

THE LEGAL PROFESSION IN HUNGARY

by Márta Pardavi

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1. The basic organization and structure of the legal profession

Act XI of 1998 on attorneys at law¹ (“Attorneys Act”) governs the organization and structure of the legal profession in Hungary, which is organized into bar associations.

The bar association is a public body and is completely independent of the State. Public bodies are self-governing entities established by an Act of Parliament with registered membership.² Public bodies perform a public function related to their membership and their activities. Public bodies have legal personality.

The bar association’s primary duty and purpose is to maintain a public register of attorneys, to govern them based on the principle of self-government and engage in performing professional duties and representation.³ The Bar organises attorneys’ continuous professional development, carries out disciplinary functions through its self-elected bodies, represents attorneys and their interests in various public fora and plays an active role in the training of future attorneys. The bar also makes decisions concerning the initiation and termination of attorneys’ membership in the bar association.

The Hungarian bar is composed of a national association (the Hungarian Bar Association⁴) and regional bar associations⁵. The Hungarian Bar Association operates as the national body of attorneys and its members are the regional bar associations. The regional bar association is also a public body, which has a representative and administrative apparatus and an independent budget; within its operational area, it fulfils the duties assigned to its jurisdiction. The membership of the regional bar associations consists of all attorneys at law practicing within the territorial competence of the given association. The operational areas of the regional bar associations are the same as the jurisdictions of the Budapest Metropolitan Court and the county courts. Regional bar associations are located in Budapest⁶ and in the 19 counties of Hungary⁷.

¹ <http://www.magyarugyvedikamara.hu/index.php?content=0> (in Hungarian), <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=99800011.tv&dbnum=62> (in English)

² Article 65 of Act IV of 1959 on the Civil Code

³ Article 12 of the Attorneys Act

⁴ Chapter XIII of the Attorneys Act. Website: <http://www.magyarugyvedikamara.hu>

⁵ Chapter XII of the Attorneys Act

⁶ Budapest Bar Association: <http://www.bpugyvedikamara.hu/>

⁷ List of county bar associations and their contact information:

<http://www.magyarugyvedikamara.hu/?content=7x>

1.1. Members of the bar association

1.1.1. Types of legal professional registered by bar associations

Attorneys must be members of a bar association to provide legal services.⁸

There are four types of legal professionals in Hungary who must register as members of a bar association: attorneys, associate attorneys, European Community jurists and foreign legal counsels.

1. Attorneys: Attorneys may proceed before any court or authority of the Republic of Hungary and may provide legal representation for their clients in any matter.⁹

An attorney

- a) represents his client,
- b) provides the defence in criminal cases,
- c) provides legal counsel,
- d) prepares contracts, petitions and other documents,
- e) holds valuables deposited with him in connection with the activities stipulated in a)-d),

Only attorneys are entitled to regularly provide these services in return for fees.

In addition to the services listed above, attorneys may also provide certain services that are not exclusively limited to attorneys, such as tax and social security consultancy, financial and other commercial consultancy, real estate agency, patent agency, mediator activities in mediation proceedings and in criminal cases, arbitration in and counselling related to public procurement procedures, lobbying and provision of corporate headquarters (headquarters services).

2. Associate attorneys: attorneys who practice law on the basis of employment by an attorney or law firm. An associate attorney may not handle matters independently; he may participate in such cases only within the attorney's scope of liability and under the authority or the supervision of the attorney.¹⁰
3. *European Community jurists*: persons with the right of free movement and residence who are authorized to practice law in any Member State of the European Economic Area under any of the professional designations stipulated

⁸ § 13 (1) of the Attorneys Act

⁹ § 2 of the Attorneys Act attorney who practices law on the basis of an employment relation created with an attorney or law firm. An assistant attorney may not handle the matters specified in Subsections (1) and (3) of Section 5 independently; he may participate in such cases only within the attorney's scope of liability and under the authority or the control of the attorney.

¹⁰ Chapter VIII of the Attorneys Act

in specific other legislation.¹¹ European Community jurists may pursue any of the legal activities set out for attorneys, but in cases where legal representation is mandatory, a European Community jurist may only provide such representation if he has concluded a collaboration contract with an attorney or law firm for this purpose.

4. *Foreign legal counsels*: persons who are engaged in providing legal advice concerning the law in the country in which they are a registered attorney, international law, and legal practice in connection with these, on the basis of a collaboration contract concluded with a Hungarian attorney or law firm.

Trainee attorneys are also registered with a bar association (see below under 2.1.).

