

## INFORMAL QUALITY ASSESSMENT OF LEGAL SERVICES (BY CITIZENS) IN SLOVENIA

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### **Abstract:**

In the paper we described different approaches to quality assessment of legal services, which are provided by lawyers, notaries or other legal profession. Citizens have options to make a formal complaint about poorly delivered legal services. Complaint and possible restitution can hardly effect to the past, when damage was already done. In most cases inspection and supervision mechanisms are obtained by bar association, specialized boards or ombudsman. On the other hand, we experienced a lack of informal or so-called market supervision mechanisms, which could protect citizens from potential bad or mediocre legal services. Based on several prior studies and statistical data we found out that formal supervision mechanisms might lack effectiveness. Therefore we proposed criteria of SERQUAL evaluation for legal service quality assessment and development of a publically available web portal for rating legal service providers with strong incentive of social networks. Citizens would be able to evaluate the legal service they were given according to selected criteria and to list, compare and choose legal service providers based on previous evaluations and scores. With such involvement of citizens we could improve quality of legal service provision and protect citizens from potential poor legal service.

*Keywords: legal services, quality assessment, lawyers, active citizenship*

## 1. INTRODUCTION

Legal services are part of a big single market in EU which enhances the free flow of goods and services. Legal services, such as legal advice, for businesses and consumers are regulated in EU service directive, but the provision on the freedom to provide legal services can fall under restrictions of EU Member State, for example requirements that reserve the legal service provision to lawyers. On one hand, legal services create conditions for free flow of goods and services across national borders, and are subject to the same open market on the other hand. Clients can acquire legal services or law related services from a lawyer or from other professions like experts, executors, appraisers, and interpreters who provide documents or services as a support to certain legal processes. But in the paper, only informal quality assessment of legal services delivered by lawyers was analyzed.

Quality assessment of legal services by clients is argued where main reason is asymmetric information, where lawyers sell knowledge that clients do not possess and is hard or even impossible to estimate how other lawyers would deliver the same legal service (CE 2006, 8, Yarow & Decker, 2012, 33). The main problem of legal services' clients is the fact, that there is only a formal option to start a complaint process in case of bad legal service. Such complaints can be filed to the court or bar association, complaint board or similar body, whose opinion could be biased by protecting its own profession. However, clients have limited access to information of legal service providers' quality before they choose it and almost no options to evaluate legal service after receiving it. On the other hand, we must take into consideration that qualitative legal services not only benefit clients directly but also the economy in a wider sense (Yarow & Decker, 2012, 34).

In the paper we explored and presented different possibilities of informal quality assessment of legal services to solve aforementioned problem, and highlighted the importance of on-line quality assessment and listing of legal service providers. Secondly, we discussed the difference of formal and informal supervision mechanisms and its implications for citizens. We proposed quality criteria for evaluation of legal service providers. Finally, we presented SWAT analysis of proposed web portal for informal evaluation and searching for legal service providers on the Internet, which can prevent citizens from bad legal service.

## 2. LEGAL SERVICES

Legal services are defined as work performed by lawyers or as services involving legal or law related matters like issue of legal opinion, filing, pleading and defending of lawsuits by a lawyer or attorney-practicing law related services.

Delivery of legal services and the work of lawyers can be divided into three typical steps:

- Step one consists of looking for general information and offering standard advice such as standard contracts, standard wills, which can be delivered also from other profession in addition to lawyers.
- Step two consists of actual case handling and acquiring specific advice, excluding court cases,
- Step three, which is reserved for lawyers only, when a case develops into a dispute that needs solving in court (CE, 2006, 21).

Although clients can obtain legal services from different state appointed officials, like judges, prosecutors, state attorneys and other legal or law related professions like experts, executors, appraisers, and interpreters, we focused in this paper primarily on legal services provided by lawyers.

