Human Rights Monitoring Institute

ACCESSIBLE JUSTICE

The right to a lawyer and the right to legal aid in Lithuania

ABOUT THE STUDY

Lead researcher and editor:
Natalija Bitiukova

Researchers:
Jūratė Guzevičiūtė, Mėta Adutavičiūtė, Karolis Liutkevičius, Kristina Normantaitė

Translator:
Petras Borisovas

We sincerely thank criminal defence lawyers, police officers, prosecutors and judges who kindly agreed to share their insights on the subject matter of the study. We also thank Ugnė Zmitrytė, Kristina Ramoškaitė and Evelina Vaišvilaitė for their assistance during their internship at the HRMI.

This research includes only laws, case-law and statistical data that was available before 31 March 2017.

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the Human Rights Monitoring Institute and can in no way be taken to reflect the views of the European Commission.

Funded by the European Union

The bibliographic information about the publication is available in the National Bibliographic Data Bank (NBDB) of the Martynas Mažvydas National Library of Lithuania

ISBN 978-609-95968-0-8

Human Rights Monitoring Institute

ABOUT THE HUMAN RIGHTS MONITORING INSTITUTE

Human Rights Monitoring Institute (HRMI) is a non-governmental, not-for-profit public advocacy organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are real and effective in practice.

The team of HRMI lawyers and public policy experts carries out research, drafts legal and policy briefings, compiles reports to international human rights bodies, undertakes strategic cases before domestic and international courts, provides expert consultations and legal services, engages in various national and international projects, delivers conventional and distance trainings to law enforcement officers and other professionals.

Thematic fields of HRMI activity are the rights of crime victims, the rights of suspects and accused, prohibition of discrimination, protection of privacy and digital rights, freedom of expression, human rights and corporate social responsibility.

www.hrmi.lt

CONTENTS

SUMMARY

The right to a lawyer and the right to legal aid is increasingly seen as a vital component of a fair and accessible justice system, and necessary for redressing situations where rights are denied or violated.

The study is a part of a larger regional project, aimed at determining the impact of secondary EU laws in the EU member states and the quality of its implementation in the everyday life. This study in particular aims to assess how the right of access to a lawyer and the right to legal aid in criminal proceedings, as provided for in the EU directives and recommendations, have been implemented in Lithuania.

The primary pieces of EU legislation for the purposes of this study were the Directive on the right of access to a lawyer (2013/48/EU) and the Commission Recommendation on the right to legal aid (C(2013) 8179/2).

In the course of this study, Lithuanian researchers reviewed the case files in 157 criminal proceedings, interviewed 10 experts and organized two focus groups with lawyers providing state-guaranteed secondary legal aid in criminal proceedings, with a grand total of 8 lawyers attending.

KEY CONCLUSIONS:

1. Directive on the right to a lawyer is only partially transposed into the national legal system. Although the trasponsition period is over, the amendments to the Code of Criminal procedure transposing the Directive were not adopted during the preparation of this report.
2. The legal right to a lawyer „from the very first interrogation" has different interpretations in practice. The suspects are not always provided with a possibility to consult with a lawyer before the interrogation, there are also significant variations in terms of the attitude of police officers regarding the allowed length of such consultation.
3. The mandatory participation of the lawyer is not ensured in all cases. The research indentified instances when minors, persons with mental disabilities, linguistic minorities were not represented by the lawyer during the first interrogation or during the pre-trial and trial investigation of their case. There are no clear guidelines to assess the vulnerability of the suspect and circumstances of the case to determine if participation of the lawyer is mandatory.
4. In 2016, the State Guaranteed Legal Aid Service received a record number of complaints concerning secondary legal aid services that had been provided or were being provided by lawyers. Compared to 2015, the number of complaits increased by 2,5 times.
5. The main reasons for unsatisfactory performance of legal aid lawyers are excessive workload, low pay and a remuneration system that lacks incentives, as well as the absence of a comprehensive quality assurance mechanism.

For the full list of conclusions and recommendations, please refer to the last chapter of the study.

CONTEXT AND OBJECTIVES

The right to a lawyer and the right to legal aid is increasingly seen as a vital component of a fair and accessible justice system, and necessary for redressing situations where rights are denied or violated.

Fairness and accessibility of the justice system are especially important for the individuals subject to criminal proceedings. They justly expect to understand and the charges against them, and to effectively exercise their right to defence. The access to judicial proceedings may be impeded if such persons are denied access to a qualified legal advice or such access is reserved exclusively to the ones who have enough funds to pay for it.

In the recent years, the European Union made a number of steps to strengthen procedural rights for suspected or accused persons in criminal proceedings, including by adopting extensive secondary legislation in this field.

The study is a part of a larger regional project, aimed at determining the impact of such legislation in the EU member states and the quality of its implementation in the everyday life. This study in particular aims to assess how the right of access to a lawyer and the right to legal aid in criminal proceedings, as provided for in EU secondary laws, have been implemented in Lithuania.

Analogous studies were carried out in four other Member States of the European Union (EU), namely, Bulgaria, Slovenia, Hungary and Poland. The evaluations of these five national systems were summarized in the regional comparative report, which highlights common problems as well as examples of good practice and allows for a full assessment of the implementation of the right of access to a lawyer and the right to free legal assistance in the region.

RESEARCH METHODOLOGY

The primary pieces of EU legislation for the purposes of this study were the Directive on the right of access to a lawyer (2013/48/EU)[1] and the Commission Recommendation on the right to legal aid (C(2013) 8179/2).[2] The study also takes into account relevant European Court of Human Rights (ECtHR) case law and other EU directives relating to criminal procedure. Since the launch of this study, the European Parliament and the Council have adopted the Directive on legal aid (2016/1919/EU);[3] however, as its transposition into national law has just begun, the implementation of its provisions has not been assessed.

In order to get a full view of the situation, the study was conducted using a combination of the following:

1. Desk research, during which researchers examined national legislation and case law, collected publicly available statistical data, information on recent or planned legal reforms, and analyzed academic literature.
2. Review of completed criminal proceedings, which let researchers identify the problematic aspects of the application of the law.
3. Semi-structured interviews with investigating police officers, prosecutors, judges and institutions responsible for handling complaints about attorney performance or the provision of state-guaranteed secondary legal aid; this gave an opportunity to hear how legal practitioners viewed the subject matter.
4. Focus groups with lawyers providing state-guaranteed secondary legal aid in criminal proceedings, which allowed greater insight into the lawyers' position and their proposed solutions to problems.

From the outset, it is important stress that both the number of cases analyzed and the number of practitioners interviewed were limited, and as such may not accurately reflect the actual situation. Nevertheless, the data collected is enough to identify problematic aspects and propose how to solve them.

1 Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450449360102&uri=CELEX:32013L0048 (all links were last accessed on 30 March 2017). Please note that the research does not discuss the European Arrest Warrant proceedings and related provisions of the Directive.

2 Commission Recommendation 2013/C 378/03 of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32013H1224(03)&from=en

3 Directive (EU) 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32016L1919&from=EN

In the course of this study, researchers reviewed the case files in 157 criminal proceedings, interviewed 10 specialists and organized two focus groups with lawyers providing state-guaranteed secondary legal aid in criminal proceedings, with a grand total of 8 lawyers attending.

The review analyzed cases in the Kaunas City District Court (45 cases), the Klaipeda City District Court (18 cases), the Panevėžys City District Court (12 cases), the Šiauliai City District Court (19 cases) and the Vilnius City District Court (48 cases), as well as from the Vilnius Regional Court (15 cases). For the purposes of the review, cases were randomly selected by the researchers themselves from a list of proceedings completed in 2011-2015. The review was carried out from 3 November 2016 to 6 December 2016 by completing a standardized, anonymous questionnaire.

The experts were directly contacted for the interviews. In total, 3 judges, 3 prosecutors and 3 investigating police officers from Vilnius, Kaunas and Alytus participated in the study as well as 1 state official, working for who handles the complaints with respect to the state guaranteed legal aid services. In this study, the interviews with investigating police officers are referred to as „TYR", with the prosecutors – as „P", with the judges as „T" and with the complaint-handling officer as „TAR".

The focus groups, which took place in Vilnius and Kaunas, were attended by 8 lawyers providing state-guaranteed secondary legal aid in criminal proceedings. In this research, the information received during the focus groups is marked as „FGD".

The researchers did not encounter any administrative or technical obstacles while collecting information. On the contrary - the courts and the other institutions cooperated in good faith, openly welcomed the researchers and provided them with the requested information. Compared to the experiences of the other research partners, the HRMI had an easier time getting access to the files of completed proceedings due to there being a clear procedure for access in place.[4]

4 Order No. 1R-308 of the Minister of Justice „Approving Rules of Access to Materials of Completed Trials", dated 7 December 2012, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=439220&p_tr2=2

STOCKHOLM PROGRAMME MEASURES IN THE FIELD OF CRIMINAL PROCEDURE

For a long time, criminal law was considered to be the exclusive purview of EU Member States – the EU only became able to act in this area when the Maastricht Treaty was adopted in 1992. Later on, the Treaty of Lisbon abolished the three-pillar structure and provided a basis for developing criminal law as part of EU law.[5]

In order to effectively apply the principle of mutual recognition, which provides that the competent authorities of Member States should put trust into the criminal justice systems of other Member States, there was a need to set common standards for the protection of procedural rights. This lead to the Council Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings ("the Roadmap" or "the Plan") in 2009. The Plan contained six measures meant to ensure that persons who become suspected or accused in any Member State receive the same procedural guarantees and are able to effectively enjoy their right to a fair trial. Specifically, the Roadmap referred to the right to information, translation, legal counsel, legal aid, communication with relatives, employers and consular authorities, and the rights of vulnerable persons.[6]

In 2010, the Roadmap became a part of the Stockholm Programme adopted by the European Council, which set out the priorities of the European Union in the area of justice, freedom and security. The European Council asked the Commission to draw up proposals for the implementation of the measures provided for in the Plan, further asking it to assess the necessity of any additional measures, such as the presumption of innocence.[7]

The following pieces of legislation have been adopted in pursuit of the objectives set out by the European Council:

5 European Parliament, Report on an EU approach on criminal law (2010/2310(INI)), 24 April 2012, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2012-0144+0+DOC+XML+V0//LT

6 Resolution of the Council (2009/C 295/01) of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32009G1204(01)

7 European Council, „The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens", No. 2010/C 115/01, dated 10-11 December of 2009, para 2.4, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:lt:PDF

- Directive on the right to interpretation and translation (2010/64/EU)[8]
- Directive on the right to information (2012/13/EU)[9]
- Directive on the right of access to a lawyer (2013/48/EU)[10]
- Recommendation on procedural safeguards for vulnerable persons (2013/C 378/02)[11]
- Recommendation on the right to legal aid (2013/ C 378/03)[12]
- Directive on the presumption of innocence (2016/343/EU)[13]
- Directive on procedural safeguards for children (2016/800/EU)[14]
- Directive on legal aid (2016/1919/EU)[15]

Directive on the right of access to a lawyer

Pursuant to the stated goals of the Stockholm Programme, the Directive on the right of access to a lawyer (2013/48/EU) was adopted on 22 October 2013. The Directive endows each and every suspect or accused person subject to criminal and/or European Arrest Warrant proceedings with the right of access to a lawyer, and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

The Directive obliges states to ensure that persons are able to get access to a lawyer in such time and in such a manner so as to allow them "to exercise their rights of defence practically and effectively". The right of access to a lawyer encompasses the right to meet the lawyer representing the person and to communicate with them in private, as well as the ability of counsel to effectively participate in interviews and other proceedings.

The Directive has strict provisions relating to the timing of the right to a lawyer, safeguards pertaining to the confidentiality of communications and circumstances in which the right to a lawyer may be waived.

Furthermore, the Directive allows individuals to inform at least one third party (e.g. a family member or their employer) and the consular authorities of their State of nationality of their detention or arrest, as well as to arrange communicate with these individuals.

Member States had until 27 November 2016 to transpose the directive into national law.

Recommendation on the right to legal aid

The issue of how to approach situations where someone doesn't have the funds to hire legal counsel was already evident when deliberating the Directive on the right to a lawyer. Due to significant differences in the organization of legal aid in different jurisdictions, the Member States were unable to agree on yet another binding instrument, so on 27 November 2013 the European Commission adopted the Recommendation on the right to legal aid (2013/C 378/03) ("the Recommendation").

By their nature, recommendations are non-binding acts of law that set minimum standards of acceptable treatment and give suggestions to Member States. The Recommendation on the right to legal aid specifies that suspects and accused persons have the right to legal aid "if they lack sufficient financial resources to meet some or all of the costs of the defence and the proceedings as a result of their economic situation (`means test'), and/or when such aid is required in the interests of justice (`merits test')."

The Recommendation also provides guidance on ensuring that legal aid services are of a high quality. It is recommended that Member States have systems in place that would ensure that the work of lawyers is of a high quality, that they offer training to lawyers, that they establish a transparent procedure for selecting lawyers for specific cases that would reflect both the wishes of the suspect or the accused and the principle of continuity of representation.

8 Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32010L0064&from=EN

9 Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32012L0013

10 Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450449360102&uri=CELEX:32013L0048

11 Commission Recommendation 2013/C 378/02 of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A32013H1224(02)

12 Commission Recommendation 2013/C 378/03 of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32013H1224(03)&from=en

13 Directive (EU) 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be persent at the trial in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32016L0343

14 Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=celex:32016L0800

15 Directive (EU) 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32016L1919&from=EN

Member States were required to inform the Commission of the measures they took to implement the Recommendation by 27 November 2016.

Still, following a period of difficult tripartite negotiations, the Directive on legal aid was finally adopted on 13 October 2016.[16] Compared to the Recommendation, the Directive is more limited in scope, but the guarantees contained therein are largely the same. Furthermore, Member States may not treat the Directive as a collection of suggestions, since it is a binding act of law, the provisions of which must be transposed into national law by 25 May 2019.

16 Zaza Namoradze, „The European Union Embraces a Common Approach to Legal Aid", Open Society Foundations, 19 October 2016, https://www.opensocietyfoundations.org/voices/european-union-embraces-common-approach-legal-aid

TRANSPOSITION OF EU STANDARDS INTO LITHUANIAN LAW

Right to information

The Directive on the right to information was transposed into national law by amending the CCP.

There were two such amendments. The first was adopted in May of 2014,[17] directly adding the rights of suspects and the accused provided under the Directive (namely, the right to urgent medical assistance, the right to contact consular authorities and one person, the right to silence and others) to the CCP. The second amendment, adopted in June of 2015,[18] was not formally intended to further the transposition of the Directive, but nevertheless added a very important Directive right to the CCP, one omitted in the previous amendment – that is, the suspect's right to access the material collected during the pre-trial investigation that is used by a prosecutor in support of their application for pre-trial detention.[19]

In addition to the amendments to the CCP, an important Order of the Prosecutor General was issued in December of 2014.[20] It established a new form for notifications of suspicion that are served to each and every suspect, with one of its Annexes – namely, the Annex to the Record of Notification of the Rights of the Suspected Person – being the Lithuanian equivalent of the letter of rights stipulated in the Directive. In the beginning of 2017, the Prosecutor General adopted the Record of Notification of the Rights of the Person Surrendered on the Basis of the European Arrest Warrant (EAW) and its Annex which is equivalent ot the letter of rights in the EAW casesd under the Directive.[21]

Following its own study, the HRMI in 2017 concluded that the vast majority of the Directive`s provisions were transponsed into the national legal system, however the letter of rights served to the suspects lacked clarity: the sentences were too long, complicated and filled with legalese. The police officers did not put additional efforts into making sure that the suspects understood the

17 Law No. XII-891 Amending Articles 21 and 22 of and the Annex to the Code of Criminal Procedure of the Republic of Lithuania, dated 15 May 2014

18 Law No. XII-1878 Amending Articles 121, 123, 125, 126, 127, 130, 131 and 181 of the Code of Criminal Procedure of the Republic of Lithuania, dated 25 June 2015

19 Art 121(2) of the CCP

20 Order No. I-288 of the Prosecutor General „On the Approval of the Forms of Documents in Criminal Proceedings", dated 29 December 2014

21 Order No I-55 of the Prosecutor General „On the Approval of the Forms of Documents in Criminal Proceedings", dated 28 February 2017

content of their procedural rights, e.g. by providing them additional explanations orally.[22]

Right to translation and interpretation

No changes were made to the CCP when transposing the Directive on the right to translation and interpretation into national law. Experts were quick to note that while the regulatory regime in place satisfied the essential requirements of the Directive, in certain respects Lithuanian law set a lower level of protection than the Directive.

Unlike the Directive, the CCP does not set out any procedure for accessing the necessity of translation or interpretation, with the decision on whether a translator should be called falling within the investigating officers' full discretion. The duty to translate written documents is also more narrowly defined under the CCP, which does not require translating decisions to apply pre-trial detention, whereas the Directive posits that all decisions to restrict a person's liberty are essential procedural documents which must be translated.[23]

Attempts to effective implement the rights in practice run afoul of a fair number of problems. For example, when providing translation services to suspects, especially where the language is quite rare in Lithuania and the suspect does not know any of the more commonly encountered foreign tongues, there are issues with the quality of translation. The situation is further complicated by the fact that currently, there is no real oversight of the quality of translations or any self-regulation from the translator community - there is not even a register for translators.[24]

On 17 November 2016, the European Commission gave its reasoned opinion, stating that Lithuania did not properly transpose and implement certain provisions of the Directive. The Ministry of Justice, in turn, drafted amendments to the CCP that will, if adopted, at least partially solve the aforementioned problems.[25] These amendments were not yet adopted when this study was being prepared.

Right of access to a lawyer

On 30 November 2016, the Ministry of Justice submitted the draft amendment to the CCP, the Law on Pre-Trial Detention and the Law on the Bar for Parliament's consideration, aiming to harmonize national law with the provisions of the Directive on the right of access to a lawyer.[26]

The amendments, which were submitted after the period for transposing the Directive had already expired, proposed clearer regulation on the point in time when the rights of defence come into existence, expressly prohibiting any control over communications between counsel and client, establishing a duty to explain the consequences of waiving their right to counsel to a person, and many more.

It is believed that the proposals of the Ministry of Justice are adequate to properly transpose the Directive on the right of acess to a lawyer into national law, even if they fall somewhat short of addressing the practical problems tied to its application in practice.

Right to free legal aid

No assessment was carried out in Lithuania to determine whether national law complies with the Recommendation on legal aid, nor were there any amendments to the Code of Criminal Procedure or the Law on State-Guaranteed Legal Aid. It is likely that these laws will be reviewed at some point to determine if they are in line with the new Directive on legal aid.

Presumption of innocence

On 9 February 2017, the Ministry of Justice opened discussions with interested institutions regarding the transposition of the Directive on the presumption of innocence into national law. The Ministry aims to determine whether existing legislation is sufficient to satisfy the requirements of the Directive.[27]

22 Human Rights Monitoring Institute, „Letter of Rights in Lithuania: regulation and practice", 2017, https://hrmi.lt/wp-content/uploads/2017/06/Letter-of-rights-EN-2017.pdf

23 Human Rights Monitoring Institute, „Human Rights Overview 2013-2014", 2015, http://pasidomek.lt/lt/i-itariamuju-teises-

24 Human Rights Monitoring Institute, „Discussion on the Implementation of EU Procedural Rights Directives", 18 August 2014, http://www.liberties.eu/lt/news/diskusija-del-direktyvu-igyvendinimo

25 Draft Law No. 16-13525(3) Amending Articles 8, 71(1), 80 and 103 of the Code of Criminal Procedure, 24 January 2017, https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bd82030003f311e7ae41f2dbc54c44ce?jfwid=89x1tcsmy (see also the Explanatory Memorandum)

26 Draft Law No. XIIIP-115 Amending Articles 10, 21, 44, 48, 50, 52, 69, 69(1), 71(1), 72, 128, 140, 168, 190, 192, 196, 197 and 233 as well as Supplementing the Annex of the Code of Criminal Procedure, 30 November 2016, https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/3dfca250b6ed11e6a3e9de0fc8d85cd8?positionInSearchResults=11&searchModelUUID=20045e4b-a0fd-4e12-99b9-f6be96048ee9

27 Letter of the Ministry of Justice No. (1-39)7R-1221 „On the submission of opinion", dated 9 February 2017

OVERVIEW OF THE NATIONAL LEGAL SYSTEM

Brief overview of the criminal justice process in Lithuania

The Republic of Lithuania operates under a civil-law system.

The principal body of law is statutory. All regulatory acts, including laws, must comply with the Constitution. International treaties and conventions automatically become part of the Lithuanian legal system from the moment of signing or accession. Those ratified by the Parliament, e.g. the European Convention of Human Rights, prevail over internal laws, whether enacted at the moment of ratification of such treaty or convention or later.[28]

The majority of criminal law related issues are covered by two sets of codified laws – the Criminal Code and the Code of Criminal Procedure, both of which came into force in early 2000s after a complete reform of the criminal justice legal framework.

The first stage of a typical criminal procedure is the criminal investigation, called "pre-trial investigation" in the Code of Criminal Procedure, which is usually conducted by investigating police officers, and in some instances – officers of other investigating institutions. They are jointly referred to as pre-trial investigation officers in the Code of Criminal Procedure. Each individual case is assigned to a prosecutor, who oversees the criminal investigation. The investigation is considered concluded when the prosecutor draws up the act of indictment and submits it to the court. From that moment the case is overseen by the court, which decides it.

The first instance court's decision can always be appealed. A second appeal, appeal in cassation, to the Supreme Court of Lithuania is also possible, but only on substantial points of law.

The person suspected of a crime or crimes is called a "suspect" during the pre-trial investigation phase. A suspect is a person who is arrested on a suspicion of committing a criminal act, or who is interrogated about the criminal act he is suspected of committing, or who is called for interrogation based on the notice of suspicion.[29]

When the investigation is concluded, the suspect turns into an "accused", and is called so throughout the trial stage.

28 Elona Norvaišaitė, „A Guide to the Lithuania Legal System and Research", 2013, *Hauser Global Law School Programme*, http://www.nyulawglobal.org/globalex/Lithuania1.html

29 Criminal Procedure Code, Article 21(2)

Lithuanian criminal procedure has more characteristics of an inquisitorial system, although there are some features of an adversarial system.[30] Pre-trial investigation is essentially an inquisitorial procedure, while at the court the case is heard in an adversarial manner, i.e. both prosecution and defence have equal rights to submit the evidence, make requests and present their arguments.[31]

The Criminal Code recognizes two different categories of criminal acts: crimes and misdemeanours. The main different between the two is that crimes can be punishable by a custodial sentence, whereas misdemeanours – by a non-custodial sentence only (with the exception of arrest).[32]

Lawyer`s status in criminal proceedings

Article 31(6) of the Constitution of the Republic of Lithuania establishes that each and every person who is suspected or accused of having committing a crime has the right to defence and the right to a lawyer, from the moment they are apprehended or interrogated for the first time.[33]

The Constitutional Court of the Republic of Lithuania has interpreted this right to be absolute, one that cannot be denied or restricted on any grounds and under any circumstance. The court further noted that it follows from the Constitution that it is required to flesh out this constitutional right in law. The public authorities have a duty to ensure that these rights can be exercised in real terms.[34]

The right to defense is understood to be a set of rights allowing one to fight the allegation (charge) set against them, or to mitigate their liability.[35] This right may be exercised by either the person defending him- or herself, or by doing so through legal counsel. As such, the right to counsel is considered to be one of the components of the right to defense.[36]

The right to counsel includes the right to select and call upon any counsel, and, if lacking the financial means to do so, the right to demand that counsel be appointed for you.[37] Lawyers (otherwise referred to as „advocates") and, in some cases,

30 Ed Cape and Zaza Namoradze, „Effective Criminal Defence in Eastern Europe", 2012, *LARN*, p. 199

31 Code of Criminal Procedure, Article 7

32 Criminal Code, Articles 10-12

33 Art 31(6) of the Constitution of the Republic of Lithuania, No. 33-1014, 2 November 1992, https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA

34 12 February 2001 ruling of the Constitutional Court of the Republic of Lithuania

35 2 December 2014 ruling of the Supreme Court of the Republic of Lithuania on an appeal in cassation in criminal proceedings No. 2K-522/2014

36 G. Goda, M. Kazlauskas, P. Kuconis, „Criminal Procedure Law", Vilnius: Legal Information Centre, 2005, p. 64.

37 R.Ažubalytė, R. Jurka, J.Zajančkauskienė, „Criminal Procedure Law: General Provisions", Mykolas Romeris University, 2016, p. 240

lawyers` assistants may act as counsel in criminal proceedings.[38] The conduct of the defence is a matter between counsel and the defendant. In Lithuania, counsel acts as an independent party in criminal proceedings – they are not restricted by the defendant's preferred or demanded defence strategy, nor are they required to follow instructions from their charge when it comes to conducting the defence.[39]

To become an lawyer in Lithuania, one must be a citizen of Lithuania or any EU Member State with university degree in Law, be able to speak the national language, be of impeccable reputation, possess the requisite legal experience and successfully pass the Bar exam.[40] Only persons that have been entered into the register of laweyrs practicing in Lithuania, and which also have a valid lawyers` license, may undertake action reserved for lawyers (for example, representing a suspect in criminal proceedings).[41]

Each lawyer is a member of the Lithuanian Bar Association, an institution that provides self-regulation for advocates. The Lithuanian Bar Association is responsible for entering people into the register of practicing lawyers, as well as for striking them from the rolls, organizes professional training, resolving disputes between laweyers and their clients, handling issues relating to disciplinary proceedings for lawyers and coordinating their activities. Disciplinary cases are examined and disciplinary sanctions are issued by the Court of Honour of Advocates (a body of the Lithuanian Bar Association).

Structure of State-guaranteed legal aid

The Law on State-Guaranteed Legal Aid (SGLA), adopted back in the year 2000, established a system of state-guaranteed legal aid for persons who were unable to properly defend their rights and legitimate interests dues to their financial condition.

Currently, legal aid provided by the State in civil, criminal and other cases is divided into primary and secondary legal aid.