1.1.2. Membership numbers and ratio to population

Currently a total of about 10,000 attorneys are members of the 20 regional bar associations in Hungary. This means that there is 1 attorney for about 1000 persons living in Hungary.¹²

The Budapest Bar Association is by far the largest regional bar association with about 5,500 members (about 60 percent of all attorneys in Hungary), hence there is one attorney for each 310 Budapest residents¹³. In contrast, the Szeged Bar Association has about 520 members, which equals to 1 attorney for each 815 residents in that county. The Debrecen Bar Association, which also covers Hungary's second largest city, only has about 400 members, hence there is one member of the regional bar association for each 1,360 county resident.

1.1.3. Forms of legal practice

Attorneys may establish a legal practice as a solo attorney or as a law firm, which can be established to practice law by a single or several attorneys. Law firms have legal personality and are not subject to company law as they are *sui generis* legal entities established under the Attorneys Act.¹⁴

Most attorneys in Hungary practice as solo attorneys or in small law firms. In recent years however, particularly in Budapest, the number of larger domestic law firms having 20-30 or even more members has increased. Many large international law firms

¹¹ Chapter IX of the Attorneys Act

¹² In July 2008, the Central Statistical Office estimated the total Hungarian population at 10,035,000 persons.

¹³ The population of Budapest is roughly 1,702,000 persons in 2008.

¹⁴ Chapter VII of the Attorneys Act

are also present on the Hungarian legal services market since the early 90's. These larger firms generally work for the corporate sector.

2. Admission to the legal profession

In Hungary, prospective attorneys have to pass two distinct steps to practice law. First, after having obtained a law degree in one of Hungary's seven university law faculties and completion of a traineeship, candidates have to pass the state legal examination (bar examination). Second, one must request admission to the bar to become a member of a bar association eligible for practicing law.

2.1. The traineeship

The main preconditions for persons holding a law degree and wishing to apply to take the bar exam is the completion of at least 3 years of legal traineeship.

The minimum three years of traineeship have to be spent in full-time employment requiring a law degree. This in practice generally means clerkship in a court or prosecutor's office, being a trainee attorney or trainee public notary, legal advisor or any other legal position not specifically mentioned in the law. Hence, positions entailing legal tasks that are performed by civil servants, employees of a company or non-governmental organisations are also eligible. In these cases, the legal advisor's supervisor must also hold a bar examination and he/she will perform the necessary day-to-day legal instruction of the advisor.

The traineeship must be completed in Hungary. However, full-time employment in a legal position at international organisations to which Hungary is a party can also count as a traineeship (e.g. legal jobs at the European Union institutions, UN, NATO, etc.).

The three-years time limit is quite strict, but enrolment in PhD-level legal studies can count for up to 12 months of this period.

For trainee attorneys, finding a traineeship outside of Budapest, where there are fewer attorneys, can sometimes be problematic if they cannot rely on informal personal links to secure a place with an attorney or law firm. It is often heard that many trainees receive not more than the minimum wage¹⁵, making it difficult to meet the costs of living.

2.2. The state legal examination (bar examination)

¹⁵ The minimum monthly wage in 2008 is 69,000 HUF (265 EUR).

The rules on the bar examination are set forth in a decree issued by the Minister of Justice.¹⁶ The main purpose of the bar examination is the assessment of legal knowledge and skills in practice, and if successfully completed, it allows access to independent legal work performed in any area of law. The bar exam is a uniform examination and not specialised in Hungary.

The bar examination is centrally administered by the Bar Examination Committee of the Ministry of Justice and Law Enforcement, which is composed of both theoretical and practicing legal professionals.

Applicants for the bar examination have to present a notarised copy of their law degree and a certificate evidencing the completion of the three-years traineeship from their employer.

Regarding preparation for the bar exam, the Bar Examination Committee issues an information pack each year that also contains the main topics of the exam.¹⁷

The regional bar associations conduct organised preparatory courses for trainee attorneys, and courts and prosecutor's offices also organise internal trainings for clerks. Lawyers working in other legal areas are free to decide whether to take part in organised preparatory courses or prepare for the exam on their own.

The bar exam consists of three separate exams according to the following subject areas:

- civil law and family law, commercial law, civil procedure law,
- criminal law, criminal procedure law and penitentiary law,
- labour law and social security law, public administrative law, European Community law.

Applicants can select which exam they wish to take as a written exam (a 4-hour exam consisting of drafting a legal brief, decision or legal opinion), but they have to take oral exams before a 3-member panel of the Bar Examination Committee in all three areas.

