



“ENHANCING THE QUALITY OF LEGAL AID: GENERAL STANDARDS FOR DIFFERENT COUNTRIES”  
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## REPORT OF WORKING STREAM 1

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Raad voor Rechtsbijstand



## Introduction

International community widely recognizes that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, that it is a foundation for the enjoyment of other rights, including the right to a fair trial. Moreover, it is seen as an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. The recent international documents support the view that provision of legal aid is no longer regarded as a charity to indigent persons but as an obligation of the community as a whole.

At present, the right to free legal aid, in cases where a person does not have sufficient means to pay for it and where the interests of justice so require, is well anchored in international law. Recent international documents, however, go one step further, not only requiring availability of free legal aid, but also highlighting importance of its quality, as well as need for trainings and education in this area.

This international framework is further strengthened in Europe. Here, the Council of Europe and the EU are the two main organizations setting the standards for legal aid. As for the Council of Europe, its European Convention of Human Rights, and in particular the case law of the European Court of Human Rights, considers that mere appointment of a lawyer is not enough to fulfil the State's obligation to provide effective legal assistance – some quality of this assistance is also required. The EU goes even further developing and implementing certain common standards of legal aid across Europe. The new directive 2016/1919 on legal aid should be seen as the most important document in this regard.

The three countries participating in the Project “Enhancing the Quality of Legal Aid: General Standards for Different Countries” (hereinafter – the Project) – Lithuania, Germany and the Netherlands – all being part of the EU closely follow the European developments and implement the general European standards. However, although all the three countries ensure access to free legal aid, the organisation of the legal aid, provision and supervision of it, as well as many other aspects differ considerably.

In this context and taking into account the overall objective of the Project, in this Report, we seek:

- (1) to summarise the main similarities and differences by comparing the existing legal frameworks and practices in the three countries, focusing on the instruments and practices aimed at ensuring high quality legal aid in criminal proceedings. As legal aid in civil proceedings is not at focus of the Project, it is not analysed and might be mentioned only briefly. This part of Report is based on the documentary analysis prepared by each of the Project partners in Lithuania, Germany and the Netherlands under the Project activities 1.1.2-1.1.4. The more detailed information on the issues discussed in this Report might be found in the reports prepared by each of the Partners, which are included as annexes hereto.
- (2) to analyse and assess the needs and expectations of different target groups. The analysis is based on surveys (interviews) and documentary review (complaints) conducted in three Project partner countries under the Project activity 1.1.1. This

empirical research is important for assessing the legal aid system in the eyes of those directly affected, receiving valuable information, about the quality of the legal aid, as well as expectations, needs, and an opinion on the development and evaluation of this system.

The Report will be further supplemented after finalising other activities of the Working Stream 1, and will finally appear as an outcome of Working Stream 1.

# **1. Analysis of the existing legal frameworks and practices aimed at the ensuring high quality legal aid in criminal proceedings. Activities 1.1.2-1.1.4 (based on documentary review)**

## **1.1 The requirement to ensure effective legal aid in international documents**

The requirement that legal aid should be not only free but also effective starts appearing in 1990's. For example, Basic Principles on the Role of Lawyers, adopted in 1990, refers to *effective* legal assistance, without payment for persons lacking sufficient means to pay for such services. This document also stresses the importance of lawyers periodic *training*, *respect of client's interest*, and independence of the lawyer. Despite of that, no further explanation was given as to understanding what is meant under those general notions.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012 was the first international instrument entirely dedicated to the right to legal aid. The document set global standards for legal aid and urged States to establish, strengthen and expand legal aid "to the maximum extent possible." Importantly, the document affirms that legal aid should be *accessible, effective, sustainable and credible*. As to competence and accountability of legal aid providers, the document required that States should put in place mechanisms to ensure that all legal aid providers possess *education, training, skills and experience* that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.

Article 6 of the ECHR, establishing right to fair trial, recognized the right of anyone charged with a criminal offence to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. This right was further elaborated by the European Court of Human Rights which also drew some guiding standards for the quality of legal aid. In accordance with its case law, mere appointment of a lawyer is not enough to fulfil the State's obligation to provide effective legal assistance – from lawyer's side, at least some performance of legal aid lawyers of basic quality is needed; from the side of legal aid administering institutions, it should ensure sufficient time and facilities for an officially appointed lawyer to prepare for a case and should rectify the situation if the appointed lawyer is manifestly failing to perform its duties.

The EU instruments more clearly refer to legal aid since 2000 when the Article 47 of the Charter of Fundamental Rights directly reaffirmed the right to free legal aid stating that legal aid shall be made available to *those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*. While the right to legal aid was consistently repeated in other EU instruments, the quality of legal aid did not come so much into focus until in 2013 when the Commission of the EU adopted the Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings. This document presented several very important recommendations as to effectiveness and quality of legal aid.

The new EU directive 2016/1919 on legal aid should be seen as the most important document in EU regulating the right to legal aid and setting its quality standards. Its Article 7 (Quality of legal aid services and training) is specifically dedicated to *quality* of legal aid. It requires the States to take necessary measures, including with regard to funding, to ensure that there is an effective legal aid system that is of an adequate quality; and legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession. This directive also highlights importance of adequate training of staff involved in the decision-making on legal aid.

## 1.2 The general framework of legal aid in three Project countries

All three Project partner countries ensure that the right to legal aid would be duly ensured in line with their international obligations and constitutional law. However, many issues are regulated and approached differently.

The **Dutch** Legal Aid system provides legal aid to people of limited means. 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 Act. Given their financial means, approximately 39% of the Dutch population would, according to the latest estimates, qualify for legal aid if circumstances so require. The legal aid in the Netherlands is mainly financed by the State (the Legal Aid Fund) and only for a minor part by an income-related contribution of the individual client.

Legal aid model in the Netherlands should be seen as a mixed model, with public providers (Legal Services Counter) and private lawyers and mediators providing legal aid. Legal aid is available for all kind of legal cases (civil, criminal, administrative and asylum) and for all kind of legal services (advice, assistance and litigation) as well as for mediation. Legal aid system also includes legal aid provided by duty lawyers (duty solicitors).

In **Lithuania**, legal aid includes legal information, advice and representation in civil, administrative and criminal cases. Legal aid will also be available for mediation as of 1 January 2019. It is financed by the State and is ensured to everyone of limited financial means or when the law provides for mandatory representation. In certain cases, the second line (secondary) legal aid is covered by State fully, in others (when the person is of a bit higher income than that when the free legal aid is ensured) – in part (with 50% contribution from an applicant). Same as in the Netherlands, Lithuania's legal aid model is a mixed model, with public providers (servants at the municipalities) and private lawyers providing legal aid.

A very different approach to legal aid is taken in **Germany**. In Germany, if a party is not in a position to pay court and counsel fees, legal aid is provided in civil, administrative, labour, criminal and even constitutional disputes before courts. However, here, there is no formal legal aid scheme. Rather, in criminal cases legal aid is substituted by the mandatory defense regime (*notwendige Verteidigung*), which is based on the seriousness of the offence or vulnerability of the accused (merits test), not on financial situation of a person (no means test).

### 1.3 Institution responsible for organizing legal aid

In the **Netherlands**, the legal aid provision is organised centrally. The **Legal Aid Board** (*'Raad voor Rechtsbijstand'*, LAB) is an independent governing body and is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. It is residing under the competence of the Ministry of Justice and Security. LAB functions include matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided.