Primary legal aid encompasses the provision of legal information and legal advice, as well as the preparation of documents meant for state or local authorities. Hour-long legal consultations are usually provided by specialists at the legal departments of various municipalities.[42]

Secondary legal aid is understood to mean state-guaranteed assistance from a lawyer in judicial proceedings: drafting documents, conducting the defence, representing their client in proceedings (including enforcement proceedings), as well as representing the latter's interests when settling disputes out of court. Secondary legal aid is provided to persons that fall below the wealth and annual income threshold set by the Government. In some cases, secondary legal aid is provided regardless of any particular person's wealth and income, for example, where the participation of counsel is mandatory under the CCP, where persons cannot make use of their wealth or income for objective reasons, where they are provided for in residential care facilities, and other similar situations.[43]

Secondary legal aid is provided by lawyers and, in some cases, by lawyers` assistants. The State-Guaranteed Legal Aid Service enters into agreements with lawyers that were successful in the tendering process and puts them on the list of lawyers providing legal aid. Some lawyers provide secondary legal aid services full-time (being paid a monthly remuneration) and some do it when they are required to provide representation cases on demand (their fee is calculated based on how long assistance was actually provided for).[44]

Primary legal aid is organized by the municipalities, whereas secondary legal aid is handled by the State-Guaranteed Legal Aid Service (SGLAS, "the Service"). Since July of 2015, the Service consists of central office in Vilnius as well as regional divisions in Kaunas, Klaipėda, Šiauliai and Panevėžys.[45] In addition to organizing the provision of secondary legal aid, the Service also concludes agreements with lawyers providing secondary legal aid, pays the legal fees for the assistance provided and organizes training.[46]

The Ministry of Justice is responsible for the implementation of the Law on State-Guaranteed Legal Aid. It receives proposals for improving SGLA from the State-Guaranteed Legal Aid Coordination Council, a collegial advisory body operating on a honourable basis. The Bar Council is responsible for overseeing the quality of the secondary legal aid services provided by lawyers and lawyers` assistants (the governing body of the Lithuanian Bar Association).[47]

38 Art 47(1) of the CCP

39 R.Ažubalytė, R. Jurka, J.Zajančkauskienė, „Criminal Procedure Law: General Provisions", Mykolas Romeris University, 2016, p. 244.

40 Art 7 of Law No. IX-2066 on the Bar, dated 18 March 2004, https://www.e-tar.lt/portal/lt/legalAct/TAR.9F4371AB03A3/YThIBEDHse

41 Art 17 of the Law on the Bar

42 Art 2(6) of Law No. VIII-1591 on State-Guaranteed Legal Aid, dated 28 March 2000, https://www.e-tar.lt/portal/lt/legalAct/TAR.EAA93A47BAA1/ucAAwrSjgW

43 Art 12 of the Law on State Guaranteed Legal Aid

44 Art 17 of the Law on State Guaranteed Legal Aid

45 2015 Activity Report of the State-Guaranteed Legal Aid Service, 29 February 2016, No. 1, www.teisinepagalba.lt

46 Art 9 of the Law on State Guaranteed Legal Aid

47 Art 60(2)(16) of the Law on the Bar

Important statistical data

Chart 1. Average annual population of Lithuania[48]

Chart 2. Number of offences recorded in Lithuania[49]

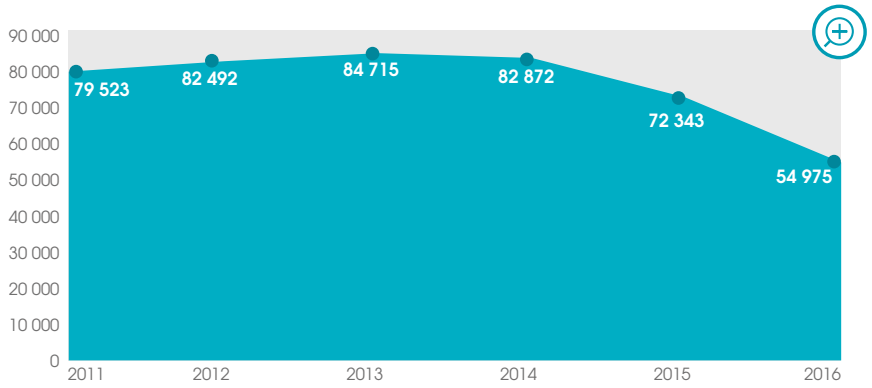


Chart 3. Number of persons suspected of having committed a criminal offence[50]

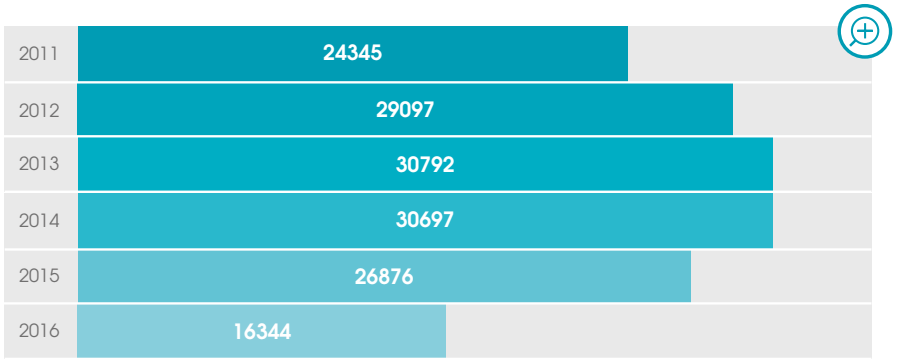
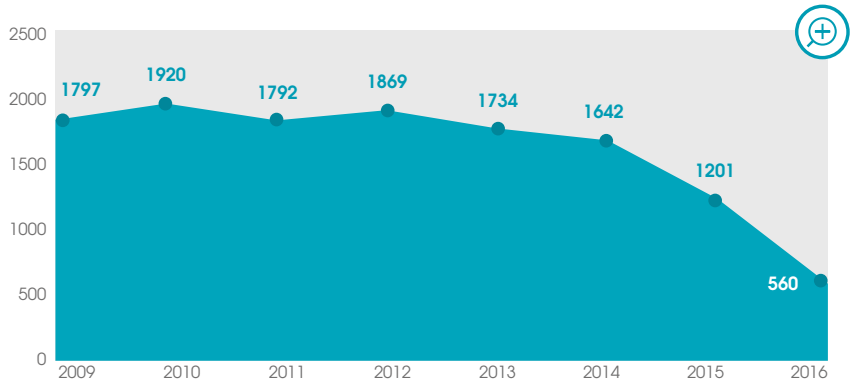


Chart 4. Number of persons remanded in pre-trial detention[51]



48 Statistics Lithuania, http://osp.stat.gov.lt/

49 Statistics Lithuania, http://osp.stat.gov.lt/ and the Information Technology and Communications Department under the Ministry of the Interior, http://www.ird.lt/statistines-ataskaitos/

50 Information provided by the Information Technology and Communications Department under the Ministry of the Interior, http://www.ird.lt/statistines-ataskaitos/. It should be noted that the data collection procedure (system) was changed in 2016, and as such any data from that period should be taken with a grain of salt.

51 Information provided by the Information Technology and Communications Department under the Ministry of the Interior, http://www.ird.lt/statistines-ataskaitos/. It should be noted that the data collection procedure (system) was changed in 2016, and as such any data from that period should be taken with a grain of salt

Chart 5. Number of decided criminal cases[52]

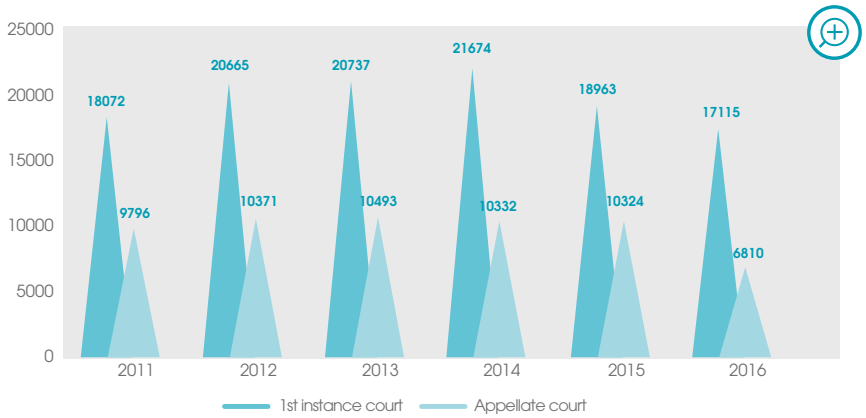


Chart 6. Number of criminal cases in which secondary legal aid was provided[53]

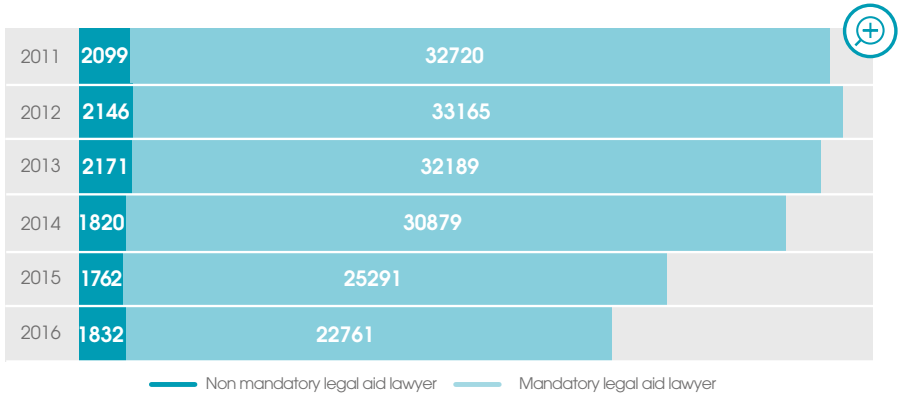


Chart 7. Remuneration of lawyers providing secondary legal aid in criminal proceedings

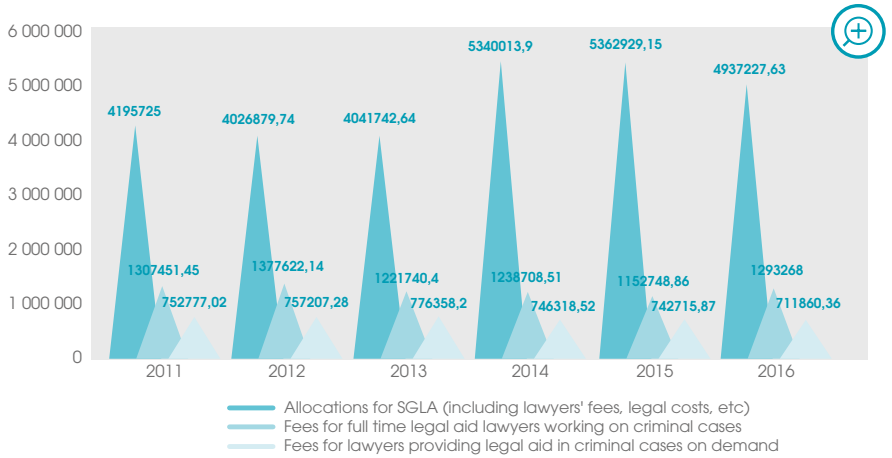
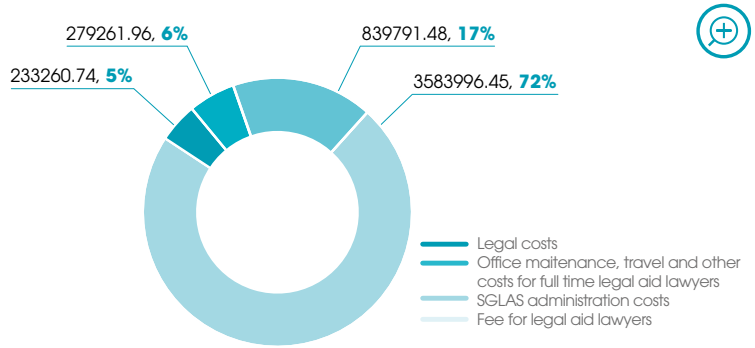


Chart 8. Spendings on secondary state guaranteed legal aid in 2016 (EUR)



52 Information provided by the National Courts Administration, http://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/statistika/106.

53 Information on secondary legal aid presented here and further on was taken from official reports published by the State-Guaranteed Legal Aid Service, http://vilnius.teisinepagalba.lt/lt/tm/veiklos-ataskaitos/

THE RIGHT OF ACCESS TO A LAWYER AND THE RIGHT TO LEGAL AID: REGULATORY REGIME

Right of access to a laywer

As mentioned previously, the constitutional right of access to counsel is laid out in the Code of Criminal Procedure (CCP), which states that suspects and accused persons have the right to access a lawyer, without any undue delay.[54]

Timing of the right of access to a lawyer. The Directive on the right of access to a lawyer ("the Directive") provides that suspects "shall have access to a lawyer without undue delay", with this right coming into existence at one of the following points in time (whichever is the earliest):

- before they are questioned by the police or by another law enforcement or judicial authority;
- upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act, including, at the very least, identity parades, confrontations and reconstructions of the scene of a crime;
- without undue delay after deprivation of liberty;
- where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.[55]

The CCP provides that the right of access to counsel is guaranteed "from the moment of arrest or the first interrogation." While arrest may last up to 48 hours, the detainee must be questioned as a suspect within 24 hours of being delivered to the institution responsible for the pre-trial investigation.[56] Unlike the Directive, the CCP does not explicitly provide that the right to counsel is comes into existence *prior* to the questioning, which sometimes leads to misunderstandings in practice. Nor does the CCP state that the right of access to counsel comes into existence when carrying out evidence-gathering acts or summoning someone to court, but in practice, these actions take place *after* the suspect's questioning, where they may avail themselves of the right to counsel if they so wish.

54 Art 3(2) of the CCP

55 Art 3(2) of the Directive

56 Art 140(4) of the CCP

Information on the right of access to counsel. The Directive requires that suspects or accused persons be provided promptly with information concerning the right of access to a lawyer.[57]

Under the CCP, every party to the proceedings, including suspects or accused persons, must be informed of their procedural rights.[58] The general duty to clarify these rights lies with investigating police officers, prosecutors and judges.

This information must be served to the suspect in writing prior to their first questioning by the police, together with a notification of the suspicions arrayed against them.[59] Specifically, suspects must be served the Annex to the Record of Notification of the Rights of the Suspected Person, in a form approved by the Prosecutor General.[60] The second paragraph explains the right to counsel:

> (excerpt from the Annex to the Record of Notification of the Rights of the Suspected Person)
>
> **2. A right of access to a lawyer from the moment of detention or first interrogation.**
>
> *The suspected person shall have the right to defend himself/herself in person or through a defence counsel of his/her own choice. This right shall be guaranteed from the moment of detention or first interrogation.*
>
> *In the event the suspected person does not have sufficient means to pay for legal assistance, he/she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State.*
>
> *The detained or arrested suspect shall have the right to meet his/her defence counsel in private. The number and duration of meetings between the suspected person and his/her defence counsel shall not be limited during the working hours of temporary detention or arrest facilities.*

57 Para 14 of the Preamble to the Directive, making a blanket reference to Directive 2012/13/EU on the right to information in criminal proceedings

58 Art 45 of the CCP

59 Art 187 of the CCP

60 Order No. I-288 of the Prosecutor General „On the Approval of the Forms of Documents in Criminal Proceedings", dated 29 December 2014, https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4/RnuZPoNCAA

The other rights listed in the Annex are broadly consistent with the rights that suspects or accused persons must be informed of under the Directive on the right to information.[61] Furthermore, the right of access to counsel is defined in the Record of Notification of the Rights of Access to Counsel, which must be signed by the suspect to indicate that it had been read and understood:

> (excerpt from the Annex to the Record of Notification of the Rights of the Suspected Person)
>
> *Pursuant to Articles 44 and 50 of the Code of Criminal Procedure (CCP) of the Republic of Lithuania, it has been explained to the suspect that each person that is being suspected or has been accused of having committed an offence may defend himself/herself in person or through a defence counsel of his/her own choice, and, in the event he or she does not have sufficient means to pay for legal assistance, he/she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State. Suspects themselves may choose and contact counsel that they deem appropriate. If the suspect so instructs, counsel may be contacted by his/her representatives in accordance with the law or others that the suspect instructs.*
>
> *Pursuant to Article 51 of the CCP, it has been explained to the suspect that the State may, in accordance with the procedure laid down by the law, seek to recover the costs of state-guaranteed legal aid in relation to the necessary attendance by counsel, subject to the suspect's, accused or convicted person's means and excepting the circumstances where the proceedings involve suspects or accused persons that are minors, or proceedings involving blind, deaf, mute or other persons with physical or mental disabilities that prevent them from exercising their rights of defence.*
>
> *Pursuant to Article 52 of the CCP, it has been explained to the suspect that waiving their right to counsel does not deprive them of the right to have access to counsel later on, at any stage of the proceedings.*

In practice, the right of access to a lawyer is explained to the person before any interrogation – that is, it's not limited to just the first interrogation.[62] The focus group survey that the Human Rights Monitoring Institute carried out in 2012 confirmed that detainees are usually offered a lawyer in practice. However, the duty to explain this right is interpreted very formalistically - the person is asked if he or she would like to have a lawyer, without going into detail about what the right entails and what procedural repercussions it might have for him or her.[63]

The general rule established in the CPP states that the rights of the accused at trial are explained to him or her by the presiding judge,[64] Interviewed judges explained that they always take further steps to explain the right to counsel and the right to legal aid before the court hearing.[65] No written documentation on existing rights is available in court.

Replacing counsel. The CCP does not set out the procedure for replacing legal counsel in detail, but it does provide that suspects may waive their right to have counsel at any stage in the proceedings without relinquishing their right to have counsel in the future.[66] When the right to counsel is waived, a notice must be drawn up.[67]

The CCP also sets out two instances where replacing counsel is mandatory. Suspects are appointed counsel if the lawyers selected by them are unable to participate in the proceedings for more than three days in a row, or if they are unable to attend the first interrogation or the interview regarding the validity of detention within six hours.[68] The same rule applies to court hearings.[69] Before defence counsel is appointed, either the investigating police officer or the prosecutor must ask the suspect whether they would like to contact some other lawyer. If the suspect doesn't do so, counsel is appointed by law enforcement officers at their discretion and the suspect's wishes regarding specific lawyers are not taken into account.[70]

Confidentiality of communications between counsel and client. The Directive states that the confidentiality of communications (meetings, correspondence, telephone conversations and others) between suspects or the accused and their counsel be respected.[71] This duty means that states must not only refrain from interfering with counsel-client communications, but that they must also ensure that this principle is being followed in places where persons are deprived of their liberty.[72]

61 Directive 2012/13/ES on the right to information in criminal proceedings

62 Interview No. TYR-01 and TYR-02

63 Human Rights Monitoring Institute, „Arrest and Pre-trial Detention in Lithuania", 2012, p. 9 http://hrmi.lt/sulaikymo-ir-suemimo-reglamentavimas-ir-taikymas-lietuvoje-2012/

64 Art 268, 50 and 45 of the CCP

65 Interview No. T-01 and T-02

66 Art 52(3) of the CCP

67 Art 52(1) of the CCP

68 Art 50(4) of the CCP

69 Art 250 of the CCP

70 Art 50(4) of the CCP

71 Art 4 of the Directive

72 Para 33 of the Preamble to the Directive

One of the rights of counsel provided for in the CCP is the right to meet the detained or arrested suspect without third parties being present. The law on criminal procedure does not set a limit on the number of such meetings or their duration, nor does it provide any exceptions to the rule.[73] The Law on the Bar further prohibits inspecting postal items, listening in on phone conversations, controlling information sent through other telecommunication networks or any other form of communication or actions between counsel and client.[74]

Typically, detainees are sent to remand prisons for pre-trial detention, but they may be held in a police custody up to fifteen days beforehand.[75] There are no limitations to the number and length of meetings between counsel and suspects in custody.[76] Suspects in remand can meet with counsel in designated facilities during working hours.[77] Detainees are searched after the meeting, but they are allowed to keep documents or notes relating to their case.[78]

The management of remand prisons does not check mail to and from counsel.[79] The general rule that detainees must cover the cost of correspondence also doesn't apply in this case. If the detained person wants to communicate with their lawyer via mail, but cannot afford the requisite means (envelopes, stamps, etc.), they must be provided to him or her by the management of the remand prison.[80]

The law does not have any special provisions for telephone conversations between detainees and their counsel. Usually, detainees may call a person (or persons) of their choosing once a day, with the length of the call (or calls) not exceeding 15 minutes.[81] The prosecutor or the court may order the management of the remand prison in writing to prohibit the detainee from making telephone calls.[82]

Right of counsel to participate in the investigation. The Directive provides that counsel must, at the very least, be allowed to attend the following: identity parades, confrontations and reconstructions of the crime scene.[83]

73 Art 48(1)(3) of the CCP, Art 14(1) of Law No. I-1175 on Pre-trial Detention, dated 18 January 1996, https://www.e-tar.lt/portal/lt/legalAct/TAR.11A8B08A7405/EuUhOSPJXf

74 The exception applies when the lawyer is being suspected or has been accused of having committed a criminal offence. Art 46(3) of the Law on the Bar of the Republic of Lithuania

75 Art 2(2) of the Law on Pre-trial Detention

76 Para 171(6) of Order No. 88 of the Minister of the Interior „On the Operation of Police Custody at Stations", dated 17 February 2000, https://www.e-tar.lt/portal/lt/legalAct/TAR.DA14BA090407/wgjGWuvNbI

77 Para 34 of Order No. 1R-172 of the Minister of Justice „On the Approval of the Internal Rules of Procedure for Remand Prisons", https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.345557/huRQLnLPiT

78 Para 35 of Order No. 1R-172 of the Minister of Justice „On the Approval of the Internal Rules of Procedure for Remand Prisons"

79 Art 16(3) of the Law on Pre-trial Detention

80 Art 16(4) of the Law on Pre-trial Detention

81 Para 75 of Order No. 1R-172 of the Minister of Justice „On the Approval of the Internal Rules of Procedure for Remand Prisons"

82 Art 23(1) of the Law on Pre-trial Detention

83 Art 3(3) of the Directive

Compared to the Directive, the CCP gives counsel greater scope for participating in the pre-trial investigation. Counsel has the right to attend the interrogation of the suspect, as well as any other action involving the latter.[84] This includes interrogations, identity parades, checking the suspect's statement on the spot (if the suspect's statement is checked), experiments involving the suspect, confrontations et al.

If the action is being carried out at the request of the suspect or their counsel, counsel may participate irrespective of the participation of the suspect.[85] Counsel may participate in any other material-gathering action only with permission from the investigating police officer, prosecutor or judge.[86]

The CCP sets out two specific limitations on this right.

For one, the pre-trial judge may rule that the suspect and their counsel are prohibited from participating in the interviews of witnesses or victims that happen to be minors, if there is a risk that the suspect will exert influence on them.[87] Secondly, suspects and their counsel may be removed from the place of the interview when anonymous witnesses or victims are being interviewed. This must be sanctioned by the pre-trial judge. The suspect and their counsel retain the right to pose questions to the victim or witness through the pre-trial judge.[88]

Counsel's right to effectively participate when their clients are being questioned. The Directive provides that suspects and accused persons have not only the right to have their counsel present during questioning, but also the right to have them effectively participate in these proceedings.[89] Effective participation in interrogations includes the counsel's right "ask questions, request clarification and make statements, which should be recorded in accordance with national law" during the pre-trial investigation and the trial itself.[90]

Although the CCP does not use the term "effective participation", suspects and their defense counsel, as well as other parties to the proceedings, are given the right to pose questions in interrogations that take place during the pre-trial investigation, have access to the records of investigative actions taken at their request, as well as comment on the contents of these records.[91] Protocols are signed by the person that carried out the investigative action, as well

84 Art 48(1)(2) and 48(1)(4) of the CCP

85 Art 48(1)(4) of the CCP

86 Art 48(1)(4) of the CCP

87 Art 186(3) of the CCP

88 Art 203(3) of the CCP

89 Art 3(3)(b) of the Directive

90 Para 25 of the Preamble to the Directive

91 Art 178(5) of the CCP

as by anyone involved - for example, reports of interrogations involving counsel must be signed by the latter.[92] If questioning takes place in the presence of the pre-trial judge at the suspect's request, counsel's attendance is mandatory.[93] Counsel may also pose questions during direct or cross-examination at trial.[94]

If counsel is unable to meet the investigating police officer, prosecutor or attend a court hearing at the designated time, they must give reasons for their absence in advance; counsel without a valid reason may be fined up to 1140 EUR or be held in custody for up to one month. [95]

Limitations on the right to counsel. The Directive sets out the situations in which the suspects right of access to a lawyer may be temporarily[96] restricted during the pre-trial investigation in exceptional circumstances:

- where geographical remoteness of the suspect or accused person does not allow for their right to have access to a lawyer being implemented without undue delay after deprivation of liberty;
- where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

As was mentioned previously, in the Republic of Lithuania, the right to a lawyer is a constitutional right which, according to the Constitutional Court of the Republic of Lithuania, is absolute and cannot be denied or restricted on any grounds and under any circumstance. [97] As such, the CCP does not have anything similar to the restrictions laid out in the EU Directive, and can thus be said to protect this right to a higher standard in comparison.