### 2.1. Different views of legal services provision

According to Slovenian Law, a lawyer does legal advising, represents clients in courts and other state institutions, prepares documents, and represents clients in their legal relationships<sup>1</sup>. Another important definition from Legal Aid Act addresses legal advice as a review of legal situation in regulation in order to inform a party with questions and circumstances, which are important for party's rights, obligations, legal relationships, conditions, form and content of legal means and procedures for their insurance<sup>2</sup>. In

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<sup>1</sup> Article 5 of Slovenian Bar Act.

<sup>2</sup> Article 26 of Slovenian Legal Aid Act.

Recommendation of Council of Europe (COE), on the freedom of exercise of the profession of lawyer, the lawyer is: "... a person qualified and authorized according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters" (CEPEJ, 2012).

There were 1294 registered lawyers in Slovenia in 2011, which makes 63,1 lawyers per 100,000 inhabitants according to 2010-2012 research of CEPEJ (2012, 309). This places Slovenia below COE average of 127,1 but numbers must be interpreted with care, considering differences of legal profession in member states. Other measurement is 1,3 lawyer per one judge which is also considerably low comparing to average of 9,8. This could be a result of relatively high number of judges. It is reported 49,9 judges per 100,000 inhabitants in Slovenia that is above stable COE average of 21,3 judges from last two measurements (CEPEJ, 2012, 145).

On the user side, clients would use legal service when in need of resolving different legal problems, issues or just the need for legal advice or a document. In a study of Ministry of Justice (2010, 6) more than three-quarters of users (77%) in England and Wales used at least one legal service in last three years for<sup>3</sup>:

- Conveyance – 50 %,
- Will writing – 27 %,
- Probate (described as 'dealing with someone's financial affairs after their death') – 17 %,
- Family matters (including divorce, matrimonial matters or matters related to children) – 15 %,
- Accident or injury claims (or injury claims including personal injury claims) – 11 %,
- Housing, landlord or tenant problems – 4 %
- Employment disputes – 3 %
- Any offences or criminal charges – 2 %, Etc.

Considering the three steps of legal service delivery, most of them are delivered as step two where clients get specific advice on their case. Similar results are from Denmark, where 80 % of all legal services fall into step two as handling the case, 15 % services as trials and arbitration before court – step three and 5 % as information and standard services – step one (CE, 2006, 45).

Unfortunately, it was impossible to calculate and compare distribution of legal services in Slovenia according to aforementioned three steps. The only available data were from the income of legal services where the highest percentage was reported in legal counseling and representation in judicial procedures concerning business law by 34 %, following notary services by 18 %, representation in judicial procedures concerning civil law matters and other legal services, both by 15 % (SI STAT, 2012).

But the most important step in legal problem solving for a client would normally start with the search of legal service provider before actually getting in contact with a legal professional. This process, as called the starting point on a path to justice, may take some time to find professional help, from a few hours to even a few days or more and this time investment is what economists call 'searching costs' (Barendrecht, 2006, 8). Several options exist on how to search legal service provider, but clients would choose it by following criteria (Ministry of Justice, 2010):

- Recommendation by family or friends – 29 %,
- User or family member had used provider before – 23 %,
- Referral by another organization – 23 %,
- Saw local offices – 8 %,
- Responded to advertising or contact – 5%,
- Searched for information – 5 %,
- Knew someone who worked there – 3 % and
- Other answers – 2 %.

As we can see, a user would identify a provider by searching for information in publications such as Yellow Pages, or use the library or the Internet only in 5 %. This percentage might rise if we consider growing opportunities, where users can get legal advice on-line; especially with so-called unbundled legal services, but in certain cases a client always needs a lawyer for legal services, where they would have to meet in person. Similarly to our prediction, a US study of legal service clients showed that 65

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<sup>3</sup> Users could give multiple answers if they used more legal services.

% of those who searched for a lawyer in the past year visited the Internet, where 61 % found a lawyer, 53 % were validating and 44 % selected a lawyer (Lexis-Nexis, 2012, 2).