The bar exam is administered in two periods each year (1 February – 15 June, 1 September – 15 December). Generally the full examination takes about a year considering the period of preparation needed for each exam.

The total minimum cost of the bar examination is 54,000 HUF (210 EUR) if the applicant succeeds in passing all three subjects for the first time (each subject area costs 18,000 HUF (70 EUR)). If the applicant fails, the exam in the particular subject area can be repeated, which costs 15-20,000 HUF (57-77 EUR) for each repeated examination.

¹⁶ Decree no. 5/1994. (IV. 4.) of the Minister of Justice on the state legal examination

¹⁷ Available at the website of the Bar Examination Committee of the Ministry of Justice and Law Enforcement: <http://irm.gov.hu/?mi=1&katid=315&id=57&cikkid=4671>

The maximum time period for passing the bar exam is 5 years, after which successful exams already taken expire and will have to be repeated.

In 2007, the Bar Examination Committee registered a total of 3,866 applications for the three subject areas of the bar exam and 3,948 applicants were invited to take the exams. Altogether 880 persons were successful in passing the bar examination in 2007.¹⁸

2.3. Admission to the bar

Once someone has successfully passed the bar examination, he/she can apply for bar association membership.

The Attorneys Act sets out the statutory conditions of becoming a member of a bar association¹⁹:

- a) Hungarian citizenship;
- b) Clear criminal record;
- c) Law degree;
- d) Successful bar exam;
- e) Liability insurance;
- f) Appropriate office for the purposes of running a law firm,
- g) Lack of exclusion grounds

The following persons are excluded from admission to the bar:

- a) any person who has a conflict of interest and has not terminated such conflict,
- b) any person who is subject to the force of an ancillary punishment banning him from public affairs or occupations requiring legal qualifications,
- c) any person whom a court has sentenced to prison for committing a wilful crime may not be admitted to the bar for ten years following completion of his sentence or termination of enforceability, nor may any person whose sentence has been suspended for a probationary period for three years following the end of probation,
- d) any person who has been disbarred, for ten years from the time the disbarment decision became final,
- e) any person who is under guardianship or conservatorship or, even without placement under guardianship, is incompetent,
- f) any person who, owing to his lifestyle or conduct, is unfit for the public trust necessary for practicing the legal profession.

Admission to the bar association consists of an application and taking an oath.

¹⁸ Information provided by the Secretariat of the Bar Examination Committee.

¹⁹ § 13 of the Attorneys Act

The Hungarian Bar Association in its internal regulations has set the general procedure for admission to a bar association.²⁰ Each regional bar association may decide to establish an admissions committee to examine applications for membership.

The application for membership has to contain copies of the law degree, the certificate of the bar examination, the articles of association of the law firm, the documents relating to the attorney's/law firm's seat or offices. If the documents are complete, membership is completed by taking an oath at the bar association.

At the Budapest Bar, in addition to certifying that the applicant meets the above conditions, certain applicants also have to take part in an interview with the Admissions Committee: persons who have not been trainee attorneys, or were trainee attorneys for less than 1 year, former attorneys and attorneys who had been previously excluded by the Bar, European Community jurists wishing to become Hungarian attorneys, etc.

2.3.1. Costs of admission to and membership in the Bar

The costs of admission to a bar association are generally high, and memberships costs are also significant.

For the Budapest Bar Association, the information pack on the admission process costs 2,200 HUF (9 EUR). If someone is admitted as a member, a registration fee of 140,000 HUF (540 EUR) has to be paid (for persons who were trainee attorneys for at least 2 years, the registration fee is 113,000 HUF (430 EUR)). Attorneys must have an official seal, which costs 9,000 HUF (35 EUR).

Memberships fees vary among regional bar associations, but as the majority of Hungarian attorneys are members of the Budapest Bar, these membership fees are given here: annual membership fee is 108,000 HUF (415 EUR).

Furthermore, all attorneys are obliged to take out liability insurance. Most attorneys are members of the Insurance and Self-assistance Association of Hungarian Attorneys²¹, which offers several insurance policies. The minimal policy includes a minimum payment of 5,000,000 HUF (18,300 EUR) per liability incident maximised at 10,000,000 HUF per annum (with 15 percent or maximum 50,000 HUF (200 EUR) to be paid by the attorney as own contribution). The cost of the minimum liability insurance scheme is composed of a monthly membership fee (800 HUF / 3 EUR) and a monthly insurance premium (6,700 HUF / 24 EUR), totalling 90,000 HUF (322 EUR) per year.