Representation of vulnerable suspects. The Directive requires that the particular needs of vulnerable suspects and vulnerable accused persons be taken into account when their right to counsel is being implemented.[98] This provision should be interpreted in line with the Commission's Recommendation on procedural safeguards for vulnerable persons,[99] which consolidates the presumption of vulnerability for "persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering them to understand and effectively participate in the proceedings."[100]

The CPP provides additional safeguards for vulnerable persons who, presumably, are unable to exercise their rights of defence due to their "physical or mental disability".[101] When cases involving such persons are being tried, the attendance of counsel is mandatory and investigating police officers, prosecutors or courts are not obliged to follow any waiver to the right of access to a lawyer.[102] In addition, counsel to such persons may submit appeals irrespective of their clients' wishes.[103]

In addition to counsel, the CCP provides for one more position to assist vulnerable suspects and accused persons – namely, they can have a legal representative, who would participate in the proceedings alongside them and help them exercise their rights. Parents, adoptive parents, guardians or persons authorized by care institutions can become legal representatives of suspects and accused persons who have not yet come of age or lack capacity. Suspects and accused persons who have not been recognized as lacking capacity, but who are otherwise unable to exercise their rights due to old age, disability, infirmity or any other valid reason, may be represented by family members or close relatives. Representation of this sort must be authorized by the prosecutor or the court.[104] The fact that there is a legal representative does not limit the represented persons right to counsel – the CCP provides that legal representatives may call for counsel to participate.[105]

Violating the right to counsel. To be recognized as evidence by the court, the material has to be obtained in accordance with the law (the admissibility principle).[106] The admissibility principle is violated when human rights are restricted unreasonably when performing procedural actions, when procedural principles are broken or when procedural actions are carried out without closely

92 Art 178(3) of the CCP

93 Art 189(5) of the CCP

94 Art 275(1) of the CCP

95 Art 48(2)(2) and Art 163 of the CCP

96 All derogations must be proportionate, strictly limited in time, not based exclusively on the type or seriousness of the alleged offence and not prejudice the overall fairness of the proceedings (Art 8(1) of the Directive).

97 12 February 2001 ruling of the Constitutional Court of the Republic of Lithuania

98 Art 13 of the Directive

99 Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02), http://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A32013H1224(02)

100 Para 9 of Recommendation 2013/C 378/02

101 Art 51(1(2) of the CCP

102 Art 52(2) of the CCP

103 Art 312(6) and Art 367(2) of the CCP

104 Articles 53-54 of the CCP

105 Art 50(2) of the CCP

106 Art 20(1) of the CCP. As well as material that may be checked while carrying out procedural steps under the CCP. See „Overview of how the rules laid out in the Code of Criminal Procedure are applied in case law", by the Supreme Court of the Republic of Lithuania, No. T-1, dated 28 June 2007, http://www2.lat.lt/lat_web_test/4_tpbiuleteniai/senos/nutartis.aspx?id=32350

following the main rules set out for such actions.[107] For example, material collected by wiretapping calls between counsel and client during the pre-trial investigation would be inadmissible as evidence, since it would violate the absolute prohibition on listening in on conversations between counsel and the suspect set out in the CCP.[108]

Furthermore, the courts assess compliance with procedural requirements and principles when examining the material collected during the pre-trial investigation that was submitted by the prosecution. In the event of fundamental violations of the Code of Criminal Procedure during the pre-trial investigation, which now interfere with the trial, the case is returned to the prosecutor.[109] Fundamental violations are violations where the defendant's rights are restricted due to failure to comply with procedural law.[110] Some violations may be remedied at first instance, for example, by allowing the suspect and his or her counsel to pose questions to the victim if they were denied this right during the pre-trial investigation.

Violations of the rights of defense are assessed in the context of other procedural irregularities; situations where the attendance of counsel was mandatory, but his or her participation was not guaranteed, are taken exceptionally seriously. For example, in one case the court of cassation decided that the interrogation of an 88-year old suspect with a physical impairment (80-84% loss of hearing) in the absence of counsel was a fundamental violation of his rights. Although the suspect waived his right to counsel, the court was of the opinion that the investigator had to appoint one for him to make sure that he was really able to defend himself from the accusation. Annulling the verdict, the court stated that:[111]

It cannot be agreed with the conclusion of the appellate court, namely, that, by appointing counsel to the convicted person during trial at first instance, the pre-trial irregularities were successfully remedied. Agreeing with such a position would, as such, go against the essence of mandatory participation of counsel in pre-trial investigations, as well as the guarantee of the person's right to defence enshrined in the Constitution.

107 16 January 2007 ruling of the panel of judges of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K-4/2007. Minor derogations to established procedure would not be an obstacle to admitting important material in the case as evidence (G. Goda, M. Kazlauskas, P. Kuconis, „Criminal Procedure Law", Vilnius: 2011, p. 168)

108 *Mutatis mutandis,* 4 April 2006 ruling of the panel of judges of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K-281/2007

109 Art 234(2) of the CCP

110 Art 369(3) of the CCP

111 3 November 2015 ruling of the panel of judges of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K-462-697/2015

Special witness status. The Directive provides that it also applies to "persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons".[112] This means that, should a person be questioned as a witness and become a suspect during questioning, the interview should be suspended immediately, with the person being informed of his rights as a suspect and given the opportunity to exercise them.[113]

In essence, the CCP prohibits interviewing persons as witnesses if they could give evidence about their own offense, unless they themselves agree to it. Such persons are called special witnesses.[114] In most cases, this status is given where there is evidence that an offence was committed by a particular person, but it is not sufficient to have the person be declared a suspect. Special witnesses may only be interviewed if there is a prosecutor's resolution to that effect, which is subject to appeal.[115]

Special witnesses do not have a legal right to know what they might be suspected of or to request that a party be removed from the proceedings.[116] However, the special witness differ from "regular" witnesses in that they are not held liable for refusing to testify or for false testimony. Special witnesses are also entitled to have an authorized representative (for example, their lawyer) during interviews, and to demand that they be declared suspects.[117]

Special witness status is, in effect, the intermediary link between witnesses and suspects. Lithuanian lawyers are not of one mind on this subject: some believe that this status can protect a person from unwarranted prosecution, while others argue that it can be used as a means of applying psychological pressure.[118] A judge interviewed for the study questioned the necessity of such a status in criminal proceedings, since if a person is questioned about an offence he could have committed, he must be made a suspect in all circumstances.[119]

Procedure for administrative offences. The Directive does not require the same level of protection of the right of access to a lawyer where cases concerning

112 Art 2(3) of the Directive

113 Para 21 of the Preamble to the Directive

114 Art 80(1) of the CCP

115 Para 7-9 of Order No. I-8 of the Prosecutor General „On the Recommendations Regarding Witness Interviews Under Art. 80(1) and Art. 82(3) of the Code of Criminal Procedure of the Republic of Lithuania", dated 9 January 2008, https://www.e-tar.lt/portal/lt/legalAct/TAR.CB6301C7E283

116 Art 81 of the CCP

117 Art 82(3) of the CCP. Under the CCP, the witness`s or the victim`s lawyer is called „authorized representative", whereas the suspect`s lawyer is called „counsel".

118 Saulius Jakučionis, „What is a special witness? The now wildly-popular status raises doubts", 23 January 2017, *BNS,* http://www.tv3.lt/naujiena/897508/kas-tas-specialusis-liudytojas-ispopuliarejes-statusas-kelia-abejoniu?t=1

119 Interview No. T-02.

minor offenses (which are not punishable by deprivation of liberty) are examined by administrative authorities.[120]

Administrative offenses, which are not punishable by deprivation of liberty and may not be subject to such sanctions, could be seen as an example of this type of minor infringement in Lithuania.[121]

Many institutions, including the Seimas Ombudsmen's Office, the Bank of Lithuania, the Radio and Television Commission of Lithuania and others, are able to investigate administrative offenses and draw up records for them.[122] Some administrative offences are examined in court, some are examined out of court; all decisions may be appealed to the ordinary courts.[123] The investigation, examination and appeals regarding administrative offences are governed by administrative and not criminal procedure law.

As such, all signs point to administrative offenses not falling under the regulatory scope of the Directive.

Waiving the right to a laywer

The Directive aims to make sure that individuals are aware of the consequences of waiving their right to a laywer. As such, it requires that persons wishing to waive their right to a lawyer be explained, orally or in writing, the consequences of the waiver. Any such waiver must be voluntary and unequivocal.[124] The directive also states that the waiver of the right to counsel, as well as "the circumstances under which the waiver was given", must be noted using the recording procedure in accordance with national law.[125]

The suspect's desire to have counsel during the pre-trial investigation, as well as any waiver of the right, are noted in the Record of Notification of the Rights of Access to Counsel.[126] The Record does not require that circumstances of the waiver be elaborated upon. Before signing the document, the person is given the following information:

120 That is, not courts with jurisdiction over criminal matters.

121 Art 23 and Art 27 of the Code of Administrative Offences (CAO), XII-1869, 25 June 2015, https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/rGRpUclCUx

122 Art 589 of CAO

123 Art 614 and Art 612 of CAO

124 Art 9 of the Directive

125 Art 9(2) of the Directive

126 Art 50(1) of the CCP

(excerpt from the Record of Notification of the Rights of Access to Counsel)

Pursuant to Article 52 of the CCP, it has been explained to the suspect that waiving their right to counsel does not deprive them of the right to have access to counsel later on, at any stage of the proceedings.

As mentioned previously, neither officers nor the courts are obliged to follow a vulnerable suspect's or accused person's waiver of the right of access to a lawyer.

During trial, the suspect's wishes regarding waiving their right to counsel are recorded in the minutes of the hearing. Case law provides that where the attendance of counsel is mandatory, the waiver of the right to counsel is not deemed to be voluntary if counsel fails to show up at the hearing.[127] According to the court of cassation, "the right to counsel may only be waived by the defendant him- or herself, and only when counsel is actually participating in the case and there is a writ of attorney to that effect."[128]

In some cases, defendants have argued at trial that they did not waive their right to counsel during pre-trial investigation voluntarily, instead doing so because they were not made aware of their rights to defence; because they were intoxicated and unable to understand the consequences of the waiver; or because police officers forced them to do it. In assessing such situations, the court usually take the following into account:

- whether the right to counsel was explained to the suspect and whether this has been noted in the Record;
- whether the suspect waived their right to counsel and whether the waiver was noted in the Record;
- whether there is evidence that there were circumstances in the case where counsel attendance was mandatory;
- whether the suspect exercised their right to counsel at other stages of the investigation;
- whether there is evidence that the suspect waived their right to counsel not of their own accord, but rather due to the "influence exerted by investigating police officers".[129]

127 R.Ažubalytė, R. Jurka, J.Zajančkauskienė, „Criminal Procedure Law: General Provisions", Mykolas Romeris University, 2016, p. 263.

128 14 September 1999 ruling of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K-459/1999

129 See, for e.g., 2 February 2010 ruling No. 2K-26/2010 of the Criminal Division of the Supreme Court of the Republic of Lithuania

To examine the latter, judges may summon the investigating police officers for questioning about the circumstances of the waiver. Still, just as one judge who participated in this study said, it is very difficult to ascertain the facts in such cases, since the defendant's word is set against the officer's claims and there is no further information as to what happened during the interrogation.[130]

Right to free legal aid

Information on the right. The Recommendation on the right to legal aid ("the Recommendation") provides that suspects and accused persons should be provided with information on legal aid "in easily accessible and understandable language".[131] This should cover such aspects as: (i) how and where to apply for aid, (ii) transparent criteria on when a person is eligible for legal aid, (iii) the possibilities to complain in circumstances where access to legal aid is denied or a legal aid lawyer provides insufficient legal assistance.

As mentioned previously, information about their rights must be served to suspects in writing prior to their first questioning by the police, together with a notification of the suspicions arrayed against them. The information provided to suspects in writing is very succinct when discussing the right to state-guaranteed legal aid: "In the event the suspected person does not have sufficient means to pay for legal assistance, he/she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State." This arrangement is explained orally.[132] Detailed information on how to exercise this right is also available on the Internet, at the official website http://www.teisinepagalba.lt/. However, the site lacks information on how to appeal refusals to grant legal aid or refusal of counsel to act.

All interviewed judges said that they explain this right to the person in the beginning of the trial.[133] Two interviewed judges also claimed that if they do not find find that counsel attendance is mandatory, but the person still wishes to receive state-guaranteed legal aid, he/she may be offered an application form for legal aid at the hearing, with the case being adjourned until the next hearing, which the defendant could attend with their appointed lawyer.[134]

Model for the provision of secondary legal aid. Lithuania uses what can be described as a mixed model for providing secondary legal aid (representation).

The CCP outlines specific circumstances where counsel attendance is mandatory to the proceedings – in those cases, secondary legal aid is provided to suspects or accused persons irrespective of their wealth or income.[135] It is presumed that in those circumstances people are in a particularly vulnerable position (for example, by virtue of their age, disability, inability to understand the language of the proceedings or because of the specificity of the proceedings) and the interests of justice require that they be represented by counsel.

Investigating police officers, prosecutors and judges may, at their discretion, decide that counsel attendance is also mandatory in other cases - in those circumstances, legal aid is also provided without regard for the person's financial means.[136] This way, the officials assess whether the interests of justice require that counsel attendance be deemed mandatory, perform a merits tests within the meaning of the Recommendation.[137]

In all other circumstances, suspect or accused persons may apply to the State-Guaranteed Legal Aid Service (SGLAS), which assesses their wealth and income in accordance with set criteria and decides whether to provide secondary legal aid (representation).[138] In this case, the Service carries out a means test within the meaning of the Recommendation.[139] In certain cases, SGLAS may decide to provide legal aid regardless of the person's wealth or income. An example of one such case may be a situation where persons are unable to freely make use of their wealth or income due to objective reasons, or when they are provided for in residential care institutions. These circumstances are listed in the Law on State-Guaranteed Legal Aid.[140]

Personal means test. The Recommendation provides that any assessment of a person's means should take into account their (i) income, (ii) wealth, (ii) family situation, (iii) standard of living and (iv) the costs of representation.[141]

130 Interview No. T-02

131 Art 5 of the Commission Recommendation of 27 November 2013 on the right to legal aid for suspects and accused persons in criminal proceedings (2013/C 378/03), http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32013H1224(03)&from=en.

132 Art 50(2) of the CCP

133 Interview No. T-01, T-02, T-03

134 Interview No. T-01, T-02

135 Art 51(1) of the CCP

136 Art 51(2) of the CCP

137 Para 11 of the Recommendation

138 Art 11 of the Law on State-Guaranteed Legal Aid

139 Para 6 of the Recommendation.

140 Art 12 of the Law on State-Guaranteed Legal Aid

141 Para 6 of the Recommendation

State-guaranteed secondary legal aid is provided when a person's assets and annual income do not exceed the thresholds set by the Government:[142]

Level of personal wealth	Percentage of costs of legal aid covered by the State	Rule for calculating assets	Rule for calculating annual income	Annual income expressed in EUR (in accordance with the law in force on 1 January 2017)
First (Level I)	100%	1 standard wealth level[143]	9 minimum monthly wages (MMW) + 3 MMW for each dependent, or	3420 EUR (excluding dependents)[144]
Second (Level II)	50%	1,5 standard wealth level	13 MMW + 4,5 MMW for each dependent	4940 EUR (excluding dependents)

An assessment of the level of personal assets takes into account that person's real estate (housing) and land, movable assets, the value of securities and shares, as well as the money at that person's disposal. When assessing a person's family situation, dependents are said to be minors (including adopted minors) living together with that person and dependent on him or her, children (or adopted children) aged 18-24 who are unemployed, unmarried and studying full-time, as well as others who are living with the person in question and dependent upon him or her.[145]

Lithuanian laws do not provide for an assessment of the costs of representation, since lawyers providing secondary legal aid are offered fixed fees for their services.

142 Art 2(2) of the Law on State-Guaranteed Legal Aid. Wealth levels have been set in Resolution No. 468 of the Government „On Determining Wealth and Income Levels for the Purposes of Secondary Legal Aid", dated 27 April 2005 (edited 1 January 2015), https://www.e-tar.lt/portal/lt/legalAct/TAR.1E9AFC503DE6/URxLXimokZ

143 A more detailed explanation on the calculation of these standards is available at the State-Guaranteed Legal Aid Service website at http://www.teisinepagalba.lt/lt/antrine/tm/skaiciuokle/

144 The minimum monthly wage has been set at 380 EUR by a Government resolution. Resolution No. 644 of the Government of the Republic of Lithuania „On minimum wages", dated 22 June 2016, https://www.e-tar.lt/portal/lt/legalAct/172d7630394911e69101aaab2992cbcd

145 Art 2 of Resolution No. 468 of the Government „On Determining Wealth and Income Levels for the Purposes of Secondary Legal Aid"

The Recommendation also establishes that suspects and accused persons should not be subjected to an onerous burden of proof (beyond reasonable doubt) when claiming that they have insufficient financial means to hire a lawyer.[146] Meanwhile, in Lithuania, suspects or accused persons seeking secondary legal aid must fill out the prescribed application form[147] and submit it together with the specified Declaration of their income and assets. The Declaration requires you to carefully detail the types, amount and sources of income for the last 12 months, the type, address and market value of any real estate owned, as well as any other income.[148]

Means (interests of justice) test. The Recommendation specifies that any assessment of whether the interests of justice require that legal aid be provided must take into account the following criteria: (i) the complexity of the case (ii) the social and personal situation of the suspect or accused person or requested person, (iii) the seriousness of the offence and (iv) the severity of the potential penalty that can be incurred.[149] The Recommendation further provides that in situations where the offense that carries a custodial sentence as a possible penalty, the granting of legal aid should be considered to be in the interests of justice.[150]

Lithuanian law provides a non-exhaustive list of circumstances in which the participation of counsel is mandatory due to the interests of justice. In these cases, the person in question is required to call upon counsel – if they are unable to do so, counsel is appointed on their behalf.[151] Contrary to what is stated in the Recommendation, the possibility of a custodial sentence (except for life imprisonment) is not considered to be grounds for mandatory participation of counsel, with legal aid in such cases being provided in accordance with the person's financial means, unless deemed otherwise by the investigating police officer, the prosecutor or the judge.

Below you will find information on the grounds for requiring attendance by counsel as set out by the CCP, together with the number of times that counsel has been appointed over the course of 2015 and 2016 on those grounds. [152]

146 Para 10 of the Recommendation

147 Order No. 1R-124 of the Minister of Justice „Approving the Form of the Application for Secondary Legal Aid", dated 27 April 2005 (edited 1 January 2016), https://www.e-tar.lt/portal/lt/legalAct/TAR.477A31637B58/cODEUXZZev

148 Order No. 1R-300 of the Minister of Justice „Approving the Form for the Declaration of Annual Income and Assets for the Purposes of Obtaining Secondary Legal Aid", 27 January 2013 (edited 7 July 2015), https://www.e-tar.lt/portal/lt/legalAct/c2bc167077b111e3996afa27049d9d4e

149 Para 11 of the Recommendation

150 Para 12 of the Recommendation

151 Art 51(3) of the CCP

152 2015 Activity Report of the State-Guaranteed Legal Aid Service, 29 February 2016, No. 1, p. 13, table 18, http://vilnius.teisinepagalba.lt/dok/ataskaitos/2015%20m_%20veiklos%20ataskaita%20internetui_16_07_27.pdf, 2016 Activity Report of the State-Guaranteed Legal Aid Service, 2016, Annex No. 4

Grounds for mandatory participation of counsel	Counsel appointed (2015)	Counsel appointed (2016)
In proceedings where the suspect or accused is a minor	4337	3602
In proceedings involving blind, death, mute or other people who, by virtue of their physical or mental disability, are unable to exercise their rights of defence	3299	3189
In cases where the defendant does not understand the language of the proceedings	2310	2115
When there is a conflict between the interests of suspects or accused persons when it comes to their defence, and at least one party is represented by counsel	2127	1721
In proceedings involving offences punishable by life imprisonment	126	130
In cases of trial in absentia	57	53
When investigating and examining cases involving detained suspects or defendants	3501	2345
In proceedings for extraditing persons, surrendering them to the International Criminal Court or transferring them under the European Arrest Warrant	174	219
In summary proceedings	1249	1329
When examining the case in a hearing at an appelate court	2555	2289
When prosecuting legal entities who either select an inappropriate representative or fail to do so at all	13	0
In all other cases where the participation of counsel is mandatory because the investigating police officers, prosecutor or judge have deemed that without counsel`s assistance the suspect`s or accused person`s rights and legitimate interests would not be adequately protected	5543	5769
TOTAL	**25291**	**22761**

As can be seen, investigating police officers, prosecutors and courts may deem that counsel participation is mandatory at their own discretion, in circumstances not covered by the list, where "without counsel`s assistance the suspect`s or accused person`s rights and legitimate interests would not be adequately protected".[153] When applying this provision, the Ministry of Justice suggests assessing „reasons, factors, evidence and arguments, justifying a possible violation of suspect`s (accused`s) rights and legitimate interests", but fails to provide more specific guildelines to this end.[154]

None of the professionals who took part in this study has made any reference to the Ministry`s recommendation. It seems that they mostly follow their personal jugdment and the practice established by their respective institution.

One judge who participated in the study wanted to add situations involving serious or very serious crimes punishable by long-term imprisonment, as well as situations where prisoners wanted to exercise their procedural rights, to this list of circumstances where the participation of counsel is mandatory.[155] At the same time, another judge did not automatically include imprisoned convicts in the group of people that need to be represented by counsel, but thought that addiction to drugs or psychotropic substances, as well as poor social skills (especially when dealing with law enforcement for the first time), were sufficient grounds for finding that the defendant's rights would not be adequately protected without a lawyer.[156]

This approach was dismissed by a participating prosecutor, who believed that addiction to drugs or anything else could not be seen as grounds for mandatory participation by counsel.[157] Two of the prosecutors stressed that in cases involving accomplices, especially if one was being represented by counsel while the others were not, it was necessary to appoint counsel to each and every defendant.[158] Only one judge unequivocally adhered to the Recommendation, i.e. where the offense carries a custodial sentence as a possible penalty, the accused should be represented by a lawyer in the interests of justice.[159]

153 Art 51(2) of the CCP

154 Ministry of Justice, „Re provision of a recommendation", No. (1.16)7R-5643, 8 July 2011, http://vilnius.teisinepagalba.lt/dok/BPK%2051%20str_%202%20d_.PDF

155 Interview No. T-02

156 Interview No. T-01

157 Interview No. P-02

158 Interview No. P-01, P-02

159 Interview No. T-03

As a matter of principle, I hold the view that during the trial, when the criminal case is being decided, when a person is accused of a crime and he is a facing a custodial sentence, the lawyer is mandatory. And I try to assign a lawyer. If there is no ground for a mandatory participation of counsel, no ground under part 1 of Article 51 of the CCP, then I assign a lawyer under part 2 (of Article 51 of the CCP). (judge, T-03)

Appointment of the legal aid lawyer. The Recommendation provides that the preference and wishes of the suspects or accused persons should as far as possible be taken into account when selecting their the legal aid lawyer.[160]

On weekdays, the appointment of counsel is handled by the SGLAS. In cases where the participation of counsel is mandatory, the Service-appointed criminal case coordinator is approached by law enforcement officials or the court, whereas in other cases the suspect or accused person his- or herself must apply to the Service. On weekends, holidays and outside of working hours, counsel is appointed by the investigating police officer, the prosecutor or the court. Counsel is selected from a list of lawyers on call drawn up by the SGLAS. The lists are available online on the Service's website.[161] Arrested or detained individuals cannot access these lists.

When selecting counsel, the Service must consider the applicant's proposal regarding specific lawyer, but it is not bound to follow it.[162] When counsel is being appointed by the investigating police officer, the prosecutor or the court, they do not have to take into account any requests for specific lawyers – usually, they select a lawyer from the list that is able to come over as soon as possible and participate in the interrogation (or any other proceedings).

Even though the law does not require that the same lawyer be appointed at all stages in the proceedings, generally, efforts are made to ensure that persons are represented by the same counsel throughout.[163]

Decisions on the provision of legal aid. The Recommendation specifies decisions on whether or not to grant legal aid should "be made promptly by an independent competent authority, within a time frame that allows suspects or accused persons and requested persons to effectively and concretely prepare their defence." Individuals have a right to review these decisions and, where applications have been rejected, the reasons for rejection should be given in writing.[164]

Decisions on secondary legal aid are taken by the SGLAS or one of its regional divisions.[165] When the Service is approached by a investigating police officer, a prosecutor or a judge requesting that counsel be appointed in required circumstances, the Service makes a decision immediately.[166] When a person applies to the SGLAS, the Service makes a decision on legal aid promptly, no later than within five working days.[167] Among other things, the decision must include reasons for granting or refusing to grant legal aid[168] – for example, it can explain where exactly the person exceeded the asset or income threshold.

The decision is served to the person and contains information on the institution that it may be appealed to, as well as the deadline for appeal.[169] Appeals may be submitted to administrative dispute commissions, the administrative courts and, where appropriate, the Parliament (Seimas) Ombudsmen's Office of the Republic of Lithuania.