## 2.2. Legal Service quality assessment

Every service has a quality dimension that is measured from wonderful to awful. Quality represents the manner in which service is delivered to user or client and consists of content and context (Hernon & Altman, 2010, 5). Services quality could be measured as perceived quality, which is defined as a consumer's judgment about an entity's overall excellence or superiority and objective quality, which involves an objective assessment of a thing or event (Kang, 2006). Service quality as perceived by users has two dimensions: a functional (or process) dimension that focuses on how the service is delivered and a technical (or outcome) dimension that focuses on what was delivered (Kang 2006). But one of the most adopted theories of measuring service quality is SERQUALITY (Parasuraman et al., 1985), which was also subject to criticism while focusing mostly on service delivery side (Kang, 2006, 38).

Quality of legal services consists of three main components. First one is technical quality, which represents the ability to understand and apply technical law. Second is service quality which reflects the ability of legal service provider to understand the needs of clients such as convenient office hours, explaining clients the case in language they understand, offering different methods of access and communication (internet, social networking, SMS) and such approach is no different from other professional services, which are not so difficult to incorporate to business. And the third is utility quality, where it is asked if a lawyer gave client legal advice, wrapped in good legal service, in a way that is useful to them (Mayson, 2010, 4, Sullivan, 2010, 3).

The main issue that arises at informal quality assessment of legal services is co called asymmetric information problem between lawyer and client where only layer is capable to assess the quality of his services. Asymmetric information could lead to two problems. Firstly, the clients are not able to deselect a bad layer in advance and secondly, the 'moral hazard' problem, where layer does not respect client's interests, and does not deliver the service in favor to client because he typically defines a problem and delivers a solution for the client, who is typically not aware of mediocre legal service (CE, 2010, 23). Such situation most often arise with lay citizens, since frequent and repeat users of legal services, such as large businesses or government agencies, will have capacity to evaluate the product before they choose (Yarow & Decker, 2012, 34). Therefore, special attention is appointed to citizens' protection. Possible methods and mechanisms to reduce the problem of asymmetric information are available in two major groups, formal and informal supervision mechanisms. In certain point of view, they can be explained as objective and perceived measurement of legal service quality or as regulatory and market mechanisms for quality assessment.

## 2.3. Formal supervision mechanisms

Formal supervision mechanism for assuring quality legal services is based on regulation and licenses, where legal profession has to fulfill certain educational and verification process, which varies from country to country<sup>4</sup>, which is also called entry in the profession (Yarow & Decker, 2012, 39). Moreover legal service provision is under inspection of different disciplinary boards, which are constituted primarily by national bar associations or other subjects such as Legal Ombudsman or similar (CEPEJ, 2012, 232).

Users of legal services in Slovenia can make an official complaint to the Bar Association, where disciplinary prosecutor requires the introduction of the disciplinary proceedings, if the complaint infers that the lawyer has violated his duty. In demand for introduction of the disciplinary proceedings, the Disciplinary Prosecutor shall specify the breach of duty as well as state the facts and propose evidence to be submitted for their identification. In a disciplinary proceeding against a lawyer there are the following disciplinary measures: warning, reprimand, fine and denial of the right to practice the legal profession or the practice in a law office.

In Slovenia, 59 disciplinary proceedings were initiated against lawyers, claiming breach of professional ethics, which represents 46 per 1000 lawyers and is below COE average of 59 proceedings per 1000

<sup>4</sup> [https://e-justice.europa.eu/content\\_legal\\_professions-29-EU-en.do](https://e-justice.europa.eu/content_legal_professions-29-EU-en.do)

lawyers (CEPEJ, 2012, 324). On the other hand, 25 lawyers were also sanctioned, which is 19,3 sanctioned per 100 lawyers which is above COE average of 14,7 (CEPEJ, 2012, 327), where 13 lawyers were sanctioned with reprimand and 12 with fine.