²⁰ 1/1998. (VI.27.) MÜK Szabályzat
<http://www.magyarugyvedikamara.hu/?content=1&scontent=8>

²¹ <http://www.mubse.hu/main.php>

3. The cost of legal services

Under the Attorneys Act, an attorney shall be due a fee and compensation for his expenses in return for his services. There are no fixed fees and the attorney and the client are free to negotiate and decide the fee.²² Hence, the level of legal fees varies. The fees are influenced (among other factors) by the attorney's professional experience, the characteristics and complexity of the case, the volume of work required etc.

Legal fees are subject to 20 percent VAT.

For some services, such as general legal consultations, attorneys charge hourly fees, which can range from 5,000 HUF (20 EUR) to 40,000 HUF (150 EUR) per hour.

Typically larger law firms working for the corporate sector will also charge clients on an hourly fee basis. Here the hourly rate varies and is considered a business secret, however, the starting rate is generally at least 100 EUR plus VAT.

For certain transactions, the usual fees are charged on a per case basis or based on the value of the contract or transaction (e.g. in real estate sales, where the average percentage fee is 1 to 5 percent of the sale value).

In case of a permanent retainer contract, for example for general corporate legal tasks, law firms will charge a monthly retainer fee.

In civil lawsuits, the procedural and legal fees are borne by the party who lost the case. The court will determine (in accordance with the scale and method set by a decree of the Minister of Justice²³) the amount of legal fees that the losing party will have to pay to the winning party. Of course, if the winning party had agreed higher fees with his/her attorney than those determined by the court, he/she will have to pay the rest of the fee.

In criminal cases, the defense counsel will frequently charge a lump sums for each stage of the criminal proceeding (investigation, judicial phase until first instance decision, court of second instance). The fees will also depend on the complexity of the criminal case (economic offenses v. assault). Sums between EUR 5,000 and 40,000 are not uncommon here.

4. The legal aid system

The Hungarian legal aid system underwent significant reforms in 2004 and subsequently in 2008. Before the legal aid reform in Hungary in 2004, separate legal aid

²² § 9 of the Attorneys Act

²³ Decree no. 32/2003. (VIII. 22.) of the Minister of Justice on the establishment of legal fees in judicial procedures

schemes existed for civil and criminal law, whereas no legal aid was available for administrative or extrajudicial procedures.

Access to justice was a rather neglected issue in Hungary for a long time, notwithstanding a number of binding norms and non-binding recommendations which could have set the Hungarian political machinery into motion with a view to creating a coherent and efficient legal aid system. However, it was the country's approaching accession to the European Union and the need to harmonise Hungarian law with the *acquis communautaire*²⁴ that gave a real impetus leading to the legal aid reform.

Instead of creating a single legal aid system, Hungarian legislators opted for trying to improve the legal aid system through several separate steps.

The civil legal aid system was reformed in two stages. The first stage was Act LXXX of 2003 on legal aid (Legal Aid Act) adopted on 20 October 2003 that took effect on 1 April 2004. The Legal Aid Act introduced pre- and extra-judicial legal aid for legal advice and preparation of legal documents.

The second stage aimed at the reform of legal aid system in civil court procedures. This was originally foreseen to start on 1 January 2006 but was postponed until 1 January 2008 due to financial reasons. On 1 January 2008, a substantial amendment²⁵ of the Legal Aid Act extended the scope of legal aid to civil court proceedings.

As regards legal aid in criminal cases, while no thorough reform has taken place, some positive changes have been implemented.

4.1. Eligibility for legal aid

4.1.1. Eligibility for legal aid in extrajudicial matters

The Legal Aid Act's personal scope covers

- Hungarian citizens
- foreign persons who have an ancestor who is or has been a Hungarian citizen, in cases related to visas, residence permits, naturalisation,
- foreign citizens based on an international legal aid treaty or reciprocity with Hungary,

²⁴ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes OJ L 26, 31.1.2003, p. 41–47, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings OJ L 082 , 22.03.2001 p. 1-4

²⁵ Act CLI of 2007 on amending certain acts related to legal aid

- persons having the right of free movement and residence under immigration law (citizens of EU and EFTA member states),
- foreign citizens residing in Hungary,
- persons holding a humanitarian residence permit.²⁶

Legal aid, where the state either covers or advances legal costs, is granted as a general rule based on a means test for persons who are indigent. However, the Legal Aid Act automatically considers some persons as indigent who do not have to show that their financial situation is below the threshold of the Legal Aid Act.²⁷ Moreover, legal aid in the form of deferred payment (with the state advancing the legal costs) is also available for persons whose financial situation is only slightly better than the level of indigence.

