

Introduction

Norlam was contacted by the Ministry of Justice on 4 June 2010 with a request to provide information of the European solutions regarding legal representation in civil cases. As we do not have knowledge about the legislation and practice in the European countries, we found it necessary to send a request to the various European Bar Associations.

Unfortunately just a few of the Bars provided us with answers, but some of the ones who did, are countries that have similar legal background and traditions to Moldova. The questions to the Bars and their answers follow below. Also, we have attached a list of the European Bar Associations with contact information if there is a wish to contact them for further information.

In all countries, the major obstacles to justice are the same; complexity, duration and cost. Each of these aspects influences the other. It is a common goal to ensure that everybody has access to the courts, irrespective of means, education or position.

Council of Europe Recommendation No. R (81) 7 on 14 May 1981:

Principle 4:

“No litigant should be prevented from being assisted by a lawyer. The compulsory recourse of a party to the services of an unnecessary plurality of lawyers for the need of a particular case is to be avoided. Where, having regard to the nature of the matter involved, it would be desirable, in order to facilitate access to justice, for an individual to put his own case before the courts, then representation by a lawyer should not be compulsory.”

This principle preserves the right to consult a lawyer and be legally advised in all court proceedings. In many disputes professional assistance is indispensable. The assistance of a lawyer before proceedings are commenced, can lead to an amicable settlement or the abandonment of an unnecessary claim, so saving money, time and effort of the potential litigant. Although it in many cases is useful or necessary that the parties are represented by a lawyer, the above mentioned principle recognises that there are cases where a litigant should be entitled to put his own case before the courts.

There are also cases where the assistance of a lawyer is not absolutely necessary. In such cases the judges would often need to be more active in the proceedings and the procedure could be simplified. A compulsory recourse to a lawyer in all cases could lead to the impression that access to justice is obstructed. Problems could occur where the litigants are not sufficiently experienced to conduct their own cases and they have no means to obtain the assistance of a lawyer. In such cases a solution could be to open up for assistance of a competent person who does not hold a licence to practice law.

The lawyer fees are often particularly hard on persons of moderate means to whom legal aid is not available. Sometimes this leads them not to institute proceedings and thus not defending their rights. Often these persons are afraid of conducting their own case and would want for a representative without being forced to hire a lawyer.

When the requirement to have assistance of a lawyer is solely for the purpose of keeping to traditional rules of procedure and is not based on an objective need, there is every reason to introduce rules in order both to simplify cases and to reduce costs. It is important that unnecessary and frivolous litigation must be discouraged, no matter who the representative is, whether it is someone with a licence to practice law or not.

Information provided at working group meetings during the preparations for the amendments on the Law on the Legal Profession was that there were several persons “hanging around”/presented in the court houses offering their services based on a power of attorney provided by the litigants. The Ministry of Justice and the Moldovan lawyers expressed a worry about the quality of the assistance given by these persons and thus the fear of the litigants suffering from inadequate counsel. Representatives for the Government further expressed the difficulties in being able to supervise this activity, especially for tax purposes. To our knowledge the common understanding in the working group was that this activity must be ended or at least being subject to regulations and supervision.

Ultimately the choice of the legislators in Moldova is on the one hand, the fear of lack of quality of the legal assistance offered from persons without a licence to practice law, weighed against the basic needs of the public to choose their own representative and thus have easier access to justice. Taking into consideration the income situation of the Moldovan citizens Norlam believes one should be careful of infringing upon their rights to choose their own representative and counsel.

The Norwegian solution regarding representation in courts in civil cases

The question of legal representation in civil cases in Norway is regulated by two laws, each dealing with a different aspect.

The Civil Procedure Code

The Civil Procedure Code deals directly with the right for parties to be represented by counsel in court. Norlam has commented on this issue previously in two memos, dated 16.10.09 and 25.11.09.

The main rule is found in art. 3-1: All parties have a right to counsel in civil cases.

According to art. 3-2 the court can compel a party to meet with a counsel if the party is not able to present his case in an understandable manner. This article is rarely used.

Article 3-3 states the requirements of counsels. Practicing lawyers and their deputies are always allowed to be counsels. Close relatives are allowed to be counsels unless they are found unsuitable by the court. In cases concerning business matters, employees may be allowed to act as counsels. The court may allow suitable persons to act counsels Foreign lawyers may act as counsels if the court allows it.