In **Lithuania**, the State-guaranteed Legal Aid Service (SGLAS) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System in Lithuania. It is a budgetary institution established by the Ministry of Justice, financed by it and acting under its coordination. The SGLAS coordinates the provision of primary and secondary legal aid. This institution, inter alia, controls the provision of secondary legal aid on the basis of the agreements concluded with the lawyers. However, it cannot in fact control the quality of their services.

As noted above, in contrast to Lithuanian and Dutch systems, in **Germany** there is no formal legal aid scheme in criminal cases. Due to such system, it is the courts administering and organizing legal aid. The judge whom a criminal case is assigned to, in a mandatory defense case appoints the counsel. During preliminary proceedings, an investigating judge appoints the counsel.

### 1.4 Levels of legal aid

In the three countries analysed, the legal aid is organized in several levels. The main two levels are primary and secondary legal aid. Primary (first line) legal aid includes consultations and legal advice on legal matters, while the secondary (second line) legal aid is meant to provide assistance in litigation.

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

Preliminary level of legal aid in the Dutch system is offered by *Rechtwijzer* (Roadmap to Justice) which is an online self-help legal information portal. 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 potential clients can apply to the LSC for help: the website, e-mail, telephone, counter or referral to a consultation hour (by appointment). All services are free of charge.

Secondary legal aid in the Netherlands is based on certificates. In order to obtain a certificate, a (Board-registered) lawyer needs to submit an application to the LAB on behalf of

his client. Then LAB tests whether the means test on income and assets is fulfilled. If yes, the LAB proceeds to merit test – reviewing the significance of the legal problem (in case the lawyer cooperates on the basis of High Trust, merit test is automatically considered to be fulfilled – LAB trusts lawyers’ evaluation). The costs of legal aid are not only paid by the LAB, but are partly covered by a contribution from the client himself (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 discourage frivolous cases). However, 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’). 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, should it turn out that a certificate is needed after all).

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. Each criminal suspect, alien or psychiatric patient who has been lawfully deprived of his liberty against his will is visited by a subsidised lawyer. The lawyer can also attend the police-interrogations.

The **Lithuanian** legal aid system provides for two level legal aid – primary and secondary legal aid. As of 1 January 2019, legal aid will also be available for mediation.

Primary legal aid includes legal advice and drafting of the documents to be submitted to State and municipal institutions (there are 60 municipalities in Lithuania), with the exception of procedural documents. It is provided free of charge in the municipal institutions and is granted irrespective of one’s financial situation. The applicants are consulted in person upon their arrival to the municipality.

Secondary legal aid is provided by advocates and funded by the State. It covers legal services related to representation in courts and is based on means and merits tests. In certain cases, only a merits test is applied, in others – both needs to be fulfilled. The SGLAS appoints an advocate from the lists of advocates, with whom it has agreements on provision of secondary legal aid. There are two separate lists for (i) advocates who continuously provide secondary legal aid and for (ii) the advocates who provide secondary legal aid in case of necessity (ad hoc). Appointing an advocate, the SGLAS takes into account, inter alia, the applicant’s proposal as to the lawyer.

In **Germany**, a distinction is made between assistance under the Legal Advice Scheme (equivalent to primary legal aid) and assistance with court costs (equivalent to secondary legal aid). This mechanism is regulated in the *Rechtsberatungshilfegesetz*. The Legal Advice Scheme Act provides for people on low incomes to receive assistance with the cost of advice and representation outside the courtroom. Assistance under it (advice and, where necessary, representation) is given in civil cases including employment, administrative, constitutional and social cases. In criminal cases and cases involving administrative offences, only advice is given. As a result, in some states (*Bundesländern*) there are public legal advisory services, but overall the primary legal aid (*Rechtsberatungshilfe*) is given little recognition. Persons in need

receive assistance with the conduct of court proceedings under the rules on assistance with court costs.

The German legal aid in criminal cases system contains two elements, which combine for a system which is functionally equivalent to legal aid: The appointment of mandatory defense depends on the *merit*, that is, whether counsel is deemed to be necessary in the interests of justice. Whether the defendant has to pay the costs of the proceeding including the costs for court-appointed mandatory defense depends on whether he or she is convicted, and on whether he or she has the *means* to do so. If he or she is bankrupt or under protection against levy of execution, he or she does not have to bear the costs.

### 1.5 Supervision of quality of services

In all the three countries, the Bar associations are in charge of the general quality of legal services. They are responsible for general standards of this profession and for handling complaints for breaches of professional conduct, as well as for taking respective steps in case of major breaches are established.

In the **Netherlands**, the main institutions supervising the advocates involved in the provision of legal aid are the Netherlands Bar Association (*Nederlandse Orde van Advocaten*, NOvA), and to a lesser extent, the LAB. LAB and the Bar exchange information with the aim of improving the supervision of advocates within the State-funded legal aid system.

The Netherlands Bar Association has laid down Rules of Conduct and regulations that advocates should follow. The rules of this document as to the quality of legal aid are limited (see section below). The Netherlands Bar Association has introduced best practices and quality assessments which are meant to encourage advocates to gain insight into and receive feedback on their conduct and improve this where necessary.

LAB's supervision of work of advocates providing legal aid is limited, and mainly focuses on verifying if the registration conditions set by the LAB are fulfilled. If not, the registration of a lawyer can be terminated. However, disciplinary measures against the lawyers are taken by the Bar association. As a consequence, the LAB can also remove the lawyer from the list of legal aid lawyers in case of grave misconduct.

In the Netherlands, once every two or three years, advocates and clients are asked about their experiences with the legal aid system. This includes a client satisfaction survey on the services provided.

In **Lithuania**, supervision of advocates providing legal aid is carried out by Lithuanian Bar Association and the SGLAS. The SGLAS resolves beneficiaries' complaints against the actions of legal aid providers. Lithuanian Bar Association has a general duty of supervising the advocates.

Having received a complaint on the provided legal aid, the SGLAS, in accordance with the agreements on provision of legal aid signed with an advocate, can take the following measures of control: (i) request to explain the situation, and issue a decision to replace the lawyer; (ii) if SGLAS determines that the issue in the complaint is related to the quality of the lawyer's activity, it transfers the complaint to be considered by the Lithuanian Bar; (iii) to terminate the agreement signed with the lawyer. Thus, the SGLAS is not empowered to supervise the quality

of the service itself and, similar to the Netherlands, disciplinary measures against the lawyers are taken by the Bar association, as the SGLAS can only terminate the agreement signed with the lawyer in case of major breach of provisions of the agreement.

The duty to verify the quality of activities of the lawyers providing secondary legal aid in Lithuania is assigned to the Bar. It is responsible for examination of disciplinary cases of lawyers (through Court of Honour of the Bar). One of the functions of the Bar is to organize the assessment of the quality of lawyers' activities when providing secondary legal aid. The Law of the Bar provides that quality assessment rules must be approved by the Bar. However, such rules are not approved yet. The Bar considers the complaints of the persons whom legal aid is provided according to the same procedure as the complaints on private lawyers.

In **Germany**, there are no formal quality control mechanisms for court-appointed lawyers. From one side, this is due to the fact, that the appointment of lawyer is done by the courts and the German constitution guarantees the independence of judges. From the other side, this is explained by already high requirements for becoming a lawyer in Germany.