Replacing legal aid lawyers. The Recommendation stipulates that mechanisms should be put into place to allow replacing legal aid lawyers or requiring them to fulfil their obligations, if those lawyers fail to provide adequate legal assistance.[170]

Generally, the same lawyer provides secondary legal aid both during the pre-trial investigation and at trial. Should the suspect or accused person wish to have their lawyer replaced, they must submit a reasoned application in writing to the Service. The Service will take the decision to replace the lawyer if a conflict of interests can be established, or there are other circumstances leading to the lawyer being unable to provide legal aid in that specific case.[171]

In 2011 Lithuania lost a case at the European Court of Human Rights due to failing to provide a convict with high-quality legal representation when the former was preparing his appeal in cassation. The Court noted that although the State cannot be held responsible for every shortcoming of a lawyer appointed for legal aid purposes, the authorities are required under Article 6(3)(c) of the

160 Art 24 of the Recommendation
161 http://vilnius.teisinepagalba.lt/lt/tm/advokatubudejimograf/
162 Art 18(5) of the Law on State Guaranteed Legal Aid
163 Art 21(2) of the Law on State Guaranteed Legal Aid
164 Para 14-16 of the Recommendation
165 Art 18(2) of the Law on State Guaranteed Legal Aid
166 Art 21(2) of the Law on State Guaranteed Legal Aid
167 Art 18(2) of the Law on State Guaranteed Legal Aid
168 Art 18(4) of the Law on State Guaranteed Legal Aid
169 Art 18(4) of the Law on State Guaranteed Legal Aid
170 Para 18 of the Recommendation
171 Art 18(8) of the Law on State Guaranteed Legal Aid

Convention to intervene where the failure by legal aid counsel to provide representation is manifest or sufficiently brought to their attention in some other way. In this case, he convicted person informed the authorities that he was not being provided with legal assistance, but no steps were taken to help him.[172]

Recovery of legal aid costs. Recommendation allows for recovery of legal costs in the event of a final conviction, provided that the person has sufficient resources at the time of recovery.[173]

According to the law, once it finds the person guilty, the court may decide to recover the costs of state-guaranteed legal aid incurred due to the mandatory participation of counsel. The only circumstances where costs cannot be recovered are where counsel was appointed to represent a minor or someone with a physical or mental disability that prevent them from exercising their rights of defense. When seeking to recover costs, the court must take into account the financial status of the convicted person and may, in the end, decide to not award costs or to reduce their amount.[174]

Currently, if the Court makes no decision as to the costs of legal aid, the SGLAS submits a request for it to do so. The judges who took part in this study held a dim view of such behavior, pointing out that the case law of the court of cassation provided that, where counsel's participation was mandatory irrespective of the wishes of the accused, legal aid costs could not be recovered from the latter.[175] This view is shared by courts of all instances, with the following arguments given:[176]

> *In the present case, the attendance of the counsel of A. Č. is mandatory under Article 51(1)(5) of the CCP. The rights of defence cannot be restricted, while the State has a duty to ensure that every person subject to criminal prosecution is able to exercise this right, irrespective of their financial status. In this case, requiring the defendant to pay legal secondary legal aid costs could be seen as limiting their right to defend themselves from accusation under international law, the Constitution of the Republic of Lithuania and the law on criminal procedure.*

The participating judges were unanimous in their assertion that the Service's requests for recovery waste the courts' time.[177]

> **This is really bad. Courts of all instances have already spoken out against it, and the opinion is unanimous that this a conflict between the State's desire to save costs and the constitutional, undeniable human right to counsel. This should not be happening. And I am angry that the Service, knowing what the case law says, still (makes applications to recover costs). Yesterday I issued a verdict, and today I've already received a request for (recovery). This is a waste of our time. A waste of the courts' time. I do not understand why (the Service) does this. (judge, T-01)**

The discrepancy between the law and the case-law is clear cut. It will be addressed by the amendments to the CCP coming into force on 1 July 2017, which will amend the law by scrapping the rule for recovering costs for mandatory counsel participation from the suspect.[178]

Rights to inform and contact third parties

In addition to the right of access to a lawyer, the Directive provides that persons deprived of liberty have the right to contact a third party of their choice without undue delay.[179]

Right to inform a third party of a person's deprivation of liberty. The CCP obliges prosecutors to promptly inform a family member or a close relative of the suspect's choosing of the latter's detention, or if they are not available –to any other third person. Where the suspect does not specify such a person, investigating police officers or prosecutors use their initiative to inform his or her family members or close relatives. The suspect is also able to inform his or her chosen person directly.[180] These provisions are applied *mutatis mutandis* during arrest, except in that case the informing is done by the investigating police officer.[181]

172 Para 118-126 of the 19 July 2011 judgment of the European Court of Human Rights in the case of *Jelcovas v. Lithuania,* application No. 16913/04

173 Para 13 of the Recommendation

174 Art 160(2) of the CCP

175 17 June 2014 ruling of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K–322/2014

176 13 February 2015 ruling of the Criminal Division of the Kaunas Regional Court in criminal proceedings No. 1-384-634/2014

177 Interview No. T-01, T-02, T-03

178 Law No. XIII-165 Amending Articles 51 and 106 of the Code of Criminal Procedure of the Republic of Lithuania, dated 20 December 2016, https://www.e-tar.lt/portal/lt/legalAct/908a7a20cd9e11e6a2cac7383cbb90a3

179 Art 5(3) of the Directive

180 Art 128 of the CCP

181 Art 140(7) of the CCP, interview No. TYR-01

This right is explained to the suspect in writing, by providing him or her with the Annex to the Record of Notification of the Rights of the Suspected Person, which states:[182]

> excerpt from the Annex to the Record of Notification of the Rights of the Suspected Person)
>
> **4. A right to have consular authorities and one person informed.**
>
> *Following the detention or arrest of the suspected person, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her must usually notify one of the family members or close relatives named by the suspected person. If the suspected person does not name any persons, but wishes that notification be given about his/her detention or arrest, the pre-trial investigation officer or the prosecutor must notify, at his/her own discretion, one of the family members or close relatives of the suspected person, if such a person is identified. If the suspected person wishes to notify about his/her detention or arrest any other person, who is not the family member or the close relative, the pre-trial investigation officer or the prosecutor shall notify such a person only if, in the opinion of the pre-trial investigation officer or the prosecutor, this shall not prejudice the success of the pre-trial investigation.*

The pre-trial investigation officer or the prosecutor may refuse to notify, if the suspected person presents a well-reasoned explanation that such a notification may endanger safety of his/her family members, close relatives or any other person.

The suspected person must be provided with a possibility to notify his/her family members or close relatives about his/her detention or arrest personally. (...)

When filling out the report for temporary arrest, officers enter the details (name, last name, phone number) of the arrestee's family member or another person designated by him or her in the part titled "Suspect's statement regarding informing a family member, a close relative or another person of their choice of their arrest", and then give the designated person a call. This may also be done by the arrestee's lawyer. That being said, the investigators and prosecutors that participated in this study pointed out that not all arrestees wanted to have someone notified of their detention.[184] A request to that effect is recorded in the report.

When persons are arrested, maybe they feel shame, maybe they feel embarrassed, so they very rarely ask to have their loved ones called, but it happens. So, immediately after drawing up the report on the arrest, the loved ones are contacted (if the suspects so wish): their mom, sister or wife. (...) When drawing up the report, they are asked this: "Would you like to have a person close to you be informed of your arrest?" (investigating police officer, TYR-02)

Like the Directive, the CCP places some restrictions on this right – it can be *temporarily* deferred if it would prejudice the success of the pre-trial investigation or endanger safety of the suspect's family members, close relatives or any other person.[185] The CCP does not set out the upper limit for deferral. In this case, the limitation contained in the Directive is narrower than the one in the CCP. Under the Directive, the notification of the person's detention may only be deferred when there is an *urgent* need to avert *serious* adverse consequences for the life, liberty or physical integrity of third parties, or when there is an *urgent* need to prevent a situation where criminal proceedings could be *substantially* jeopardised.[186]

The proposal tabled by the Ministry of Justice specifies this provision by allowing a possibility to limit the right only upon the „reasoned decision" by the prosecutor, which can be appealed within 5 days to the pre-trial investigation judge. Still, this amendment does not establish the safeguards discussed above (*„serious* adverse consequences", *„substantially* jeopardized proceedings").

The investigating police officers and prosecutors who participated in the study indicated that, in practice, close ones are always promptly notified if the arrestee so wishes. They only see the need for temporary deferral in one situation – namely, in the context of organized crime cases, where one person is detained and the accomplices go into hiding. In that case, officers believe that a premature notification could undermine the pre-trial investigation.[187] Investigating police officers said that they are the ones who notify suspect`s family member

182 Order No. I-288 of the Prosecutor General „On the Approval of the Forms of Documents in Criminal Proceedings", dated 29 December 2014

183 It is believed that this interpretation of the right established in the CCP is not precise. The CCP provides two alternative independent grounds for temporary refusal to notify: (i) where notification will jeopardize the success of the pre-trial investigation; (ii) where the notification may put the safety of family members, close relatives or other persons at risk. This means that prosecutors may refuse to notify family members or close relatives of the suspect's detention even when the latter expresses his wishes to do so, if the notification would jeopardize the success of the pre-trial investigation.

184 Interviews No. TYR-01, TYR-02, P-01, P-02

185 Art 128(1) of the CCP

186 Art 5(3) of the Directive

187 Interview No. TYR-01, TYR-02, P-01, P-02

or other person about his/her arrest, and there is no possibility for the arresstee to do it himself/herself,[188] even though the CCP provides for such a right.

Obligation to inform parents when minors are deprived of liberty. The Directive provides that the parents of minors must informed as soon as possible of the deprivation of the latter's liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child. In that case, "another appropriate adult shall be informed."[189]

In Lithuania, the above general rules pertaining to the notification of family members apply when arresting or detaining minors. If the child doesn't have parents or any other legal representatives, the fact of his or her detention must be reported to child protection authorities.[190] Unlike the Directives, the CCP associates the ability to give notice of the child's detention not with the protection of the interests of the child, but with the success of the investigation and the interests of third parties.[191]

This discrepancy should disappear once the draft amendments to the CCP, prepared by the Ministry of Justice, have been adopted, transposing the Directive into national law.[192] The amendments stipulate that where informing the parents of a minor suspect would contradict his interests, another person shall be informed about his arrest or detention.

Right to communicate with third parties. The Directive establishes that detainees are able to contact (communicate with) third parties. They must be allowed to make use of this right without undue delay following the detention. This right may be restricted in accordance with the principles of necessity and proportionality.[193]

Individuals held in police custody can communicate with their close relatives and other persons in writing, with the management forwarding the detainee's letters and handing the received ones back to him within three days.[194] With permission from an officer, they are also able to meet their designated person in designated premises (for up to 2 hours).[195]

When detainees are transferred to a remand prison, the management must inform the detainee's spouse, cohabitee or close relatives of their arrival by next day at the latest. The detainee is able to meet, call or write letters to relatives or other persons. The number of meetings and the length of phone calls is limited - for example, the length of two meetings (where the meeting takes place without a representative from the remand prison being present) may not exceed two days.[196] These rules are markedly different from the previous regime, under which detainees were only entitled to a meeting of up to two hours. In the 2013 case of *Varnas v. Lithuania*, this limitation was found to violate Articles 8 and 14 of the European Convention on Human Rights.[197]

As mentioned previously, detainees have the right to one phone call to a person (or persons) of their choice per day, with the length of the call (or calls) not exceeding 15 minutes.[198] The prosecutor or the court may instruct the remand prison's management in writing to not allow the detainee to make phone calls.[199]

Right to inform the consular authorities of the deprivation of liberty. The Directive grants suspects and accused persons the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities.[200]

The CCP also allows suspects and accused persons to inform consular authorities. When a foreign national is detained, the prosecutor must immediately inform the Ministry of Foreign Affairs of the fact - or, if the suspect so wishes, inform the diplomatic mission or consular authorities of his State of nationality.[201]

This right is explained to the suspect in writing, by providing him or her with the Annex to the Record of Notification of the Rights of the Suspected Person, which states:[202]

188 Interview No. TYR-01, TYR-02, TYR-03

189 Art 5(2) of the Directive

190 Art 54(2) of Law No. I-1234 on Fundamentals of Protection of the Rights of the Child, 14 March 1996, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.26397/TECQCHsytb

191 R. Ažubalytė, P. Ancelis, R. Burda, „Legal Recommendations to Pre-Trial Officers Working with Minors", p. 24, https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Teisine_informacija/Tyrimai_ir_analizes/Metodikos,_rekomendacijos/Teisinesrekomendacijos.pdf

192 Draft Law No. XIIIP-115 Amending Articles 10, 21, 44, 48, 50, 52, 69, 69(1), 71(1), 72, 128, 140, 168, 190, 192, 196, 197 and 233 as well as Supplementing the Annex of the Code of Criminal Procedure, 30 November 2016

193 Art 6 of the Directive

194 Para 34(1) of Order No. 88 of the Minister of the Interior „On the Operation of Police Custody at Stations", dated 17 February 2000, https://www.e-tar.lt/portal/lt/legalAct/TAR.DA14BA090407/wgjGWuvNbI

195 Para 39-49 of Order No. 88 of the Minister of the Interior „On the Operation of Police Custody at Stations", dated 17 February 2000

196 Para 61 of Order No. 1R-172 of the Minister of Justice „On the Approval of the Internal Rules of Procedure for Remand Prisons", https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.345557/huRQLnLPIT

197 9 July 2013 judgment of the European Court of Human Rights in the case of *Varnas v. Lithuania*, application No. 42615/06

198 Para 75 of Order No. 1R-172 of the Minister of Justice „On the Approval of the Internal Rules of Procedure for Remand Prisons"

199 Art 23(1) of the Law on Pre-trial Detention

200 Art 7(2) of the Recommendation

201 Art 128(3) of the CCP

202 Order No. I-288 of the Prosecutor General „On the Approval of the Forms of Documents in Criminal Proceedings", dated 29 December 2014.

(excerpt from the Annex to the Record of Notification of the Rights of the Suspected Person)

4. A right to have consular authorties and one person informed.

(...) Following the detention or arrest of a foreign national, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her, shall immediately notify the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detained or arrested suspect wishes, the diplomatic representation or consular authority of his/her state.(...)

The CCP does not specify the timeframe within which the diplomatic mission or the consular authorities must be notified. It also not explicitly state that the suspect is allowed to contact these institutions him- or herself.[203] Under the CCP, the right to inform the Ministry or the consular authorities only comes into existence upon detention. If the individual's liberty is restricted in some other way - for example, if he or she is arrested – then the prosecutor is under no such obligation. To compare, prosecutors are obliged to notify family member or others person both when suspects or accused persons are detained *and* when they are arrested.[204] There is a noticeable discrepancy between the way this right is detailed in the CCP and the way it is explained in Annex to the Record of Notification of the Rights of the Suspected Person. These shortcomings should disappear after adopting the aforementioned draft amendments to the CCP prepared by the Ministry of Justice.[205]

Right to be visited by consular authorities. Under the Directive, detainees have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities.[206]

Suspects and detainees held in police custody may meet embassy and consular staff from diplomatic missions of their State of nationality if they obtain written permission from the pre-trial office or a court.[207]

Foreign nationals detained in remand prisons are allowed to maintain contact with their embassies and consular authorities.[208] Since there are no specific provisions regarding the implementation of this right, meetings with representatives from these missions and institutions follow general rules. Phone calls and written correspondence also follow general rules.

Although the law does not explicitly state that suspects' consular authorities are able to make arrangements for their legal representation, this right follows from the general provisions of the CCP. The suspect may instruct any person to call counsel on his or her behalf.[209]

203 Art 128(3) of the CCP

204 Art 140(7) of the CCP

205 Draft Law No. XIIIP-115 Amending Articles 10, 21, 44, 48, 50, 52, 69, 69(1), 71(1), 72, 128, 140, 168, 190, 192, 196, 197 and 233 as well as Supplementing the Annex of the Code of Criminal Procedure, 30 November 2016

206 Art 7(2) of the Directive

207 Para 31(18) and 54 of Order No. 88 of the Minister of the Interior „On the Operation of Police Custody at Stations", dated 17 February 2000

208 Law No. I-1175 on Pre-trial Detention, dated 18 January 1996, https://www.e-tar.lt/portal/lt/legalAct/TAR.11A8B08A7405/EuUhOSPJXf

209 Art 50(2) of the CCP

RIGHT OF ACCESS TO A LAWYER AND RIGHT TO LEGAL AID: CHALLENGES TO IMPLEMENTATION

Point of time when the right to a lawyer comes into existence

Currently, the CCP links the point of time when the right to counsel comes into existence with two alternative circumstances – namely, the person is arrested or interrogated for the first time. In November of 2016, the Ministry of Justice submitted draft amendments to the Code for Parliament's consideration, proposing to change this provision and specify that the right to counsel is guaranteed "immediately following arrest, or when summons for interrogation or a court hearing are served, or prior to their interrogation."[210]

The lawyers who participated in the study were critical in their assessments of whether the right to counsel if guaranteed from the "moment of arrest". Firstly, the time of the actual arrest and the time that the report on the arrest is drawn up are most often different. Lawyers noted that considerable time may pass between these two events, during which officers communicate with that person "informally".[211] Secondly, the duty to inform persons of their rights rights, including their right to counsel, only comes into existence prior to the first interrogation, even though as much as 24 hours may pass between arrest and the first interrogation. Thirdly, the implementation of this right in practice is tied directly to counsel's ability to come to meet the suspect, especially when the latter is transported to a more remote police station and/or the lawyer works in another city.[212]

Lawyers also observed that the phrasing of the CCP, namely, that "(the right to counsel) is guaranteed (...) from the very first interrogation", is not entirely accurate, since it doesn't clearly provide that persons may consult their counsel *prior* to the interrogation. The importance of these consultations was further highlighted by a prosecutor who participated in the study. In his view, only when given time to talk to the suspect, without the investigator being present, can counsel properly explain what rights the suspect possesses. Lawyers and judges were both unanimously in favour of the proposal of the Ministry of Justice to change the wording of the CCP Article here, since doing so would help avoid having differing interpretations of the Article, as is commonly seen now.[213] One investigator and one prosecutor were in favour of amending the CCP.[214]

This clarification (proposed by the Ministry of Justice) would probably be most relevant to the police and the prosecutor's office, bringing some clarity. I think that it is better, all the time, when the law I clearer. So I'd be for it, most certainly. (judge, T-02)

Lawyers who participated in the study pointed out that even when they were allowed to communicate with their client prior to the interrogation, they would often only be given just 5-10 minutes. Since police station infrastructure is not built to accommodate this, consultation have to take place in the corner of the room or in the hallway – that is, in an environment which is not conductive to the right to "to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority", as laid out in the Directive.[215]

The investigator gives me a couple of minutes alone (with the client), then knocks on the door and asks if we're done. (lawyer, FGD-01)

Investigators who participated in the study indicated that they allow suspects to communicate with counsel prior to questioning, but the latter rarely wishes to do so.[216] Opinions were split on how much time should be given to the suspect and their counsel.

210 Draft Law No. XIIIP-115 Amending Articles 10, 21, 44, 48, 50, 52, 69, 69(1), 71(1), 72, 128, 140, 168, 190, 192, 196, 197 and 233 as well as Supplementing the Annex of the Code of Criminal Procedure, 30 November 2016, https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/3dfca250b6ed11e6a3e9de0fc8d85cd8?positionInSearchResults=11&searchModelUUID=20045e4b-a0fd-4e12-99b9-f6be96048ee9

211 Paragraph 20 of the Preamble to the Directive states that „for the purposes of this Directive, questioning by the police or by another law enforcement authority the purpose of which is to identify the person concerned, to verify the possession of weapons or other similar safety issues or to determine whether an investigation should be started."

212 With respect to this particular circumstance, the Directive provides it is possible to temporarily derogate from the right to counsel „where the geographical remoteness of a suspect or accused person makes it impossible to ensure the rightof access to a lawyer without undue delay after deprivation of liberty." (Art 3(5) of the Directive).

213 FGD-01, FGD-02, Interview No. T-01, T-02, T-03

214 Interview No. TYR-02, P-01

215 Art 3(3)(a) of the Directive

216 Interview No. TYR-02

If this person had been arrested, is in police custody and his questioning will take place within 24 hours as planned, no one will prevent the lawyer from going to the cells and having a chat. We'd probably not leave them together alone in the office, since he (the suspect – author's note) is still arrested and will make a break for it, jump out the window and the like. But the lawyer can visit the cells following arrest and prior to questioning, spending as much time there as he likes. (investigating police officer, TYR-01)

If the lawyer really expresses the wish to so, is one hundred percent able to produce a writ of attorney – in that case I, if there is time, try allow them to meet the suspect. (...) It's not always possible to let them go into separate premises for a chat, but if we see that we're physically OK on time, then I always let them have their meeting. Of course, not for half an hour. (...) Well, seven minutes. Up to ten sometimes. (investigating police officer, TYR-03)

Considering that the Ministry of Justice is proposing to further link the moment that the right to counsel comes into existence to receiving summons to an interrogation, some participating lawyers suggested that the suspect's rights be detailed on the writ of summons itself (for example, on the other side of the writ), drawing attention to the right to counsel.[217] At the moment, the writ of summons states who is being summoned and for what purposes, where they have to go and who they have to meet, the time of arrival and the consequences for non-appearance. If persons were aware that they can call upon counsel in advance, it is likely that they would make arrangements prior to the interrogation and would be able to go to the police station together with their lawyer.

Waiving the right to a lawyer prior to the first interrogation

Throughout all of the criminal proceedings reviewed, people were informed of their right to free legal aid in writing prior to their first interrogation 100% of the time. This is confirmed by the Record of Notification of the Rights of Access to Counsel on file bearing that person's signature.

217 FGD-02

86 (55%) waived their right to counsel and their choice was recorded in the document. In all Records analyzed, entries were limited to a few words – either "I agree to have a lawyer defend me" or "I waive my right to a lawyer and will defend myself".

Only a single participating investigator indicated that, when the suspect would waive their right to counsel, she would ask them to state their reasons for the waiver in the Record "in their own words, succinctly".[218] This practice is in line with the requirement to record not only the waiver itself, but also the circumstances that lead to it, as set out in the Directive.[219]

Lawyers that participated in the study noticed that some suspects waive their right to counsel at their first interrogation because they are not aware of the gravity of their situation and believe that the process will go by quicker without a lawyer involved. According to lawyers, people also worry that they might not have the means to hire counsel, not knowing whether they are eligible for state-guaranteed secondary legal aid based on their wealth and income and whether the costs of representation will later be recovered from them. This view was supported by several of the prosecutors and judges participating in the study.

Some lawyers are concerned that pressure exerted by investigating police officers may also contribute to the person deciding to waive their right to counsel. Such cases go against the stipulation in the CCP that the right to counsel may only be waived by the suspect or the accused of their own volition,[220] as well as the requirement set out in the Directive that the waiver must be voluntary and unequivocal.[221]

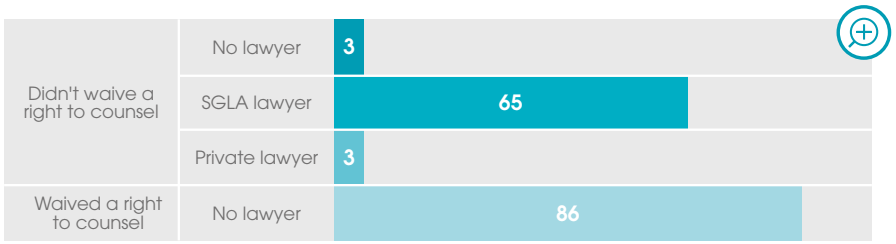
The officer asks the guy: "What do you need a lawyer for? You've already been convicted, you know your way around the block. Did lawyer help you out last time? Nope. Which means they won't help you this time, either. You've been caught, you're guilty – see, everything will go faster without a lawyer." (lawyer, FGD-02)

The review of case files revealed 3 instances where the interrogation proceeded without counsel, even though suspects did not clearly waive their rights. Judging from case file, the circumstances in the pre-trial investigation did not

218 Interview No. TYR-03
219 Art 9(2) of the Directive
220 Art 54(1) of the CCP
221 Art 9(2)(b) of the CCP

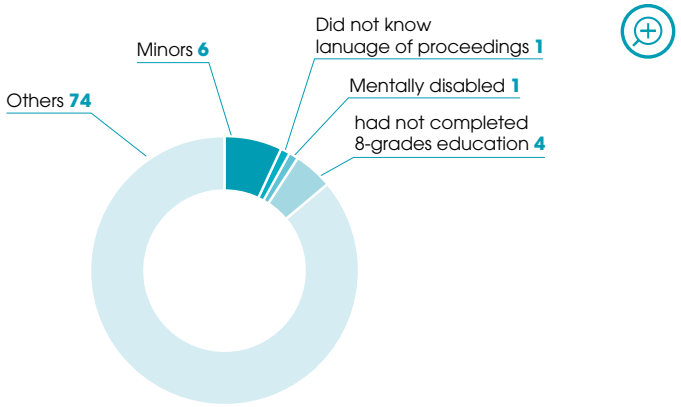
merit mandatory participation of counsel: all three individuals were adults, knew Lithuanian, were suspected for crimes against property, did not have physical or mental disabilities, etc.[222] In two of the three cases, counsel was hired or appointed by the SGLAS during at the second interrogation.

Chart 9. Lawyer`s attendance during the first interrogation



Of the 86 cases in which persons waived their right to counsel and defended themselves in the interrogation, 12 raise some doubts.

Chart 10. Suspects that waived their right to counsel before the first interrogation, with counsel not attending the interrogation



In 6 cases suspects waiving their right to counsel were minors, 3 of which had no legal representation during the pre-trial investigation, with one having no representation at all throughout the proceedings. 2 of the minors that were not represented throughout the pre-trial investigation were eventually convicted and sentenced to imprisonment.

In one case, a citizen of the Republic of Lithuania who had finished 9 grades and who had difficulty speaking Lithuanian decided to waive his right to counsel, with no counsel attending his first or any subsequent interrogations. Finally, he was appointed a SGLA counsel at trial, when the court determined that he was not sufficiently proficient with the national language to properly participate in the proceedings.

In another case, a person who had finished basic education and who was diagnosed with an adjustment disorder waived his right to counsel and confessed to the crime he was accused of during the first interrogation. He was only appointed a SGLA lawyer at the second interrogation. In the end, he was sentenced to three months imprisonment.

As mentioned previously, the CCP prescribes special protection to minors, persons with physical or mental disabilities or suspects that do not understand the language of the proceedings. Their waiver of the right to counsel is not binding on officers or the court. In such cases, counsel's presence becomes a necessary precondition to a fair trial, and the right to counsel becomes a "duty" to have counsel.[223] As such, situations where persons from particularly vulnerable groups are left without representation during the first interrogation, which in many cases becomes a decisive factor in the outcome of the case, must be viewed in a negative light.

In 4 cases, the right to counsel was not exercised by individuals that had completed only 8 grades education (with one person having finished 4th grade and three completed 7th grade). They all completely or partially confessed to the offence during the first interrogation. They had no counsel throughout the pre-trial investigation (only during the trial stage) and they all were sentenced to imprisonment.