Special rules apply in the Supreme Court.

It follows from the rules mentioned above that Norway has chosen to give liberal rules as to the question of representation in court.

There is however an important provision in art. 3-3 (4): Persons who give legal assistance as a source of income or on a regular basis, can only be counsels in court if they fulfil the requirements of the Court Law art. 218, see below.

The Courts of Justice Act Art 218

According to the Courts of Justice Act Art 218, the main rule is that only lawyers who have an official license to practice law, may give legal assistance as a source of income or on a regular basis. From this rule some exceptions are made. In connection with acting as counsel in court, only one exception is practical:

1. Jurists who are not licensed as lawyers, may give legal assistance out of court, and may act as counsels in court if the court allows it. These jurists very seldom appear in court.

In conclusion: Norway has liberal rules concerning the right to be represented with counsel in court, but jurists who wish to make a livelihood out of acting as counsels in court, are for all practical purposes required to obtain license to practice as lawyer.

After a consultation with the Moldovan Ministry of Justice, Norlam sent a request to most of the European Bar Associations with the following questions:

1. Within Your National legislation, do the citizens have the right to choose any representative to assist them in court in a civil case – regardless of education or whether the representative has a licence to practice as a lawyer – based on a power of attorney or similar?

2. Are there any legal limits or prohibitions as to what extent a person without a licence to practice law can provide such assistance?

3. If there are such restrictions, how is it considered to be in accordance with ECHR Art 6 in regards to access to justice?

As mentioned above, we did not receive answers from all of the Bars we contacted, but below is presented the answers we did receive. As You will see, some of them answered very briefly and others more thoroughly. We have decided to present the replies and also the name of the sender where it appears. Thus, the Moldovan Ministry of Justice can contact them directly if something is not clear or needs to be elaborated.

Croatia

1. Pursuant to the Civil Procedure Act and the Act on the Legal Profession in the Republic of Croatia citizens can autonomously and freely choose a lawyer who will represent them in court both in civil and criminal matters. Lawyers must be qualified, i.e. they are required to have attended the Law School, passed the Bar exam and be registered in the Directory of lawyers of the Croatian Bar Association.

In criminal matters the defence lawyer may be only a lawyer. In civil matters the party can represent himself/herself or he/she can be represented by an authorized person, i.e. only a lawyer. In exceptional cases the party can be represented by the authorized person who is of her/his kin in a horizontal line: a brother, sister or a spouse, providing he/she has capacity to contract.

2. If the value of the subject matter exceeds 50.000 kn (app 7.000 EUR) the authorized person to represent the party may only be a lawyer.
3. Parties who cannot afford a lawyer, access to justice is guaranteed by means of the following:
 - in criminal matters they are entitled to a defence lawyer appointed by the court
 - in civil matters they are entitled to seek a lawyer free of charge who will be paid by the state or such a lawyer is appointed by the Croatian bar Association for that party and in such a case it is pro bono representation.

Respectfully yours,

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Hungary

1. Citizens are not completely free at choosing their representative in civil proceedings. The relevant legislation, i.e. Act III. of 1952 on the Code on Civil Procedure ("Civil Procedure Act") contains restrictions on the persons that can be granted right of representation before the court and also established mandatory representation by counsel in some cases.

Pursuant to Section 67 of the Civil Procedure Act, the right to representation of a client may only be granted to:

- adherents of the party;
- the co-plaintiff/co-defendants or the legal representative or proxy of the co-plaintiff/co-defendants;
- lawyers or law firms;
- the executive or employee of the administrative or budgetary body in lawsuits in connection with their activities or employees for their executives in

litigation relating to their position of executive;

- trade unions in lawsuits concerning their members and other lawsuits specified in legislation;
- organizations for interest representation in lawsuits affecting their members, if the interest affected in the lawsuit is among the represented interests stated in the organization's statutes;
- members or entitled employees of a co-operative in lawsuits of the co-operative;
- the employee of a legal person or other business organizations in lawsuits concerning the business activities of their employer or the company solicitor in cases provided in specific legislation;
- in lawsuits concerning local governments, members of the City Council, the mayor, the notary, the employee of the Notary's Office;
- other persons if provided by further legislation.

