneficiary's assets, income or expenses and that the beneficiary is, therefore, able to pay;
- if the person concerned has benefited from the lawyer's intervention in such a way that if this benefit had existed at the time of the application, this aid would not have been granted, provided that these amounts have not been received by the lawyer in application of Article 508/19ter;
- if the assistance was granted as a result of false statements or was obtained by other fraudulent means.

Such recovery shall be barred after five years from the date of the decision to grant legal aid, either partially or entirely free of charge, but the limitation period may not be less than one year from the date on which the lawyer received the compensation.

As to persons who have legal expenses insurance, under the law, if the beneficiary is entitled to legal expenses insurance, the appointed lawyer shall inform the Bureau and the Treasury shall be subrogated to the rights of the beneficiary up to the amount of the legal aid granted which it has assumed.

2.5. France

The French legal aid system is regulated by the Law No. 91-647 on Legal Aid³⁰ and its implementing Decree No. 91-1266 of December 19, 1991. Legal aid includes two types of services: first line legal aid and second line legal aid. First line legal aid means legal consultation and assistance during non-judicial proceedings. It is implemented through a network of legal advice centres, providing free legal advice and located in each of the main towns. Second line legal aid applies to court proceedings as well as out-of-court settlements for civil, criminal, and administrative matters.

Nationally, the National Legal Aid Council is an advisory body that is mainly responsible for collecting all quantitative and qualitative information on the functioning of legal aid, proposing to the public authorities all measures likely to improve it, and drafting an annual report on legal aid activity. Locally, legal aid committees (*les bureaux d'aide juridictionnelle*) within the 164 first instance courts receive applications and determine eligibility for legal aid.

I. Free legal aid

In France, natural persons of French nationality and nationals of the Member States of the European Union are eligible for legal aid. Persons of foreign nationality habitually and regularly residing in France are also eligible for legal aid. However, legal aid may exceptionally be granted to persons who do not fulfil these conditions if their situation appears particularly worthy of consideration in view of the subject matter of the dispute or the foreseeable costs of the proceedings. Moreover, legal aid is granted without the condition of residence to foreigners when they are minors, assisted witnesses, indicted, accused, convicted and in some other cases (Article 3 of the Law on Legal Aid).

Legal aid is granted to individuals whose resources are insufficient to assert their rights in court. This aid is total or partial. To qualify, applicants must prove that their monthly resources are below certain ceilings fixed by decree of the *Conseil d'Etat*. In addition, owned assets are evaluated. In the assessment of resources, account shall also be taken of the resources of the spouse of the applicant for legal aid and of persons living in the applicant's household, unless the proceedings are between spouses or persons living in the same household. The income ceilings are revised annually in line with the consumer price index, excluding tobacco.

In certain cases, the means test is not applied (e.g. in case of minors in criminal cases, victims of domestic violence, victims of crimes of intentional attacks on the life or the integrity of the person, as well as their heirs to benefit from legal aid in order to bring a civil action for damages resulting from personal injury, etc.).

II. Partially financed legal aid

Partial legal aid covers part of the fees of the lawyer. The amount covered depends on the income of a person and if there are dependents.

³⁰https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000537611?init=true&page=1&query=91-647&searchField=ALL&tab_selection=all

The following ceilings are set for 2022 (they are revalued each year according to the observed evolution of consumer prices excluding tobacco):

- €11,580 to benefit from full legal aid
- €17,367 to benefit from partial legal aid.

These ceilings are increased by: 18% of the total assistance ceiling for the first two dependents; and 11.37% of the ceiling for total assistance from the 3rd dependant.

A person can benefit from the total legal aid (100%) if his/her tax reference income and the value of your property and real estate do not exceed the following limits (in case of a single person, different limits are set for those with dependents):

- Reference Tax Income: €11,580
- Value of movable heritage: €11,580
- Property Value: €34,734

| Reference Tax Income | Legal aid rate |
|-------------------------------|----------------|
| Less than or equal to €11,580 | 100% |
| Between €11,581 and €13,688 | 55% |
| Between €13,689 and €17,367 | 25% |

From <https://www.service-public.fr/particuliers/vosdroits/F18074?lang=en>

In the event of partial legal aid, the lawyer is entitled, on the part of the beneficiary, to a freely negotiated additional fee. A prior written agreement fixes, taking into account the complexity of the file, the diligence and the costs imposed by the nature of the case, the amount and the terms of payment of this additional fee, under conditions compatible with the resources and the beneficiary's assets (this additional amount is checked by the public institution). In certain cases, when the Bar to which the lawyer belongs establishes a method for assessing fees, the amount to be paid by the legal aid client is calculated on the basis of this method of assessment.