Where a person has not finished his or her basic education, their ability to understand the criminal proceedings and effectively participate in them must be viewed with a critical eye. In such cases, officers should make use of their discretion and determine whether the presence or counsel is required,[224] since to do otherwise would not properly protect the suspect's rights and legitimate interests. This view was shared one of the participating judges and one participating prosecutor, and it is in line with the requirement to consider the special

222 Art 51 of the CCP

223 R. Ažubalytė, R. Jurgaitis, J. Zajančkauskienė, J., „Specific Types of Criminal Proceedings" Vilnius, MRU: 2011; J. Zajančkauskienė, „Disabled Person's Right to Defence with the Contribution of Defence Lawyer", *Societal Innovations for Global Growth*, 2012, No. 1(1), p. 110

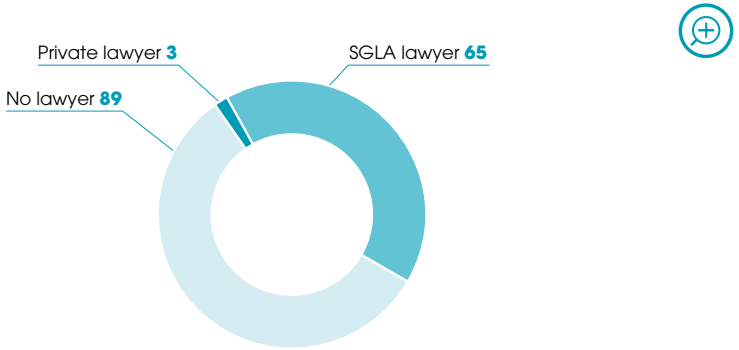
224 Art 51(3) of the CCP

needs of vulnerable suspects and the accused, as set out in the Directive.[225] Criminal law experts also note that "if there is at least a theoretical possibility that qualified legal assistance might alleviate the defendant's situation, proceedings in the counsel's absence may be deemed to be unfair."[226]

Lawyer's participation in the pre-trial investigation

65 of the cases reviewed had a SGLA lawyer attend the first interrogation,[227] private counsel attended 3 interrogations, whereas counsel was absent in 89 interrogations (57% of cases). For all suspects who had counsel, their counsel attended their first interrogation.

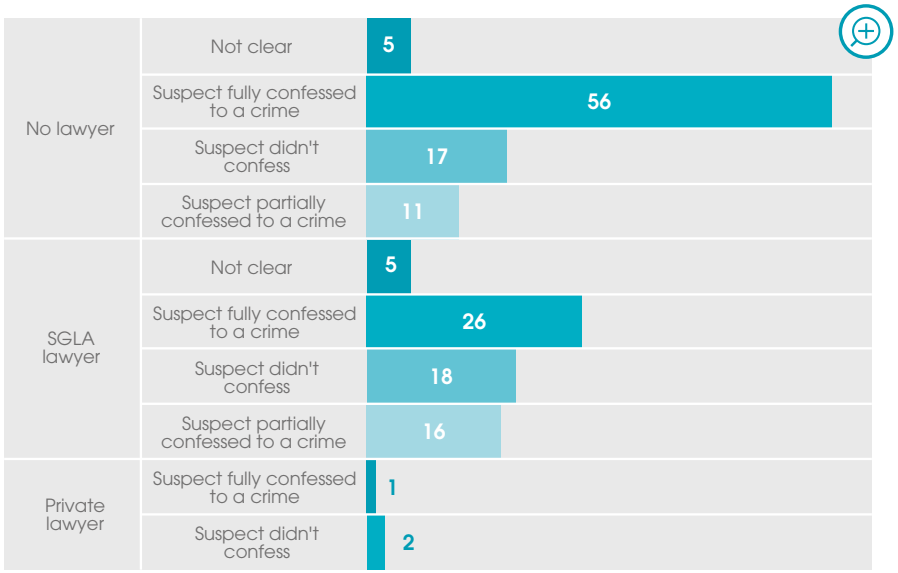
Chart 11. Lawyer's attendance at the first interrogation



In the cases reviewed, interrogations could take from 5 minutes up to 3 hours. Interrogations involving counsel (both private or appointed by SGLAS) took longer – around 1 hour and 48 minutes on average. Interrogations conducted in the counsel's absence were shorter, on average taking around 1 hour and 18 minutes. In 95% of the cases, suspects would give testimonies at the first interrogation regardless of whether counsel was in attendance.[228]

Still, the results from interrogations involving counsel and those where counsel was absent differ. Persons fully confessed to the suspected offence in 67% of the cases where counsel was absent, but only in 41% of the cases where counsel (whether private or appointed by SGLAS) was in attendance. However, the rate of partial admission was significantly higher in cases where the person had counsel (25% of cases, compared to 13% where counsel was absent).[229]

Chart 12. Suspects' confessions at the first interrogation



Compared with to the first interrogation, more suspects[230] in the second interrogation were represented by private counsel. 2 suspects who did not have legal counsel during the first interrogation came to the second interrogation with private counsel in tow. Yet another suspect, who had a SGLA lawyer at the first investigation, was represented by private counsel during the second interrogation. These individuals were also represented by the same lawyers at trial.

10 suspects that did not have counsel at the first interview were appointed a SGLA counsel at their second interview. It not unclear from the case files reviewed whether these persons applied for counsel of their own volition, or

225 Interview No. P-02, T-03. Art 13 of the Directive

226 G. Goda, „Value Priorities in Criminal Proceedings", Vilnius: Registry, 2014, p. 96

227 In 18 cases those interrogated were minors, in 10 cases they did not speak the language of the proceedings, in 2 cases they had a mental disability, and a further 16 cases they had been detained. In the remaining 19 cases, it was impossible to determine the grounds for mandatory SGLA counsel participation – it's most likely that either the pre-trial officer or the prosecutor decided that the suspect's rights and legitimate interests would not be adequately protected without counsel's assistance (Art 51(2) of the CCP).

228 It was impossible to determine whether individuals gave evidence in three of the cases.

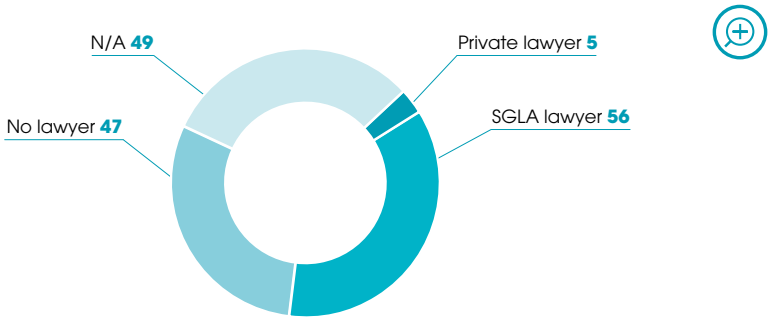
229 Confessions „in part" were cases where the person would only confess to some of the alleged offences, or to a lesser offence than the one alleged.

230 Overall, a second interrogation took place in 108 out of 157 reviewed cases.

whether it was appointed by the investigating police officer or prosecutor. There were two cases where suspects had a SGLA counsel at the first interrogation, but didn't have a lawyer at their second interrogation. It is impossible to claim, based on the case files, that counsel's performance was mandatory in either of these cases.

Speaking of vulnerable suspect groups, 2 minors, 5 persons who had not finished basic education and one suspect who had difficulty speaking the language of the proceedings were questioned at the second interrogation without counsel being in attendance.

Chart 13. Lawyer's attendance at the second interrogation



The interviewed lawyers' experiences when participating in the collection of evidence differed. Some did not encounter any significant obstacles in practice and were able to participate effectively, while others suspected abuse on the part of the pre-trial officers – for example, where the date and time of the interrogation were not discussed with the lawyer in advance, violating the principle of equality of arms. The investigators who participated in the study noted that some lawyers would abuse their rights and make it impossible to set a time for interrogation.[231] Still, the data collected in the course of this study does not support the conclusion that this is a widespread structural problem.

If the lawyer is unavailable at that particular time, has a hearing in another case, we don't wait for him, the interrogation proceeds without him or by calling over a state-guaranteed lawyer. (lawyer, FGD-01)

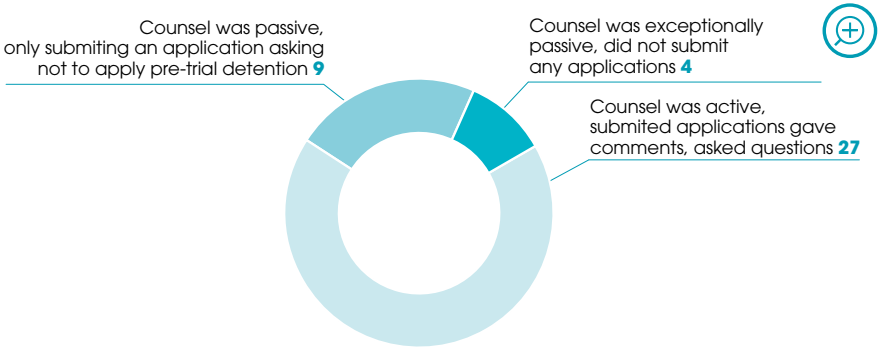
231 Interview No. TYR-01, TYR-02

In 40 of the cases reviewed there were hearings concerning pre-detention. All hearings were attended by counsel: in 2 hearings suspects were represented by private counsel, while the rest had SGLA representation. The minutes of these hearings and court rulings with respect to pre-trial detention show that in 33% of the hearings the counsel's participation either amounted to requesting that pre-trial detention be not applied, or counsel failed to make any requests, comments or ask any questions at all.

An analysis of the minutes of the hearings failed to reveal the quality of the participation of counsel, only establishing that these lawyers submitted (or did not submit) additional requests, asked questions and explained their position. The quality of counsel's participation in hearings concerning pre-trial detention was assessed in prior studies.[232]

It is impossible to determine from the case files the amount of time, if any, counsel had to prepare for the hearing, or whether they were able to meet the suspect prior to the hearing, but minutes of the hearings analyzed show that lawyers did not request access to the materials in the case or a chance to talk to the suspect prior to the hearing. This trend has already been seen in prior studies.[233]

Chart 14. Lawyer's participation in hearings regarding pre-trial detention



In 2014, the European Committee for the Prevention of Torture called upon Lithuania to ensure that "lawyers appointed to represent persons in police custody perform their functions in a diligent and, more specifically, timely manner."[234]

232 Human Rights Monitoring Institute, „Pre-Trial Detention in Lithuania", 2015, p. 23-25, http://www.hrmi.lt/uploaded/TYRIMAI/Suemimo proc.20taikymas proc.20Lietuvoje proc.20- proc.202015.pdf

233 Human Rights Monitoring Institute, „Pre-Trial Detention in Lithuania", 2015, p. 24

234 Report on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman Treatment or Punishment in 2012, No. CPT/Inf (2014) 18, 4 June 2014, p. 19, http://www.coe.int/en/web/cpt/lithuania

During discussion about the quality of the performance of SGLA counsel, focus group members expressed their concern that some of their colleagues only pay lip service to the proceedings, playing a "token attorney", thus harming their clients and bringing the whole Bar into disrepute.[235] Although it happens rarely, there have been cases where secondary legal aid lawyers would sign the case files *post factum* to show that they participated in the interrogation or some other procedural matter, even though they were in fact absent.[236]

Of all the interviewed investigators and prosecutors, only one prosecutor was ready to agree that SGLA lawyers perform their duties well. He also noted that SGLA lawyers were often "more polite" than private counsels.[237] Other experts pointed out that the quality of the work of SGLA lawyers trails significantly behind private counsel, giving them a score of 5.75 on a scale of 1 to 10. They further noted, when comparing lawyers that provide secondary legal aid full time to those that do it on demand, the latter are seen as better since they are more active and effective.

But there's no reason to rejoice over secondary legal aid. (...) I personally have only once seen someone from the secondary legal aid service appeal against arrest or detention. In cases where money's being paid, lawyers earn their keep, whereas I have no clue what the secondary legal aid corps are doing. In my opinion, they are doing nothing. (investigating police officers, TYR-01).

In comparison, that (the participation of the SGLA lawyer – author's note) is very formal: if need be, I'll stand here, if need be, I'll sit there, if need there, I'll say something. (...) Of course, on the other hand, we are happy. When there's private counsel, he is, as a rule, very rude, sometimes even abusing his rights. They appeal things not provided for under the CCP while we're forced to respond. (prosecutor, P-02)

235 This is corroborated by data from a study conducted by dr. M. Gušauskienė. Accodring to her, counsel often only take a formal part in pre-trial proceedings: 26.43% state appointed, 9.29% hired counsel according to the information provided by suspects, defendants and convicts. (P. Ancelis et al, „Fair Criminal Proceedings", Vilnius: Industrus, 2009, p. 230)

236 FGD-01

237 Interview No. P-01

Lawyer`s participation at the trial stage

As mentioned previously, all of the participating judges claimed that they explain the contents of the right to counsel and the right to legal aid to the defendant, aiming to do it in a simple and easily understandable, not overly formal manner.

Everyone understands that trial causes some measure of stress to the defendant. And that explanation (of rights) really shouldn't be formal: oh, I read it, and now it's over. (...) It's been roughly twelve years that judges have been taking this matter seriously – when I would participate in the training of new judges, I always used to drew attention to it. (judge, T-02).

Studies on procedural justice in Lithuania also reveal, that, when comparing the peculiarities of judicial conduct from 2004 and 2011 with respect to the explanations of the suspect's right to counsel, there is statistically significant difference. Specifically, while only 47.6% of judges would explain this right to defendants in 2004, this figure grew to 82.5% by 2011. However, observers in court hearings also found that "(h)aving finished explaining their basic rights to the accused, judges would quite often limit themselves to one formal question: "Do you understand your rights and obligations?", moving on to other things with nary a pause."[238]

When analyzing cases, it was difficult to determine with any degree of accuracy whether defendants were properly explained their procedural rights at the hearing in all cases. This information was reflected in the minutes of certain hearings, but not in others. In cases where the court appointed a SGLA counsel to the defendant, it was possible to assume that the contents of the right to legal aid were explained to him or her.

In 3 of the trial hearings of the cases reviewed, the minutes showed that the person was asked "Do you agree to have the trial proceed without counsel?", to which the defendants answered "yes." However, one cannot conclude from these minutes that these persons were explained the contents of the aforementioned right before asking the question. The minutes of trial hearings should contain a fuller record of how the procedural rights were explained, as required by the CCP.[239]

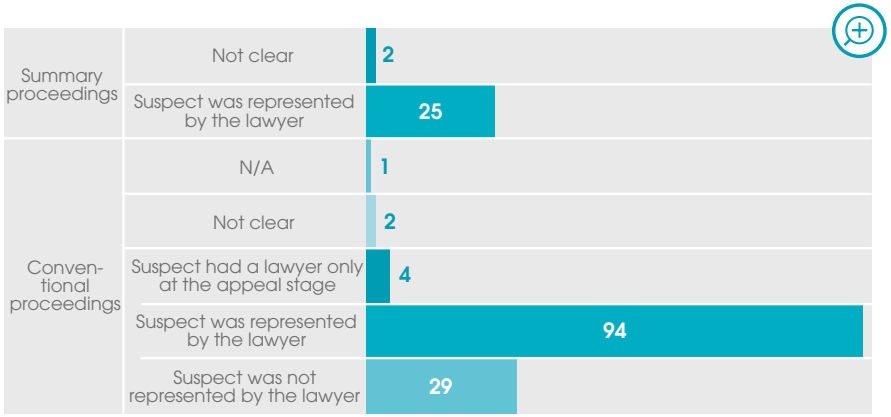
238 G. Valickas, V. Justickis, K. Vanagaitė ir K. Voropaj, „Procedural Justice and Public Trust in Law Enforcement Officials and Institutions", Vilnius University Press, 2012, p. 104, 114, http://www.vu.lt/site_files/LD/Proced%C5%ABrinis_teisingumas_ir_%C5%BEmoni%C5%B3_pasitik%C4%97jimas_teis%C4%97saugos_pareig%C5%ABnais_bei_institucijomis.pdf

239 Art 261(1) of the CCP

Of all the cases examined at trial, defendants had counsel in 79% of the cases (in 3% of the cases it was impossible to accurately determine whether counsel was present): in 119 cases defendants were represented by counsel at first instance, and in 4 cases they were represented only at appellate courts.[240]

27 of the cases reviewed for the purposes of this study were subject to the summary proceedings.[241] In such cases, counsel participation is mandatory.[242] If counsel is appointed by the court, they must be given the opportunity to meet with the defendant and access the case file prior to the hearing.[243] In of 25 reviewed cases it was possible firmly establish that the defendant was represented by counsel from SGLAS, whereas in 2 cases the procedural documents were not sufficiently precise to be able to draw that conclusion.

Chart 15. Lawyer's participation at trial



Criminal procedure experts have noted that, when cases are subjected to the summary proceedings, it is especially difficult to make sure that the defendant receives quality representation. When a SGLA lawyer is appointed, they often only become aware of the notification that the case will be subject to the summary proceedings when they step into the courtroom. As such, they don't have enough time to prepare a defence – they don't even know the person that is the subject of that particular hearing, the suspicions or allegations arrayed against him or her, the financial means of their client, their criminal record and so on.[244]

Speaking broadly about the quality of legal representation at trial, the judges that participated in the study held differing opinions. One didn't see any difference in the quality of performance between private counsel and SGLA lawyers,[245] whereas two others noted that SGLA lawyers are more passive in the proceedings and don't represent their clients as their colleagues in private practice.[246] On a scale of 1 to 10, judges pegged the quality of SGLA lawyer performance at 6.5.

The interviews conducted in the course of this study revealed that the judges are faced with a problem when examining defendants' complaints about negligent representation in court.

> **I saw it myself in one proceedings, where (the defendant) applied to have counsel removed because the SGLAS appointed counsel wasn't doing anything. But how do you get to the bottom of this? You have a lawyer, he has passed his exams, been appointed and checked. That lawyer then entered into an agreement with the Service, which means his character, qualifications and so on have been checked yet again. If he's providing services, that means the Service is satisfied with him. So then we can't really say that we'll just cross everything out and do God knows what based solely on your (the defendant – author's note) words. Here, this thing should maybe be between that person's lawyer and the Service, and maybe the court should in that case make an adjournment and say „You sort out these issues of qualifications and communication between yourselves". Because there are cases where the defendants themselves are abusing this and are trying to cause delay in the proceedings, trying to have that counsel removed or even refusing to cooperate (with counsel). (...) On the one hand, you have to prevent abuse, on the other, you have to make the proceedings fair. So then where do you strike the balance? (judge, T-02)**

Generally, judges are not inclined to get involved in disputes over representation (negligent or otherwise) between clients and lawyers. In their opinion, passiveness does not necessarily mean that counsel are not doing their job, as it may be part of their defence strategy. One judge indicated that he would

240 See Chart 14: NN – it is unclear from the case file whether the defendant had counsel, NT – the pre-trial investigation was terminated in the case.

241 If the circumstances of the offence are clear and the case is to be tried in district court, the prosecutor may apply to the court no later than within 14 days from the start of the pre-trial investigation to have the case be subjected to fast-track procedure at trial. In that event, no indictment is drawn up. (Art 426 of the CCP)

242 Art 51(3) of the CCP

243 Art 431 of the CCP 431

244 D. Šneideris, „The Protection of Guarantees of Human Rights – the Aspect of Right to a Fair Trial: Secondary Legal Aid Guaranteed by the State in Civil, Administrative and Criminal Cases", Law Institute of Lithuania: 2014, p. 21, http://teise.org/wp-content/uploads/2014/10/Aktualiausios-ZT-problemos.pdf

245 Interview No. T-01

246 Interview No. T-02 and T-03

personally take steps to "correct such deficiencies" by posing clarifying questions to the parties or giving them more time to study the case file.[247] Furthermore, the opinion expressed in Lithuanian case law is that "how counsel chooses to study the case and coordinate the defence with the defendant is an organizational matter, which does the courts do not resolve."[248]

As stated by the ECtHR, although the State cannot be held responsible for every shortcoming of a lawyer appointed for legal aid purposes, any related complaints must be taken very seriously.[249] In the event of manifest failure of the legal aid lawyer to represent the client (for example, not attending hearings, staying silent, failing to perform basic functions, conflicts of interest), the court is under a duty to intervene and rectify the situation even if the defendant does not lodge a complaint.[250] If a complaint is lodged, the court has a duty to examine it and either replace counsel or compel them to perform their functions.[251] Such an obligation does not arise if the complaint is either unfounded or unreasonable (for example, it points to the lawyer's indicated personal characteristics, nationality, religion, or negligible errors that have no bearing on the case).[252]

The judges that took part in the study claimed that they have never seen a case where counsel's failure to perform their duties was so egregious that it had to be deemed a breach of the right to counsel.[253] No counsel was dismissed for inadequate representation in any of the cases reviewed, although there were a few cases where the appeals were penned by the defendants themselves by hand even though they were represented by SGLA lawyers in the trial at first instance.

Selecting and replacing a lawyer

Although individuals have the ability to select SGLA counsel in theory, this is difficult to make use of in practice. As mentioned above, detainees do not have access to the online lists of SGLA lawyers, so any preference for any specific lawyer can only potentially be expressed by those who have already had run-ins with law enforcement and wish to be represented by the same lawyer as before. This was corroborated by the investigators that participated in the study, who said that people almost never ask for a specific SGLA lawyer.[254]

Even when a person specifies a lawyer, their preference may be impossible to implement due to that lawyer's workload. Lawyers that participated in the study also noted that their colleagues who provide legal aid on de,and often refuse to represent some people, in so doing choosing cases that are more acceptable to them.[255]

In essence, a person is allowed to select the lawyer he or she wants, but there aren't enough SGLA lawyers willing or able to provide assistance to them. As such, people don't have a choice. (lawyer, FGD-02)

Yet another obstacle to selecting a lawyer was identified by one participating prosecutor.[256] He claimed that sometimes people want to be represented by well-known lawyers that they know from the press, but don't have the financial means to hire them. Under the Law on SGLA, when a lawyer is not on the list of lawyers providing legal aid full-time or on demand, the Service may enter into a contract with him or her for the provision of secondary legal aid services in any specific case. In that event, persons must present that lawyer's agreement to represent them in writing. Unfortunately, lawyers in private practice are not inclined to enter into contracts for the provision of secondary legal aid contract due to low hourly rates. They maintain that where suspects express a wish to be represented by a specific lawyer, they or their family members should enter into an agreement for the provision of legal services with that lawyer and pay him according to his established rates.[257] This is corroborated by statistical evidence. Throughout 2015, the Office only contracted one lawyer to provide legal aid in a specific criminal case, throughout 2016 – 12 lawyers.[258]

One interviewed judge noted that during trial, if there are no grounds for the mandatory participation of counsel, people are given time to choose and hire their lawyer. If the person cannot do so, the court may deem that instance to require counsel participation and appoint a SGLA lawyer. When a person has been represented by counsel during the pre-trial investigation, the interviewed

247 Interview No. T-02, T-03

248 See, for example, 27 March 2007 ruling of the Criminal Division of the Supreme Court of the Republic of Lithuania in criminal proceedings No. 2K-271/2007. See also R.Ažubalytė, R. Jurka, J.Zajančkauskienė, „Criminal Procedure Law: General Provisions", Mykolas Romeris University, 2016, p. 270-271

249 Para 65 of the 19 December 1989 judgment of the European Court of Human Rights in the case of *Kamasinski v. Austra,* application No. 9783/82

250 Para 75 of the 19 June 2012 judgment of the European Court of Human Rights in the case of *Moldoveanu v. Romania,* application No. 4238/03; Para 68 of the 10 October 2002 judgment of the European Court of Human Rights in the case of *Czekalla v. Portugal,* application No. 38830/97

251 Para 33 of the 13 May 1980 judgment of the European Court of Human Rights in the case of *Artico v. Italy,* application No. 6694/74

252 Para 44-45 of the 3 July 2012 judgment of the European Court of Human Rights in the case of *Falcao dos Santos v. Portugal,* application No. 50002/08; Para 61 of the 14 January 2003 judgment of the European Court of Human Rights in the case of *Lagerblom v. Sweden,* application No. 26891/95

253 Interview No. T-01, T-03

254 Interview No. TYR-01, TYR-02, TYR-03

255 FGD-01

256 Interview No. P-01

257 FGD-01

258 2015 Activity Report of the State-Guaranteed Legal Aid Service, 29 February 2016, No. 1, p. 17; 2016 Activity Report of the State-Guaranteed Legal Aid Service, 2017, p. 53

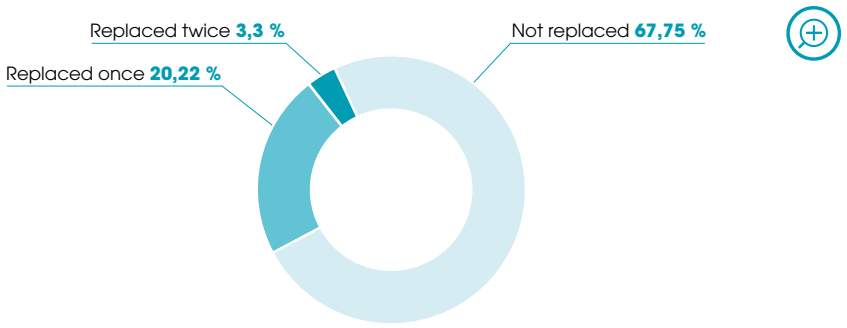
judge would indicate cousenl's on the ruling so that the Service could appoint that same lawyer for trial proceedings. [259]

In that ruling, the directions given to the Service are so that they wouldn't waste time trying to figure which counsel was appointed in the pre-trial investigation. Personally, I highly welcome this nuance, since that particular lawyer would have been present from the first interrogation during the pre-trial investigation. So continuity is very much appreciated. (judge, T-01)

The reviewed case files showed that consistency and continuity of representation is sought after in practice, taking steps to ensure that the person is represented by the same lawyer throughout all stages of the proceedings. Still, some derogations from this principle were observed.

In cases where suspects were represented by a SGLA lawyer through the pre-trial investigation, or a SGLA lawyer and private counsel, the SGLA lawyer were replaced at least once in 23 (25%) instances (once in 20 cases and twice in 3 cases). In the overwhelming majority of the cases, the SGLA lawyer was replaced by another SGLA lawyer. In 3 cases, the person hired private counsel instead of their SGLA lawyer.[260] There were no recorded cases where a person would replace private counsel with a SGLA lawyer or another practicing lawyer.