We could conclude, that 42 % of started proceedings lead to sanction. That means that when a client starts a procedure it is most likely that in more than half of the cases the procedure will not end with sanction. On the other hand the ratio of dropped complaints before procedure even starts is between 50 and 60 % according to Disciplinary Prosecutor (Petrovčič, 2012).

Another option to make a complaint in Slovenia is to propose an initiative to Slovenian Human rights Ombudsman, when lawyers may have not conducted themselves in the correct manner. In 2011 report (HRO, 2012) 26 initiatives generally reproached lawyers with following reasons:

- Poor quality of legal advice and representation,
- Non-fulfillment of agreements,
- Inappropriate conduct, negligence in relation to the client's interest,
- Breach of their duties on the part of attorneys-at-law in conducting their profession,
- Disappointment of the fee calculation,
- Disappointment about carrying out free legal aid.

The number of initiatives to Slovenian Human rights Ombudsman rose by 18 % from 2010 to. Concerning fact is also that some initiators, who did turn to the bodies of the Bar Association of Slovenia, were disappointed, when the Disciplinary Prosecutor, on the basis of their notification, did not request the initiation of a disciplinary procedure against a lawyer, which could explain a relatively big number of reported discrepancy between started and sanctioned procedures against lawyers.

In England and Wales, if clients have a complaint about the lawyer's service, they should first make a formal complaint to their lawyer or law firm itself – first-tier complaint. If they are not satisfied by the way their complaint was dealt with they should contact the Legal Ombudsman, which is an independent service for resolving complaints about lawyers – second-tier complaint. If lawyers may have not conducted themselves in the correct manner, dissatisfied clients have an option to contact the body, which regulates lawyers, such as Solicitors Regulation Authority or Bar Standards Board.

In a study conducted on 1257 respondents who were dissatisfied with legal service (YouGov, 2012, 36) similar complaints as Slovenian were reported. But very important information from the study is that 22 % of dissatisfied clients did not take any action, with reasons, that it would not be worth it or they were fed up and just let it go, or they thought it would cost them more. Another group of 33 % raised concerns with service provider, but did not make a formal complaint, 27 % made a formal complaint to service provider, and the rest 18 % found advice somewhere else, or complained to Citizen Advice Bureau, or complained to someone else (YouGov, 2012, 41). To be precise, more than two thirds of dissatisfied clients did not use any kind of formal supervision mechanism to improve the outcome of received legal service and just let it go.

In our opinion, sanctions and formal supervision mechanism of bad legal services are less effective because client's complaints are either rejected or mediocre legal service provider is not sanctioned or clients simply don't file a complaint. On the other hand, dissatisfied clients could have used other available mechanisms if they were not confident with formal ones. Bad legal service can lead to irreparable consequences for clients although lawyers' work is insured in case of negligence or other types of lawyers' misconduct<sup>5</sup>.

Formal supervision is an inevitable mechanism in every democratic society with options to sanction any kinds of damage that has been made. In ambition to prevent the possible damage, a more preventive approach should be considered as already Susskind predicted that lawyers in the future should have more preventive role in solving legal problems (Susskind 2000, 20). In our opinion, informal control mechanisms with support of ICT and social networks offer many opportunities for this preventive approach. Susskind (2013) also predicts Electronic Legal Marketplaces and legal rating systems as one of disruptive legal technologies that will challenge and change the way legal service is provided in the future.

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<sup>5</sup> It is obligatory for lawyers to have legal service provision insured.

## 2.4. Informal mechanisms

Informal control mechanisms of legal services could be used to reduce the problem of asymmetric information between lawyers and clients and to improve the quality of legal service. Informal mechanisms could be explained also as market mechanisms where different instruments exist such as guarantees, tests and good name or reputation (CE, 2010, 24).

With established guarantees the lawyer would not be able to collect a reward for work if legal service was performed badly or with no success, but in most cases it is difficult for a client to estimate if service was provided adequately, especially if service depends on the client's action as well. Type of guarantees can be set as 'no cure no pay' as an assurance of quality service (CE, 2006, 25). In addition there are different rules of pricing legal services as in case in Europe (CEPEJ, 2012, 318).