Pursuant to Section 68 of the Civil Procedure Act, a party may not be represented by somebody:

- who is no at least 18 years of age;
- who was deprived of basic rights by the court by a final and enforceable decision;
- who is placed under guardianship by a final and enforceable decision.

Therefore, persons falling under Section 68 cannot be representatives even if they fall under Section 67 of the Civil Procedure Act.

Pursuant to Section 73/A of the Civil Procedure Act, representation by counsel is mandatory for parties:

- presenting an appeal (adjoining appeal) against verdicts and orders issued in the merits of the case in procedures before the Regional Court, for parties presenting an appeal (adjoining appeal) against verdicts of the Supreme Court specified in Section 235 of the Civil Procedure Act;
- in lawsuits between business undertakings before the County Court, if the County Court is the court of first instance; and
- in other cases specified in further acts.

Pursuant to the Civil Procedure Act a counsel may be a (i) lawyer or law firm, or (ii) a company solicitor as specified above or (iii) other persons specified in further legislation.

In addition to the above, the representation may also qualify as representation by counsel, if the person is represented by:

- the legal representative of a natural or legal persons and business companies without legal personality; or
- persons specified in point a), b), d), e) and h) of Subsection 1, Section 67 (see above); or
- pursuant to the above provisions on company solicitors, the employees of legal persons and the and other business companies; or

- persons entitled to representation by further legislation;

provided that these persons have passed a bar exam.

2. As described in the answer to Question 1., in cases without mandatory representation by counsel, a person not holding a license to practice law may only represent a party if he/she falls under Section 67 of the Civil Procedure Act and the case does not fall under Section 68 of the Civil Procedure Act.

In cases with mandatory representation by counsel, a party shall always be represented by legal counsel as defined in Sections 73/A - 73/C of the Civil Procedure Act.

3. If there are such restrictions, how is it considered to be in accordance with ECHR Art 6 in regards to access to justice?

Contrary to representation based on material civil law, where even persons with limited capacity can act as representatives, representation before courts is notably more limited due to reasons of complexity of the matters at stake. Representation before courts (and in other non-litigious proceedings) requires much higher expertise from the representative and liability is therefore also considered to be a prevailing issue. According to the official commentary of the Civil Procedure Act, legal representatives are often obliged to make immediate declarations, the consequences of which will often be irreversible and of direct and final effect to the represented party, whereas the declaration of a material-law representative can be challenged in retrospect.

This finding led the legislator to the conclusion that the representative has to be someone with high expertise bound by professional rules, increased liability or someone with at least a certain degree of connection (e.g. relatives) to the represented person in order to warrant for the proper and well-established safeguard of the rights of the represented.

Should you have any further questions on the above, please do not hesitate to contact us.

Yours sincerely,

Dr. András Szecskay
Vice President of the Hungarian Bar Association

Latvia

There is a distinct difference between lawyers and sworn advocates in Latvia. Lawyers are persons who have received advanced legal education and qualification of a lawyer, but sworn advocates besides this educational condition also have acquired an adequate working experience as well as passed the examination of a sworn advocate and been admitted to the Latvian Collegium of Sworn advocates (the Bar).

Both lawyers and sworn advocates (including assistants of sworn advocates) are allowed to provide legal advice. Both lawyers and sworn advocates can represent a person in the court in civil and administrative cases. The person can represent himself / herself as well or issue an authorization to someone else (who might not be a lawyer) whom they trust. In civil and administrative cases the persons are free to choose whether to use the assistance of a sworn advocate, of a lawyer or manage it on their own, depending on their financial resources and knowledge. Only sworn advocates are allowed to defend a person in a court in criminal cases.

According to the Civil Procedure Law natural persons may conduct matters in court personally or through their authorised representatives, but matters of legal persons shall be conducted in court by officials who act within the scope of authority conferred upon them pursuant to law, articles of association or by-law, or by other representatives authorised by legal persons (Article 82). Any natural person may be an authorised representative in the civil procedure, taking into account the restrictions specified in Article 84 of the Law. Representation of natural persons shall be formalised with a notarially certified authorisation. Representation of legal persons shall be formalised with a written authorisation or documents attesting to the right of an official to represent the legal person without special authorisation. Authorisation of an advocate to provide legal assistance shall be confirmed by a retainer. If an advocate acts as an authorised representative of a party, their authorisation shall be confirmed by a written authorisation (Article 85).