In Germany, a person who is not satisfied with the quality of the work of the legal aid lawyer may submit a complaint to the Bar. However, neither the Bar, nor the courts run any independent monitoring or quality assurance mechanism.

Certain questions as such model and the quality of legal aid services arise. Firstly, since it is mainly the judge to choose a lawyer, there are some questions as to independence of those lawyers who are "systematically chosen" by courts. Secondly, it is true that there are very high standards for the entrance to the Bar in Germany. However, once a lawyer is admitted to the Bar, his/her supervision or monitoring is very limited. The further training is also voluntarily.

The quality of legal aid services is also linked to fees received by lawyers. In Germany and Lithuania, court-appointed lawyers receive considerably lower fees the lawyers chosen and paid by the client. This is also true about the Netherlands, though to a lesser extent. This can raise questions that experienced criminal lawyers are sometimes unwilling to be appointed by the courts. On the other hand, this is not straight forward – some experienced lawyers see it as their duty to be appointed from time to time by courts in legal aid cases.

## **1.6 Legal aid quality standards**

In the **Netherlands**, to be entitled to accept legal aid cases, private lawyers need to be registered with the LAB and have to comply with a set of quality standards. These standards are set by the Bar in the Rules of Conduct that advocates should follow. The rules of this document as to the quality of legal aid are limited. It only requires the advocates to discuss with their client whether State-funded legal aid should be sought, moreover, it states that advocates must be guided by the principle that receiving a subsidy means that advocates should perform their duties as efficiently as possible. In case of failure of an advocate to abide to the Rules of Conduct, disciplinary measures may be imposed by the responsible bodies of the Bar. Furthermore, all lawyers have to pass the Bar exam and also need to fulfil a (basic) quality audit, set by the Bar.

The tasks of the Dutch LAB also include developing quality standards and measuring the quality of services provided by suppliers of legal aid. Thus, in addition to Rules of Conduct

of the Netherlands Bar Association and the LAB have established certain additional requirements on advocates who provide legal aid through conditions of registration. These conditions of registration include (i) requirements of expertise, (ii) a maximum number of legal aid cases per year or agreements concerning the duty solicitors scheme and (iii) continuing training. Through random and specific checks, the Board verifies if registered advocates still meet the conditions of registration.

As to (i) requirements of expertise, specific conditions of registration apply in specialist areas such as criminal law, juvenile law, juvenile criminal law, law of persons and family law, asylum and immigration law, legal aid to victims, psychiatric patients' law and international child abduction cases. The additional requirements of expertise in the area of criminal and juvenile criminal law include following a basic training course, handling a minimum number of cases per year and obtaining a certain number of training points per year. As to (ii) a maximum number of legal aid cases per year, in order to ensure that the quality of legal aid is not compromised, including by too rapid or too numerous applications for referrals or by too little time and attention being devoted to cases, an advocate may not be issued more referrals annually than the set number.

In **Lithuania**, as noted above, the Law of the Bar provides that quality assessment rules must be approved by the Bar. Such rules would enable to identify certain legal aid quality standards. However, such rules are not approved yet. As a result, the advocates providing legal aid are not bound by any other standards save the Code of Ethics for Advocates and other requirements for the advocate profession provided for in the legal acts that are applicable to everyone in the Bar (similar to Germany). Disciplinary measures, same as in the Netherlands and Germany, may be imposed by the responsible bodies of the Bar.

The **German** lawyers providing legal aid are not bound by other quality standards save those applying to advocate's profession in general.

## **1.7 Best practices and ideas for improvement**

Several ideas could be drawn from the analysis above.

Firstly, an interesting solution to optimize legal aid at initial stages, an example of good practice, is offered by the Dutch model. As preliminary level of legal aid the Dutch system established *Rechtwijzer* (Roadmap to Justice). It is an online self-help, information and support is offered on the *Rechtwijzer* website (see [www.rechtwijzer.nl](http://www.rechtwijzer.nl)). *Rechtwijzer* offers interactive 'decision trees' helping people to assess their situation. In addition, *Rechtwijzer* provides easy-to-understand information and guidance on possible solutions for the most common legal problems, such as divorce. Such legal information platforms should be seen as a progressive approach to legal aid and could serve as a model to other States.

As discussed above, the first-line legal aid in the Netherlands is offered by Legal Services Counters, which, inter alia, manage a call center. Since 2015, there is even more focus on the call center activities and less on the face-to-face activities where people can visit without appointment. Such call center could also be seen as good practice example as it enables to provide and access legal aid faster and at less costs.

Secondly, there is an emerging trend in Europe to refer to internet based instruments for legal aid matters. In the Netherlands, besides the already mentioned *Rechtwijzer* (Roadmap to Justice) project, there are some experimental projects. One of them - experimenting with means to offer support to apprehended suspects by means of video connections. Such ideas were also expressed by participants from various countries during the international conference organised in 2017 under the Project in Vilnius.

Thirdly, in certain countries, e.g. the Netherlands, once every two or three years, advocates and clients are asked about their experiences with the legal aid system. This includes a client satisfaction survey on the services provided. In Lithuania, similar satisfaction surveys of the legal aid clients are supplemented by research into the experiences and opinions of the judges, prosecutors, and investigators. Such regular monitoring enables to see the general level of legal aid in the country. In the Netherlands, the courts and the prosecution service can also bring signals about the malfunctioning of lawyers under the attention of the Deans and the LAB.

It should also be noted that the analysed international and EU documents tend to stress the importance of specific education and trainings on legal aid matters. From this perspective, an example that could be taken into account when drafting recommendations on legal aid quality, is the Dutch example where bachelor education system recently started a law course to train students on provision of first-line legal aid. Also, a system that obliges lawyers to prove how much time they invested in permanent education could be taken into account.

## **2. The needs and expectations of different target groups (legal aid beneficiaries and stakeholders): analysis of survey results. Activity 1.1.1**

A survey of clients and stakeholders (judges, prosecutors, police officers, lawyers) was conducted in the three Project partner countries in order to identify and analyse the needs of selected target groups in criminal proceedings and to assess whether their needs as to legal aid quality are met in the current national legal aid systems. In total, 160 respondents participated in the survey (37 in Lithuania, 103 in the Netherlands, 20 in Germany). The following groups of people were interviewed:

- Beneficiaries of legal aid (persons (former suspects and accused) who received legal aid in criminal proceedings) (total number: 110);
- Stakeholders (judges, prosecutors, and police officers) (total number: 41).

In addition, interviews with lawyers were conducted in Lithuania and Germany (total number: 9).

Qualitative interviews and focus group methods were applied during the study. Semi-structured questionnaires were used.

The following aspects were discussed during interviews:

- The quality of legal aid provided by lawyers in general;
- The competence and motivation of lawyers providing legal aid;
- The difference between the quality of work of lawyers providing legal aid and lawyers working on the basis of private contracts;
- The need of establishment of the practice standards of legal aid providers;
- Qualitative criteria for the evaluation of the activities of a lawyer;
- Aspects of improving and developing activities of lawyers providing legal aid.