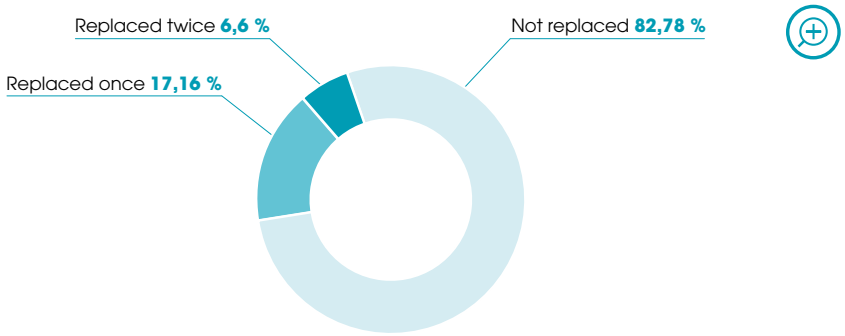
Chart 16. SGLA lawyer replacement during the pre-trial investigation



When it comes to trial proceedings, SGLA lawyers were replaced in 23 cases, or 22% of all cases involving representation by SGLA counsel, or by SGLA and private counsel, at trial. In all but one case the SGLA lawyer was replaced by another SGLA lawyer – private counsel was hired in only one case.

There was one case where the court had to take initiative and replace one SGLA counsel with another due to the fact that the lawyer representing the defendant at trial wasn't sufficiently well-versed in the national language. In another case analyzed, counsel was changed on the day of the hearing because the SGLA lawyer announced that he couldn't attend the hearing.

Chart 17. SGLA lawyer replacement at trial



As can be seen, more people were represented by SGLA lawyer at trial than during pre-trial proceedings. This is partly related to the discussed problem of differing interpretations of the pre-conditions for "mandatory participation of counsel". Investigators and prosecutors tend to interpret this provision more narrowly than judges and rarely exercise their right to appoint counsel in circumstances other than those listed in the CCP.

The judges who participated in the study noted that they are rarely faced with a situation where counsel fails to attend a hearing without good reason and it becomes necessary to impose sanctions or replace him. There were no such instances among the cases reviewed. Two of the three judges interviewed had to fine the lawyer at least once for this, but none had ever had to resort to arrest, which is an option under the CCP.[261]

259 Interview No. T-01

260 The case files do not make clear for what reason counsel was replaced.

261 Interview No. T-01, T-02, T-03

Sometimes they fail to attend, so they're fined and we look to see how this process might develop. If it's just a one-off instance and that lawyer had previously participated in the proceedings without any problems, didn't cause any concern, then most likely nothing will change. If, let's say, the limitation period is nearly up and we being to see horseplay, sometimes to just get over that limitation line, then of course state-guaranteed legal aid counsel is appointed and no one pays any heed whether that is the counsel that he (the defendant – author's note) wanted or not. (judge, T-02)

One judge noted that the problem was far more acute a few years, but due to the Bar Council taking these cases seriously lawyers do not wish to damage their reputation and attend hearings dutifully. SGLAS efforts in relation to this issue also received some praise – currently, it is very rare that the Service fails to notify SGLA lawyers adequately or at all about hearings. [262]

I think this is related to the advent of the new Bar Council. (...) Lawyers are afraid for themselves, because, for them, this (being absent from a hearing – author's note) is sufficient grounds for disciplinary proceedings. Then they lose their ability to work and ruin their reputation (...) In Vilnius I really haven't heard of lawyers being absent. They protect their reputation. (judge, T-01)

Effectiveness of the secondary legal aid system

The police officers, prosecutors and judges that participated in the study were generally satisfied with the work of the SGLA Service. They pointed out the centralization of SGLA offices in 2015 lead to better cooperation with the Service's coordinators and smoother appointment of lawyer.[263] Only one participating investigator indicated that they encountered great difficulties in dealing with the Service's coordinators, especially when lawyers were needed during the evening or on weekends.[264]

262 Interview No. T-01

263 Interview No. T-01, T-03, T-01, P-02, P-03

264 Interview No. TYR-01

I'd say that now, lately, things are going well, they settled down. When coordination was transferred to the city of Kaunas, that's in 2015, back then we'd get many problems: they'd not be able to find something, get lost, would be unable to find lawyers, that did happen... The lawyers themselves would be confused and angry, and at the same time it was also a problem for us. But the last year or half-year, counsel appointment has been going smoothly. (judge, T-01)

The lawyers themselves mainly complained about disproportionate administrative burdens involved when presenting documents attesting the lawyer's work to the SGLA Service. Some felt that they were not being believed and were not trusted. A portion noted that, as the forms are changing, they are not sure how to complete them and need training in this regard.[265]

Some lawyers providing legal aid full-time pointed out that the SGLA Service requests them to disclose excessive information (e.g. the *content* of the phone calls made by the lawyer on behalf of the client) which also constitutes a professional sercret. Usually these requests are made when the Service assesses monthly declarations submitted by the lawyers in attempt to verify the reasonableness of their actions. Thereby, the lawyers are put in the position where they either have to violate the principle of confidentiality, or, failing to provide the requested information, they do not receive a payment for their services.[266]

The majority (90%) of experts who participated in the study thought that the quality of the work of SGLA lawyers assisting in criminal cases was not satisfactory. As reasons for this problem, experts pointed to excessive workload, low pay and a remuneration system that lacked incentives, as well as the absence of an effective quality assurance mechanism.

In 2016, 34 lawyers[267] were providing secondary legal assistance *full-time* in Lithuania, who were assigned a total of 7125 cases throughout the year. One lawyer was given nearly 210 case that year. When compared to 2015, there is a noticeable downward trend in the number of cases assigned to lawyers (↓20%, compared to 2014 - ↓30%,), caused by decreasing numbers of registered offences (see. „Important statistical data"). At present, a lawyer is assigned just shy of 18 cases on average each month.

265 FGD-01, FGD-02

266 FGD-01

267 Information on secondary legal aid presented here and further on was obtained from published State-Guaranteed Legal Aid Service reports at http://vilnius.teisinepagalba.lt/lt/tm/veiklos-ataskaitos/. Statistical data from 2016 was not yet available when this study was being carried out. However, a list of lawyers was published on the SGLAS website in March of 2017, showing that 32 lawyers are providing legal aid full-time as of 2017, http://vilnius.teisinepagalba.lt/lt/lt/tm/advokatu-sarashai/

The workload of lawyers providing legal assistance *on demand* (who are also providing services to private clients) is smaller – a little more than 5 cases per month, or more than 60 cases per year. Although since 2011, the workload of such lawyers fell by 33%, it slightly increased in the past year (↑3%).

Table 2. Workload of lawyers providing secondary legal aid services full-time (criminal proceedings):

Year	Number of lawyers	Total number of criminal cases assigned (throughout the year)	Number of cases assigned to a lawyer on average (throughout the year)	Number of cases assigned to a lawyer on average (throughout the month)
2014	36	10 191	283,10	24
2015	34	9 213	270,97	22,58
2016	34	7 125	209,56	17,46

Table 3. Workload of lawyers and lawyers' assistants providing secondary legal aid services on demand (civil, criminal and administrative proceedings):

Year	Number of lawyers	Total number of cases assigned (throughout the year)	Number of cases assigned to a lawyer on average (throughout the year)	Number of cases assigned to a lawyer on average (per month)
2011	365	32 890	90,10	7,5
2012	408	35 061	85,93	7,2
2013	416	31 041	81,82	6,22
2014	437	34 676	79, 4	6,6
2015	459	27 002	58,83	4,90
2016	469	28 444	60,65	5,05

In the meantime, the 2015 workload of SGLA lawyers has been repeatedly cited as "gigantic" when compared to the workload of lawyers in private practice.[268] The SGLA lawyers providing legal aid full-time asserted that their workload is still enormous, which makes it impossible to review all the relevant documents in the case and to discuss the defence strategy with the client. This subsequently leads to the deterioration of the quality of legal services they provide.[269]

The SGLA lawyers who participated in the study explained that according to a semi-official policy endorsed by the SGLA Service, each full-time lawyer has to be assigned between 22 to 24 new cases per month in addition to the ones they already handle.[270] They were critical of the method employed to calculate their workload, i.e. the number of cases assigned to a lawyer, since it didn't reflect how busy lawyers really were and the peculiarities of their work. Lawyers pointed out that cases vary in complexity, the number and frequency of procedural actions, and as such the time that lawyers need to devote to prepare for representation in pre-trial proceedings or at trial varies too.

Lawyers who provide legal aid services full-time receive a flat salary from the State. In 2016, that was 1894.49 EUR per month before taxes.[271] When the Service enters into a contract with such a lawyer, that contract does not set minimum or maximum workloads, only stating that the Service is obliged to ensure that the lawyer's workload is "appropriate". It also states that lawyers shall work on weekdays, 40 hours per week, and in some cases on non-working days. This problem attracted the attention of the National Audit Office as far back as 2009,[272] but nothing much has changed.

The hourly fee for lawyers providing legal aid on demand was 11.58 EUR in 2016.[273] There are certain time limits in place for doing procedural actions – for example, preparation for trial may not exceed one hour for each hearing, drafting an appeal in serious or very serious intentional crimes may not exceed 6 hours, etc.[274] If these limits are exceeded, lawyers may ask the Service to authorize additional payment, but the time they actual spent working must be confirmed by a investigating police officer, a prosecutor, a judge or their client via signature.[275]

268 V. Urbonas, „Lawyers Complain: Our Wages Are Lower Than Those of Hairdressers", 21 June 2015, *tv3.lt*, http://www.tv3.lt/naujiena/838003/advokatai-skundziasi-musu-atlyginimai-mazesni-nei-kirpeju

269 FGD-01.

270 FGD-01.

271 Para 4 of Resolution No. 364 of the Government „Approving the Fees and Payment Rules for Legal Aid Services, Coordination and Mediation", dated 13 April 2016

272 Para 2.2.2. and 3.1.8. of Order No. 1R-123 of the Minister of Justice „Approving Model Contracts for the Provision of Secondary Legal Aid", dated 27 April 2005, https://www.e-tar.lt/portal/lt/legalAct/TAR.B3C5B5A871CB. National Audit Office of Lithuania, „Report of National Audit: State-Guaranteed Secondary Legal Aid", No. VA-P-40-12-15, 7 August 2009, p. 13, https://www.vkontrole.lt/failas.aspx?id=1948

273 Para 2 of Resolution No. 364 of the Government „Approving the Fees and Payment Rules for Legal Aid Services, Coordination and Mediation", dated 13 April 2016. The Ministry of Justice is obliged to recalculate the fees annually with reference to economic data.

274 *Ibid.*, p. 10-20

275 *Ibid.*, p. 11

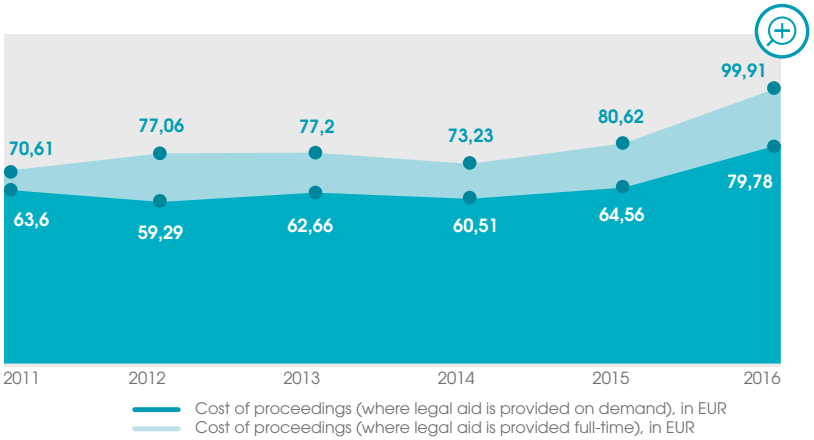
Lawyers providing secondary legal aid are also reimbursed expenses related to the provision of legal aid, such as travelling to where procedural actions are to take place, copying, translating or otherwise preparing documents and so on.[276] Lawyers providing secondary legal aid full-time are also allocated premises and work equipment free of charge.[277]

The SGLA lawyers pointed out that the remuneration they receive for their services is too low and is not being recalculated regularly.[278]

Chart 18 shows how much a criminal case where legal aid is provided costs to the State per year.

Although more and more funding is allocated to secondary legal aid from 2011 to 2015, the portion for paying lawyers' salaries is actually decreasing slightly (see Chart 6, "Important statistical data"). In 2016, the situation changed a bit. Although the allocations to the SGLAS were decreased by 8%, the share for paying lawyers` salaries increased by 6%.

Chart 18. Average cost of criminal proceedings when secondary legal aid is provided, in EUR



276 Para 30 of Resolution No. 364 of the Government „Approving the Fees and Payment Rules for Legal Aid Services, Coordination and Mediation", dated 13 April 2016

277 Para 3.1 of Order No. 1R-123 of the Minister of Justice „Approving Model Contracts for the Provision of Secondary Legal Aid", dated 27 April 2005

278 FGD-01, FGD-02

SGLAS note that the average cost of criminal proceedings increased in 2016 due to the fact that a number of legal aid lawyers participated in voluminous cases, the most prominent being „January 13-th case" (the case of an attempted Soviet coup of 1991).[279]

For the purpose of comparison, below are the fees for the criminal defense legal aid lawyers in some of the EU member states (information from 2011-2015).

Table 4. Average expenditure on criminal legal aid (2011-2015) [280]

State	Legal costs of typical criminal case	Annual expenditure on criminal legal aid (average)	Annual expenditure on criminal legal aid per capita (average)
Belgium	365-400 EUR	12,9 mln EUR	2,10 EUR
France	398 EUR	119 mln EUR	1,8 EUR
The Netherlands	530 EUR	168,1 mln EUR	9,3 EUR
Finland	694 EUR	N/I All cases (incl. civil, admin, etc): 67,7 mln EUR	N/I All cases: 12 EUR
Italy	1000-1500 EUR	87 mln EUR	1,45 EUR
Poland	N/I	23 mln EUR	0,59 EUR

Experts who participated in the survey thought that one of the greatest flaws of the SGLA system was the low quality of representation from lawyers providing secondary legal aid. However, they were not sure if it's possible to establish quality indicators for lawyer's work and assess how well they are being followed.[281]

In a 2012 report to the European Committee for the Prevention of Torture, the Lithuanian Government stated that it "gives much attention to the efficiency and quality of legal aid", defining the quality assurance mechanism as follows:[282]

279 2016 Activity Report of the State Guaranteed Legal Aid Service, 2017, p. 67.; Algirdas Acus, „Lithuania is handing to court the case of an attempted Soviet coup", 11 January 2015, *Lrt.lt*, http://www.lrt.lt/en/news_in_english/29/112623/lithuania_is_handing_to_court_the_case_of_an_attempted_soviet_coup_

280 Open Society Justice Initiative, „Criminal legal aid: factsheets", 2015, https://www.opensocietyfoundations.org/fact-sheets/legal-aid-netherlands

281 FGD-01, FGD-02, Interview No. T-03

282 Report of the Government of the Republic of Lithuania on measures taken or planned to be taken in order to implemenet the recommendations provided in the report on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 27 November to 4 December 2012, p. 5-6, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680697369

(excerpt from the 2012 Report of the Government of the Republic of Lithuania to the European Committee for the Prevention of Torture)

1. Control of contractual obligations, which is performed by the institutions in charge of organisation of state-guaranteed legal aid – state-guaranteed legal aid services.

2. Control in the general procedure of lawyers, which is performed by the Lithuanian Bar Association as the self-governing authorty of lawyers.

3. Training arranged by the Ministry of Justice to persons providing state-guaranteed legal aid.

Under the Law on SGLA, the quality of lawyer's work should be assessed in accordance with "the rules for assessing the quality of secondary legal aid approved by the Lithuanian Bar Association". However, these rules have never been approved because, as stated by the Lithuanian Bar Association, "the Bar Council of the Lithuanian Bar Association, when there are grounds for doing so, assesses the quality of the work of lawyers providing secondary legal aid services with reference to legislation that is applicable to all lawyers, and has not approved any special quality assessment rules that are applicable only to lawyers providing secondary legal aid services, believing that creating rules that are applicable only to a certain subset of lawyers would be incompatible with the principles governing the practice of lawyers."[283]

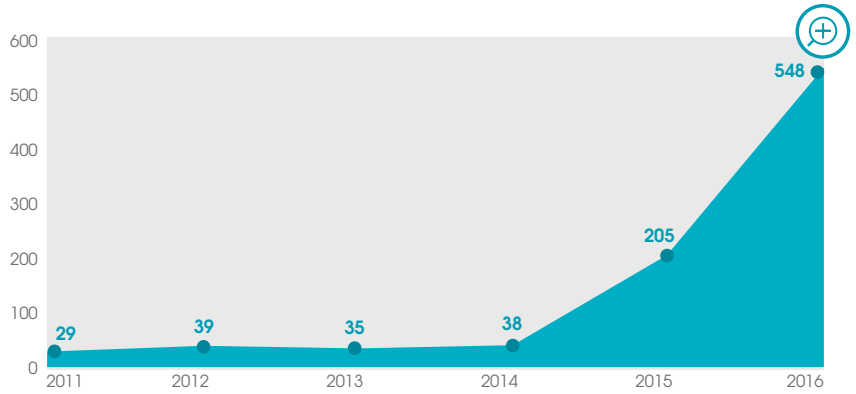
Therefore, at present *ex post* quality assessments are only carried out when a person or concerned institution complain to the SGLA Service, the Lithuanian Bar Association, the Ministry of Justice, the court, the Seimas Ombudsmen's Office or another authority. As mentioned previously, the official SGLA Service website does not contain information on how to complain about a lawyer's performance or non-performance.

In 2016, the SGLA Service received a record number of complaints concerning secondary legal aid services that had been provided or were being provided by lawyers.[284] Compared to 2015, the number of complaits increased by 2,5 times (↑267%), compared to 2011 – by 20 times.

283 National Audit Office of Lithuania, „Report of National Audit: State-Guaranteed Secondary Legal Aid", No. VA-P-40-12-15, 7 August 2009, p. 21

284 This is an overall number, including lawyers that provide legal aid services full-time or on demand in all types of proceedings. More detailed data is not available.

Chart 19. Complaints received by the SGLA Service concerning secondary legal aid



The Service forwarded 46 complaints to the Lithuanian Bar Association in 2016 (in 2015 – 30 complaints). That year, the Ministry of Justice forwarded 3 complaints regarding the activity or inaction of legal aid lawyers to the Bar Association (0 complaints in 2015). In total that year the Ministry of Justice received 14 complaints, but didn't launch any disciplinary action against the lawyers.[285]

In 2016, the Bar Council received a total of 57 complaints concerning the provision of secondary legal aid, while in 2015 - 22 complaints. In 2016 it was decided to start disciplinary proceedings in 8 cases, not to start proceedings - in 35 cases and 14 complaints are sill under consideration.[286]

In the conclusions issued by the Disciplinary Committee of the Bar Council in 2015, it was recommended that SGLA lawyers be offered "additional seminars to raise their qualifications, since this reporting period saw a marked increase in the number of complaints concerning SLGA services."[287] That year, the Lawyers Court of Honour decided a total of 38 cases, at least 2 cases were related to the deficient provision of state legal aid. In one of the cases, the lawyer appointed by the Service refused to meet with a client held in detention, because „he was not paid for going to prisons"; same lawyer failed to show up at the court hearing. In both cases the Court found violations of the Law of the Bar and the Lawyers Code of Ethics.[288]

285 The response of the Ministry of Justice to the Human Rights Monitoring Institute, No. IS-XII-8, 27 April 2017

286 A letter from the Bar Council to the Human Rights Monitoring Institute, „Regarding request for information", Nr. 236, 7 April 2017

287 General Meeting of Advocates, „Bar Council Activity Report 2016", 2016, www.advokatura.lt/download/54593/ataskaita%20_paskelbimui.pdf, p. 60

288 Ibid., p. 179 and 195

The downside to quality assurance systems based on individual complaints is that complainants lack legal experience or financial means must collect and present any evidence of the lawyer's misconduct themselves. The Ombudspersons of the Seimas (Parliament) of the Republic of Lithuania discovered yet another systemic problem while investigating complaints about failures to effectively guarantee secondary legal aid. Where secondary legal aid is provided to a person in order to appeal the Bar Council's decision not to initiate disciplinary proceedings against a lawyer, SGLA lawyers refuse to represent him or her. In one case, no less than two lawyers refused to represent the complainant, basing their refusal on the fact that they have "a business-professional" or even a "not just collegial, but friendly" relationship with the lawyer subject to the complaint.[289]

In summary, at present no comprehensive monitoring of the quality of legal services, performance audits, expert evaluations or similar mechanisms for assessing the quality of legal service providers that are in place abroad have been introduced to Lithuania.[290] Meanwhile, the Recommendation on the right to legal aid states that countries should put into place systems to ensure the quality of legal aid lawyers.[291] The Recommendation also requires the creation of an accreditation system for legal aid lawyers.[292]

289 Seimas Ombudsmen's Office, „Note on the Complaint Against the State-Guaranteed Legal Aid Service", No. 4D-2016/1-1601, 2 March 2017

290 A.Limantė ir M. Limantas, „Right to Legal Aid in Europe", Vilnius University: Law, 2016-99, p. 137, *supra note* 71, www.zurnalai.vu.lt/teise/article/download/10117/8120

291 Para 17 of the Recommendation

292 Para 19 of the Recommendation

CONCLUSIONS AND RECOMMENDATIONS

The right to a lawyer

1. Directive on the right to a lawyer (hereinafter – Directive) is only partially transposed into the national legal system. Although the trasponsition period is over, the amendments to the Code of Criminal procedure transposing the Directive were not adopted during the preparation of this report.

2. In Lithuania, the right to legal defence has a constitutional status and cannot be denied or restricted on any grounds and under any circumstance. Hence, the CCP does not provide for the limitations of the right to a lawyer that are found in the Directive, and thus ensures a higher standard of protection if compared with the EU law.

3. The legal right to a lawyer „from the very first interrogation" has different interpretations in practice. The suspects are not always provided with a possibility to consult with a lawyer before the interrogation, there are also significant variations in terms of the attitude of police officers regarding the allowed length of such consultation.

4. In more than half of the analyzed cases, suspects waived their right to lawyer before the first interrogation. According to the interviewed experts, the suspects usually waive their right because they underestimate the gravity of their situation and/or have no financial means to hire a lawyer. Some lawyers expressed a concern that the pressure exerted by investigating police officers may also contribute to the person deciding to waive their right to counsel.

5. The mandatory participation of the lawyer is not ensured in all cases. The research indentified instances when minors, persons with mental disabilities, linguistic minorities were not represented by the lawyer during the first interrogation or during the pre-trial and trial investigation of their case. There are no clear guidelines allowing to assess the vulnerability of the suspect and circumstances of the case to determine if participation of the lawyer is mandatory.

6. In 95% of cases analysed, irrespectively of whether or not suspects were represented by the lawyer, they gave testimonies during the first interrogation. The suspects who were not represented by the lawyer were more inclined to confess to committing a crime, whereas suspects who benefitted from the counsel's representation were more likely to confess to some of the alleged offences, or to a lesser offence than the one alleged.

The right to legal aid

7 On the scale from 1 to 10, police officers and prosecutors assess the work of the legal aid lawyers at 5.75 points. Majority of the officers evaluate the work performed by the lawyers providing legal aid on demand as being of a higher quality than the work of full time legal aid lawyers.

8 Legal aid lawyers are concerned that some of their colleagues only pay lip service to the proceedings, playing a "token attorney". There had been cases of legal aid lawyers signing case file documents *post factum* to show that they participated in the interrogation or some other procedural matter, even though they were in fact absent.

9 Judges assess the quality of legal aid lawyers work at 6,5 points out of 10. Majority of the judges believe that legal aid lawyers are more passive in the proceedings than their colleagues in the private practice. The judges don`t see any material difference in the quality of performance between the lawyers providing legal aid full time and on demand.

10 The judges are not inclined to get involved in disputes over representation (negligent or otherwise) between clients and lawyers. In their opinion, passiveness does not necessarily mean that counsel are not doing their job, as it may be part of their defence strategy. The judges are not entirely clear how to rule on the situations where an accussed applies for a replacement of the lawyer due to poor representation.

11 According to the experts, the main reasons for unsatisfactory performance of the legal aid lawyers are excessive workload, low pay and a remuneration system that lacks incentives, as well as the absence of a comprehensive quality assurance mechanism. The legal aid lawyers are critical of the method employed to calculate their workload, i.e. the number of cases assigned to a lawyer, since it doesn`t reflect how busy lawyers really are and the peculiarities of their work.

12 In practice, it is difficult for suspects to make use of the right to choose a legal aid counsel. Detainees do not have access to the online lists of legal aid lawyers. Any preference for a specific lawyer can only be expressed by those who have already had run-ins with law enforcement and wish to be represented by the same lawyer as before.

13 Consistency and continuity of representation is sought after in practice. Judges take steps to ensure that the accused is represented by the same legal aid lawyer who worked on the case during pre-trial investigation. Still, some derogations from this principle were observed – SGLA lawyers were replaced in 25% of the analyzed cases.

14 The police officers, prosecutors and judges that participated are generally satisfied with the work of the State-Guaranteed Legal Aid Service. Centralization of State-Guaranteed Legal Aid offices in 2015 lead to better cooperation with the Service's coordinators and smoother appointment of lawyers. The legal aid lawers, on the other hand, feel burdened with disproportionate administrative requirements and are concerned about State-Guaranteed Legal Aid Service requesting them to disclose excessive information that constitutes their professional secret.

15 In 2016, the State-Guaranteed Legal Aid Service received a record number of complaints concerning secondary legal aid services that had been provided or were being provided by lawyers. Compared to 2015, the number of complaits increased by 2,5 times.