III. Limitations to receive legal aid (refusal to provide qualified legal aid)

Under Article 7 of the law, legal aid is granted to the person whose action does not appear to be manifestly inadmissible, devoid of foundation or abusive, in particular, because of the number of requests, and their repetitive or systematic nature. This condition does not apply to the defendant in the action, to the person civilly responsible, to the assisted witness, to the person charged, to the defendant, to the accused, to the convicted and to the person subject to the procedure of appearance on prior admission of guilt. Additionally, if there are no credible means of cassation that can be asserted, legal aid is denied to the petitioner in cassation cases.

IV. The mechanism for recovering expenses for legal assistance guaranteed by the state

The benefit of legal aid may be withdrawn, at the request of any interested party or ex officio by the legal aid office:

- in the event of false declaration or production of inaccurate documents in the request for assistance
- when the procedure initiated by the applicant benefiting from legal aid has been deemed dilatory or abusive.

In the event of withdrawal of aid, all costs and fees of lawyers, bailiffs, experts, etc. must be paid by the litigant who has had the aid withdrawn.

Article 43 of the Law on Legal Aid provides that when the party that is ordered to pay the litigation costs does not benefit from legal aid, it must reimburse the Public Treasury for the sums incurred by the State when providing legal aid in that case. However, for considerations based on fairness or the economic situation of this party, the judge may exempt it totally or partially from this reimbursement. The Public Treasury has a period of 5 years from the judgment or judgment to initiate the recovery procedure.

2.6. Ukraine

In Ukraine, the state legal aid system includes first line (primary) legal aid and second line (secondary) legal aid. The right to primary legal aid according to the Constitution of Ukraine and the Law of Ukraine on the Legal Aid³¹ have all individuals who are under the jurisdiction of Ukraine. Primary legal aid includes such legal services as provision of legal information, consultations and clarifications on legal issues; assistance in making appeals, claims and other documents of legal nature (except court procedural documents); providing assistance in ensuring access to secondary free legal aid and mediation.

Secondary legal aid includes defence of legal aid client, representation of his/her interests in courts, other state governmental bodies, self-government bodies, before other persons; drafting of court procedural documents.

Coordination Centre for Legal Aid Provision (hereinafter – CCLAP), established within the system of the Ministry of Justice, is a central coordinating institution in the area of legal aid provision.

I. Free legal aid

The right to secondary legal aid, according to the Law of Ukraine on Legal Aid and other related laws, has the following categories of persons (Article 14 of the law):

- persons who are under the jurisdiction of Ukraine, if their average monthly income does not exceed two amounts of the subsistence minimum, calculated and approved in accordance with the law for persons belonging to the main social and demographic groups of the population, as well as persons

³¹ <https://zakon.rada.gov.ua/laws/show/3460-17#Text>

with disabilities who receive a pension or assistance awarded instead of a pension in an amount not exceeding two subsistence minimums for disabled persons;

- children, including orphans, children deprived of parental care, children who are in difficult life circumstances, children who have suffered as a result of hostilities or armed conflict;
- internally displaced persons (several groups listed in the law);
- persons subject to administrative detention or administrative arrest;
- persons who, in accordance with the provisions of the criminal procedural legislation, are considered detained;
- persons in respect of whom a preventive measure in the form of detention has been chosen;
- persons in criminal proceedings in respect of which, in accordance with the provisions of the Criminal Procedure Code of Ukraine, the defender is engaged by an investigator, prosecutor, investigating judge or court to provide defence by appointment or conduct a separate procedural action, as well as persons sentenced to imprisonment in the form of imprisonment, detention in the disciplinary battalion of military personnel or restriction of freedom;
- persons subject to the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection"; persons who applied for recognition as a stateless person; persons who do not have documents certifying their identity and confirming their citizenship of Ukraine;
- several groups of war veterans and family members of deceased war veterans;
- persons with regard to whom the court is considering a case on limiting the civil capacity of an individual, recognizing an individual as incapacitated and renewing the civil capacity of an individual;
- persons in respect of whom the court is considering the case of provision of compulsory psychiatric care;
- persons rehabilitated in accordance with the legislation of Ukraine (in relation to issues related to rehabilitation);
- persons who suffered from domestic violence or gender-based violence;
- victims of criminal offences against sexual freedom and sexual integrity, torture or ill-treatment during hostilities or armed conflict, in criminal proceedings initiated under the fact of committing such criminal offences;
- whistleblowers in connection with their notification of information about a corruption or corruption-related offence.