Herewith I attach Chapter 12 of the Civil Procedure Law which determines the right of the representation in the civil procedure and the formalising procedure of the representation.

Yours Sincerely –

Elina Kaminska,
The eldest consultant of the
Latvian Council of Sworn advocates
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Lithuania

1. Only advocates can represent citizens in civil cases (with small exceptions – close relatives with legal education and labour unions in labour cases).
2. Non-advocates cannot represent in casation (3rd instance). also see answer 1.
3. If a person cannot hire an advocate, s/he can apply for legal aid in civil cases. In Lithuania the general idea is that the representation by non-advocates causes a bigger threat to human rights – not just access to justice, but also right to fair trial, right to effective defence and others.

Regards

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The Netherlands

- Regarding to your email from the 9th of June I hereby confirm you the following.

Due to a lack of recourses we are not able to help you. For an answer to your questions I refer you to the Council of Bars and Law societies of Europe (CCBE)
E-mail: ccbe@ccbe.org

With kind regards,

[Nederlandse Orde van Advocaten](#)
[Mevrouw mr. E.M.van der Meijden-Wijn,](#)
[Helpdesk & Service](#)

Council of Bars and Law Societies of Europe (CCBE)

Further to your email, let me recommend you to visit our website to find more information regarding the issue:
http://www.ccbe.org/index.php?id=94&id_comite=2&L=0

Kind regards,

Iñigo Yenes
Assistant

CCBE
Conseil des barreaux européens – Les avocats européens pour le droit et la justice
Council of Bars and Law Societies of Europe – European lawyers promoting law and justice

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Romania

1. No.
2. No person without a lawyer's licence can provide legal assistance.
3. *No answer given.*

Russia

1. According to the Civil Procedural Code of the Russian Federation the citizens have the right to choose any representative in civil courts, even a person without a legal education or a license.
2. No.
3. *No answer given.*

Attached is the Chapter 5 of the Civil Procedural Code of the Russian Federation titled “Representatives in Court”.

Best regards
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The information below was found in an old report from 1981 and might not reflect the system and solutions in the legislation and practise in the below mentioned countries today. The reason why we chose to include it, was that it might give some valuable information in the deliberations within the Moldovan Ministry of Justice in regards to the Law on the Legal Profession.

Austria

- Litigants can conduct their own case before the local (district) courts in all matters and before the regional courts in matrimonial cases at the first instance
- The judge may lead the discussion and advise parties who are present, but not represented

Belgium

- Litigants can conduct their own case (with certain exeptions)
- A party may be represented by close relatives before certain courts
- A party may be represented by trade union officers in cases involving labour law

Cyprus

- Litigants can conduct their own case

Denmark

- Litigants can conduct their own case

France

- A party may be represented by trade union officers in cases involving labour law
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Germany

- A party may be represented by trade union officers in cases involving labour law
- The judge may lead the discussion and advise parties who are present, but not represented

Iceland

- Litigants can conduct their own case
- A party may be represented by close relatives before certain courts
- The judge may lead the discussion and advise parties who are present, but not represented
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Ireland

- Litigants can conduct their own case

Luxembourg

- A party may be represented by trade union officers in cases involving labour law
- The assistance of a lawyer is required in all matters before the court of first instance, the court of appeal and the Supreme court, but such assistance is optional before the “juge de paix” which is the competent instance for some special matters such as leases and generally for any civil or commercial dispute where the amount of the claim does not exceed a certain amount. This is also the situation before the district court dealing with commercial matters and also before courts dealing with social and labour law, in which cases parties may be assisted by trade union officers.

Sweden

- Litigants can conduct their own case
- A party may be represented by whoever he/she chooses, provided that the court finds the representative suitable

Switzerland

- Litigants can conduct their own case
- A party may be represented by trade union officers in cases involving labour law
- No obligation to use the services of a lawyer
- The assistance of a lawyer is not permitted in the labour court in certain cantons
- The judge may lead the discussion and advise parties who are present, but not represented

Turkey

- Litigants can conduct their own case

United Kingdom

- Litigants can conduct their own case