16 There is no effective legal aid quality assurance mechanism at place in Lithuania. The assessment of quality of legal aid lawer's work is mostly triggered by individual complaints. The complainants lack legal experience or financial means to collect and present any evidence of the lawyer's misconduct themselves.

Miscellaneous

17 Although a person has a right to inform a family member or another person about his arrest of detention himself, this right is not ensured in practice. In the most of the cases, investigative police officers inform a requested person on behalf of the suspect.

18 The Code of Criminal Procedure allows not to infom the parents of the minor of the deprivation of the latter's liberty if it would prejudice the success of the pre-trial investigation or endanger safety of the suspect's family members, close relatives or any other person. Such a rule is contrary to the principle of the best interest of the child and to the minimum requirements set forth in the Directive.

19 Some of the judges questione the necessity of the special witness status in criminal proceedings, since if a person is questioned about an offence he could have committed, he must be recognized as a suspect and allowed to exercise all his procedural rights.

20 The vast majority of experts that participated in the research were not familiar with the Directive on the right to a lawyer and Recommendation on the right to legal aid; they did not have a knowledge of other lega instruments adopted in the framework of "Stokholm programme".

Recommendations

Ministry of Justice

- In close consulation with the legal aid lawyers, introduce the organizational and administrative measures necessary to ensure that the system of the State Guaranteed Legal Aid meets the standards of quality and effectiveness. More specifically:
  - develop a system to calculate *de facto* workload of legal aid lawyers and to distribute the workload among lawyers proportionally and fairly;
  - amend the standard agreements concluded with legal aid lawyers, providing for the overtime pay for hours in excess of the workload quota;
  - recalculate the hourly and monthly fees paid to the legal aid lawyers.
- In cooperation with the State Guaranteed Legal Aid Service, Lithuanian Bas Association, and in close consultation with the legal aid lawyers, ensure that a quality assurance system of legal aid is put in place in Lithuania.
- Revise the 2011 Ministry's recommendation regarding the implementation of Article 51(2) of the Criminal Procedure Code on the basis of the Eruopean Court of Human Rights case-law with respect to the eligibility to legal aid (merits test) and the Recommendation on the right to legal aid.

Police Department

- Make all appropriate arrangements to ensure that the suspects that are deprived of liberty have a possibility to consult with their lawyer prior to the first interrogation, without undue restrictions placed on the duration of such consultation.
- Make all appropriate arrangements to ensure that the investigative police officers infom suspects about their right to a lawyer and right to legal aid prior to the first interrogation in simple and accessible language. Take discriplinary measures if police officers directly or indirectly encourage suspects to waive their right to a lawyer.
- Take measures to ensure that minors, persons with mental disability, and persons who do not speak the language of the proceedings in all circumstances and cases are represented by the lawyer from the first interrogation and throughout the investigation.
- Allow the suspects to exercise all of their procedural rights without undue restrictions, including a right to infom a family member or another person about their arrest or detention themselves.

Prosecutor General's Office

- Briefly outline suspect's rights, including the right to a lawyer and the right to legal aid, on the writ of summons.
- Conduct internal assessment of closed cases where persons were questioned as special witnesses. Determine if the factual circumstances of the case allowed to recognize a person as a suspect from the very beginning of the pre-trial investigation.

State-Guaranteed Legal Aid Service

- In close consultation with the legal aid lawyers, review the administrative requirements imposed on the lawyers in order to minimize the administrative burden. Ensure that the lawyrers are not required to violate the principle of confidentiality and are not requested to provide the Service with the information constituting their professional secret.
- On the website www.teisinepagalba.lt, publish information about the procedures for lodging a complaint regarding unsatisfactory legal aid services or a failure to provide such services alltogerther.
- In cooperation with the Police Department, make all appropriate arrangement to ensure that the arrested or detained suspects have access to the lists of legal aid lawyers and can exercise their right to informed choise of legal assistance as provide for in the Recommendation.

National Court's Administration

- Make a compilation of the criteria developed in the ECtHR case-law on Article 6(3)(c) of the ECHR to be taken into account when assessing the quality of the legal aid in criminal cases.

All of the above listed institutions

- Organize training session to introduce the EU law instruments adopted in the framework of the "Stokholmme programme" and the related CJEU case-law to the lawyers, law-enforcement officers, judges and decision-makers.


Human Rights
Monitoring Institute

Chart 1. Average annual population of Lithuania

Chart 2. Number of offences recorded in Lithuania

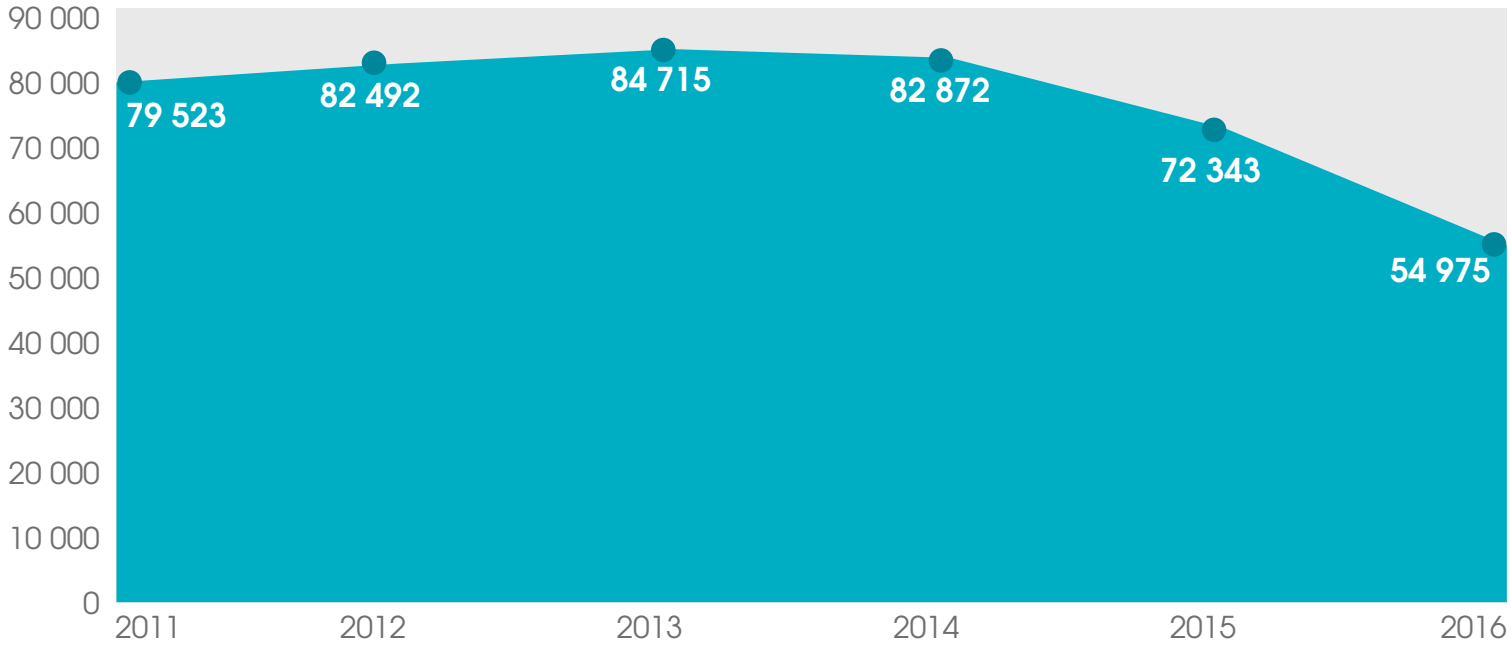


Chart 3. Number of persons suspected of having committed a criminal offence

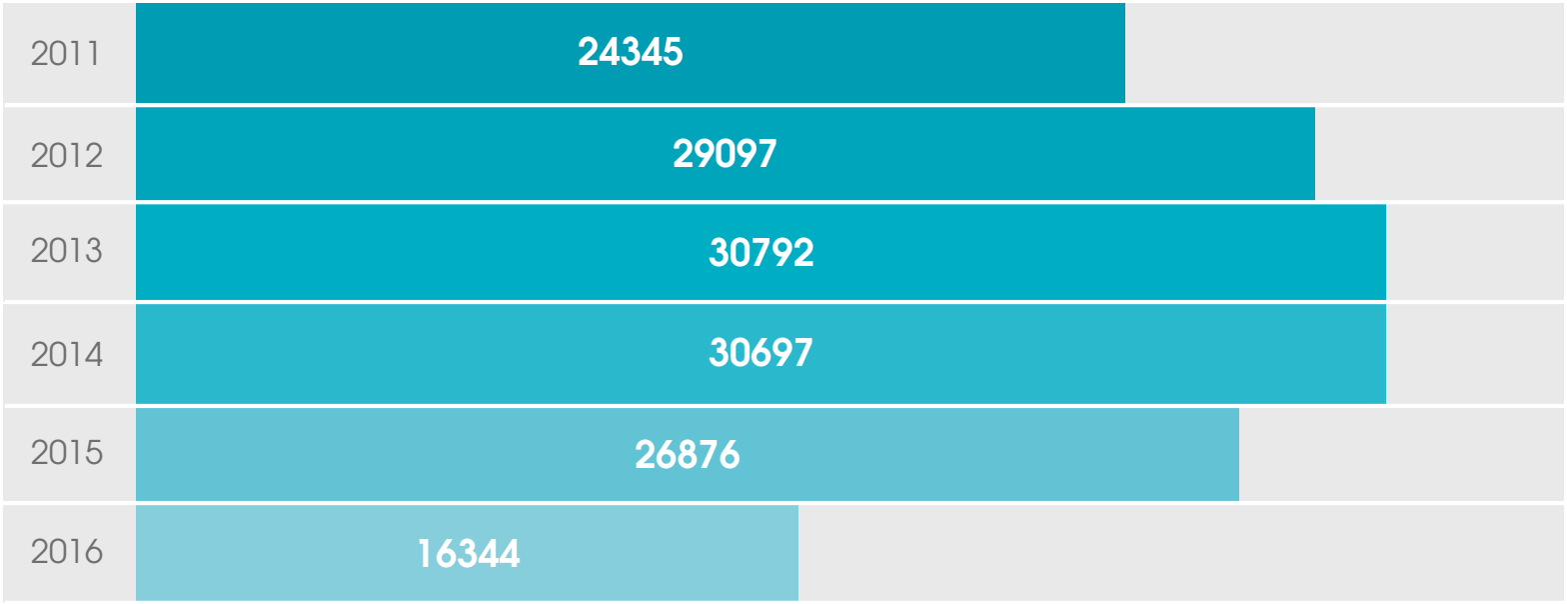


Chart 4. Number of persons remanded in pre-trial detention

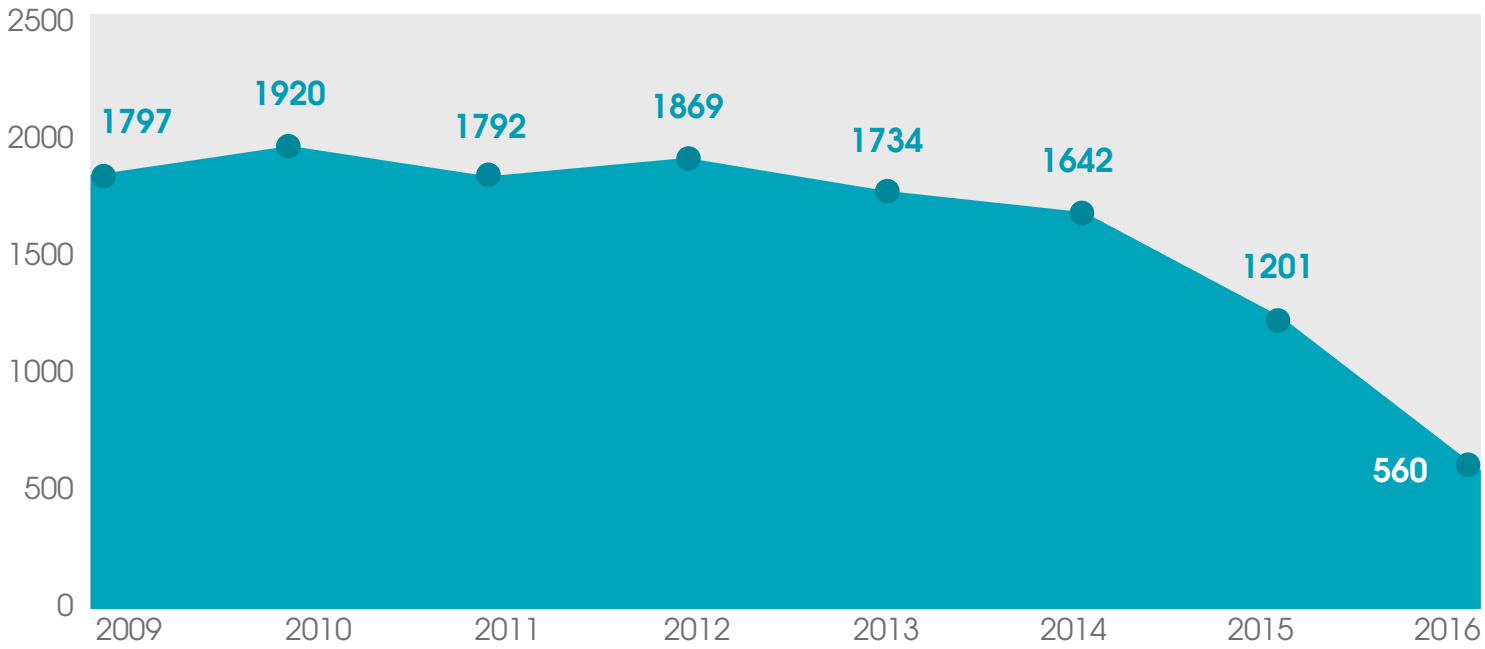


Chart 5. Number of decided criminal cases

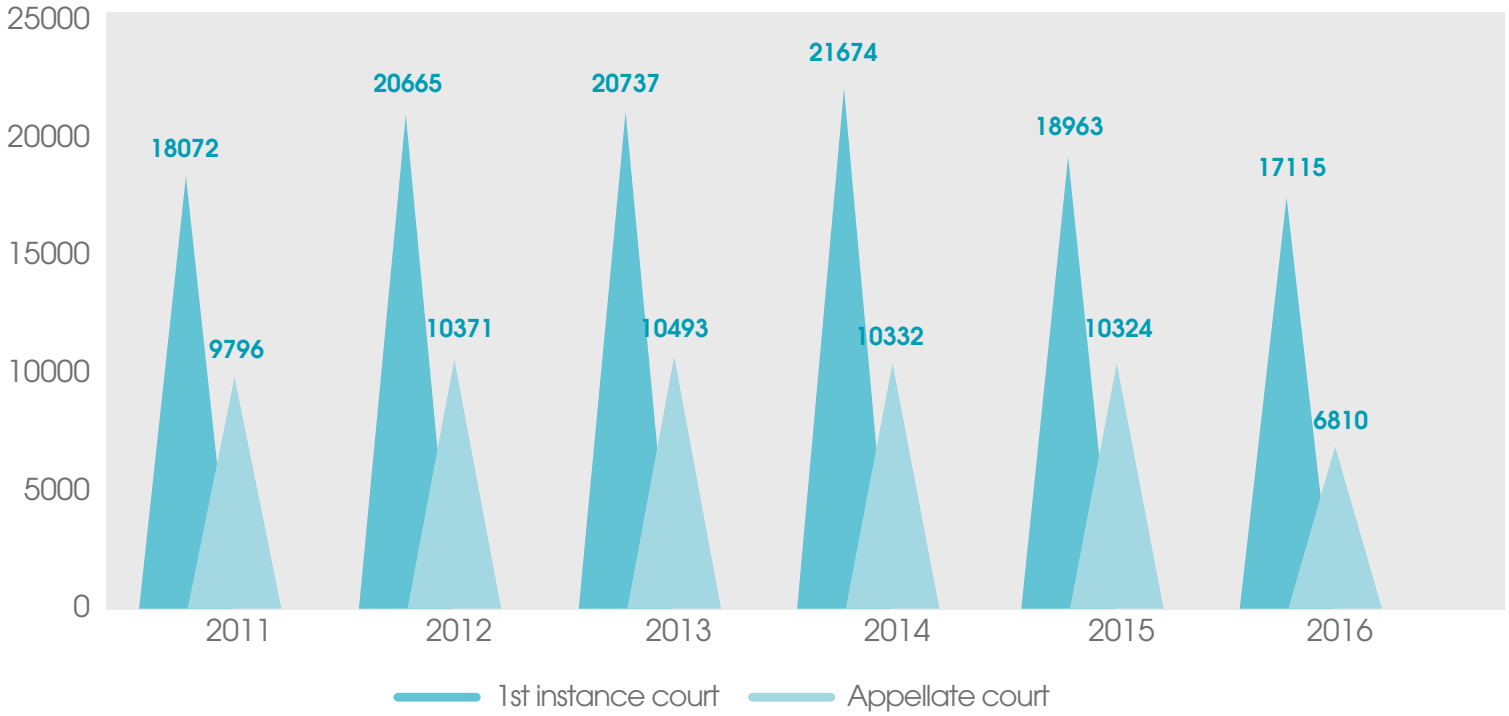


Chart 6. Number of criminal cases in which secondary legal aid was provided

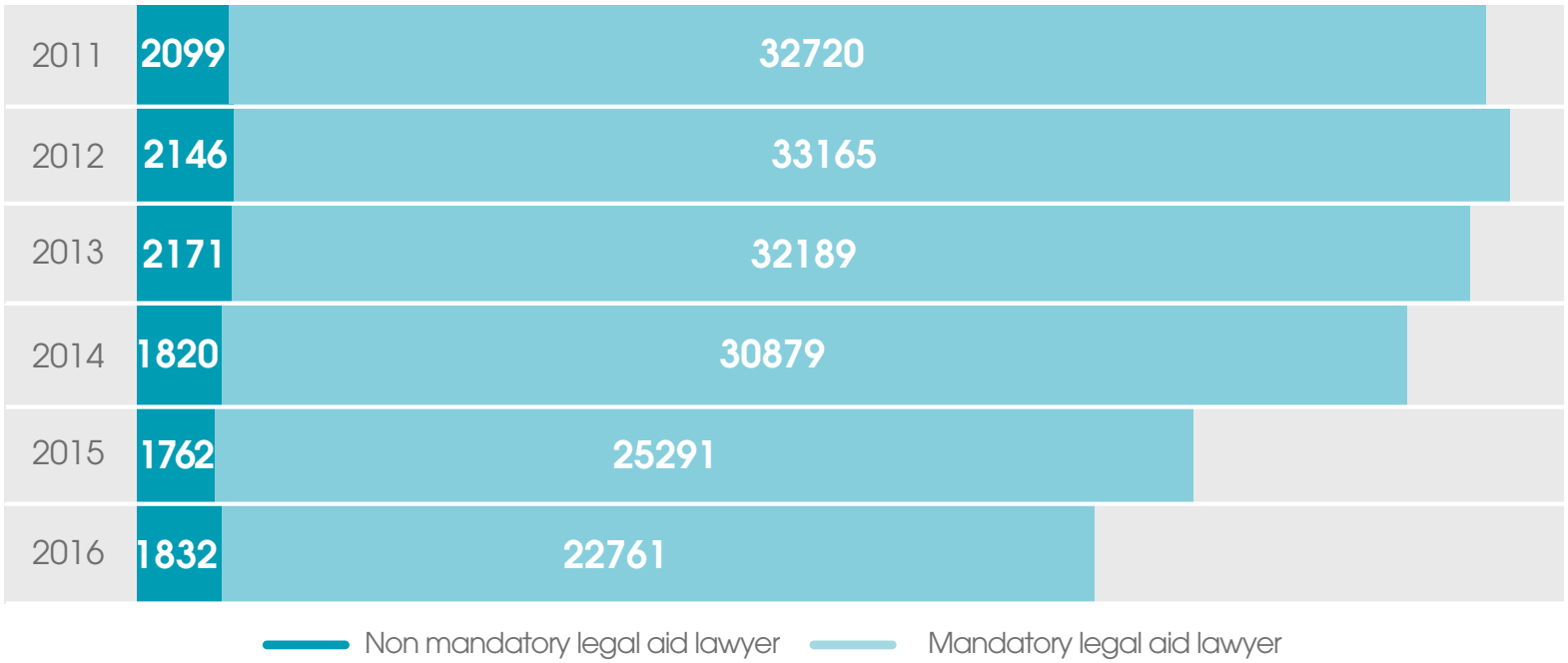


Chart 7. Remuneration of lawyers providing secondary legal aid in criminal proceedings

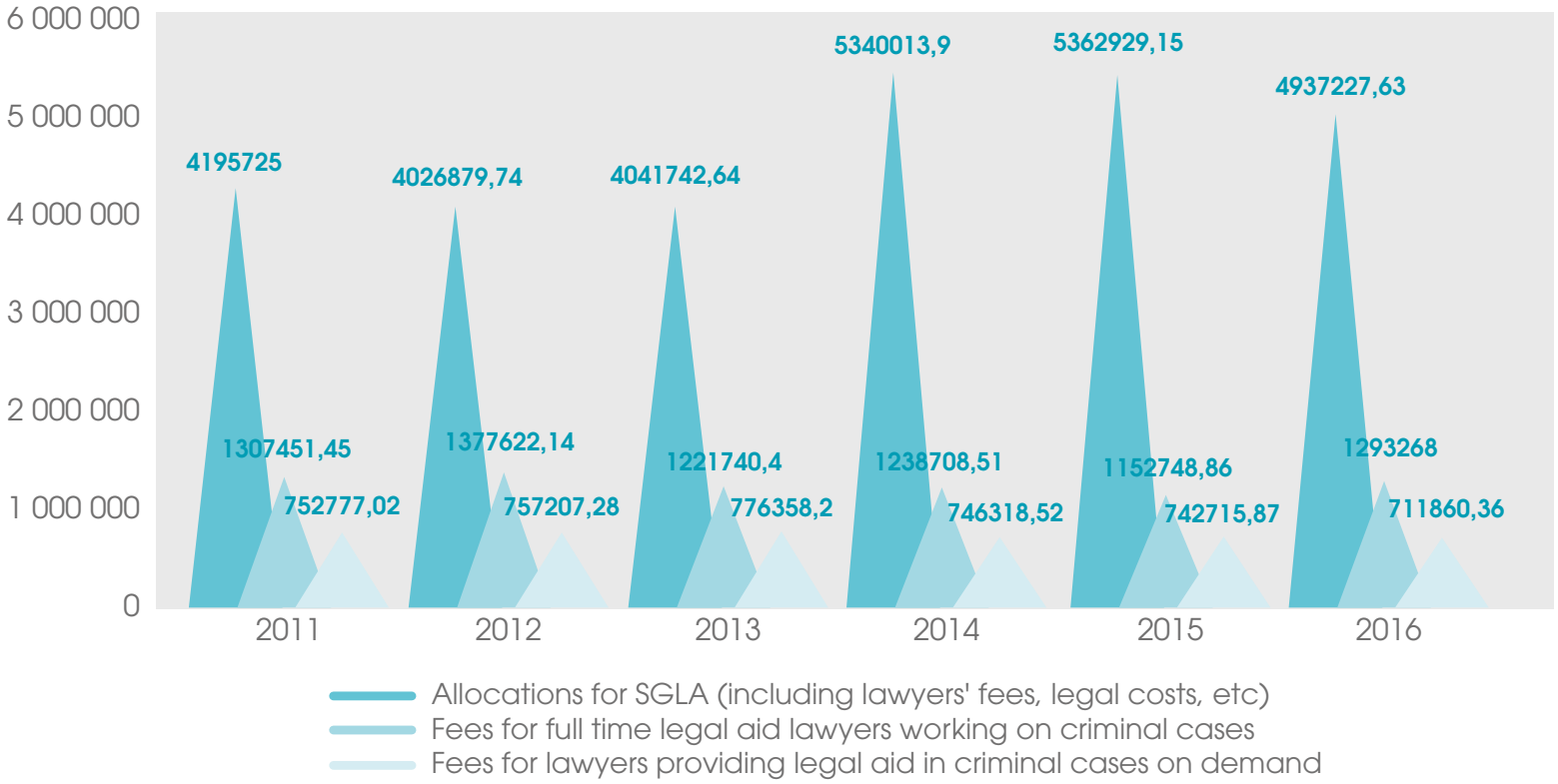


Chart 8. Spendings on secondary state guaranteed legal aid in 2016 (EUR)