### **2.1 Results of beneficiaries' surveys**

The results of the performed qualitative survey revealed that experiences of beneficiaries of legal aid are similar in all three partner countries. By presenting positive relations with lawyers providing State-guaranteed legal assistance, clients distinguish such aspects as pleasant communication, attention, assistance, availability of a lawyer, allocation of their time providing detailed information, etc. Clients are most disappointed with lack of attention, passivity, lack of legal representation (document collection, representation in hearings or interrogations, lack of contact with the client, only minimal contribution by the lawyer (performance fulfilling minimum requirements only), failure to provide information, etc.

Such results show that clients tend to assess the performance of lawyers mostly from the perspective of an emotional criterion. The legal aspects of lawyers' work (i.e. the quality of the documents prepared by lawyers, legal reasoning, etc.) are not much relevant. Surprisingly, respondents also did not emphasize the criterion of the result (e. g. an outcome of the case), which, objectively, in terms of a client's legal representation, should be one of the most important ones.

It is noteworthy that, despite the fact that a significant number of respondents had negative experiences, complaints were rarely filed. When asked why there was no complaint or why they did not file a request to change a lawyer, respondents indicated two key reasons: (1) lack of belief that something would change, for example, that another lawyer would represent them better; (2) lack of information about the possibility of appeals or the possibility of changing a lawyer. Such answers indicate that legal aid clients should receive more information about the possibility of complaining.

## **2.2 Results of survey of stakeholders**

In **Lithuania**, the opinion of judges and prosecutors as to the quality of work of lawyers providing State-guaranteed legal aid is uneven. All respondents noted that the quality of lawyers who provide legal aid depends on an individual case: there are both highly-quality lawyers and those whose work quality could be questioned. Most respondents noted that there is a number of senior age lawyers who do not provide high-quality services (for example, they passively defend the accused, even fall asleep during the meetings, use the same template text for different defendants, etc.). On the other hand, some respondents noted that older lawyers are easier to reach in cases of urgent need (when there is an urgent need for a lawyer, especially on non-working days). It was also noted that in recent years the number of young and motivated lawyers who provide qualitative State-guaranteed legal assistance has been increasing.

Furthermore, respondents also compared lawyers providing legal aid and those working on private basis. The majority of respondents indicated that there also should be more criticism towards lawyers representing suspects or accused individuals on the basis of private contracts. They are more likely to use rogue remedies (for example, delaying the process, providing various (not always reasonable) requirements, and not always reasonably complaining about procedural actions of prosecutors, pre-trial investigation officers etc.), or more emphasis on non-legal, but emotional arguments (for example, in order to demonstrate that he actively protects the accused or the suspect). Meanwhile, State-guaranteed assistance lawyers concentrate more on legal arguments, usually provide complaints when there is a legal basis, etc. It was also noted that highly qualified private lawyers, in contrast to State-guaranteed lawyers, provide more detailed arguments, such as references to case-law.

Respondents unanimously took the view that the majority of State-guaranteed legal aid lawyers do not lack necessary competences. The lack of motivation is a key issue that affects the quality of services provided by lawyers. Motivation could be divided into internal (moral) motivation and financial motivation. Internal motivation could be described as a person's willingness to perform well regardless of remuneration. According to the respondents, this motivation is determined by individual moral values and preferences of a person. Respondents noted that part of lawyers lack internal motivation in a moral sense, but this problem is not specific to State-guaranteed legal aid lawyers; this problem appears in case of all lawyers, as well as in other professionals (prosecutors, judges, etc.). Internal motivation (internal determination to work qualitatively) is individual in each case. Lawyers that are working on their career and reputation, in any case give their efforts to provide high-quality services.

Regarding financial motivation, a significant number of respondents mentioned that compared to private lawyers, fees for State-guaranteed legal aid are small. As a result, firstly, a considerable part of lawyers has less motivation to provide high-quality services; secondly, the best lawyers do not provide State-guaranteed legal aid because of low earnings; thirdly, lawyers focus on the quantity of work, since the bigger number of clients means bigger income, however, then the quality of services suffers. It has also been noted in this regard that since remuneration does not depend on complexity of a case, lawyers often refuse to provide services in more complex cases (both legal and human, for example, when clients have problematic behaviour, etc.).

One more factor named by respondents that is influencing lack of motivation is the workload. State-guaranteed legal aid lawyers (in particular, lawyers providing legal aid full time) have a large number of clients. Lacking time, they try to provide the necessary defence fulfilling minimum requirements (for example, they have no time to analyse case law, develop complex defence strategies, etc.).

When assessing the need for quality standards, the opinion of respondents was uneven. Some respondents stressed that the assessment or control of lawyers' activities is necessary (especially since it is a State-financed service). Another part of respondents indicated that additional controls (standards) are not appropriate, as lawyers are subject to high requirements and the existing control mechanisms implemented by the Bar Council. Some respondents also noted the risk that the tightening of the requirements might reduce the number of advocates providing State-guaranteed legal aid (especially highly qualified lawyers).

The main organizational problem identified by respondents is the availability of lawyers: there are cases where it is difficult to find a lawyer in urgent cases or on weekends.

Some of the respondents indicated that it is advisable that the lawyers providing State-guaranteed legal assistance would specialise. For example, special competence is needed when providing services in certain categories of cases, or to certain, more socially vulnerable persons (e.g. children, people with mental disabilities, etc.). The opinion of the respondents on how this specialization should be implemented is different. Some pointed out that lawyers working on such categories of cases could have to fulfil specific requirements and that such cases should be assigned to lawyers with relevant expertise and experience. Others took the position that it was not appropriate to establish special binding requirements: specialization should be left to the choice of lawyers themselves and could be ensured through special training, etc. Thirdly, respondents mentioned that a list of lawyers according to their specialization could be drawn up and, in the first place, a particular category case (or client) would be offered to lawyers by specialization. It was also argued that it would be advisable to provide certain social mediation services (referral to social and/or psychological care institutions and/or organizations) to State-guaranteed aid lawyers working with vulnerable persons or victims of crime.

Summarising the results of interviews with police officers, it should be noted that Lithuanian police officers are positive about the quality of work of lawyers providing State-guaranteed legal aid. According to respondents, State-guaranteed legal aid lawyers in most cases have sufficient competence. Police officers have indicated that lawyers discuss legal defence strategy with the client privately. As a result, officials do not see lawyers in action. Therefore, it is difficult for them to assess the quality of work of lawyers. Like judges and

prosecutors, police officers emphasized that lawyers providing State-guaranteed aid do not lack theoretical knowledge or practical experience. Comparing the State-guaranteed legal aid lawyers with lawyers who defend the suspects on the basis of private contracts, respondents noted that private lawyers are more active, for example, they more often complain about procedural actions, raise more requirements, and so on. In the respondents' opinion, this is due to the increased financial motivation of a private lawyer. Police officers also noted that State-guaranteed legal aid lawyers are less disturbing to them than some private lawyers who often complain about the actions of officials (not always substantiated), which makes their work more difficult. This allows assuming that State-guaranteed legal assistance lawyers are "more comfortable" for officers, making their work less demanding. On the other hand, this indicates the passivity of a certain State-guaranteed legal assistance lawyers in defending the interests of the client.

Lithuanian police officers have acknowledged that they do not have a clear opinion concerning the need for quality standards for lawyers who provide legal aid. Respondents do not see problems with the quality of lawyers' work, therefore they doubt whether additional standards would be needed.