Another option of market mechanism is a test from a professional third party assessment as is the case from International legal reference books. But private clients, namely citizens, do not benefit much from such tests, because small law firms or single lawyer offices are often excluded from assessment (CE, 2006, 25).

We focused primarily on mechanisms concerning reputation and good name of legal service providers, where lawyers with good effort will attract new clients and poor effort will damage lawyer's reputation (CE, 2006 25). According to Slovenian lawyers' Code of Ethics they compete with each other only with the quality of their work<sup>6</sup>.

Quality of legal services can be explained by various means such as word-of-mouth, global directories of lawyers or Internet rating sites (such as 'rate my lawyer'), but there are limitations to these types of mechanisms because of asymmetric information. Such assessment of legal services could lead to vague opinions mixed with personal facts and prejudice. Therefore it has to be viewed with some skepticism (Yarow & Decker, 2012, 34). Anyhow, we have to consider potential power of social network when assessing quality of legal services, which can in certain cases replace traditional word-of-mouth principle, where (Lexis-Nexis, 2012, 5) 26 % clients of legal services used social media sites to gather information about providers, 22 % found it, 16 % validated it and 11 % of clients used social media sites to select provider. In our opinion, we can overcome aforementioned issues also with selective pick of indicators, when enabling legal service quality assessment.

In one of the studies (Seebaluck, 2012) SERQUAL was used to rate legal service providers in Mauritius, where a gap between expected and received legal service was measured. An assessment was divided into five categories, which were measured with corresponding variables and the highest gap was reported at responsiveness:

- Assurance (trust and confidence, legal qualifications, reputation, feedback),
- Tangibles (smart and formal appearance, communication skills, work place, legal documents),
- Reliability (complete, right time, information, accurate, coordination, terms of agreement),
- Responsiveness (prompt service to any problem, willing to help, tackle problems proactively, further actions),
- Empathy (no technical legal jargon, customized approach, convenient open hours, client needs, mutual respect).

In a different research (LSB, 2010) six similar characteristics of 'good quality' legal service were identified:

- Empathy – treating the consumers as individuals, not just another file, understanding their situation and relating to it,
- Efficient processes – ensuring things progress smoothly and on time,
- Achieving outcomes – completing a property conveyance on time, delivering a will or achieving the desired outcome in a divorce,
- Clarity and de-mystification – unraveling the legal world with clear explanations (no jargon), signposting of what should happen and when, and guidance on charges,
- Proactive use of legal knowledge – explicitly suggesting alternative options, tailoring advice to individual circumstances or challenging a client's assumptions,

<sup>6</sup> <http://www.odv-zb.si/predpisi/odvetniska-poklicna-etika>

- Professional presentation – both personally in terms of dress and appearance, but also the physical office environment.

Ministry of Justice (2009) emphasized five characteristics, which influence quality of legal services. Respondents answered in between 89 % and 96 % of cases, that they agree with the following statements of the extent to which the clients agree that legal service provider:

- Explained things in a way you could understand,
- Acted in a professional manner,
- Know what was going on in the matter,
- Was approachable, and
- Responded to calls or letters promptly.

At Martindale-Hubbell (2012) they combine Client and Peer Review Ratings. Clients rate lawyers anonymously with five questions including: communication ability, responsiveness, quality of service and value for money which is in final rating score combined with peer reviews by professionals.

Avvo (2013) represents lawyers rating system, which includes questions about lawyers if they are: trustworthy, responsive, knowledgeable, kept the client informed, if they would recommend this lawyer. Rating can be posted anonymously and rating is afterwards calculated and combined with other available public information about certain lawyer.