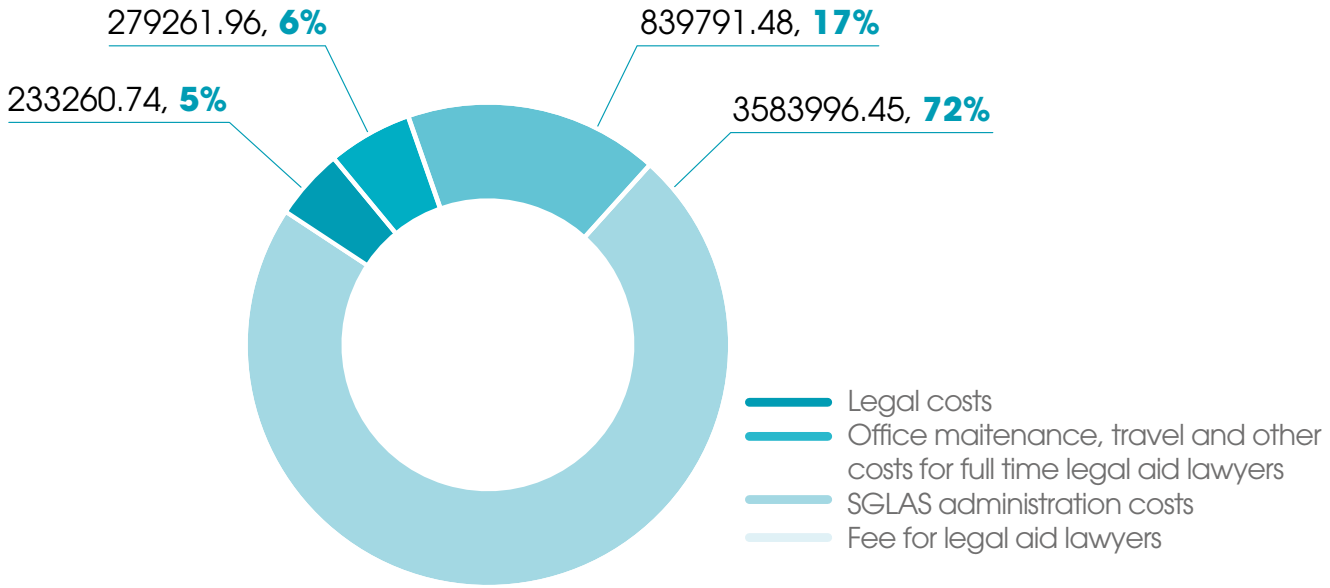


Chart 9. Lawyer`s attendance during the first interrogation

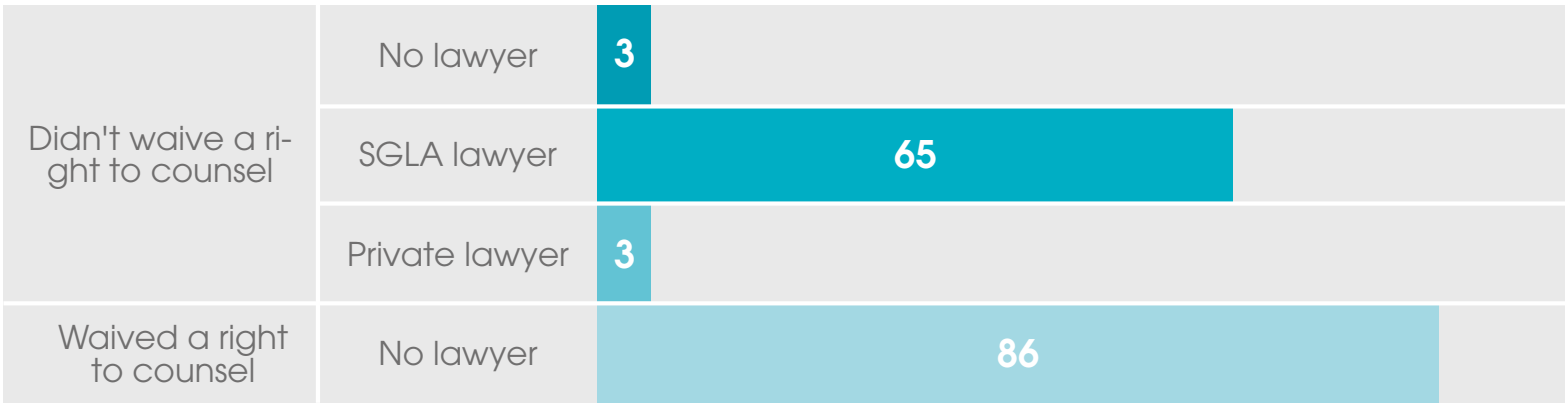


Chart 10. Suspects that waived their right to counsel before the first interrogation, with counsel not attending the interrogation

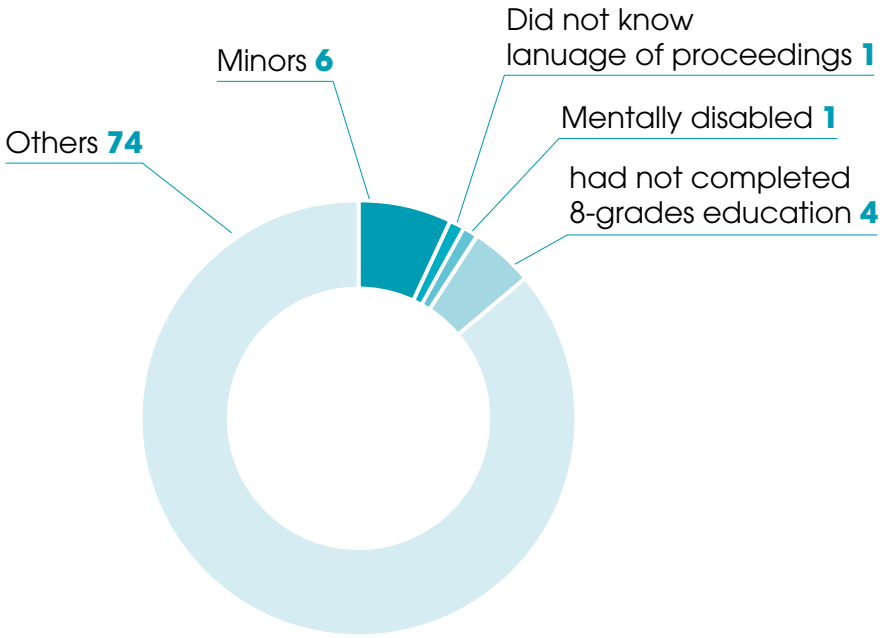


Chart 11. Lawyer`s attendance at the first interrogation

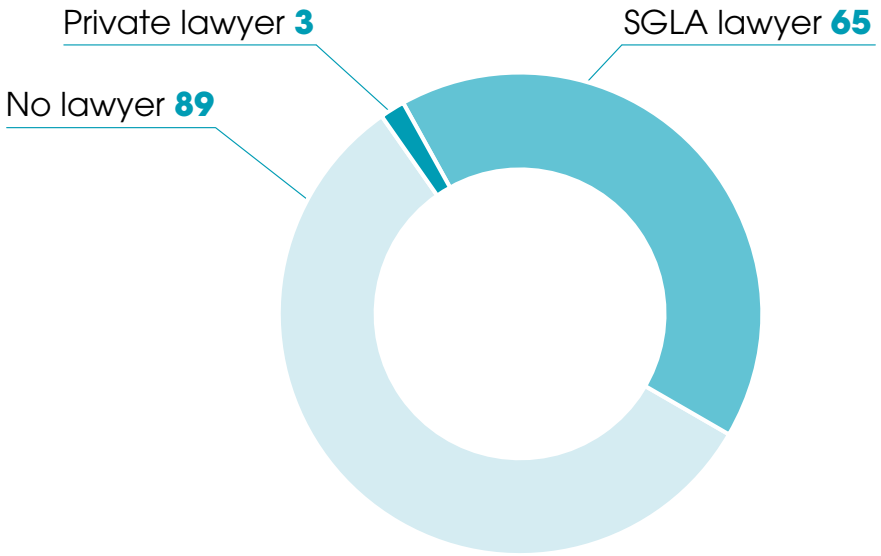


Chart 12. Suspects' confessions at the first interrogation

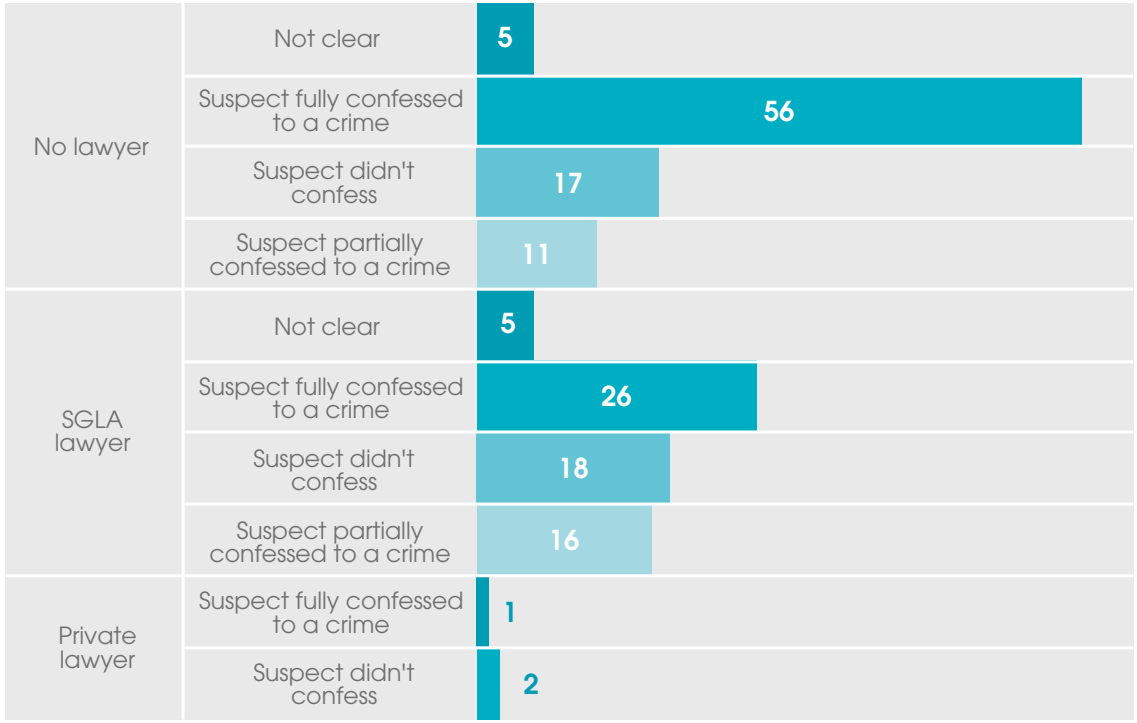


Chart 13. Lawyer`s attendance at the second interrogation

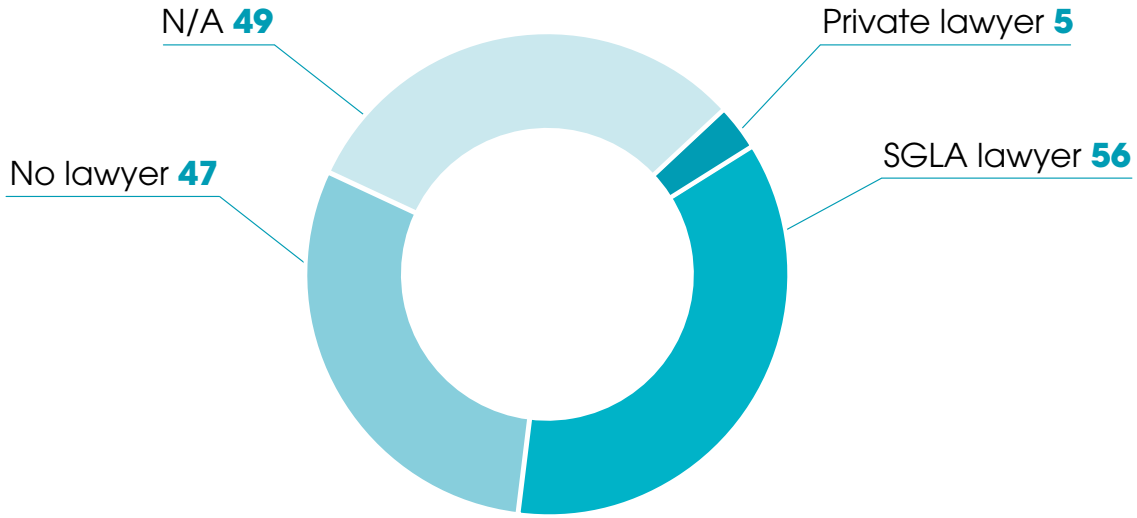


Chart 14. Lawyer`s participation in hearings regarding pre-trial detention

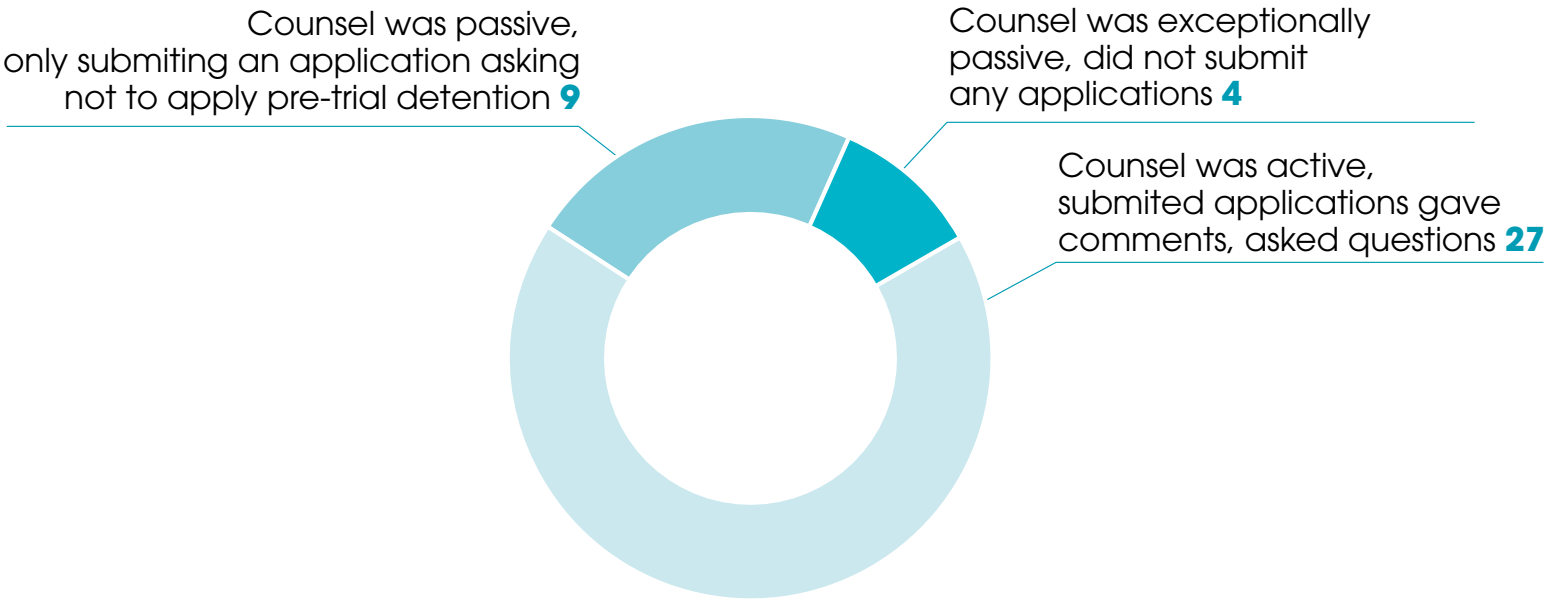


Chart 15. Lawyer`s participation at trial

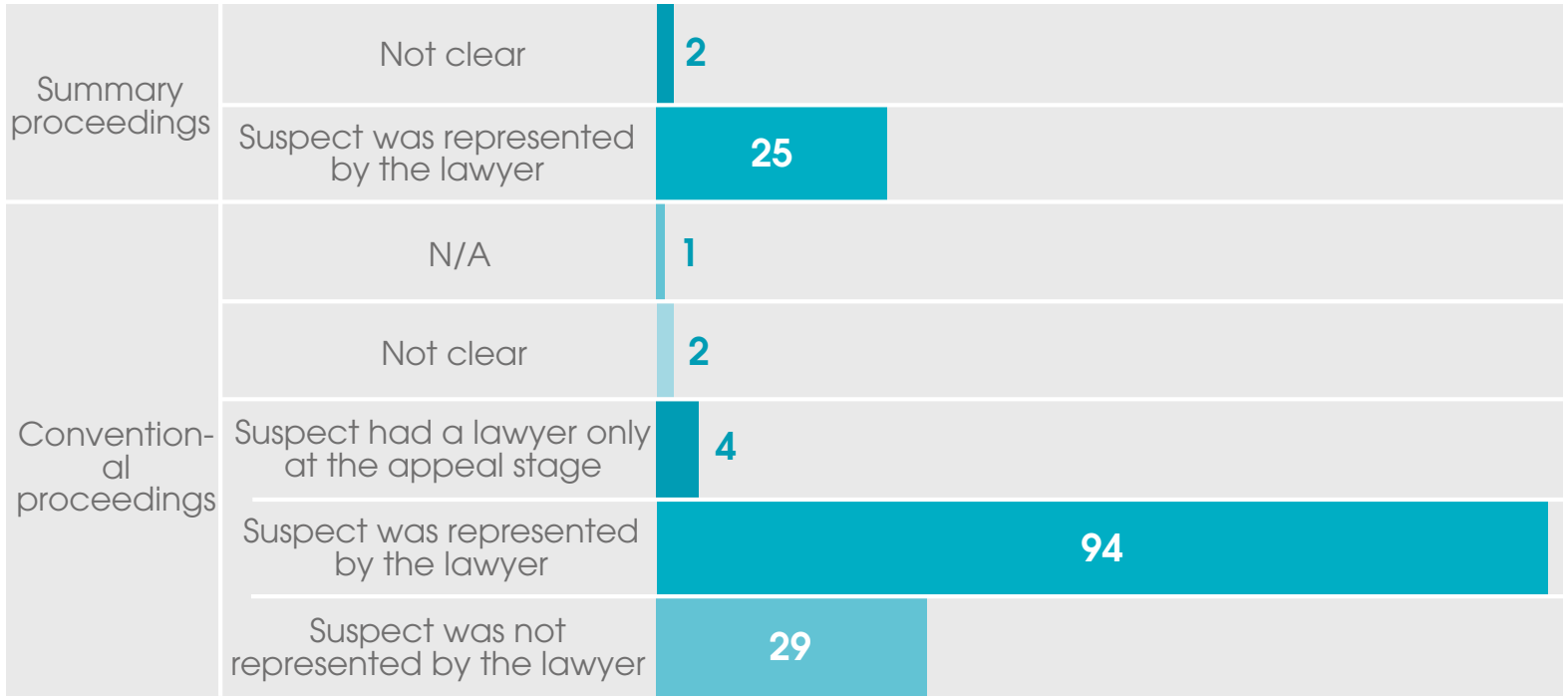


Chart 16. SGLA lawyer replacement during the pre-trial investigation

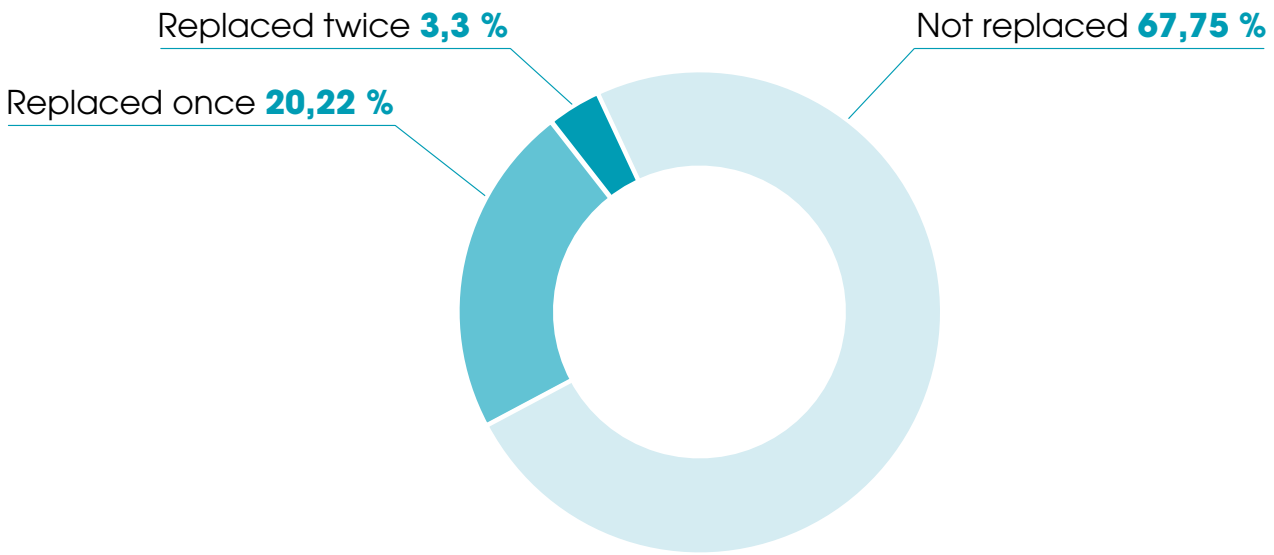


Chart 17. SGLA lawyer replacement at trial

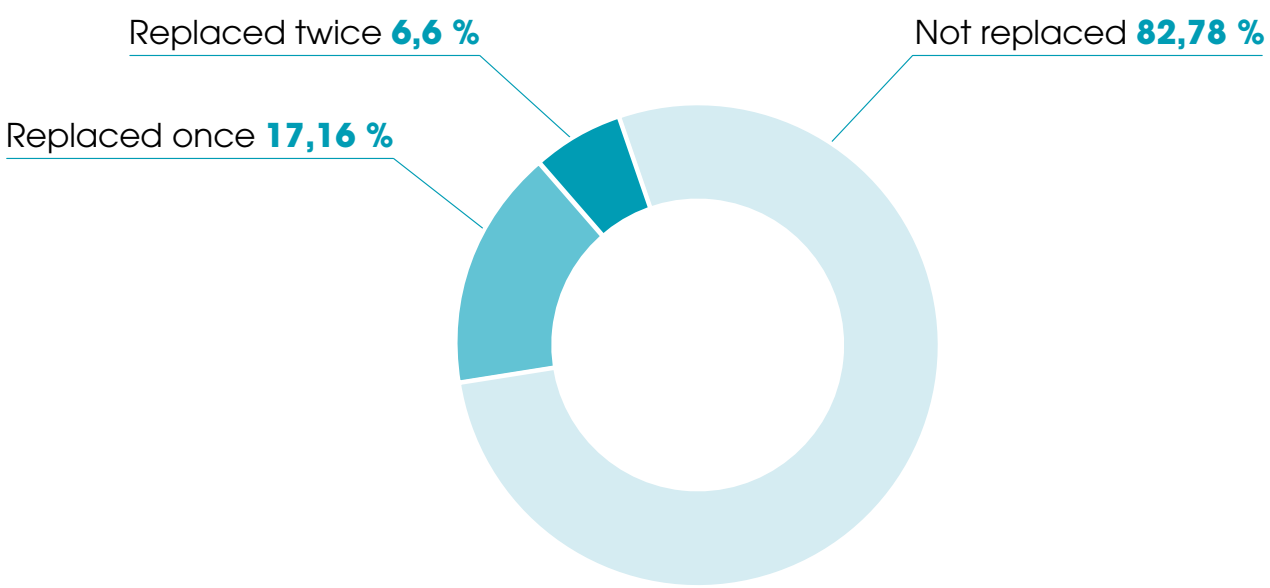


Chart 18. Average cost of criminal proceedings when secondary legal aid is provided, in EUR

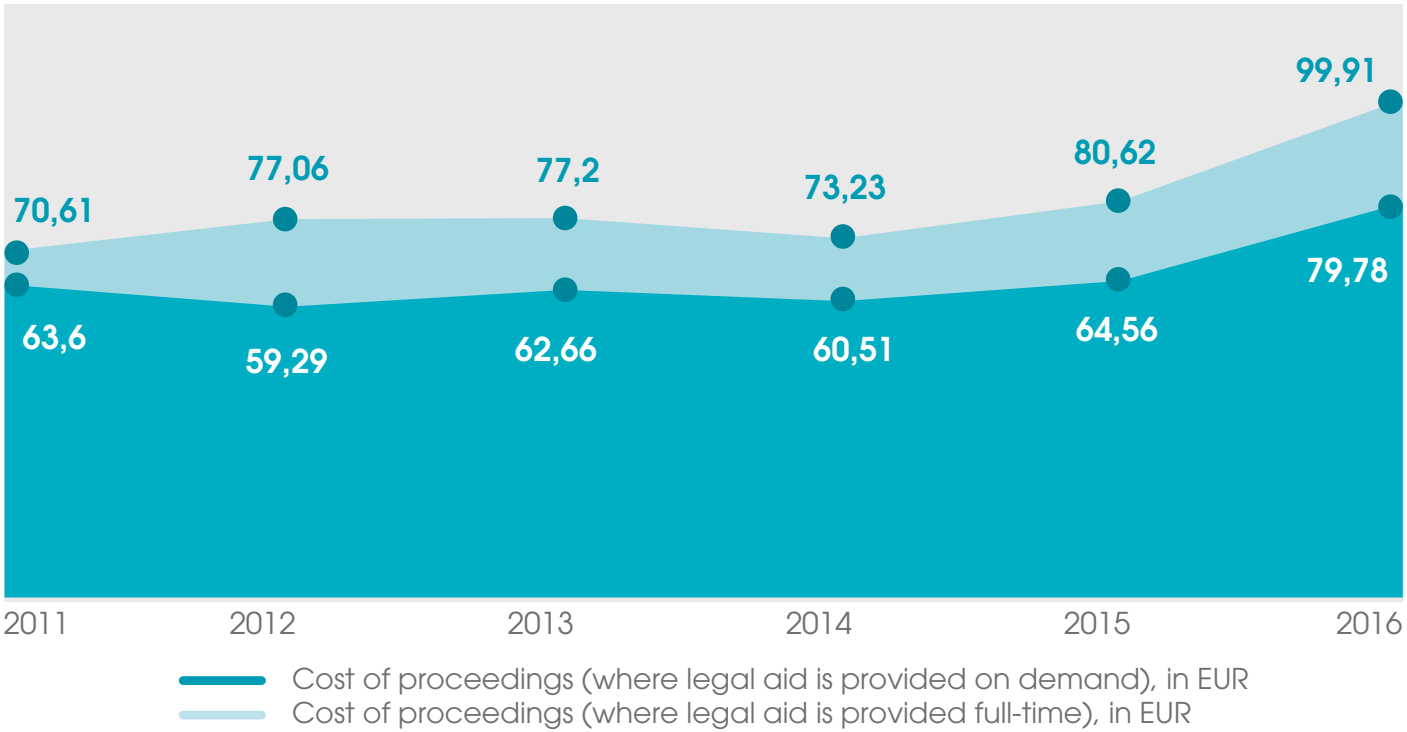


Chart 19. Complaints received by the SGLA Service concerning secondary legal aid