In line with the Criminal Procedure Code of Ukraine³², an investigator, prosecutor, investigating judge or court is obliged to ensure the participation of a defence attorney in criminal proceedings in cases where (Article 49):

- in accordance with the requirements of Article 52 of the Code, the participation of a defence attorney is mandatory, and the suspect, the accused did not engage a defence attorney;
- the suspect, the accused has submitted a request to engage a defence attorney, but due to lack of funds or other objective reasons cannot engage him/her on his/her own;
- the investigator, prosecutor, investigating judge or court decides that the circumstances of the criminal proceedings require the participation of a defence attorney, and the suspect, the accused did not involve him.

³² <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

The Criminal Procedure Code establishes the following cases for mandatory participation of the lawyer:

Article 52. Mandatory participation of a defence attorney

1. The participation of a defence attorney is mandatory in criminal proceedings regarding particularly serious crimes. In this case, the participation of the defender is ensured from the moment the person acquires the status of a suspect.

2. In other cases, the mandatory participation of a defence attorney is ensured in criminal proceedings:

1) in relation to persons who are suspected or accused of committing a criminal offence under the age of 18, - from the moment of establishing the fact that they are underage or any doubts arise that the person is of legal age;

2) in relation to persons in respect of whom it is envisaged to apply coercive measures of an educational nature, - from the moment of establishing the fact of minors or the appearance of any doubts that the person is of legal age;

3) regarding persons who due to mental or physical disabilities (mute, deaf, blind, etc.) are unable to fully exercise their rights - from the moment these disabilities are established;

4) regarding persons who do not speak the language in which the criminal proceedings are being conducted - from the moment this fact is established;

5) in relation to persons in respect of whom the application of coercive measures of a medical nature is envisaged or the question of their application is being decided - from the moment of establishing the fact that the person has a mental illness or other information that raises doubts about his/her sanity;

6) regarding rehabilitation of a deceased person - from the moment the right to rehabilitation of a deceased person arises;

{Clause 7 of the second part of Article 52 is excluded on the basis of Law No. 767-VII dated 23.02.2014}

8) with regard to persons in respect of whom special pre-trial investigation or special court proceedings are being carried out - from the moment of adoption of the relevant procedural decision;

9) in case of conclusion of an agreement between the prosecutor and the suspect or the accused on admission of guilt - from the moment of initiation of conclusion of such an agreement.

II. Partially financed legal aid

The Law of Ukraine on Legal Aid does not regulate partially financed legal aid.

III. Multiple applications for legal aid

People who are entitled to legal aid due to their low financial means and some other groups of legal aid recipients have the right to receive such assistance no more than six times during the budget year and no

more than six instructions/orders for the provision of free secondary legal aid, issued by centers for the provision of free secondary legal aid, at the same time (Article 14(3) of the Law on Legal Aid).

IV. Limitations to receive legal aid (refusal to provide qualified legal aid)

Under Article 20 of the Law on Legal Aid (Grounds for refusal to provide free secondary legal assistance), a person may be denied the provision of free secondary legal assistance in the presence of at least one of the following reasons:

- the person does not belong to any of the categories of persons provided for in the first part of Article 14 of this Law;
- the person submitted false information or false documents in order to assign him to one of the categories of persons entitled to free secondary legal assistance;
- a person's claims for the protection or restoration of his/her rights are unlawful;
- the person was previously provided with free secondary legal assistance on the same issue;
- the person has used all national means of legal protection in the case for which he/she applies for the provision of free secondary legal assistance.