In a survey conducted **in Germany**, judges and prosecutors emphasized that they did not see a big difference between lawyers providing State-guaranteed legal aid and private lawyers. It has been noted, firstly, that this is most likely due to the fact that lawyers appointed by the court are often young and motivated, and therefore they are making great efforts as the quality of their work is the basis for their future career (whilst more experienced lawyers are more "enthused" and accordingly less motivated). Secondly, in Germany, the suspect (accused) can choose any lawyer appointed by the court, so in the same district the same lawyer works both privately and on the basis of court appointment, and this does not negatively affect the quality of work.

Similarly, as in the case of Lithuania, respondents noted that State-guaranteed assistance lawyers are competent enough. In their opinion, the quality of lawyers' work depends on the responsibility and motivation of the particular lawyer. Respondents indicated that some lawyers appointed by the court were not motivated due to lack of financial motivation.

Most respondents noted that the legal aid system works well and that it is not expedient to improve it. One respondent highlighted that salary could be increased for lawyers appointed by the court.

Respondents indicated that the key criteria for assessing legal aid to lawyers are common criteria such as practical experience and good knowledge of material and procedural law. One respondent added that the quality of lawyers' work could be assessed through surveys of judges and prosecutors.

The judges and prosecutors consider the following to be the most significant violations of legal aid lawyers:

- advise the client to make a confession to save time;
- insufficient preparation;
- incompetence;
- lack of motivation;

- non-observance of the time limit;
- no or bad communication with the client.

Respondents believe that special knowledge of working with certain categories of cases or individuals is not important for the quality of the lawyers' work - the most important task for lawyers is to ensure the proper defence of the client. To achieve this, it is most important to have sufficient general legal knowledge, familiarity with the case material and motivation.

When assessing the need for quality standards for lawyers providing legal aid, respondents noted that such an instrument would not be appropriate. The reasons for this were:

- The judge has the opportunity to choose an advisor himself, and therefore the problem of poor quality legal assistance solves in itself - lawyers working insufficiently well are no longer appointed.
- There should be no distinction between the quality of the performance of legal aid lawyers and the work of private lawyers since in the criminal procedure law their role in ensuring the protection of the suspect or accused are the same. The court-appointed counsel must have the same duties as a privately hired counsel, this is standard already.
- The requirements for admission to the bar are already high.
- The standards (requirements) given by judges are sufficient. Investigating judges and judges in court hearings ensure that the counsel being appointed is competent in a technical and personal way.
- The right of the suspect to choose his or her counsel on his or her own should stay, so he or she is responsible for the choice.

During the interviews with **the Dutch** stakeholders (judges, probation officers), the following aspects of the quality of legal assistance provided by lawyers were highlighted.

According to the opinion of stakeholders there are differences in the quality of legal aid provided by lawyers; it depends on an individual case. In general, the quality of legal aid is assessed as sufficient. No difference is observed between lawyers working in legal aid (on basis of certificates) and private lawyers. In general, lawyers are motivated and devoted to serving their clients within their possibilities and attention is paid to vulnerable defendants.

The Dutch Stakeholders have identified these key characteristics of a "bad" legal aid lawyer:

- Sometimes it occurs in court that the lawyer never spoke with the client in person or did so just shortly before appearing in court.
- There are some lawyers with insufficient knowledge of procedural law or a lack of basic legal knowledge.
- Some (senior/old school) lawyers are rusted in their actions and behaviour.
- Insufficient file knowledge.
- Rushing through a case to cash in as soon as possible.
- A lack of dedication to the case and client.

The following characteristics of the "good" legal aid lawyer were identified:

- Lawyers excelling in their efforts. For example, getting in touch with the client (or victim) and show their involvement by sending flowers to the victim, or arranging practical assistance, etc.
- Persistence. Putting a maximum effort in the plea using all available legal tools.
- Commitment. To serve the interest of its client.
- Knowledge. Up-to-date legal and procedural knowledge.
- Efficient. The plea must be effective, no extensively repeating of facts and descriptions from the case file the court already knows. That can be counterproductive and might irritate the court and other professionals involved.
- Good judgment. Knowing the boundaries of pushing and demanding. Not making unreasonable demands or unrealistic requests. For instance: if it is clear the client will be condemned, do not a seek an acquittal but try to steer towards parole and aftercare.
- Sensitivity. The realization that there is a shared interest. How the client is served best. Nonaggressive and respectful communication with other professionals (as shown in the recent experiences in the Dutch ZSM procedure, the communication between the different parties is improved).
- Attitude. Awareness of the setting and other involved professionals.
- Motivation and making an effort.

The Dutch stakeholders identified the following areas of State-guaranteed assistance to be improved:

- Lawyers do not often receive or ask for feedback on their performance. Also, there is a lack of intervention. It seems the lawyers and their professional organization are less interested in feedback than the public prosecutors and judges. Preferably this should be arranged through regular feedback meetings and/or peer review.
- There is a lack of correction mechanisms. It is not clear yet how indicators or feedback regarding performance can be organized and shared with lawyers.

The Dutch Police interview revealed that suspects are assisted by lawyers who are scheduled by the Legal Aid Duty Lawyers service. Some suspects ask for their own private lawyer. This concern relatively often suspects in fraud or environment cases, recidivists and in cases of white-collar crime. They rarely use legal aid lawyers. According to the *Salduz* jurisprudence interrogation is not allowed to start unless a suspect spoke to his scheduled or chosen lawyer (consultation assistance). This can also be done by telephone provided that the suspect agrees.

Regarding consultation assistance, the ratio between legal aid lawyers and preferred lawyers is 70% against 30%. Assistance during interrogation is continued by the same lawyer. Change after the consultation phase occurs very rarely.

By accepting a call a lawyer is committed to showing up within 2 hours. This term is exceeded very often/ almost always. According to the police officers, this term is ‘a laughing matter’. This, however, is very frustrating for the police officers involved, because

they cannot start with their investigation. According to Dutch criminal law, suspects are allowed to be kept in custody up to 9 hours for the further investigation. The quick settlement (ZSM ) procedure which was introduced some years ago is according to the police officers not always working in favor of the suspects. Sometimes it occurs that suspects have to stay in custody longer than they used to before Salduz. This is in particular problematic for first offender juvenile suspects and other vulnerable suspects, having to spend a night in jail.

Main shortcomings in the legal assistance of suspects by lawyers (according to the police officers' opinion):

- The tightness of the lawyer's schedules: some lawyers taking more cases than they can handle; suspect who have to wait unnecessarily long because of this.
- No back-up to replace a lawyer who is not able to provide assistance in due time; some lawyers prefer to let their client wait instead of asking a colleague for help and losing money. Because of the low average compensation per case, each case is important to a lawyer. Therefore, some lawyers (deliberately) overestimate their own capacity. This is no exception. According to some police officers, some lawyers are more interested in the money rather than in their clients.
- Some lawyers promise to visit the client especially in the weekend and eventually not show up. This is most often the case when a solitary working lawyer is involved in a case. Some lawyers take this too easy, hereby not acting in the best interest of their clients
- Attitude and performance of some lawyers: nonverbal communication between a lawyer and his client during the investigation which is not permitted; some lawyers frustrating the process during interrogation. This occurs very rarely, but when a lawyer does so frequently he will be removed from the duty schedule.
- In case of a mental illness, suspects are interrogated by special police officers. It sometimes takes more time than necessary before a suitable lawyer is provided by the scheduled duty.