Another option of informal quality assessment is indirectly expressed when clients choose legal service provider by certain criteria that reflects lawyer's quality. CE (2006, 22) reported that in Denmark 31 % of clients prioritized professional capabilities, followed by reputation – 15 %, lives locally – 12 %, random choose – 11 % and price – only 9 %. Similar was reported for Norway where clients prioritized results and quality before good contact between lawyer and client, special knowledge and price as last important when choosing lawyer.

Different measurement indicators and methods are available to estimate quality of legal services and consequentially establish informal control of legal service providers. So-called centralized reputation systems, where users assess the service they were given, have three main functions: trust building, information asymmetry reducing and information filtering (Liu, 2012, 2). Our proposal in next chapter aims in direction to build a centralized reputation system as web portal for assessing legal services. With more and more users using social networks and their importance and already established connections users could in our opinion tremendously benefit from such portal.

### **3. POSSIBLE SOLUTION FOR LEGAL SERVICES QUALITY ASSESMENT**

Luca (2011, 4) discovered in a restaurant rating systems such as Yelp.com an influence of rating system, where rise of one out of five stars at customers rating reflected in average of 5-9 % increase of revenue. In a study of legal services influence it was discovered that 28 % of clients think ratings are extremely influential, 37% – moderately influential, 16 % neutral and 14 % moderately uninfluential and 3 % extremely uninfluential (Lexis-Nexis, 2012, 7). But we could just speculate that rating system would also improve the quality of legal service providers and prevent clients of choosing bad service.

Liu (2010) describes 5 stages of rating systems that facilitate assessment of given services: input, processing, storage, output and feedback loop. Proposed criteria for evaluation of legal services as an input of rating system should be chosen carefully. It should take into consideration collection channel, information source, reputation information and collection costs (Liu, 2010) and include indicators from previous research for evaluating legal service providers. Before deciding which measurement to use in proposed web portal, we performed SWOT analysis of proposed system from a user perspective.

As strengths of the system we identified: possibility to rate the service, listings of legal service providers, overview of quality of legal services providers, centralized evaluation scores, user friendliness, access to information of legal service providers, counterbalance to formal quality assurance, prevention policy for client, public interest, connection to social networks.

Potential weaknesses were identified as: only selected rating criteria is available, possible biased evaluation results, too long evaluation questions, which deters users, too short list, which doesn't evaluates the quality, security issues.

As opportunities we emphasized: improving active citizenship, improving selection of good legal service providers, elimination of bad legal service providers, access to legal services providers, sharing of information, improving legal service quality, citizen prevention.

Potential traps of rating system were identified as: people not interested, clients' lack of knowledge, biased client opinion (according to winning or losing the case), privacy and anonymity policy, disapproval by legal service providers, pillory effect and injustice.

According to our findings we suggest at first stage of development of the rating system the use of SERQUAL methodology tailored for legal services, where all five criteria is explained with precise question that reflects the criteria and is understandable to clients with no legal knowledge. Following method would represent exclusively clients rating, which should be prepared with consideration of client's time spent to evaluate legal service. Following the example of Martindale-Hubbell and Avvo other criteria from publically accessibly data can be added later.

#### 4. DISCUSSION

As we analyzed in paper, formal supervision mechanisms are important and inevitable mechanisms in every democratic system, not to mention every citizen has as a constitutional right to fair trial and restitution in case of mistrial. But such formal mechanisms would not prevent clients and especially citizens from bad legal service providers before they chose one. Furthermore, mechanisms are not effective in all cases of dissatisfying legal service provision where at first step one half of complaints were rejected to further process the complaint and among accepted less than half of mediocre providers were sanctioned in Slovenia in 2011. Not to mention the case of England where two thirds of dissatisfied clients did not use any kind of formal mechanisms to overcome dissatisfaction.

Therefore informal mechanisms for legal services quality assessment are suggested and as a web portal publically available. Such portal would enable citizens to (anonymously) evaluate legal service provider according to accepted criteria. In the first stage of development Criteria indicators were chosen according to several prior researches and studies and it is planned to test them in real environment with smaller population.

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