Moreover, under Article 23 (Grounds and procedure for termination of the provision of free secondary legal aid), the provision of free secondary legal aid is terminated by the decision of the Centre for Legal Aid Provision in the event that:

- the person submitted false information in order to assign him/her to one of the categories of persons entitled to free secondary legal assistance;
- the circumstances or grounds, in the presence of which a person was assigned to one of the categories of persons provided for in Article 14 of this Law, have ceased to exist;
- the person uses the protection of another defender or has engaged another representative in the case for which a defender or representative has been appointed to him/her in accordance with this Law;
- the person has used all national legal remedies in the case;
- a person who receives free secondary legal assistance and is wanted in criminal proceedings;
- a person who receives free secondary legal assistance is recognized as missing or declared dead.

V. The mechanism for recovering expenses for legal assistance guaranteed by the state

In accordance with Article 23(4), in case of termination of the provision of free secondary legal assistance due to the fact that the person submitted false information in order to assign him/her to one of the categories of persons entitled to free secondary legal assistance, the person who received such assistance is obliged to reimburse the cost of the actual expenses related to the provision of assistance.

3. Recommendations for setting up the partially financed state legal aid mechanism in Moldova

After analysing the current legal framework in Moldova and having presented legal aid models of several other European states, the expert submits the following recommendations as to partially financed legal aid mechanism in Moldova:

3.1. Recommendations on the model of partially financed legal aid

The expert suggests that the partially financed legal aid mechanism should be integrated in the current system without fully re-modelling it. The recommendations below thus seek minimum intervention into the current system.

I. Threshold levels

European states choose different ways to measure financial eligibility for legal aid. Usually, it is calculated on the basis of the applicant's gross income, disposable income and assets, including immovable property (Austria, Belgium, Croatia, Finland, Germany, Latvia, Lithuania, Spain, Sweden, Ukraine and the United Kingdom (England and Wales)). Family size and a spouse's income are often also taken into account.

At the moment, the Law on Legal Aid in Moldova and the implementing regulations establish an income threshold until which the legal aid is provided for free. The income level in families is counted per number of household members. It is suggested that similar model should be retained for partially financed legal aid.

In particular, the Resolution of the Government on approval of the Regulation on the methodology for calculating income in order to obtain qualified legal aid guaranteed by the state (No. 1016 of 1 September 2008) should establish that partially financed legal aid is granted to persons whose income is above the threshold for a fully financed legal aid but below the threshold of partially financed legal aid.

The threshold of partially financed legal aid could be set as plus 20-50 % from the level for a fully financed legal aid. In particular, if currently the threshold for the fully financed legal aid is 2108 Moldovan Leu multiplied by the number of family members, the limit for partially financed legal aid could be 2530-3162 Moldovan Leu.

II. Legal aid recipient's contribution

Legal aid recipient's contribution in case of partially funded legal aid could either be set as a fixed amount (calculated on the basis of average costs for concrete proceedings for which legal aid is applied) or be fluctuating and linked to hourly-based bill of a legal aid lawyer (a percentage of the factual legal fees to be paid – see Lithuanian model).

In the opinion of the expert, having a fixed contribution has advantages for legal aid clients as it gives more clarity of their personal costs associated with the case. It also allows to have a concrete amount for an advanced payment – if such a model of recovery of clients' contribution is chosen.

III. Possibility of evaluation of the individual situation

The expert considers that the rules should provide for the possibility of additional individual evaluation and allow NLAC (in exceptional cases) to grant secondary legal aid notwithstanding the fact that the person's income exceeds the levels of the set person's (family's) property. In particular, it is suggested that where the person's financial situation exceeds the levels of personal income established by the Government or where the NLAC adopts a decision to refuse to provide secondary legal aid, the applicant should have the right to apply to the NLAC with a reasoned written request for an additional assessment of his/her individual situation.

The applicant's individual situation should be assessed by taking into account the applicant's standard of living and financial situation, the applicant's ability to represent himself/herself effectively, the costs of legal aid, the complexity of the case in which secondary legal aid is requested, the applicant's procedural position in the case and the possible adverse consequences for the applicant, as well the existence of other cases on which the legal aid is provided.

