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## **28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE**

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**“Emerging issues of access to justice for  
vulnerable groups, in particular:  
- migrants and asylum seekers;  
- children, including children perpetrators of crime”**

**Report presented by the  
Minister of Justice  
of Ukraine**

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National Ukrainian legislation provides the right to legal aid as a method of access to justice.

1. *Right to legal aid*

Access to justice requires the establishment of an effective mechanism to provide legal aid. The State should guarantee legal aid to indigent persons, not only in criminal matters, but also in civil and administrative cases and, at least, in cases involving the protection of fundamental human rights.

Citizens of Ukraine, aliens, stateless refugees and children have the right to legal aid.

The Constitutional right to legal aid is guaranteed by the State and cannot be cancelled.

The right to legal aid cannot be limited even in cases of military operations and states of emergency.

The right to free legal aid is not an absolute right, since it can be provided only in cases stipulated by Law.

The State guarantees all children equal access to free legal aid, necessary for securing their rights.

Homeless citizens and dispossessed children have the right to legal aid.

According to articles 18, 20 and 22 of the Ukrainian Law "On Refugees" of 21 June 2001, persons who have refugee status in Ukraine or those who are applying through administrative and judiciary procedures for a decision on refugee status have the right to legal aid.

Everyone has the right to legal aid to settle a dispute in court; this right applies to both parties in the process. Moreover, a person has the right to legal aid in the settlement of a dispute in an administrative court in cases involving human rights, in accordance with the Constitution of Ukraine, the Convention on Protection of Human Rights and Fundamental Freedoms, the International Pact on Civil and Political Rights.

2. *Free primary (secondary) legal aid*

The aim of free secondary legal aid is to guarantee equal access to justice.

According to the Constitution of Ukraine and the Draft Law "On Free Legal Aid", Ukrainian citizens, foreigners, stateless persons, including refugees, who are under Ukrainian jurisdiction have the right to free primary legal aid.

In accordance with the Draft mentioned above, vulnerable groups also have the right to free secondary legal aid<sup>1</sup>.

The Constitution of Ukraine states that citizens have equal constitutional rights and freedoms; they are equal in the face of the law.

Foreigners and stateless persons who are in Ukraine on a legal basis enjoy the same rights and freedoms as the citizens of Ukraine and have the same obligations, with the exception of cases specified in the Constitution, laws or international treaties of Ukraine.

The Constitutional provisions mentioned above correspond to article 2 of the Ukrainian Law "On the Legal Status of Foreigners and Stateless Persons", which determines the basis of

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<sup>1</sup> Refugees and children are referred to directly as vulnerable groups.

legal status for foreigners and stateless persons, Section IV "Rights and Obligations of Refugees" and the Ukrainian Law "On Refugees".

The elaboration of the Draft Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" (new edition) defines an improvement in the legal status of foreigners and stateless persons in Ukraine; the procedures and conditions of their entry into Ukraine; their movement and stay in Ukraine.

3. *Right to additional and temporary protection*

The elaboration of the Draft Law of Ukraine "On Refugees and Persons Who Deserve Additional and Temporary Protection in Ukraine" determined by necessary improvement to legislation related to refugees, establishes, as a requirement of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms, Institutes of Additional and Temporary Protection.

While elaborating both drafts, the Directives of the Council of the European Union, recommendations of the International Organization for Migration, the Agency of the United Nations High Commissioner for Refugees and judgments of the European Court of Human Rights were taken into account.

The drafts contain the necessary provisions for a democratic and legal State concerning access to the justice system.

Issues of access of refugees and stateless persons who have the right to additional or temporary protection (including those not specified as a refugee or persons who have the right to additional or temporary protection) to the justice system and legal aid have been inserted in the Draft Law of Ukraine "On Refugees and Persons Who Have the Right to Additional or Temporary Protection".

4. *Participation in judicial proceedings of individuals who do not speak the language used in court*

Article 10 of the Constitution of Ukraine states: "the official language of Ukraine is Ukrainian". The above-mentioned norm of Basic Law implements, in particular, in article 10 of the Law of Ukraine "On the Judicial System of Ukraine", article 15 of the Code of Administrative Justice of Ukraine and article 7 of the Code of Civil Procedure of Ukraine. Article 370 of the Code of Criminal Procedure of Ukraine states that legal proceedings shall be conducted in the official language. Individuals who take part in legal proceedings and do not speak or speak insufficiently the official language have the right to make a request, to give an explanation, to appear in court and to apply using their native or other language or to use the services of a translator.

In accordance with the Code of Criminal Procedure of Ukraine, the investigative and court documents should be given to the defendant with a translation into his/her native or other language which he/she understands.

5. *Participation of children in civil proceedings*

In accordance with the legislation of Ukraine, everyone has the right to legal recourse for the defence of their rights, freedoms and interests.

The Code of Civil Procedure regulates the process of representation of a minor's interests and rights in court by their parents, adoptive parents, tutors or other persons appointed in accordance with legislation.

6. *Particularities of children's participation in pre-trial and judicial proceedings, and pleading minors' cases:*

1) Participation of a suspected or accused child in criminal proceedings

General provisions of the Code of Criminal Procedure and Criminal Code of Ukraine, as well as other specific norms, regulate pre-trial and judicial proceedings in criminal matters in cases involving crimes committed by minors.

During investigation of a criminal case involving a minor, the right of defence should be guaranteed, as a violation of this right, in accordance with article 370 of the Code, would result in the judgment being set aside.

The Code of Criminal Procedure defines the persons who can legally represent the rights of a minor.

2) Participation of a child in criminal proceedings as a witness or a victim

In accordance with the Code of Criminal Procedure of Ukraine, a minor called as a witness should be legally represented.

In accordance with the legislation of Ukraine, when examining criminal cases concerning minors, the participation of an attorney is obligatory. The same attorney does not have the right to defend a minor and an adult at the same time.

Ukrainian legislation regulates the interrogation of a minor during the pre-trial investigation.

Moreover, children have the right to apply to the bodies which provide protection.