Indigence is a pre-condition of eligibility for legal aid, but indigence in the sense of the Legal Aid Act is not linked to the poverty level in Hungary. The Central Office of Statistics publishes poverty line data every year. According to the Office, the poverty line in 2007 was HUF 66,271 (EUR 254) per month. For a family consisting of two adults and two children, the 2007 poverty line was HUF 192,186 (EUR 736).²⁸

The Legal Aid Act sets out elaborate criteria for the means test and establishing indigence, hence only the main rules are given below.

The means test for indigence and eligibility for full legal aid, where the state will fully cover the costs is as follows:

- a) the person's per capita net monthly income in the household does not exceed the minimum old-age pension (in 2008: 28,500 HUF (110 EUR)) and he/she has no assets beyond what is necessary for normal life,
- b) for single persons, the net monthly income does not exceed 150 percent of the minimum old-age pension (in 2008: 42,750 HUF (164 EUR)),
- c) for victims of crime, if their income does not exceed 86 percent of the gross monthly average wage (147,232 HUF (564 EUR)),

Certain categories of persons are automatically deemed indigent, and the state will cover legal costs without assessing their financial circumstances or situation (automatic indigence):

- a) recipients of regular social assistance,
- b) recipients of free public healthcare,
- c) homeless persons,
- d) refugees, persons granted temporary or subsidiary protection, asylum applicants,
- e) in matters related to visas, residence permits and naturalisation, persons having a Hungarian citizen ancestor,
- f) carers of children receiving regular child protection allowances.

²⁶ Legal Aid Act § 4

²⁷ Legal Aid Act § 5

²⁸ <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/idoszaki/letmin/letmin07.pdf>

The state will advance the costs of legal services for up to 1 year for indigent persons whose per capita monthly net income does not exceed 73,616 HUF (282 EUR) in 2008 – this amount is 43 percent of the gross monthly average wage in 2006).

Hence persons who would qualify as living in poverty from a statistical perspective are not considered as fully indigent under the Legal Aid Act and are only eligible for legal aid in the form of deferred payment.

To add a small degree of flexibility to the consideration of indigence, the Legal Aid Act also allows the legal aid authorities to qualify as indigent a person if his/her income exceeds the threshold but other circumstances (e.g. disability, illness, debated salary) make it impossible for his/her to get legal aid on the market.

4.1.2. Eligibility for legal aid in civil court proceedings

In civil court proceedings, eligibility criteria are very similar to those outlined above.

If someone is eligible for legal aid as a party in a civil court procedure, he/she will receive legal aid if “in the interest of justice so requires, that is, if:

- legal representation is mandatory in the procedure (before appeals courts, the Supreme Court and in extraordinary judicial remedies), or
- due to his/her lack of legal knowledge or the complexity of the case, he/she would be unable to effectively represent his/her interests or exercise his/her rights in the procedure.²⁹

4.2. Scope of legal aid

4.2.1. Legal aid in extrajudicial matters

Legal aid in extrajudicial matters may be granted if:

- the party is involved in a legal debate, in relation to which a lawsuit may follow, and he/she is in need of legal advice in order to become aware of his/her procedural rights and liabilities, or a petition has to be prepared for a subsequent contentious legal statement to be made;
- the party is involved in a legal debate that can be settled out of court, and it is appropriate to provide him/her with information as to the opportunities of an extrajudicial settlement, or prepare for him/her a document that serves the purposes of such a settlement;

²⁹ Legal Aid Act § 12

- the party takes part in extrajudicial mediation procedure aimed at settling a legal debate out of court, and he/she is in need of legal advice prior to signing the agreement terminating the mediation;
- the party's information on legal matters in issues directly concerning his/her everyday subsistence (in particular, issues related with housing, labour law, or the use of public utility services) is necessary;
- the party takes part in a public administrative procedure, and needs legal advice on his/her rights and responsibilities in the procedure or needs the preparation of a document to make legal statements,
- the party requires legal advice on what type of proceedings should be instituted in order to protect his/her rights, and at which authority, or if a petition has to be prepared for such a proceedings to be commenced;
- a crime victim is in need of legal advice or a petition has to be prepared in order to institute an action for compensation for the damage caused by the offence;
- the party asks for help in the preparation of an application for extraordinary legal remedies in a civil or a criminal procedure,
- documents are required for assisting a young adult having left constant or temporary state care to obtain permanent housing or first real estate property.³⁰