Where the NLAC would consider that the assessment of an individual situation indicated the need for fully/partially financed legal aid, in exceptional cases the NLAC should have the right to grant secondary legal aid, notwithstanding the fact that the person's financial situation exceeds the threshold levels set by the Government. As a result, exceptions would be applied on a case-by-case basis and taking into account a person's specific situation.

IV. Payment of legal aid fee

To collect the legal aid recipient's contribution for partially financed legal aid, several models could be chosen.

Model I: NLAC pays the fee to the lawyer and asks the legal aid client to reimburse the required part of the costs

One of the options to collect the contribution of the legal aid client for a partially funded legal aid fee, is to set an obligation of the legal aid recipient to pay the contribution in the decision to grant legal aid. Once the legal aid is provided and the lawyer is paid for the services, the legal aid recipient would receive an invoice for his/her contribution. If the payment is not made on time, legal aid could be stopped or terminated, and standard procedures for enforcement of payment could be used.

Model II: Advance payment

Under another model, upon a decision to grant partially financed state legal aid, a recipient of state legal aid may be required to pay an advance payment. This advance payment can be set as a concrete amount calculated on the basis of expected costs of such types of cases or be linked to the income of the legal aid client (see the model of Netherlands or Belgium).

It is suggested that the advance payment is paid to the lawyer. The lawyer should then have a right not to commence his or her work until he or she has received payment of the contribution unless the lawyer waives the collection of the contributions or grants a delay in payment.

3.2. Legal acts where amendments would be needed or that should be adopted to set up the partially financed state legal aid mechanism in Moldova

For the recommendations listed above with regard to the introduction of a partially financed legal aid mechanism, changes in the legal documents of Moldova would be required.

I. Changes in the Law on State Legal Aid

Setting the threshold for receiving legal aid is within the competence of the Government. Therefore, Article 22 of the Law on State Legal Aid No. 128/2007, providing for the possibility to grant partially free qualified legal assistance for persons whose income is higher than the threshold set by the Government to receive fully funded legal aid, should be amended to identify, that the threshold for partially financed legal aid is set by the Government:

Current text of Article 22

Qualified legal aid shall also be provided in cases where a person whose income is higher than the income level established by the Government for receiving legal aid in accordance with this law is able to pay part of the costs of legal aid. In this case, qualified legal assistance may be provided with the financial participation of the person to whom assistance is provided, provided that the person's contribution does not exceed his/her financial and material capabilities.

The procedure and conditions for the provision of partially free qualified legal assistance are established by the National Council.

Suggested revised text of Article 22

*Qualified legal aid shall also be provided in cases where a person whose income is higher than the income level established by the Government for receiving **fully financed** legal aid but lower than the income level established for receiving **partially financed legal aid**. In this case, qualified legal assistance may be provided with the financial participation of the person to whom assistance is provided, provided that the person's contribution does not exceed his financial and material capabilities.*

The procedure and conditions for the provision of partially free qualified legal assistance are established by the National Council.

Additional amendments might be required should any of the recommendations listed in 3.3. *Recommendations linked to introduction of partially financed legal aid mechanism* below are taken into account.

II. Supplementing the Regulation on the methodology for calculating income in order to obtain qualified legal aid guaranteed by the state

The Resolution of the Government on approval of the Regulation on the methodology for calculating income in order to obtain qualified legal aid guaranteed by the state (No. 1016 of 1 September 2008) should be supplemented by including a threshold for partially financed legal aid.

In particular, Article 1 of the Regulation should be changed accordingly, identifying not only the limit for a fully funded legal aid, but also the limit for partially funded legal aid.

III. Adopting resolution of National Legal Aid Council on partially financed state-guaranteed qualified legal assistance

As foreseen in the Law on State Legal Aid, the procedure and conditions for the provision of partially free qualified legal assistance are established by the National Legal Aid Council. Thus, a respective resolution should be adopted.