The police officers appreciate the good relationship and direct communication with the Legal Aid Board. According to the police officers, most lawyers have sufficient legal knowledge. They emphasize that the condition for lawyers working within the duty schedule of the legal aid system should comply with strict requirements and conditions not only on legal skills but also concerning attitude, behaviour, and integrity. Variation in lawyers' services is mainly caused by the difference in attitude; the way they approach their clients and police officers. It is important for a lawyer to have a broad view, also looking from the perspective of their clients or other professionals.

### **2.3 Results of interviews with lawyers**

**In Germany**, the lawyers gave their opinion on the quality of the work of the appointed lawyers. They noted that the quality of the work of these lawyers varies considerably depending

on individual cases. Interestingly, unlike the aforementioned opinion of judges and prosecutors, some lawyers have emphasized that the quality of State-guaranteed assistance is low in most cases, only a minority is doing its job well. Respondents emphasized that some lawyers did not represent their clients properly to satisfy the judges. In this regard, it was mentioned that judges do not always appoint lawyers according to their competence or experience. Sometimes a lawyer is appointed that is more pleasing to the judge. During the interview, it was also mentioned that there are many judges who nominate lawyers who avoid a conflict defence strategy, even if such a strategy would be better for the client. In general, the court appoints a counsel who is less confrontational, only upon request a confrontational lawyer is appointed in some cases.

According to respondents, court-appointed counsels tend to be more passive compared to private lawyers. They are more passive not only in the main hearing but also in preparation for the criminal proceedings and main hearing; a court-appointed counsel spends less time and resources on the particular mandate, he or she may also read the documents less intensely; they almost never investigate on their own; it is also very rare the court-appointed counsel to make a statement in the main hearing (as provided for in § 257, section 2, CCP). This way of acting passively leads to a lack of quality and the perception of the court, that defence plays a minor role in the process, which de-emphasizes the position of the accused

When discussing the motivation of lawyers appointed by the courts, respondents noted that many lawyers are less motivated because the economic enticement is lower than in cases of private defence; but there are some court-appointed advisers who do it for idealistic reasons and this intrinsic motive leads to a very high motivation. The motivation is not high enough, in general, to properly represent the client's interest. First of all, this is due to low fees, which does not allow investing too much time in the mandate; secondly, in the cases in which the client does not choose his or her counsel, but the court makes the decision, the motivation is lacking on a conscious choice of the client (which motivates a lawyer); the counsel has no need to show that the client made the right decision by choosing him or her.

When discussing the competence of lawyers appointed by the courts, respondents noted that there is no difference in the competence of private counsels and court-appointed counsels. The competence does especially not lack on a requirement of a specialisation as a criminal lawyer (as this is proposed by some people). Career beginners should also not be excluded (as in Germany it is a requirement for the specialization to have been practicing a particular time) and they are typically very motivated and this is what makes good quality. Respondents indicated that the competence does not depend on being a private or a court-appointed counsel, but on factors like commitment and experience. The base for competence is a good education and all lawyers have this qualification in Germany. There is the problem with counsels who mainly work by being appointed by a court and not by private mandates that they are less interested in further training and spend less time and money on that. It was also noted that the competence lacks on specialization and experience sometimes.

German respondents (lawyers) identified the following areas of State-guaranteed assistance to be improved:

- assistance by a lawyer should be mandatory in all kind of cases;
- the remuneration should be adequate (higher);

- the choice of the suspect should be made easier by providing the CV of defence counsels who want to be appointed (maybe there should be a social network providing all the information for the choice);
- advanced training should be compulsory for all counsels who want to be appointed in the following fields: legislative changes in the Code of Criminal Procedure, consequences in foreigners' law, strategies to avoid custody, questions of appointing expert witnesses in court hearings;
- the suspect should have the possibility to change the court-appointed lawyer (legislative changes in the law of mandatory defence and in remuneration law);
- the possibility to be appointed as a counsel by a court should require the verification of advanced training;
- an appointment of the counsel should be made by the criminal defence lawyers association or by the Bar and not by a judge;
- some of respondents suggested that the appointment should depend on 3 years of working experience/on the specialization on criminal defence/on being a bar-certified lawyer.

Qualitative criteria for evaluation of legal aid lawyers suggested by respondents (German lawyers):

- satisfaction of the client;
- motivation and knowledge of the documents, showing understanding for the client;
- relationship and contact with the client (for example, meeting with the client);
- does the counsel exploit the full potentialities contained in the Code of Criminal Procedure? (cast, limitation, jurisdiction, remedies, right to have evidence)
- the only criterion that is measurable in an objective way is the legal expertise of the counsel; all other criteria trying to measure the quality of the defence strategy are not objective ones; what makes a „good lawyer“ in the particular case is highly subjective;
- the outcome of the proceeding matters;
- experience and continuing training, specialization.

Respondents (lawyers) indicated the following lawyer's fundamental violations providing legal aid:

- breaching the confidentiality;
- not being prepared adequately;
- acting against the wishes of the client or not informing about the wishes of the client;
- no inspection of records;
- not visiting the client in custody;
- not being in touch with the client;
- no information about the content of the documents;
- no preliminary discussion;

- no interpreter despite the client having language problems;
- no or wrong legal review;
- not or wrongly finding out the factual assessment, e.g. by not or wrongly receiving the content of the documents or not making use of a possibility to investigate as interrogating the client;
- not paying attention to conflicts of interest;
- trying to fulfil not only the requests of the client but also the requests of the court/third parties;
- no experience in criminal law;
- never been working as a defence lawyer before;
- underestimating the duties of a defence lawyer only because it is a small case/a lower court, e.g. civil lawyers who feel competent to appear in local courts in criminal matters.

According to the majority of respondents (German lawyers), there is no need to establish further requirements besides the admission to the Bar Association, because the requirements cannot be objectified as they have to orient on the subjective interests of the client. It was also noted during the interviews that an internal monitoring by the person who appoints the counsel would be better. If the counsel was appointed by the Bar Association, they could monitor the quality; further trainings should be compulsory; there could be a short questionnaire where the number of visits/reviews, motions, remedies and special features like site visits are noted; counsels should be obliged to do further trainings regularly.

The lawyers who participated in the survey **in Lithuania** emphasized that, in their opinion, most of the lawyers providing State-guaranteed legal aid had a high level of qualification but assessed the services they provided on a fairly moderate scale, especially compared with the work of private lawyers. Respondents emphasized that lower quality of State-guaranteed legal aid services is determined by several factors. In particular, it was emphasized that the existing State-guaranteed assistance system does not provide the right conditions for providing high-quality legal aid: the remuneration of lawyers in comparison with private lawyers' fees is very low. First of all, it determines the motivation of lawyers, and secondly, lawyers providing State-guaranteed legal aid, due to a low hourly remuneration focuses on the number of cases, so there is not enough time to go into the individual case. Lawyers try to ensure that the assistance provided meets the minimum formal requirements. They pointed out that the remuneration calculation system is not flexible, for example, there are time limits for performing certain actions and exceeding the time rate, the remuneration is not paid; only a very limited amount of time is spent on certain actions (such as preparing for a hearing). It has also been noted that certain actions in preparation for a case, such as researches into case law, etc. are not, in general, remunerated. As a result, lawyers often choose easy, less time-consuming cases. Accordingly, they avoid working on complex (difficult) cases.

Lawyers emphasized that very important quality factor of the lawyer's legal defence in criminal proceedings is the relationship between the client and the lawyer and their mutual trust. A State-guaranteed legal aid system does not make it possible for a lawyer to gain access

to a client's trust. As respondents have noticed, lawyers are often called up promptly and get acquainted with the client only immediately before the execution of the procedural steps (especially at the pre-trial stage). All this leads to the fact that due to objective reasons such as lack of time, high workload, lack of trust in the relationship with the client, lawyers in many cases simply cannot ensure the high quality of State-guaranteed legal aid. In contrast, private lawyers have much more time to do with establishing a relationship with the client, as well as deeper inquiries, preparatory actions, court hearings, etc. Some respondents also indicated that State-guaranteed legal aid is often provided in cases where it is not necessary. It differs from that of private lawyers, where the need for legal services is assessed in each case.

Most respondents (lawyers) noted that there is no need to determine the additional quality standards for lawyers who provide State-guaranteed assistance. First, according to the lawyers, the current requirements for lawyers are very high, the lawyer's activity is supervised by the Bar Council (responding to clients' complaints, applying disciplinary liability). Secondly, even with the development of quality standards and a special assessment system it is difficult to answer who will have to make such an assessment (according to the lawyers, taking into account the principle of the independence of the Bar Association, such a function could only be performed by the Bar Association). Defence success in each case is individual and depends not only on the lawyer, but also on the client. Otherwise, only certain ethical violations, such as negligence, failure to perform the lawyer's duties, acting contrary to the client's interests, inappropriate behaviour, etc. could be assessed. Thirdly, conditions for providing high-quality legal assistance services should be created, such as the establishment of a remuneration system that would both have higher service fees and would allow lawyers to spend enough of time going deeper into the case and building a relationship of trust with the client. Some respondents indicated that it might be appropriate to establish a remuneration differentiation according to the complexity of the case. It was also noted that it would be advisable to provide more opportunities for the client to choose a lawyer. This would partially solve the problem of quality, as customers would choose well-working lawyers.

## **2.4 Suggestions for trainings**

The survey revealed that both stakeholders and lawyers lack knowledge of quality standards (their purpose, content, and application possibilities). It is, therefore, appropriate to provide training on the quality standards of legal assistance, their benefits, the impact on the quality of legal assistance, etc.

Lawyers' interviews in Lithuania revealed that lawyers lack training on the peculiarities of legal defence in criminal cases, such as the selection and creation of a defence strategy, communication with the client, and acquisition of trust with the client. The importance of communicating with the client's knowledge and skills is also illustrated by the results of a customer survey, which revealed clear customer expectations related to the aspects of lawyer's communication, attentiveness, relationship with the client. In this context, it would be advisable to organize training about communication with the client.

As the study also revealed certain organizational and collaborative problems, it would be advisable to organize training courses for communicating, coordinating and developing skills

especially in dealing with emergency situations (for example, when is the lack of available lawyers during weekends etc.).

**2.5 Table: needs and expectations of different target groups**

<b>The category of respondents</b>	<b>Needs and expectations</b>	<b>Fulfilment</b>
Beneficiaries	<p>Good communication;            Availability;            Attention;            Sufficient time given for the client;            Active defence of client's interests;            Information about legal aid procedures (e. g. information about possibility to complain).</p>	<p>By presenting positive relations with lawyers providing State-guaranteed legal assistance, in all Project partner countries clients distinguish such aspects as pleasant communication, attention, assistance, availability of lawyer, allocation of their time for providing detailed information, etc. The clients are, however, disappointed with the characteristics of the lawyers, such as lack of attention, passivity, lack of legal representation (document collection, representation during hearings or investigations, lack of contact with the client, minimal contribution by the lawyer (performance according to minimum requirements only), failure to provide information, etc.</p> <p>Objective factors leading to such criticism:</p> <ul style="list-style-type: none"> <li>• Due to the relatively low remuneration, lawyers focus on the quantity of cases. As a result clients' needs and interests are affected - a lawyer may not spend a lot of time on the client.</li> <li>• The current system does not make it possible to spend enough of time preparing for a case, or allowing more time to meet with the client.</li> <li>• Subjective factors of the problem:</li> <li>• Some lawyers formal attitude, low motivation;</li> <li>• Old age, long careers; one-man offices taking all types of cases;</li> <li>• Lack of communication skills.</li> </ul>
Stakeholders (judges, prosecutors, police officers)	<p>High qualification and competence of lawyers;            Personal motivation related characteristics (e. g. persistence,</p>	<p>The competence of lawyers is assessed as sufficient (mostly due to high requirements established by national Bar associations and, in case of the Netherlands, the Legal Aid Board).</p> <p>According to respondents in all partner countries, the lack of motivation is a key issue that affects the</p>

	<p>commitment, honesty, sensitivity, making an effort, dedication to a client); No disturbance to the process.</p>	<p>quality of legal aid services provided by lawyers. Motivation can be divided into internal (personal) motivation and financial motivation. Concerning internal (personal) motivation respondents noted that part of the lawyers lack internal motivation, but this problem is not specific to State-guaranteed legal aid lawyers; it is common to all lawyers, as well as to other professionals (prosecutors, judges, etc.). Internal motivation (internal determination to work qualitatively) is individual in each case. Lawyers that are seeking for a career improvements, good reputation, in any case, make efforts to provide high-quality services. Regarding financial motivation, a significant number of respondents mentioned that compared to private lawyers, fees for State-guaranteed legal aid are too small. Firstly, for a considerable part of lawyers there is a lower motivation to provide high-quality services; secondly, the best lawyers can choose not to provide State-guaranteed legal aid because of low earnings; thirdly, the lawyers focus on the quantity of work, the quantity increase the income, however then the quality of the services suffers. It has also been noted in this regard (by Lithuanian respondents) that remuneration does not depend on the complexity of a case, and therefore lawyers often refuse to provide services in more complex cases (both legal and human, for example, when clients have problematic behaviour, etc.).</p>
	<p>Availability</p>	<p>The organization of legal aid, in general, were assessed positively in all project partner countries. Lithuanian and Dutch respondents (stakeholders) noted that in situations of emergency there are some issues finding a lawyer, for example, there is sometimes a lack of available lawyers at weekends or in periods of high employment of legal aid lawyers.</p>
	<p>Feedback, supervision and monitoring</p>	<p>The Dutch stakeholders indicated the need for feedback. Lawyers do not often receive or ask for feedback on their performance. It seems the lawyers and their professional organization are less</p>

	Specialization	<p>interested in feedback then the public prosecutors and judges. Preferably this should be arranged through regular feedback meetings and/or peer review. There is a lack of correction mechanisms and there is hardly any complaint from the side of stakeholders. It is not clear yet how indicators or feedback regarding performance can be organized and shared with lawyers.</p> <p>The need for supervision and control instruments was also indicated by some Lithuanian stakeholders (judges and prosecutors). It was emphasized that State-guaranteed legal aid is a public function whose supervision must be different from that of private services. This could be done by organizing periodic lawyers' assessments (e. g. attestations), collecting feedback from clients and stakeholders etc.</p> <p>Some of the respondents indicated that it would be advisable to specialize lawyers providing State-guaranteed legal assistance, for example, special competence is needed for the provision of services in certain categories of cases, or to certain, more socially vulnerable persons (e. g. children, people with mental disabilities, etc.). The opinion of the respondents on how this specialization should be implemented is different. In the Netherlands, for example, the Legal Aid Board formulated special requirements for juvenile lawyers. Some pointed out that lawyers working with such categories of cases should have to fulfil specific requirements and that such cases should be assigned to lawyers with relevant expertise and experience. Others took the position that it was not appropriate to establish special binding requirements: specialization should be left to the choice of lawyers themselves and could be ensured through special training, etc. Thirdly respondents mentioned that a list of lawyers according to their specialization could be drawn up and, in the first place, a particular category case (or client) would be offered to lawyers by specialization. It was also argued that it would be advisable to provide certain social</p>
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		mediation skills (referral to social and/or psychological care institutions and/or organizations) to State-guaranteed aid lawyers working with vulnerable persons or victims of violence.
Lawyers	<p>Higher remuneration; More flexible system of remuneration (considering the time needed for the preparation of the case, for meetings with client etc.); Less bureaucratic (formal) procedures.</p> <p>Relationship and contact with the client</p>	<p>The remuneration is lower compared with privately paid lawyers. In Lithuania, the remuneration does not depend on the complexity of the case, or the time needed for preparation. In the Netherlands, lawyers can request for extra payment in complex cases and they often do. Some of the Lithuanian respondents indicated that it might be appropriate to establish a remuneration differentiation according to the complexity of the case. In existing system, the lawyer is chosen by State-guaranteed legal aid coordinator, there are not many possibilities to choose the lawyer for the client. Lithuanian lawyers noted that, in their opinion, there are a number of formal procedures that take a lot of time, such as filling in various documents.</p> <p>Respondents (lawyers) emphasized that an important quality factor of the lawyer's legal defence in criminal proceedings is the relationship between the client and the lawyer and their mutual trust. Lithuanian lawyers noted that a State-guaranteed legal aid system does not make it possible for a client to gain client's trust. Lawyers are often called up promptly and get acquainted with the client only immediately before the execution of the procedural steps (especially at the pre-trial stage). All this leads to the fact that due to objective reasons such as lack of time, high workload, lack of trust in the relationship with the client, lawyers in many cases simply cannot ensure the high quality of State-guaranteed legal aid. In contrast, private lawyers have much more time for establishing a relationship with a client, as well as for performing deeper inquiries, preparatory actions, court hearings, etc. Some respondents also indicated that State-guaranteed legal aid is often provided in cases where it is not necessary. It</p>



### 3. Assessment of the needs and expectations of different target groups: analysis of consideration of complaints. Activity 1.1.1

#### Complaints in Lithuania<sup>1</sup>

State Guaranteed Legal Aid Service (“SGLAS”) collects and processes complaints regarding legal aid quality. Relevant aspects of 61 complaints were analysed and are provided in tables below.

<b>Ground for complain</b>	<b>Number of complaints</b>	<b>% of all complaints</b>
<b>Complaints for ‘do-nothing’ lawyer (i.e. lawyer refuses to meet, does not take active actions to defend a beneficiary)</b>	30	49,18%
<b>Complaints for work quality (i.e. faulty documents, poor representation in court, low legal competence)</b>	12	19,67%
<b>Complaints for disrespectful communication and behaviour</b>	8	13,11%
<b>Lawyer refuses to represent a client because of heavy workload</b>	7	11,48%
<b>Complaints because lawyer demands payment</b>	4	6,56%
<b>Physical obstacles (i.e. lawyer works or case will be heard in different town)</b>	3	4,92%

Other mentioned grounds: lawyer believes there is no legal ground for a claim (2 cases), lawyer has different opinion regarding strategy of the case (2 cases), lawyer acts against the best interest of client (i.e. collaborates with procurement office) – 2 complaints. In several complaints, more than 1 ground was mentioned. However, it might be concluded that additional arguments were introduced only to support primary issue.

<b>Requested remedy</b>	<b>Number of complaints</b>	<b>% of all complaints</b>
<b>Replacement of a lawyer</b>	47	77,05%
<b>Apply disciplinary responsibility</b>	10	16,39%
<b>Remedy not specified</b>	2	3,28%

<sup>1</sup> This section provides an analysis of complaints in Lithuania and Germany. National authorities in the Netherlands were not able to grant access to the desired information nationwide. The Legal Aid Board is collecting information from 11 local Bar Associations. The report will be updated by analysis of these data.

Other required remedies: to discontinue representation (1 case), to oblige to prepare legal documents (1 case).

Several conclusions might be drawn. First of all, in Lithuania the most common ground for the complaints submitted as to legal aid is too passive lawyers. Almost 50% of analysed complaints include this issue. Beneficiaries complain that appointed lawyer systematically avoids meeting with a beneficiary. Also, does not take active actions while representing a beneficiary (does not file a complaint to a court, does not prepare legal documents etc.). Second most frequent ground is regarding work quality of an appointed lawyer. Beneficiaries complain that prepared documents were faulty, lawyer has no expertise in a matter. Third most frequent ground considers lawyer's behaviour. Beneficiaries complain that lawyer is disrespectful or even offensive.

Reasons and means to counter aforementioned issues will be analysed in other parts of this research.

### **Complaints in Germany**

§ 143 CCP says: „*The appointment shall be revoked, if another defence counsel is soon to be chosen and such counsel accepts the mandate.*” This rule meets the needs of Art. 6 sec. 3 lit. c ECHR stating that the suspect has the right to be defended by a defence counsel he or she has chosen by his or her own.

This also leads to the consequence that a court appointed defence counsel can be revoked by the court, at least if there is an important reason. Some academics think that an important reason is not even necessary in order to protect the right to choose your own defence counsel; the jurisdiction tends to demand an important reason, but is liberal in regard to when an important reason applies. This can especially be a disturbed confidential relationship between the accused and the defence counsel, but for the recent jurisprudence it is enough when all parties confirm to the change of the defence counsel and neither a delay of the proceeding nor extra costs arise by the change regardless of an important reason.

If the court does not revoke the defence counsel when the accused demands that, the accused can make use of the appeal procedure intending to undo the choice of the defence counsel, except a higher regional court (*Oberlandesgericht*) made the decision. The accused can also lodge an appeal in order to set aside the whole judgement of a process the accused has been defended by a court appointed counsel in.

In Germany 11 cases of court decisions concerning complaints of legal aid quality were analysed. Relevant aspects are provided in in tables below.

<b>Ground for complaint</b>	<b>Number of complaints</b>	<b>% of all complaints</b>
<b>Complaints for ‘do-nothing’ lawyer (i.e. lawyer refuses to meet, does not take active actions to defend a beneficiary)</b>	1	9,09%

<b>Beneficiary had no chance to choose a defence lawyer by his own</b>	3	27,27%
<b>The accused wanted another defence lawyer and all parties confirmed</b>	4	36,36%
<b>Beneficiary chose another defence lawyer himself</b>	1	9,09%
<b>Complaints because lawyer acts against the best interest of client (i.e. collaborates with procurement office)</b>	1	9,09%
<b>Complaints for double representation</b>	1	9,09%

	<b>Number of complaints</b>	<b>% of all complaints</b>
<b>Requested remedy</b>		
<b>Replacement of a lawyer</b>	9	81,825%
<b>Aside the judgement</b>	1	9,09%
<b>Terminate second representative</b>	1	9,09%

In all analysed judgements courts satisfied a beneficiary's request.