Certain types of legal services are excluded from legal aid:

- preparation of a contract, except if the parties to the contract all request legal aid and meet the criteria for eligibility,
- legal advice related to bank loans, real estate transactions
- constitutional complaints,
- business and investment activities by private individuals (except if the client is victim of crime that is related to his/her business activities, or the case is related to a quasi employment relationship),
- establishment and management of non-governmental organisations,
- customs cases.³¹

4.2.2. Legal aid in civil court proceedings

Since 1 January 2008, legal aid is available in both litigious and non-litigious civil procedures for all eligible parties (plaintiff, defendant, other persons having standing as party to the proceedings).³²

Legal aid is granted in the form of representation by a so-called protector attorney, whose costs are either borne or advanced by the state, depending on the eligibility level of the legal aid beneficiary.

³⁰ Legal Aid Act § 3 (1)

³¹ Legal Aid Act § 3 (3)

³² Legal Aid Act Chapter II

If the party to the lawsuit is granted full exemption of costs under the Civil Procedure Code, the fees of the protector attorney will be advanced by the state. The state will pay for the costs of the protector attorney in case the court will not order the other party to the lawsuit to pay legal costs.

4.2.3. Legal aid in criminal matters

While the Legal Aid Act did not bring about the much-needed reform of criminal legal aid for criminal defendants, several important changes have taken place in recent years.

In July 2003, the Act XIX of 1998 on the Code of Criminal Procedure (New CCP) came into force addressing a long standing point of contention in the Hungarian criminal procedure system: the fee of the defence counsel appointed for indigent defendants was only advanced and not borne by the state. The CCP now provides an exemption from legal aid costs for defendants of limited means. This so-called “personal exemption of costs” guarantees the following rights:

- upon request of the defendant who had been granted personal exemption of costs, the court, the prosecutor or the investigating authority is obliged to appoint a defense counsel for the defendant,
- the defendant and his/her defence counsel may copy the case files free of charge (on one occasion),
- the fee and the expenses of the appointed defence counsel are born by the state.³³

Personal exemption of costs shall be granted to the defendant based on criteria that are very similar to the means test for eligibility for legal aid.³⁴

Under the Legal Aid Act, from 1 January 2008, a protector attorney may be provided throughout the whole criminal procedure to persons other than defendants who are involved in criminal procedures:

- crime victims wishing to participate in the criminal procedure;
- persons asserting a damage claim in a criminal procedure;
- private prosecutors (crime victims performing the prosecutorial tasks in certain types of cases, such as defamation and libel offences); and
- supplementary private prosecutors (crime victims performing – under certain conditions – the prosecutorial tasks in cases when the prosecution rejects to investigate a crime or press charges).

The services of a protector attorneys for the above persons will only be granted if they are considered indigent in the sense of the Legal Aid Act and proceedings on their own without assistance from an attorney, they would be unable to exercise their rights

³³ Act XIX of 1998 on the Code of Criminal Procedure § 74 (3)

³⁴ Decree no. 9/2003 (V. 6.) of the Minister of Justice on the Application of Personal Exemption of Costs in the Criminal Procedure, § 2; Legal Aid Act § 19

effectively in the procedure due to their lack of legal knowledge, other personal circumstances or the complexity of the case.

4.3. Management of the legal aid system

The most profound change introduced by the Legal Aid Act was the setting up of a legal aid infrastructure independent from the courts and other authorities involved in different capacities in different legal proceedings (such as the prosecution or the investigating authority). A Legal Aid Service³⁵ was set up under the Central Justice Office of the Ministry of Justice and Law Enforcement (which also performs tasks related to victim protection, probation and mediation). The Legal Aid Service is organized with offices at the central and regional levels. Legal aid offices are charged with examining applications for and granting legal aid to those who are eligible, and for providing basic legal information and assistance to any person.

4.4. Legal aid providers

As opposed to the former legal aid system in civil matters and the existing system in criminal cases, registration in the legal aid system is not compulsory for attorneys. Legal aid providers are contracted on a voluntary basis with the Central Justice Office. The contract is concluded for three years and specifies the provider's field of expertise (civil-administrative and/or criminal justice) and the number of clients per month the provider is willing to take on. A searchable online register of legal aid providers is also available on the Justice Office's website³⁶.

Under the Legal Aid Act, several types of legal aid providers can register: attorneys, law firms, notaries public, minority self-governments, non-governmental organisations, legal clinics at law schools. Currently there are 575 legal aid providers registered in Hungary (397 private attorneys, 151 law firms, 5 notaries public, 22 non-governmental organisations).