It is suggested that the resolution of the National Legal Aid Council on partially financed state-guaranteed qualified legal assistance includes the following provisions:

- An application for secondary legal aid shall indicate the applicant's agreement to pay the costs of secondary legal aid in the event that it is established that he/she is required to pay part of the costs of secondary legal aid. Such a provision shall be set in the resolution and be reflected in the application for legal aid form. In particular, the form of application for legal aid should be amended to include information if the applicant agrees to pay part of legal aid fees should his/her income will be assessed as being above the threshold set for fully financed legal aid but eligible for partially funded legal aid.
- The procedure of payment of legal aid client's contribution should be set. If Model I from section *IV Payment of legal aid fee* above is chosen, the applicant shall pay the required part of the costs of secondary legal aid upon receipt of a notification from the NLAC. The NLAC shall inform the applicant of the amount of the secondary legal aid costs to be paid, the account to which the applicant shall pay the amount and the deadline for payment. If Model II is chosen, the resolution should specify how and when the advance payment should be made.
- The consequences of failure to pay legal aid client's contribution. If Model I from section *IV Payment of legal aid fee* above is chosen, if the legal aid client fails to pay the required contribution for partially financed legal aid, such costs shall be recovered in accordance with the procedure laid down by law. On a reasoned application by the applicant, the NLAC should be able to take a decision on distributing the amount of the secondary legal aid costs to be paid in several instalments. Moreover, failure to pay the client's contribution might be set as a ground for non-provision of legal aid in subsequent cases. In particular, if the applicant has been granted partially financed secondary legal aid in another

case but has not paid the required costs of the secondary legal aid or part of them by the prescribed deadline, the qualified legal aid can be refused. If Model II is chosen, a lawyer should then have a right not to commence his or her work until he or she has received payment of the contribution unless the lawyer waives the collection of the contribution or grants a delay in payment.

- In case the contribution of the legal aid client is linked to hours worked by the legal aid lawyer (see section II *Legal aid recipient's contribution* above), but no concrete amount is fixed, an indicative amount of the possible costs should be available on the NLAC website and upon the request of the legal aid applicant.
- The rules should provide for the possibility of additional individual evaluation and allow NLAC to grant secondary legal aid (in exceptional cases) notwithstanding the fact that the person's income exceeds the levels of the set person's (family's) property.

Please note that if Model I from section IV *Payment of legal aid fee* above is chosen, and advance payment is made to a lawyer, the Decision approving the Regulation on the amount and manner of payment for the services of lawyers providing qualified legal assistance guaranteed by the state (No. 22 of 19 December 2008) might need to be amended accordingly.

In addition, to inform the citizens of the possibilities of receiving legal aid, and the new mechanism of partially financed legal aid, it should be considered whether it would be beneficial to adopt a Resolution of the Ministry of Justice on approving the methodology for informing the public about state guaranteed legal aid. An example of such an instrument (Lithuanian document) can be found here:

<https://www.e-tar.lt/portal/lt/legalAct/TAR.C3ABE95795FC/SxqTlvWooV>

3.3. Recommendations linked to introduction of partially financed legal aid mechanism

I. Recommendations on the list of limitations for providing legal aid

Listing disputes ineligible for legal aid

Firstly, consideration could be made as to what types of disputes should be listed as ineligible for legal aid. Such could be, for instance:

- commercial activities and taxation (as in Latvia and Poland);
- disputes concerning claims related to luxury items (Latvia);
- disputes concerning compensation for non-pecuniary damage (Latvia, Lithuania);
- cases related to simple matters, such as disputes concerning applications for a legal title, mortgaging a property or drawing up documents such as a tax return, a will, a prenuptial agreement, an estate inventory or a deed of gift (Sweden).

Strengthening the merits test

As noted during the Field Mission meetings and stated in the Annual Report of the NLAC, to eliminate cases of abuse on the one hand and facilitate access to the legal aid system by vulnerable groups, the possibility of

applying merits tests when deciding on a legal aid application should be strengthened. This could include the following measures:

- Provision foreseeing that legal aid will not be granted if the amount to be spent on legal aid is incommensurably high in comparison with the amount of the claim (Latvia, Sweden and the United Kingdom (England and Wales); in Lithuania, this provision is formulated as “it is established that the potential costs of secondary legal aid would exceed the amount of the applicant's financial claims”);
- Limiting legal aid in situations where the applicant is claiming non-pecuniary damage to his or her honour but has not suffered any pecuniary damage (Lithuania);
- Provision allowing termination of state financed legal aid if the applicant abuses state-guaranteed legal aid, his/her substantive or procedural rights;
- Evaluation if representation in the proceedings is viable. Viability criteria could be determined by asking the opinion of a public defender if the applicant's claims are not manifestly unfounded; or by checking if there is no obvious violation of the procedure (the time limit for lodging a complaint has expired and it has not been applied for to be renewed, the limitation period for lodging a complaint is expired, and so on). In this regard, when deciding whether to grant secondary legal aid, the NLAC should have the right to request a public defender’s opinion as to whether there are grounds for not granting secondary legal aid as set out above.