4.5. The application for legal aid

For clients, there are two ways of contacting a legal aid provider. The first method ("preliminary decision") is to submit an application for legal aid to the legal aid office, where a decision is taken on eligibility and on the number of hours the legal aid provider is allowed to charge for services delivered. If the application is refused, regular legal remedies are available for appeal. If legal aid is granted, the client can freely select and contact a registered legal aid provider. The legal aid provider may only refuse to

³⁵ <http://www.kih.gov.hu/alaptev/nepugyvedje>

³⁶ <http://www.kih.gov.hu/alaptev/nepugyvedje/nevjegyzeke>

provide legal aid to the client if the case does not fall within his/her competence, or the number of clients taken on by him/her exceeds the limit set in the contract.

The second method of contacting a legal aid provider (“subsequent decision”) is aimed at ensuring fast access to legal services in urgent or not time-consuming cases. Clients can contact the legal aid provider directly if the need for legal aid is urgent (e.g. a deadline is about to expire) and the legal service requires not more than four hours, or if the assistance can be provided in not more than two hours. In these cases, the legal aid provider will assess the eligibility of the client, help him/her in completing the application form for legal aid and will then provide the legal assistance. It is the legal aid provider’s duty to forward the completed application to the legal aid office. Although the legal aid provider cannot charge for hours spent on assistance in completing the application form for legal aid, in practice this may take several hours and requires legal aid providers to take on a significant amount of administrative tasks.

4.6. Legal aid fees

4.6.1. Legal aid fees in extrajudicial cases

Legal aid providers providing services under the Legal Aid Act are entitled to an hourly fee determined each year by Parliament in the law on the annual state budget, plus 15 percent of this fee as a lump sum for expenses (plus 20 percent VAT). The Legal Aid Act guarantees that the fee level cannot be reduced. The detailed rules on legal aid providers' fees are set by ministerial decree.³⁷

Legal aid fees have risen slightly over the years but remain far below the market rates. In 2004, the hourly fee was 2000 HUF (7.40 EUR); in 2005 and 2006, the fee was 2500 HUF (9 EUR) and in 2007 and 2008, it is 3000 HUF (11 EUR).

4.6.2. Legal aid fees in civil court procedures and in criminal cases

Currently the fees of legal aid lawyers in court procedures (protector attorneys in civil cases, and ex officio appointed defense counsels in criminal cases) are set by a ministerial decree that ties such fees to those set under the Legal Aid Act.³⁸ Therefore current hourly fees in civil and criminal legal aid are equivalent to the fees for legal aid services performed in extrajudicial proceedings (net HUF 3000 (11 EUR) plus 15 percent for expenses).

³⁷ Decree no. 11/2004 (III. 30.) of the Minister of Justice on the fees of legal aid providers

³⁸ Decree no. 7/2002/ (III.30.) on the fees and expenses of ex officio appointed defense counsels and protector attorneys

Starting in 2008, protector attorneys acting in civil or criminal cases are paid the following fees until the end of the first-instance proceedings if the state bears the costs of legal aid:

- in litigious proceedings, six times the hourly fees for ex officio appointed defense counsels (18,000 HUF/ 66 EUR),
- in non-litigious proceedings, three times the hourly fees for ex officio appointed defense counsels (9,000 HUF/ 33 EUR),
- in criminal cases, six times the hourly fees for ex officio appointed defense counsels (18,000 HUF/ 66 EUR).

If the case is considered by the second instance court, or in case of extraordinary remedies, a repeated procedure, or in criminal cases in third instance proceedings, the fees of the protector attorney to be paid by the state will equal to 50 percent of the fees in the first instance proceedings.

However, in civil court proceedings, if it is not the state that bears the costs but the losing party of the lawsuit, the protector attorney will be entitled to fees in accordance with the general rules for claiming legal fees.³⁹

4.7. Financing the legal aid system

Legal aid is fully funded from a designated sub-chapter in the chapter for the Ministry of Justice and Law Enforcement in the state budget.

Despite the recognised need to ensure efficiency and cost-effectiveness in the legal aid system in Hungary, the system for financing the legal aid system is still not unified.

The management of the legal aid scheme operating under the Legal Aid Act, hence financing the costs of such legal aid services, is carried out by the Office of Justice in the Ministry of Justice and Law Enforcement.