II. Recommendations on legal aid in several cases

Several models for dealing with the situations where a person applies for legal aid in multiple cases can be considered. It should be highlighted that the rules suggested in the models below should be either established in the law or in the ruling of the Government.

Model I: cascade of coverage of legal fees in case of several legal aid cases

To deal with situations where one person is receiving legal aid in multiple civil/administrative cases, a cascade that limits the percentage of covered legal aid costs can be established (Lithuanian model). In particular, it can be set that for an applicant who is entitled to receive secondary legal aid and for whom secondary legal aid is already being provided in one case, the state covers a smaller percentage of the cost of the provision of the secondary legal aid in further cases. Such limitation of legal aid in further cases should not apply for legal aid needed in criminal (misdemeanour) cases.

| Persons receiving fully financed legal aid in civil/administrative cases | Persons receiving partially financed legal aid in civil/administrative cases |
|---|---|
| First case: 100 % state-funded legal aid | First case: 50 % state-funded legal aid |
| Second and subsequent cases: 25 -50 % state-funded legal aid The applicant covers 50 -75 %of the legal aid costs | Second and subsequent cases: 15 -30 % state-funded legal aid The applicant covers 70-85 % of the legal aid costs |

Model II: limiting the number of cases where legal aid can be provided

The law may establish that an applicant is entitled to state financed legal aid only in a certain number of cases per year (Ukrainian model). In such a situation, a person could receive legal aid in, for instance, 5 cases per year (the number could be smaller or bigger if considered more appropriate). If a person would consider that legal aid is needed in more cases, he/she would be required to submit a motivated application for consideration of NLAC; however, only in exceptional cases this would be approved. Such limitation of legal aid in further cases should not apply for legal aid needed in criminal (misdemeanour) cases.

Model III: a small contribution of the legal aid client

To deal with the situation of busybodies who litigate using state resources, it is also possible to establish that the person applying for legal aid should pay a small non-refundable contribution (5-20 euros). Such contribution might be required from the first or from the second application for legal aid. In general, in Europe financial contributions by legal aid beneficiaries are allowed, provided they are not arbitrary and unreasonable, and the applicant has sufficient means to pay.

III. Recommendations on recovery of legal aid costs

Recovery in criminal cases

Several European states provide for recovery of legal aid costs from a convicted person. Such a possibility was also confirmed by the European Court of Human Rights that recognised that repayment of fees and disbursements of legal aid lawyers by a convicted person is in accordance with Article 6 (*Croissant v. Germany* (1992)).

It is suggested that after finding the accused guilty, the court should have a possibility (but not the obligation; certain margin of appreciation should be left for the court), when passing a sentence and taking into account the financial situation of the accused, to decide to recover from the accused the costs of state-guaranteed legal aid (Lithuania, the Netherlands). Exceptions should be foreseen where a suspect or accused is a minor or with physical disability limiting his or her ability to participate in the proceeding without a defence lawyer.

Recovery in civil cases

Typically, in civil proceedings the costs of the legal aid are recovered from the lost party (Lithuania, Estonia, etc). As noted in the meetings organised during the Field Mission, in Moldova, such possibility is already foreseen and used.

In administrative cases

If a party to proceedings in whose favour a decision has been rendered has been awarded state-guaranteed legal aid, the court should be entitled to decide on the issue of reimbursement of the costs of state-guaranteed legal aid to the state.

Recovery due a change in the situation of the legal aid client

If a beneficiary has seen an improvement in their financial situation, it is typical to foresee recovery of incurred state legal aid costs. Such provision exists in, e.g. Belgium, France, Estonia.