The legal aid budget for 2007 was 65,000,000 HUF (EUR 260,000), compared to total state budget expenditures amounting to 8,326,031 million HUF (EUR 33,304,122,800). In 2008, the legal aid budget was 85,000,000 HUF (312,776 EUR) and the total state budget expenditures was 9,017,138,900 million HUF (close to 36,068,555,600 EUR)

The entire system of legal aid for criminal defendants, including its budget and financing, remains fragmented even within the criminal system itself. Fees paid to appointed defence counsels are included in the budget of the respective investigating authority, the prosecution and the judiciary.

³⁹ Decree no. 33/2003 (VIII. 22.) on attorneys' fees determined in court proceedings

Consequently, it is close to impossible to estimate the exact amount spent on legal aid as a whole per year, which is a severe obstacle to well-grounded planning.

5. Reform agenda

The most important reform in recent years as regards legal services was the (partial) overhaul of the legal aid system (see Chapter 4). The new legal aid system has addressed two key structural problems that had been identified as main deficiencies of access to justice in Hungary. The Justice Office under the Ministry of Justice and Law Enforcement manages the legal aid budget and collects relevant data (as regards legal aid covered by the Legal Aid Act) in a unified manner. Eligibility criteria for legal aid have become more precise and broader, and a differentiated means test is applied which also extends benefits to person who live somewhat above the poverty level.

However, some fundamental problems of the legal aid system remain unsolved.

5.1. Integration of criminal defence into the legal aid system

The fact that criminal defence is not integrated into the legal aid system and defence counsels remain to be appointed by the acting authority causes problems on a number of levels.

First, the legal aid budget remains fragmented even within the criminal system itself, as fees paid to defence counsels are included in the budget of the investigating authority, the prosecution and the judiciary. Hence, it is close to impossible to estimate the exact amount spent on legal aid as a whole per year, which is a severe obstacle to well-grounded planning.

Second, as a result of the legal aid reform in the civil and administrative matters, the provision of legal aid has come closer to a market-based system where clients can select lawyers. This provides a form of quality control both on an individual and a general systemic level, which was completely missing from the system before the reform. In contrast in criminal matters, defence counsels are still appointed by the acting authorities and selection by the client is not possible.

Individual quality assurance could – theoretically – be provided by the bar associations indirectly, through their disciplinary authorisations (if a dissatisfied client files a complaint against the negligent lawyer). However, in a blatant contradiction to the results of empirical studies⁴⁰ proving the poor performance of ex officio appointed counsels, the number of complaints against them is very low.

⁴⁰ See e.g. A. Kádár, B. Tóth, I. Vavró: *Without Defense: Recommendations for the Reform of the Hungarian Ex Officio Appointment System in Criminal Matters*. Hungarian Helsinki Committee, Budapest, 2007

As to general quality assurance, it has to be said that this function completely lacking from the criminal legal aid system. Neither the bar associations, nor the Ministry of Justice and Law Enforcement monitor whether the system as a whole fulfils its role. Not even statistics are available regarding the number and outcome of cases where ex officio appointed lawyers provide criminal defence.

5.2. Low eligibility threshold and low fees

The very low indigence threshold effectively results in only a very small part of the population being able to benefit from legal aid. However, the threshold is unlikely to be changed due to budgetary reasons, as by keeping the means limits in effect at present, the demand for legal aid providers can still be kept within a manageable scope. This however severely limits the outreach of the system's benefits.

Attorneys have to participate as ex officio defense counsels in the criminal legal aid system on a mandatory basis. Some bar associations that have sufficiently high levels of membership are able to operate an opt-out system, where attorneys can de-register from the list of ex officio defense counsels. It is widely acknowledged that the voluntary participation of attorneys (and other legal aid providers) in the new legal aid system is a positive step forward.

At the same time, the fees for legal aid providers are very low, hence this is not a financial incentive encouraging attorneys to register as legal aid providers. The limited number of legal aid providers that can satisfy the needs of clients may prove to be insufficient once the new system, which also extends to legal aid in litigation, is evaluated.

5.3. Representation in administrative cases

Legal aid is available in administrative matters in the form of legal consultations and assistance through the preparation of legal documents triggering an administrative procedure. However, once such a procedure has started, the lawyer is not able to provide assistance in the framework of the legal aid system, so the indigent client will remain without qualified representation and only consultation will be available.

Despite this fact, due to the potential volume of cases and its budgetary consequences, legal aid is not expected to be extended to representation in administrative proceedings, although such proceedings may severely impact an indigent client's subsistence (e.g. cases concerning social allowances and housing, the use of public utility services etc.).