In several European states, beneficiaries can be asked to repay legal aid costs under certain circumstances, for example, when they acquire money or property as a result of the resolution of a dispute for which legal aid was granted (Bosnia and Herzegovina, France, Latvia, Montenegro and the United Kingdom (England and Wales and Scotland)). In Austria, within three years of the end of the proceedings for which legal aid was granted, a court may order the repayment of legal aid costs if this payment can be made without there being a negative impact on the “modest standard of living” of the legal aid beneficiary.³³

In case the provision of the secondary legal aid has been withdrawn

Where the provision of legal aid is terminated (due to false statements, fraud, change of financial situation, etc.), the legal aid costs should be reimbursed to the state.

The Council of Europe suggests that the Member States consider the possibility of revoking legal aid and of seeking repayment of legal aid costs by the recipient, where it is found to have been granted on the basis of false information provided by the applicant.³⁴ This possibility is widely used in Europe. For instance, in Belgium, the state can ask for reimbursement if a person who received legal aid did so based on false statements or by fraud. Similar arrangements apply in France, the Netherlands and the United Kingdom (England and Wales).³⁵

Recovery in cases where legal expenses insurance existed

Though it does not seem to be an issue in Moldova at the moment, it is also advisable to establish that individuals who have or ought to have had legal protection cover through insurance are not entitled to legal aid (France, Sweden).

If secondary legal aid is provided to persons entitled to legal expenses insurance benefits, which, according to the insurance contract, are paid after the expenses have been incurred, the costs of secondary legal aid provided shall be reimbursed to the state. The costs of secondary legal aid to be reimbursed should normally not exceed the amount of the legal expenses’ insurance benefit.

General recommendation

³³ Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law (2021) and its Explanatory Report. <https://rm.coe.int/guidelines-of-the-committee-of-ministers-of-the-council-of-europe-on-t/1680a39918>

³⁴ Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law (2021) and its Explanatory Report. <https://rm.coe.int/guidelines-of-the-committee-of-ministers-of-the-council-of-europe-on-t/1680a39918>

³⁵ Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law (2021) and its Explanatory Report. <https://rm.coe.int/guidelines-of-the-committee-of-ministers-of-the-council-of-europe-on-t/1680a39918>

Due to the complexity and specifics of the issue of recovery of legal aid costs, it might be useful to adopt a separate resolution of the MoJ approving the rules for the calculation and recovery of secondary state guaranteed legal aid costs. This document would clarify such questions as what is included in legal aid costs (e.g., lawyer's fees, stamp duty and other costs relating to the proceedings, interpretation/translation costs, costs relating to the provision of secondary legal aid such as transportation costs, etc.); rules how and when the NLAC calculates the legal aid costs that should be recovered to the state budget; rules how legal aid client's contribution in case of partially funded legal aid should be calculated and paid; rules in case of recovery of legal aid when the legal aid client had legal costs insurance, etc.

An example could be Lithuanian resolution available at:

<https://www.e-tar.lt/portal/lt/legalAct/42a710700f9911ebb74de75171d26d52>

IV. Recommendations as to possible IT system allowing to verify the income of the applicant for legal aid

It should be noted that the Annual Report of the NLAC³⁶ foresees the technologisation of state-guaranteed legal aid services as a strategic objective. As to legal aid, several IT solutions could be developed. In this context, it would be useful to have technical solution allowing the NLAC to verify if a legal aid applicant's means test is fulfilled. The NLAC should be able to verify the client's personal data with those in the municipal population register and to check the applicant's income and assets with the tax authorities.

V. Other recommendations identified through the analyses of the good practices in other states

The expert suggests to reconsider if the current model of application of means tests is proper. In particular, at the moment, when an applicant's financial situation for legal aid is assessed, legal aid is granted in cases where the monthly of the family does not exceed 2108 Moldovan Leu multiplied by the number of family members.

While in the majority countries the number of dependents of the applicant is taken into account, the sum considered as minimum for one person is not multiplied by the number of dependants, but a certain percentage is added. In the opinion of the expert, the current situation is at least to some extent detrimental for people living alone (often more vulnerable than those living in a family household). Since certain living costs remain constant (or without major differences) despite the fact a person lives alone or several people share a household, it should be considered if it would be more appropriate to set the higher amount for the applicant and then to add certain additional percentage for further household members.

³⁶ https://cnaigs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf