

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Theme II “Ensuring Justice” – Action 5: Regional dimension for 6 EaP  
Project for Regional Dialogue on Judicial Reform in the EaP Countries**

Working Group on Regional Dialogue on Judicial Reforms in the Eastern  
Partnership Countries

**LEGAL AID**

**Expert Report on the outcomes of the Working Group’s meeting**

10-11 December 2015, Supreme Court of Georgia, Tbilisi

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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.



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## **BACKGROUND**

In implementation of the project for regional dialogue on judicial reform, implemented under the joint Council of Europe and European Union Eastern Partnership (EaP) Programmatic Co-operation Framework (PCF), three Working Groups (WGs), gathering representatives from judiciaries, ministries of justice and bar associations of the EaP countries, were established and tasked to examine, with the support of experts, areas of shared interest perceived as most challenging for the respective national reform processes.

Topics selected by participants for further analysis included: judicial ethics and disciplinary liability of judges, with a focus on their distinctions and interrelations; e-justice, in particular aspects of electronic case management; legal aid schemes, with special attention to ways to ensure independence of legal aid financed lawyers; independence of judges; selection, evaluation and promotion of judges; the role of Courts of Cassation/Supreme Courts; ways to ensure inclusive and transparent judicial reforms; alternative dispute resolution mechanisms, with a focus on criminal restorative justice and mediation in civil cases; equality of arms between lawyers and prosecutors.

The first meetings of the three WGs were hosted in Tbilisi, Georgia, between 7 and 11 December 2015 and focused on the following topics: judicial ethics (WG A), e-justice (WG B) and legal aid (WG C). Discussions were facilitated by international experts, also tasked to produce a report on the outcomes of each meeting.

This paper provides an overview of the discussions held during the meeting of the WG C, focusing on legal aid issues. It is based exclusively on the information provided by the participants and on comments by the independent experts. It does not in any way aim at providing an exhaustive presentation or an assessment of the situation in the countries considered, but rather at reporting about the issues presented and discussed by the participants with the purpose of exchanging experiences and possibly identifying areas of common interest for further examination or co-operation.

## Section I. Executive Summary

This is the Report from the meeting of the Working Group (WG) for regional dialogue on judicial reform on the topic of Legal Aid, held at Supreme Court of Tbilisi, Georgia the 10<sup>th</sup> and 11<sup>th</sup> December 2015. The meeting is an activity undertaken within the project for regional dialogue on judicial reforms in the Eastern Partnership (EaP) countries, under the joint EU-Council of Europe (CoE) “Programmatic Cooperation Framework (PCF)”.

In advance of the meeting a Questionnaire was sent out to the participants in order to reflect and consider the current position relating to a number of indicative issues in the provision of legal aid in each country. This Questionnaire was accompanied by a short Paper on the International and European Regulations and Standards related to the provision of legal aid, which would have assisted an understanding of expectations relating to provision. A Summary form of the Paper on European and international regulations and standards is to be found at **Section II** of the Report (Annex 2 to this Report provides a List of Useful References for European and International Regulations and Standards for Legal Aid.)

Participants provided both full and speedy answers to all questions, demonstrating interest and determination to comply with regulations and go beyond them. Many of the answers are too long to be adequately represented in a Grid Table of Answers, so as to provide an easy and useful comparison across countries. An abbreviated form of these answers has therefore been prepared and is set out at **Section III** of the Report. **Section IV** presents a short comparative analysis of the positions of the participants in relation to the provision of both criminal and civil legal aid and advice in each country. There is an extensive level of compliance both with international regulations and standards across all countries. There are some differences in the level of regulation, but less difference stated in the level of performance. There have been problems of independence from the State and from prosecutorial services in some countries. Most countries have training and quality assessment in place in some form.

The meeting Agenda and the Participants are set out in Annex 1 to this Report. There was a full examination of Legal Aid schemes, with a focus on how to ensure the independence of legal aid financed lawyers, construct appropriate regulatory frameworks and consider alternative schemes for financing legal assistance. Legal Aid experts from Germany and England assisted in presenting their examination and advice on these issues. Points arising and good practice advice which was given in these presentations has been set out in **Section V** of this Report.

Discussions during the meeting included an overview of relevant European and other international standards in comparison with the situation in participating countries. As a result key challenges became identified in discussion and possible solutions were suggested. It was agreed that moving towards a regional approach could contribute to tackling these challenges and that further meetings at both political and operational regional levels would be important.

In addition to the questionnaire answers participants sent in a number of supporting documents detailing the Regulations, Standards and performance of legal aid provision in their countries. These items are listed in Annex 4 to the Report.

**Section VI** provides the Conclusion to the Report.

## Section II. International Standards on Legal Aid

There are both international standards in the United Nations Principles and Guidelines, and European standards in the European Convention on Human Rights. The United Nations Principles and Guidelines set out a general right to legal aid because of its importance in securing all other rights and legal aid should therefore be guaranteed by the state. Police, prosecutors and judges have the responsibility to ensure access to legal aid where necessary. Victims and witnesses should also have legal aid and there should be no discrimination in provision, which should be prompt and effective. There should be special measures to ensure access to legal aid for the vulnerable and those with special needs. Providers should be competent, accountable, independent and protected from interference.

The European Convention is shorter and more pointed on the right to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. A criminal defendant will, “if he has not sufficient means to pay for legal assistance, ... be given it free when the interests of justice so require”. Since 2013, suspects or accused persons are entitled to access to a lawyer before the start of any questioning by the police and throughout criminal proceedings wherever they are in the European Union. While there is no general right to legal aid in civil cases, legal aid is required when legal representation is compulsory, because of the complexity or nature of the proceedings or the ability of an individual to represent him or herself. Access to legal aid for a fair hearing should depend on what is at stake for the individual, the complexity of the law and procedure and the person’s ability to represent themselves. Where any such rights are violated Article 13 of the European Convention on Human Rights guarantees the right to an effective remedy.

Beyond the legislation a number of sets of international standards have been developed by the United Nations Office on Drugs and Crime, under the United Nations Development Programme, in Europe on "Interrogation of Juveniles" and a number of other sets of standards exist. These standards set a basis for the role of the legal aid provider, to “protect and advance the rights and legitimate interests of clients”. A fuller list of sources is to be found in Annex 2. They often concentrate on respecting their clients, treating them with dignity, carrying out all appropriate activity including proper and full advice and assistance, representation, paying attention to particular needs and vulnerabilities and ensuring full legal aid until the case is finished, including appeals.

Responsibilities include responding quickly and appropriately, gathering information from both sides, ensuring the client is kept informed throughout, checking the legality of all actions taken against a client, liaising with the client’s family and/or third parties (subject to the consent of the client), and making representations to all authorities where necessary.

Where a child or juvenile is a defendant in criminal proceedings the standards suggest that special circumstances should apply and specialist lawyers should be involved.

Checklists also provide a summary of information to be obtained from the police and prosecution, and a set of questions to ask the client, once this information is obtained.

In Summary there are firm regulations, both international and European, for legal aid lawyers to be aware of and important standards to act as a guide to duties and their performance. References are to be found in Annex 2 to this Report.



### Section III. Abbreviated answers to the questionnaire sent to all countries

**Disclaimer:** This questionnaire was sent to particular attendees of the Working Group meeting, some were answered by lawyers' representative groups, some by governmental representatives and others by independent NGOs in different countries. The answers cannot therefore be taken to be equal in terms of provenance. Some are critical and some congratulatory of the status quo, but all come from a base of sincere caring for Legally Aided clients.

Question	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine
1. Is there a system/service of publicly funded legal aid for defending the accused in Criminal cases?	Yes	Yes	Yes	Yes	Yes
If so, does it cover: -Advice in the police station?	Yes	Yes	Yes	Yes	Yes
-Assistance before trial; - Representation in Court?	Yes	Yes	Yes	Yes	Yes
-All cases? / Only cases above a certain level of punishment e.g. 6 months imprisonment/ €2000 fine?, or Is the service based on more complex criteria	Yes	Yes (all cases)  In case a person doesn't speak the official language, translation will be provided free of charge. In any case the person will be represented by lawyer, whose cost will be borne by state funding.	Yes (all cases)	Yes	Yes (all cases)
Is the service free to all or available only to those with low income/capital?	According to part 5 of Article 40 of the law "On advocacy", a public defender provides legal aid for suspect or accused in all criminal cases. Therefore, in criminal cases the service is free	The service is free for all people irrespective of citizenship of the arrested/accused person.	Free for: a member of a family registered in the unified database of socially vulnerable families, whose socioeconomic index is below the limit established by the Government of Georgia.	Yes (free to all)	Early access to legal aid is free for all detainees for the period of detention. In criminal proceedings lawyer should be

	<p>for suspect, accused and detained persons. But the same Article specifies the categories of persons who have a right to receive free legal aid from Public defender office of the RA in all other cases. Particularly, besides accused/suspected in criminal cases the public defender provides legal assistance to people convicted for crime, a member of a family registered in the unified database of socially vulnerable families, whose socioeconomic index is above zero, as well as for several other groups with low income.</p>				<p>provided free of charge in cases if:</p> <ul style="list-style-type: none"> <li>▪ according to the Criminal Procedural Code of Ukraine defence lawyer participation is obligatory (children of age under 18; persons with mental or health disabilities; persons who don't speak the language of criminal proceeding and other vulnerable groups );</li> <li>▪ accused person has no means to hire a lawyer; investigator, prosecutor, investigative judge or court make a decision that the circumstances of criminal proceeding require participation of lawyer, but for some reasons accused person didn't hire a lawyer.</li> </ul>
<p><b>Are there any special arrangements for children and people with disabilities?</b></p>	<p>Yes</p> <p>In criminal proceedings, when a defendant is a juvenile or an individual with mental illness or temporary mental disorder, participation of a defender is obligatory. It should be mentioned, that according to part 1 Article 69 of "Criminal procedure code" of the RA, above mentioned minorities have a right to defender only if they are accused/suspected for</p>	<p>There is no special arrangement with respect to children or people with disabilities.</p>	<p>Minors enjoy legal aid at any stage of criminal proceedings; an accused/convicted/acquitted and injured minor shall enjoy the right to free legal aid. The right specified above may also be enjoyed by persons aged from 18 to 21 if they are the accused.). A Permanent Group of Lawyers Specialising in Juvenile Justice operating within the Legal Aid Unit, will provide legal aid to minors immediately upon request, in the shortest period of time, in cases provided for by law.). The</p>	<p>Yes</p> <p>Depending on income level provided: under condition that this contribution does not exceed his/her material and financial means. The procedure and conditions for providing partly free legal aid are determined by the National Council.</p>	<p>Disabled persons who receive pension (or allowance) of less than two minimum subsistence levels for the disabled persons have the right to all types of secondary legal aid. Besides, orphaned children, children whose parents have been stripped of their parental rights, and children that may</p>

	<p>crime. According to para 8, part 5 of Article 41 of the law "On advocacy", orphans, children without parental care have the rights to legal aid provided by Public defender office. Moreover, people who have 1-st or 2-nd disability group also have a right to free legal aid. But it is important to mention that not all people with disabilities have a right to legal aid. According to the Armenian legislation there are three groups of disability. Thus, people with the 3-rd group of disability do not have a right to free legal aid. Nevertheless, this is not an obligatory provision, and those persons will receive legal aid only if they apply for such aid.</p>		<p>director of legal aid is authorized to make a decision regarding providing a legal assistance to a person suffering from a serious or terminal disease.</p>		<p>become or have become victims of family violence also have the right to all types of secondary legal aid.</p>
<p><b>2. Are these services of criminal defence carried out by employed staff, such as a Public Defender Service or by private practice lawyers (judicare), or both?</b></p>	<p>Services are provided by public defenders who are lawyers and also have advocate licence. At the same time they work on employment contracts with the Chamber of Advocates (work in a Public Defender Office that is a department of the Chamber).</p>	<p>As in Azerbaijan a Law on Legal Aid does not exist, there is no special staff of lawyers who deal with rendering legal aid services. However in criminal cases only lawyers that are member of Azerbaijan Bar Association may defend suspected/accused/arrested/detained person.</p>	<p>Yes</p>	<p>Primary legal aid may be provided by paralegals and non-governmental associations specializing in legal advice. Professional legal aid is provided by public defenders and lawyers providing legal aid upon request. Public defenders act as members of private or consolidated law offices set up pursuant to the Law re Advocacy. A territorial office makes contracts with individual public defenders or Public Defender Offices for the provision of State guaranteed legal aid. A <u>lawyer</u> providing legal aid upon request may be requested to provide professional legal aid from the funds allocated towards State guaranteed legal aid.</p>	<p>Defence in criminal proceedings is carried out by private practice lawyers selected through the open competition and contracted by regional Legal Aid Centres. Members of the respective selection commissions in all regions are, in particular, representatives of the legal profession, lawyers, NGOs, the judiciary, Ministry of Justice and Legal Aid Centres. Lawyers selected by such commissions are</p>

					<p>included in the Register of lawyers providing legal aid, and have the right to sign contract with Legal Aid Centre.</p> <p>The relationship of a lawyer with Legal Aid Centre is of civil nature (part 4 of Article 27 of the Law of Ukraine on Bar and Lawyers Activities), lawyers are not staff members of the Centres and the directors of the Centres are not lawyer's managers. A Centre and a lawyer are in fact partners.. However, according to the Bar, the latter are dependent on the former due to a number of factors (in particular, process of distribution of cases).As a result, the current system of legal aid totally lacks independence from the State, because the system is administered by the latter.</p>
<p><b>If there is a Public Defender or employed service how is it organised and funded so that it has complete independence in relation to decisions regarding selection of defendants and defending their cases?</b></p>	<p>A specific public defender to work on a specific case is appointed by the Chief of the Public Defender Office, and this office is funded from the State budget. A public defender receives a monthly salary for the services provided, this amount being equal to that received by a prosecutor employed with a</p>	<p>If a suspect or accused person doesn't have sufficient funds to pay for the services of defence counsel and the participation of defence lawyer in the criminal proceedings is obligatory, the agency in charge of the criminal proceedings organises a lawyer. Lawyers do not enjoy independence while selecting defendants, as they appointed by their Bar upon request of law-</p>	<p>The 'Register' –is a list of lawyers providing legal aid compiled by the Legal Aid Unit on the basis of the Georgian Bar Association. Simultaneously public defender lawyers are employed by the Legal Aid Unit receives a salary for rendering legal aid on criminal, civil and administrative cases. A public lawyer conducts his/her activity</p>	<p>1) Lawyers for the provision of professional legal aid are selected on a competitive basis, organised by the National Council. The selection criteria are established by the National Council in agreement with the Bar Association. Territorial offices make contracts with public defenders and also with the lawyers that provide these services upon</p>	<p>The Law on Legal Aid envisages primary legal aid for everyone within the jurisdiction of Ukraine. As to the secondary legal aid, the particular categories of persons have the right to free secondary legal aid, in</p>

	<p>Prosecutor's Office in Yerevan. The Chief of the Public Defender Office is assigned by the board of the Chamber of Advocates. The law "On advocacy" (Article 41) provides the areas where public defender can provide free legal aid. However, the legal assistance for the application to the ECHR is not prescribed by the law. In practice, this is justified by the fact that the institution supported by the state budget cannot act against the state. The number of public defenders is low, according to the data for 2015 there are 52 public defenders for the whole country (see the research "Legal aid mechanisms and practice in Armenia. Needs assessment. Yerevan, 2015).</p>	<p>enforcement by that arrests the suspected person.</p>	<p>independently. It is inadmissible to interfere in the professional activity of a public lawyer.</p>	<p>request. 2) A lawyer appointed by the National Council from among persons that are not on the list of lawyers providing legal aid upon request must provide professional legal aid in the requested amount, however a maximum of 120 hours annually. 3) Public defenders receive a fixed monthly payment for professional legal aid.</p>	<p>whole or in part.</p>
<p><b>If there is a service carried out by private practice lawyers (such as a contract scheme, ex-officio or panel lawyers, or pro bono) how is it organised and funded so that it has complete independence in relation to decisions regarding selection of defendants and defending their cases?</b></p>	<p>No they are not  Lawyers at their own discretion get involved in cases ex proprio motu. This also concerns those non-profit organizations which provide free legal aid (for more information see below).</p>	<p>Although defence lawyer should be member to Bar, they may act privately without his attachment to the certain office under Bar being remain member of the Bar. Even if legal aid will be rendered by the private lawyer he/she should be member to the Bar. It is up to private lawyer to decide whether accept the case (defendant) or not.</p>	<p>The registry of lawyers is maintained by the Unit based on the lawyer's application on an open competition basis.</p>	<p>If a judicial circuit has no lawyers included in the list of lawyers providing legal aid upon request or if the lawyers on the list cannot satisfy a request, a territorial office appoints a lawyer from among those that are not on the list of lawyers providing legal aid on request, provided that his/her office is within the area covered by this territorial office.</p>	<p>Legal Aid system is based upon ex-officio principle and consists of:-Coordination Centre for Legal Aid Provision – central coordination institution; -25 regional Legal Aid Centres ensuring legal aid provision for detainees, in criminal proceedings and imprisoned; -100 local Legal Aid Centres ensuring legal aid provision in civil and administrative cases. Legal Aid is financed by the state, all the expenses, including</p>

					<p>lawyer's remuneration and administrative costs are within the budget of the Ministry of Justice. Distribution of cases is a function of Legal Aid Centres, they have regulations on the matter. According to the Government, in cases of legal aid provision to detainees lawyers are assigned in accordance with duty chart.</p> <p>In criminal/ civil/ administrative cases lawyer decides whether accept the case or not as specified in contract</p> <p>According to the Bar, legal aid lawyers are assigned cases chosen by the legal aid centres, i.e. legal aid lawyers have no right to choose to whom and in which cases to provide legal aid. All this makes legal aid lawyers in Ukraine fully dependent on the State.</p>
<p><b>If there is a service carried out by Paralegal, Law Centre, University Clinic or other "not for profit" schemes, how is it organised and funded so that it has complete independence in relation to decisions regarding selection of defendants and</b></p>	<p>There are numerous non-profits organisations which provide free legal to people. Each organization has its own policy and the decision to choose the case depends on the quality of the latter. Those organizations usually provide free legal aid without special foundation using their own resources. They also have strategic litigation. People</p>	<p>National legislation does not prohibit non-profit organisations to render legal aid. Even if legal aid will be rendered by the private lawyer he/she should be member to the Bar. It is up to private lawyer to decide whether accept the case (defendant) or not.</p>	<p>Within nongovernmental organizations functions a service of legal aid, throughout the whole territory of Georgia, provided by the lawyers who are members of Georgian Bar Association and who operate on the basis of private contracts.</p>	<p>Paralegals for the provision of primary legal aid are selected on a competitive basis, and this process is organised by the competition committee under a procedure set out in this Regulation. Paralegals are paid for their services from the State budget funds and other sources not prohibited by law, based on a contract for the provision of State guaranteed</p>	<p>Primary legal aid could be provided by NGOs, university legal clinics, public institutions, local self-government bodies, specialised municipal institutions etc.</p> <p>Secondary legal aid could be provided "pro bono" by lawyers and their organisations.</p>

<p><b>defending their cases?</b></p>	<p>are provided legal consultations, in case if it is necessary they are also represented in all national court instances, as well as in the Constitutional court of Armenia and in the international institutions (ECtHR, UN Human rights committee, etc). Usually those organizations are overloaded and have to work from 6 hours to 12 hours per day. For better and effective work some organizations collaborate with individual lawyers, law firms of other non-profit organizations. There are also Law clinics in Armenia (see the research "Legal aid mechanisms and practice in Armenia. Needs assessment. Yerevan, 2015)</p>			<p>primary legal aid services made by them with territorial offices covering the area where these services are provided. Local public authorities may provide paralegals with the necessary rooms and materiel.</p> <p>The National Council may enter into agreements for cooperation with <u>non</u>-governmental associations to ensure the provision of primary legal aid pursuant to this Law. Public defenders receive a fixed remuneration as approved by the National Council for State Guaranteed Legal Aid.</p>	
<p><b>Is the existing provision appropriate to the demand as well as needs of particular client groups?</b></p>	<p>No</p> <p>There are no special provisions in the legislation which would consider the demands of the client when he is provided free legal aid. But according to Article 20 of the law "On advocacy", the client has a right to refuse from the legal services provided by his lawyer in any time. The law or any other legal act does not consider special needs of particular client groups. The person who was assigned for the free legal aid can't change the advocate.</p>	<p>National legislation does not differentiate client groups.</p>	<p>Yes</p>	<p>Yes</p>	<p>No</p> <p>According to the Bar, the existing provisions governing legal aid in Ukraine essentially deprive a defendant of a right to free choice of lawyer, as legal aid lawyers are always imposed on defendants by the State (i.e. by legal aid centres) and the lawyers who may have concluded a contract of legal assistance with a defendant or his/her relative is often not admitted to a client who has already been</p>

					appointed a legal aid lawyer.
<b>How are cases allocated among lawyers or between different types of service?</b>	<p>Working in the Public Defender Office are lawyers specializing either in criminal cases or in civil/administrative cases. Cases are distributed between public defenders by the Chief of the Public Defender Office (Article 43 of the law "On advocacy") and in the accordance of the "Regulations of the Public Defender's Office". According to the latter, the Office provides legal aid in Yerevan and regions of Armenia. The distribution of defenders by their specialization and regional distribution is decided by the Chairman of the Chamber of Advocates of the RA. This means that the chairman decides the amount of public defenders specialized in criminal, civil or administrative law for Yerevan and regions of Armenia. There are no special provisions for consideration of the features and specifics of the cases, as well as workload of the defender.</p>	<p>Cases are allocated by the branch offices of the Bar Association where the lawyers are attached, upon their workload.</p>	<p>According to the "Legal Aid Service Regulations" Head of the Bureau: directs the Bureau; distributes cases among the lawyers of the Bureau, gives instructions, controls advocates, consultants and ensures the administrative staff's proper performance of official duties.</p>	<p>Qualification requirements to persons providing State guaranteed legal aid are very high; however the assignment of requests by the lawyer's specialization can take place to raise the standards of legal services provided. For instance, a coordinator appointing a lawyer in a territorial office, must take into account the applicant's request for appointing a specific lawyer, the involvement of this lawyer in executing other decisions on the provision of professional legal aid, and other circumstances. The lawyers providing professional legal aid are governed by the quality standards and standard workload established by the National Council, and enjoy independence guarantees set out in the Law re Advocacy.</p>	<p>Legal consultations are provided by staffed legal experts of local Legal Aid Centres. Free secondary legal aid (FSLA) is provided by selected via open competition private lawyers, contracted by Legal Aid Centres. According to the Ministry of Justice, in cases of legal aid provision to detainees lawyers are assigned by Legal Aid Centres in accordance with duty chart. In other cases the situation is specific in different regions and influenced by the needs of their own practice, the uneven territorial distribution of lawyers and the desires of lawyers when, or not, to do legal aid work. Legal Aid Centres make public the number of assignments issued to each lawyer and the amount of money paid to him/her by name. There is also a limitation of 30 cases that a lawyer can simultaneously handle. However, according to the Bar, the administration of the legal aid system by</p>



					the State through the Ministry of Justice has contributed to an improper influence in the distribution of cases among legal aid lawyers. Lawyers belonging to the system receive vastly different access to cases assigned by their respective legal aid centres. The assignment process has allowed for State influence and control of legal aid lawyers, and a kind of “appropriation” of the criminal proceedings, in which the State is now represented by the prosecution (public prosecutor), and by the defence (legal aid lawyer controlled by the State)”. Yes
<b>Is there specific training for legal aid lawyers in accordance with the nature of those delivering legal aid? If so what does this comprise?</b>	All lawyers must attend at least a 24-hour training programme annually organised by the Chamber of Lawyers, Lawyer School, etc. Training programmes include obligatory deontology courses and various themed training courses of the lawyers’ own choosing.	There is not  Lawyers voluntarily pass trainings that are jointly held by Justice Academy and Bar Associations. Content of the trainings are defined according to the common needs of the lawyers.	Unit employees and public lawyers periodically are provided with training courses and workshops to retrain and raise their qualification	1) Initial and continual training courses are organised. Both initial and continual training of paralegals is provided. Training of paralegals organised by other establishments can only be recognized and accredited in the event that a cooperation agreement has been concluded. 2) Public defenders are continually improving their knowledge and practical skills in jurisprudence by attending training sessions organised by the Republic of Moldova Lawyers’ Union, and also taking part in training sessions and other training events organised by	Legal aid lawyers regularly participate in trainings organised by Coordination Centre for Legal Aid Provision and regional Legal aid Centres. Organisation of trainings for professional development of lawyers providing free secondary legal aid is one of the main tasks of the Coordination Centre. The system of “cascade

				<p>the Public Defender Office and other organisations. The Head of Public Defender Office ensures that public defenders have training adequate to their needs as revealed during the monitoring of their activities.</p>	<p>trainings” was introduced that includes “trainings for trainers”, and then such trainers conduct trainings all over Ukraine. According to the Government, the Coordination Centre for Legal Aid Provision have been authorised to organise conferences, workshops, "round tables", trainings and other activities for the professional development of lawyers. However, the Coordination Centre has never requested the UNBA Expert Commission to have its programs certified, as required by the Procedure for continuing professional training of advocates. As a result, in practice the quality of those trainings cannot be verified and ensured by the UNBA.</p>
<p><b>Is there a quality check on the work of lawyers working on legal aid? If so how is it carried out and by whom?</b></p>	<p>According to the Directive of the Chairman of the Chamber of Advocates on “Evaluation of professions and efficiency of the work of the public defender”, the special Commission on evaluation of the quality of the defenders’ work is established. The evaluation of the work takes place once a year. The commission does not check each case of the public defender</p>	<p>There is not</p>	<p>Director of Unit enjoys power to ensure provision of a qualified legal aid by a lawyer registered in the registry and to control the quality of the provided service under the procedure established by the Statute of the Unit;</p>	<p>2) The head of Public Defender Office is responsible for efficient organisation of the office operation; he/she ensures high standards of legal services provided and an equal distribution of work. The head of Public Defender Office may establish quantitative and qualitative performance ratios to ensure efficient operation of the office in line with the recommendations issued by the</p>	<p>According to the Bar, the quality of legal aid lawyers’ work should be evaluated by the qualification and disciplinary commission of the Bar, but it is evaluated by the State officials within the Ministry of Justice. According to the Bar, its independence from the</p>

	separately, it considers the results of the case, as well as if the defender was subjected to disciplinary responsibility, if she/he violated the terms of the work of Public Defender's Office or labour discipline.			National Council that are mandatory for all lawyers in the Public Defender Office. 3) The National Council ensures high standards of professional legal aid by monitoring, obtaining on demand, and checking the information from the territorial offices regarding the amount and type of legal aid provided, studying complaints from persons that received professional legal aid, and also by carrying out quality control of the services provided. The quality of legal aid is controlled under a procedure and within a timeframe as established by the National Council, with assistance from the Bar Association, monitors the provision of professional legal aid by lawyers. Outputs of this monitoring and control are forwarded to the Bar Association.	State apparatus is called into question.
<b>Do the quality assurance standards include<sup>1</sup>:</b> • <b>Compliance with ethical standards, including ensuring the independence of legal aid providers in respect of the provision of legal advice, assistance and representation?</b>	Only if the defender is subjected to disciplinary responsibility or violated the terms of the work of Public Defender's Office or labour discipline. The evaluation of the client is not considered. There are no provisions concerning independency of the defenders.	No	Yes  Lawyers of a Legal aid Bureau act according to the Code of Professional Ethics for lawyers approved by the General Assembly of the Georgian Bar Association.	Yes	No
• <b>The obligation to accept cases?</b>	Yes	No	Yes	Yes	No
• <b>Adequate response times?</b>	In one working day since the request is submitted in criminal cases and three working days in	No	Yes	Yes	Yes (but without specific time-frames)

<sup>1</sup>Adapted from Cape, Ed "UNODC UNDP – Early Access to Legal Aid in Criminal Justice Processes" Criminal Justice Handbook Series.

	all other cases. In case if the person makes request to provide legal information the answer to such request is to be provided in one working day (see paras 5, 6 and 22 of the Decision of the Chairman of the Chamber of Advocates on "Registration of applications to the Public defender office and accounting decision")				
<b>Appropriate methods of delivering legal advice and assistance?</b>	Yes	No	Yes	Yes	Yes
<b>Continuity of representation?</b>		No	Yes	Yes	No  According to the Bar, often legal aid lawyers are assigned for the participation in one particular procedural action; then others are assigned for other actions. This all makes the existing system ineffective, as each new legal aid lawyer assigned to a particular client has to learn anew the documents, case materials and so on, thus protracting the proceedings.
<b>• Prohibition on charging fees for legal aid cases (except where this is permitted)?</b>	Yes	No	Yes	Yes	No
<b>• The employment of appropriately qualified and experienced staff?</b>	Yes	No	Yes	Yes	No
<b>• The provision of personal supervision of,</b>	Yes	No	Yes	Yes	No

<b>and support for, staff?</b>					
<b>• The provision of appropriate training for staff?</b>	Yes	No	Yes	Yes	No
<b>Do the quality checks include the need to: -Respond to requests for legal advice and assistance in a timely and appropriate manner</b>	No As it was mentioned above, the decision to provide legal aid is made by the Chief of the Public Defender's office, and there are special provisions to respond to each kind of request. But the quality check does not have special provision to check the accuracy of these conditions.	Yes	Yes	Yes	Yes
<b>-Gather relevant information from the police, the client and other sources?</b>	No Only the information which is included in the public defender's case file is considered. The list of documents which should be included to public defender's case file is provided by the "Regulations on Public defender office" and consists of documents which concern precisely the client's case.	Yes	Yes	Yes	Yes
<b>Determine any vulnerabilities and special needs of clients?</b>	No See the answer to the question above	Yes	Yes	Yes	Yes
<b>Check the legality of actions taken by the police and other authorities in respect of a client?</b>	No According to the Directive of the Chairman of the Chamber of Advocates on "Evaluation of professions and efficiency of the work of the public defender", the results of the case are considered. E.g., in criminal cases it is considered if the appeals of the defender against	Yes	Yes	Yes	Yes

	the decision of investigation body were satisfied. But the Directive does not give the opportunity to check the legality of the actions of taken by any authority.				
<b>-Advise the client before, during and after interviews?</b>	No (see above)	Yes	Yes	Yes	Yes
<b>-Make appropriate representations?</b>	Yes	Yes	Yes	Yes	Yes
<b>-Liaise with the client's family and other relevant people?</b>	No	Yes	Yes	Not necessarily	No
<b>-Ensure representation at any court hearing?</b>	Yes	Yes	Yes	Yes	Yes
<b>-Record all relevant information?</b>	Yes	Yes	Yes	Yes	Yes
<b>3. Is there a system/service of publicly funded legal aid for taking and defending civil law and family law cases?</b>  <b>If so, which areas of law are covered:</b> <b>Family Law?</b> <b>Children Law?</b> <b>Housing Law?</b> <b>Employment Law?</b> <b>Welfare Law?</b> <b>Immigration Law?</b> <b>Mental Health Law?</b> <b>Care Law?</b> <b>Personal Injury law?</b> <b>Administrative Law?</b>	No  The law "On advocacy" declares that legal advice is provided in civil, administrative and criminal cases. At the same time the law does not specify the field of law where legal advice is available. Moreover, the term "civil cases" includes family law, children law, employment law, personal injury law, etc. But people who need legal aid in those fields of law have the right to receive such aid if they represent one of the groups of people mentioned in Article 41 of the Law. Thus, e.g. the child who has parents, but whose rights are violated by his/her parents does not have a right to receive public defender. The same is with other minors. The Public defender office also provides free legal aid for	Legal remedy is guaranteed for rights and freedoms of everyone and legal aid is provided free of charge in cases established by law. If it is civil, family of criminal case, where legal aid should be provided by the state in criminal cases (mandatorily) and in civil cases (if the person does not own sufficient funds for attaining lawyer).  Poor people in need of legal aid in court are provided by the state with legal aid subject to no restriction.	Legal advice is rendered on any legal issue, and legal aid is provided during criminal, civil and administrative legal proceedings. Legal aid shall be provided in representation in court with respect to administrative and civil cases; and in case of representation before an administrative body. Also legal aid (representation in court) is provided in civil and administrative proceedings if a person is insolvent and it is appropriate to render legal aid to him/her (represent him/her in court) based on the importance and complexity of a case. Legal documents on any issue with respect to civil and administrative cases are drafted for an insolvent person regardless of the importance and complexity of a case.	Yes  Domestic proceedings are also qualified as civil proceedings. Legal aid and defence/representation in civil proceedings are provided WITHOUT regard to the field of law in the following events: a) where a disabled or partially incapacitated party of a proceeding or a third person have no legal representative or the defendant's place of residence is unknown; b) where the court has revealed a conflict of interests between the representative and the person represented who was found disabled or partially incapacitated; c) where a person, after he/she was found partially incapacitated or disabled, has not used a lawyer's advice in court, and also where a person who is to be ordered into treatment in an inpatient psychiatric	Primary legal aid (which includes provision of legal information; granting consultation and explanation of legal issues; drafting requests, complaints and other legal documents (except for procedural documents); assisting in individual's access to the secondary legal aid and intermediation) is provided to all persons under the jurisdiction of Ukraine, irrespective of the subject-matter of the legal questions in respect of which the primary legal aid is granted.  As to the secondary legal aid, it is provided in

	refugees and people who have temporary asylum in Armenia (see more below)			facility is not represented by a lawyer in court.	whole or in part to certain categories of persons and on certain categories of cases (see above). The principles of distribution of cases, allocation, management etc. are the same as described
<b>Are there income and capital criteria for eligibility?</b>	Yes  According to Article 41 of the law "On advocacy", the following group of people have a right to free legal aid provided by Public Defenders: a) a member of a family registered in the unified database of socially vulnerable families, whose socioeconomic index is above zero, b) socially vulnerable people, who have documents approving their social vulnerability, Vulnerability here means that the natural person who does not have enough income, working family member living together, who does not have any other real estate besides her/her private home, c) unemployed people d) pensioners who live alone	No	Reimbursement of legal aid expenses shall be imposed on the opposing party for the benefit of the Legal Aid Unit if they lose.	Yes  In the events provided for in law.	Income criteria – yes, capital criteria – no.
<b>Are some areas of law excluded?</b>	Corporate Law	No	Legal aid (representation in court) for civil and administrative legal proceedings, considering the importance and complexity of a case, shall be provided to an insolvent person.	The aid is provided without regard to the field of law, instead by the case category and in the events provided for in law.	1. Certain appeals the decision on refugee status; 2. Certain issues of protection for victims of Nazi persecution 3. Certain issues connected with rehabilitation.

					According to the Bar: no, unless the subject-matter obviously falls out of the areas covered by civil law and administrative law (in which legal aid may be provided)
<b>Include information, advice+ representation?</b>	Yes	It includes only court representation	Yes	Yes	Primary legal aid (information, advice) – yes. Secondary legal aid (representation) – depends on a category of a person to be provided with legal aid and on a category of case.
<b>Is this work carried out by employed lawyers or private practice lawyers?</b>	The Public Defender Office also deals with these issues, similar to criminal cases. Besides, as it was mentioned above, non-profit organizations provide legal aid in this field as well.	By employed lawyers	This work is carried out by a public lawyer – a lawyer of the Legal Aid Bureau, by a legal aid provider, or a lawyer recorded in the register who provides legal aid under Law.	These activities are carried out by paralegals, non-governmental associations, public defenders, and lawyers providing legal aid upon request under a contract with the National Council for State Guaranteed Legal Aid.	In Legal Aid Centres by employed legal experts. NGOs (International Renaissance Foundation, Ukrainian Helsinki Group for Human Rights etc) provide legal information and consultations via their centres. Representation in court and/ or procedural documents drafting are carried out by private lawyers contracted by Legal Aid Centres.
<b>As above, how is it allocated, managed, quality checked, trained and paid for?</b>	As was mentioned above, working in the Public Defender Office are lawyers focusing either on criminal cases or civil and administrative cases. Cases are assigned to public defenders according to their specialization.	There is not certain way to allocate, manage check, train or pay for.	Head of the Bureau: directs the Bureau; distributes cases among the lawyers of the Bureau, gives instructions, controls advocates, consultants and ensures the administrative staff's proper performance of official duties.	The National Council for State Guaranteed Legal Aid monitors the provision of professional legal aid, organises an evaluation procedure for State guaranteed legal aid provided by authorised persons, and also selects and analyses the	Managed by 100 local Legal Aid Centres. Distribution of cases is as for criminal cases. Quality Standards of Free Legal Aid in civil and administrative cases



	<p>Working in the Public Defender Office are lawyers specializing either in criminal cases or in civil/administrative cases. Cases are distributed between public defenders by the Chief of the Public Defender Office (Article 43 of the law "On advocacy") and in the accordance of the "Regulations of the Public Defender's Office". According to the latter, the Office provides legal aid in Yerevan and regions of Armenia. The distribution of defenders by their specialization and regional distribution is decided by the Chairman of the Chamber of Advocates of the RA. This means that the chairman decides the amount of public defenders specialized in criminal, civil or administrative law for Yerevan and regions of Armenia. There are no special provisions for consideration of the features and specifics of the cases, as well as workload of the defender.</p>			<p>information on the delivered legal aid to improve the State guaranteed legal aid provision system</p>	<p>are being developed. Remuneration system for lawyers providing free secondary legal as well as coverage of lawyer's expenses in the process of legal aid provision aid both for criminal and civil law is adopted. Amount of remuneration depends upon the complexity of case, number of activities and result achieved for the client.</p>
<p><b>4. Organization and delivery of legal aid<sup>2</sup></b>  <b>• Has a legal aid body or authority been established to administer legal aid services?</b></p>	<p>Yes</p> <p>The Chamber of Lawyers has set up a Public Defender Office.</p>	<p>Legal aid has not particular body where this service is embodied. The Ministry of Justice was charged with establishment of twenty (20) regional centres for legal consultation services to reach out to poor populations about their civic rights and broaden their opportunities for access to free legal aid services. But the experience of the past period points out to that the limited number of advocates available in regions represents a significant impediment to an efficient</p>	<p>The Unit is independent in performing tasks assigned to it. Any influence on its activity is inadmissible. The Legal Aid Unit (the 'Unit') is a legal entity under public law which is independent in its activity and ensures the availability of legal advice and legal aid on the basis of the Constitution of Georgia, the Law on legal aid, other legal and subordinate normative acts and the statute of the Unit.</p>	<p>Yes</p> <p>This is the National Council for State Guaranteed Legal Aid and its territorial offices.</p>	<p>Yes</p> <p>As stated above, the body is the Coordination centre for legal aid at the Ministry of Justice of Ukraine.</p>

<sup>2</sup>Similarly adapted ibid.

		operation of this system, which is active now.			
<p><b>What regulations or arrangements are in place to ensure independence in respect of: (a) decisions regarding individual cases; and (b) legal aid policy?</b></p>	<p>There are no special regulations in respect to the above mentioned issues.</p> <p>There is no random selection system or something that will ensure independence for the assignment of the cases</p> <p>The all decisions are made and delivered by the chairman of the Public defenders' office as a requirement of the law (Article 42 of the law "On advocacy", see more above)</p>	<p>No</p>	<p>The Unit is accountable only to the Parliament of Georgia</p> <p>The Unit is independent in performing tasks assigned to it. Any influence on its activity is inadmissible.</p>	<p>The principles underlying State guaranteed legal aid are as follows:</p> <ul style="list-style-type: none"> <li>a) equal rights of all persons using such aid;</li> <li>b) professional competence of persons providing such aid;</li> <li>c) high standards, effectiveness, and efficiency of services provided;</li> <li>d) confidentiality;</li> <li>e) inadmissibility of conflict of interests.</li> </ul> <p>Lawyers providing professional legal aid are governed by the quality standards and standard workload established by the National Council, and enjoy independence guarantees set out in the Law re Advocacy. A public defender is a person qualified to practice law under the Law re Advocacy. Public defenders enjoy all the rights and guarantees and have all lawyers' obligations. When providing primary legal aid, paralegals are independent of local public authorities. No interference in a paralegal's professional activities is allowed, except for where this is stipulated by law.</p>	<p>According to the Bar- there are no such regulations or safeguards in the existing legislation of Ukraine, which therefore needs to be changed as soon as possible in order to ensure the independence of profession including the above aspects.</p> <p>According to the government-</p> <p>(a) Lawyer providing free legal aid has all the rights and guarantees stipulated by the Law "On the Bar and advocacy activities". Any interfere in the legal position is inadmissible.</p> <p>(b) Legal aid policy is based upon the Constitution, international documents adopted by the Parliament, and the Law "On Legal Aid".</p> <p>According to the Law, state policy in the area of legal aid is based upon: Rule of law; Lawfulness; Accessibility of legal aid; Quality of legal aid; Guaranteed public financing.</p> <p>Legal regulation of legal aid is provided by</p>

					<p>Ministry of Justice, operative management – by Coordination Centre for Legal Aid Provision.</p> <p>The participants of the Public Platforms are lawyers, human rights activists, representatives of the Centre for Political and Legal Reforms, UN Program Without Borders, Ukrainian Helsinki Human Rights Union, NGO Civil liberties centre, Renaissance International Foundation, Ukrainian Legal Aid Advisory Council, Advisory council of the communities on access to treatment in Ukraine.</p>
<p>• Are the responsibilities of the legal aid body or authority for providing, administering, coordinating and monitoring legal aid clearly set out in legislation or regulations?</p>	<p>Yes</p> <p>-the law “On advocacy”,  - a Standing Order of the Public Defender Office, adopted by the Chamber of Lawyer,  - Directive of the Chairman of the Chamber of Advocates on “Evaluation of professions and efficiency of the work of the public defender”,  - Decision of the Chairman of the Chamber of Advocates on “Registration of applications to the Public defender office and accounting decision”, etc</p>	<p>No</p>	<p>Yes</p> <p>Legal aid unit activities are based on the Constitution of Georgia, the law on legal aid, The Statute of the Unit.</p>	<p>Yes</p> <p>-Law re State guaranteed legal aid;  - Regulations on the National Council for State Guaranteed Legal Aid;  - Regulations on the operation of territorial offices of the National Council for State Guaranteed Legal Aid;  - Regulation on the procedure for request and appointment of lawyers to provide urgent legal aid;  - Regulation on the public defenders’ activities;  - Regulation of the paralegals’ activities.</p>	<p>The legal aid system and its structural bodies are governed by the Law of Ukraine “On Legal Aid” of 2 June 2011.</p>

<p>• Are the arrangements for allocating funds for the administration and provision of legal aid clearly set out in legislation or regulations, and do they provide for the allocation of sufficient funds?</p>	<p>A list of free legal aid types and categories of persons entitled to such aid is set out in law. The funds allocated are not sufficient. They are only enough to engage 50 public defenders across Armenia. All of them are currently overloaded with work.</p>	<p>No</p>	<p>Under the law on legal aid of Georgia Financing sources of the legal Aid Unit are  a) special purpose funds allocated from the State budget of Georgia;  b) donations and grants;  c) other income permitted by the legislation of Georgia.  The State funding of the Unit is defined by the annual State Budget Law.  The draft budget of the Unit is submitted to the Ministry of Finance of Georgia with the agreement of the Council and based on consultation with the Parliament of Georgia.</p>	<p>Yes  The law stipulates free legal aid types, principles, and forms, and specifies which persons are entitled to provide State guaranteed legal aid. Of late years, funds allocated by the State for this purpose have increased, yet they are not sufficient.</p>	<p>Yes  These matters are governed by the above Law. However, according to the Bar, only a small part of the funds allocated to the legal aid system are used for the legal aid lawyers' remuneration, more goes to administration.</p>
<p>• What obligations are imposed on the legal aid body or authority for reporting on the provision of legal aid, and what arrangements are in place for monitoring the legal aid body or authority?</p>	<p>All public defenders submit relevant reports, dedicated officers in the Chamber of Lawyers monitor the work of public defenders.</p>	<p>None</p>	<p>The Unit is accountable only to the Parliament of Georgia.  The Director of the Legal Aid Unit annually submits to the Parliament of Georgia the Unit activity report for the previous year. After hearing the report on the Unit activity, the Parliament of Georgia approves it by resolution, or requires that the Unit eliminate defects and/or improve its activities.</p>	<p>The National Council for State Guaranteed Legal Aid prepares annual Reports of activities within the State guaranteed legal aid provision system and submits them to the Ministry of Justice, Government, and Parliament. It also submits a quarterly report to the Ministry of Justice on the use of funds allocated towards providing State guaranteed legal aid;</p>	<p>The Coordination centre for legal aid makes public periodic reports on its activities as well as the activities of the whole legal aid system: performance of the regional and local Legal Aid Centres (monthly); current information (on daily basis); public procurement; Legal Aid Centres employees' remuneration.  The number of assignments to each lawyer-attorney and the amount of remuneration for fulfilled assignments.  According to the Bar, however, these reports reveal that the legal aid system functions in non-</p>

					efficient way, and the funds allocated for legal aid are spent in non-rational and non-transparent way (for further details, see the UNBA Report attached).
<p>• Are the arrangements for delivering legal aid set out in the relevant legislation or regulations, or is this a matter for the legal aid body or authority to determine? Are the arrangements appropriate and adequate given the level and patterns of need?</p>	<p>Yes</p> <p>This is prescribed in the Standing Order of the Public Defender Office.</p>	<p>No</p>	<p>The Legal Aid Unit functions on the basis of the Constitution of Georgia, the Law on legal aid of Georgia, other legal and subordinate normative acts and the statute of the Unit.</p>	<p>Yes</p> <p>They are provided for in the Law re State guaranteed legal aid, Resolutions adopted, and Orders issued by the National Council for State Guaranteed Legal Aid.</p>	<p>Yes</p> <p>This is the subject of Law "On Legal Aid". However, the action of the Russian Federation against Ukraine has formed new vulnerable groups who strongly need the access to free secondary legal aid in civil and administrative cases.</p> <p>Relevant changes to the Law are being considered by the Parliament of Ukraine. According to the Bar these are sorely needed. In particular, the current legal aid system has failed to protect defendants' basic human rights, undermined the independence of the legal profession, created or contributed to corrupt practices, and is a threat to the professional bar, judicial independence and the rule of law in the country. Therefore, the existing arrangements</p>

<p>• Are the arrangements for assuring the quality of legal aid covered by legislation?</p>	<p>No</p> <p>The only requirement is to have law education and to be the licensed advocate, but the special knowledge on the international human rights standards and etc are not prescribed by the law. Moreover, neither Law nor any legal acts of the Chamber of advocates of Public defender office do not provide minimum knowledge for those who can apply for public defender status. The law "On advocacy" (Article 42) the competition <u>may be</u> set to choose public defender. This provision is not obligatory. Nevertheless, there is a special decision of the board of the Chamber of advocates on "The procedure of the organization of the competition for the job of public defender". This decision does not regulate the evaluation mechanisms, but speaks about the type of the exams and the procedure.</p>	<p>No</p>	<p>Yes</p> <p>A collegiate body – the Legal Aid Council (the 'Council') is established to ensure administration of the Unit, efficient performance of its functions, and independence and transparency of the Unit. Legal Aid Council upon recommendation of the Director, approves the procedure and criteria for the quality assessment of the legal advice and legal aid rendered by the Unit; applies to the Director with a recommendation to improve activities of the Unit and monitors its performance within the scope defined by the Statute of the Council.</p>	<p>Yes</p> <p>The National Council ensures high standards of professional legal aid by monitoring, obtaining on demand, and checking the information from the territorial offices regarding the amount and type of legal aid provided, studying complaints from persons that received professional legal aid, and also by carrying out quality control of the services provided. Besides, the head of a Public Defender Office may within the office's budget appoint two defenders to represent the same client, to ensure high standards of legal aid. To provide the quality and efficiency of the legal aid provision, the head of a Public Defender Office may re-assign the cases assigned by the Territorial Office to the public defenders in the Public Defender Office. In this event, this Office will demand that the Territorial Office adopts a new decision on the appointment of a relevant lawyer to provide legal aid.</p>	<p>are not appropriate</p> <p>This is the subject of Law "On the Bar and advocacy activities". To assess the quality of FSLA, Regional Bar Councils formed permanent collegial organs – the Commission on evaluating the quality, completeness and timeliness of free legal aid provided by lawyers. Besides, the Law "On Legal Aid" stipulates that quality standards for free legal aid should be developed. The Standards of Legal Aid Provision in Criminal Proceedings were developed, approved by the decision of the Bar Council of Ukraine and adopted by the Order of Ministry of Justice. However, according to the Bar, many of these standards are not complied in practice due to the existing malfunctioning of the legal aid system in Ukraine, State pressure and influence on legal aid lawyers, non-transparent distribution of cases and so on</p>
<p>• Does the legal aid body or authority have responsibility for raising</p>	<p>There is no special obligation prescribed by law, but according to Article 5 of the law "On</p>	<p>No</p>	<p>Under the law on legal aid the legal aid Council may conduct research to investigate the availability and</p>	<p>No</p>	<p>Yes</p> <p>Under the Law.</p>

<p><b>awareness of the right to legal aid?</b></p>	<p>advocacy”, the advocate activity is one of the types of human rights deference. Thus, human rights dependence also includes raisin legal aid awareness.</p>		<p>quality of legal aid and legal advice; promotes activities of the Unit; The Director of legal aid Unit ensures publicity and accessibility of the annual Unit activity report; ensures promotion of Unit activities;</p>		
<p><b>5. Are there alternative approaches available for the funding of legal services, such as insurance schemes, contingency fee schemes, trade union funded services or another alternative?</b></p>	<p>The winning party may claim a reasonable amount from the losing party to cover its legal costs mainly in civil and administrative cases.</p>	<p>The only way to fund legal services is projects that are funded by international and local donors. But these kinds of projects are mainly planned for limited period of time, which make them not so efficient.</p>	<p>No There are no alternative approaches available for the funding of legal services.</p>	<p>Apart from the State budget, legal costs can also be compensated from other sources not prohibited by law, based on a cooperation agreement.</p>	<p>There are no such current alternatives existing in Ukraine.  The UNBA proposed a number of ways in order to improve the system as well as the practice of law by the legal aid lawyers genuinely independent from the State. The Bar ask for transferring the administration of legal aid from the State to an independent body, with the broad involvement of the Bar as an independent constitutional institution. . In the opinion of the Bar, this will eliminate opportunities for pressure and interference by the state with the professional activities of lawyers. At the centre of these reforms is a proposed legal aid model which places the funding and maintenance of the system in the hands of the state through the Ministry of Finance, but</p>

					whose operational control and functioning is the responsibility of the legal profession itself, through the Bar, with the state further represented through the Ombudsperson. This new model of legal aid will ensure efficient and transparent use of funds flowing into the legal aid system, respect for human rights and observance of professional rights and guarantees of attorneys on fair, transparent and non-discriminatory terms (for more details, see the attached UNBA Report).
<b>If so, how is it organised and funded so that it has complete independence in relation to decisions regarding selection of clients/defendants and promoting or defending their cases?</b>			N/A	The winning party may claim a reasonable amount from the losing party to cover its legal costs. Yes, and also, where in a civil/administrative hearing the court renders judgement in favour of a person receiving professional legal aid, legal costs are imposed on the losing party. The amounts of money compensating legal costs are remitted to the Territorial Office's account.	



**NB. Contribution from Belarus**

Belarus provided answers to the Working Group subsequent to the meeting. Belarus' answers to the Questionnaire are as follows:

**"(Free of charge) legal assistance"**

Legal assistance shall be provided in accordance with the Law of the Republic of Belarus "On Advocacy and Legal Practice in the Republic of Belarus"

According to Article 6 of the Law:

1. Legal assistance is provided by lawyers for a fee. In cases and under procedure stipulated by the applicable Law and other legislative acts, legal assistance shall be provided at the expense of the bar associations, the republic and (or) local budgets.
2. Any individual or legal person in the territory of the Republic of Belarus is entitled to seek legal assistance from a lawyer at own choice, except in cases of legal assistance at the expense of the bar associations, the republican and (or) local budgets, in order to protect rights and interests in the courts, towards public authorities and other organizations, responsible for addressing the relevant legal issues, and towards individuals.
3. Within provision of legal assistance the proper conditions shall be ensured for the meetings and consultations with a lawyer at observance of absolute confidentiality for a person detained, administratively arrested, taken into custody, subject to house imprisonment, person to whom the compulsory security measures and treatment were applied, as well as convicted person.

## Section IV. Analysis of the Answers given to the Working Group Questionnaire

It has already been stated as a disclaimer to the Shortened form of Questionnaire above that the “questionnaire was sent to particular attendees of the Working Group meeting, some were answered by lawyers’ representative groups, some by governmental representatives and others by independent NGOs in different countries. The answers cannot therefore be taken to be equal in terms of provenance. Some are critical and some congratulatory of the status quo, but all come from a base of sincere caring for Legally Aided clients”.

For this reason alone it is particularly difficult therefore to make comparisons between the different answers and the different countries who were invited to the Working Group meeting. In addition, it is difficult to determine actual practice from such an exercise. Whereas one country may have all the appropriate regulations in place, the regulations may be ignored in practice. Another country may still be progressing towards a full set of good standard regulations, but is much better at keeping to those that they have in place. The second country might, in that event, actually be ahead of the first in practice, but not appear to be so on paper.

With these caveats in mind, much can be gained from looking through the answers to the Questionnaire. It is clear that all countries represented at the Working Group are well served by a group of people attending the workshop who cared considerably for the current and future state of access to law in their countries. All stated that there was a system/service of publicly funded legal aid for defending the accused in Criminal cases, covering the police station, assistance before trial and representation in court. They began to differ over eligibility for this service. In some cases it was free to all, in some cases it depended on the income/capital of the accused or the nature and seriousness of the case. Some had special arrangements for children and people with disabilities/ vulnerabilities and some treated all equally.

It seems that Armenia, Georgia and Republic of Moldova have set up some form of public defender scheme and a fourth had a form of contracting arrangement. Azerbaijan has no law on Legal Aid and no special staff, but all lawyers who are members of Azerbaijan Bar Association can take such legal aid criminal defence cases. Organisation, funding, independence and selection for cases vary considerably among the five countries. Apart from Ukraine there does not seem to be an organized system for contracting with private practice, and that system does not seem satisfactory for all lawyers. Georgia and Ukraine have a Register for the purpose and the others each have a different method for involving private practice. Republic of Moldova has a well-developed system for paralegal involvement which all might learn from. Pro bono work exists in most countries, but in general does not seem to be regulated. Armenia, Georgia and Republic of Moldova consider the current provision appropriate to the demand. Apart from the Bar’s view of Ukraine (which is denied by government), allocation of cases among lawyers seems to work well; the Bar of the Ukraine suggest there are some serious problems of lack of independence in the organisation of the system and some lawyers get many more cases than others (whereas the government deny that this is the reason). Azerbaijan does not have compulsory continuing education for their legal aid lawyers, the others do. A quality check is carried out by Ministry of Justice officials in Ukraine (according to the Bar, but see above for the government view), Heads of Public Defender Units in Georgia, Republic of Moldova and Armenia and there is no

check in Azerbaijan. In Armenia, Georgia and Republic of Moldova there is a check for complying with ethical standards and obligation to accept cases; in Armenia, Georgia, Republic of Moldova and Ukraine it includes adequate response times and appropriate methods of delivering legal advice and assistance; in Georgia and Republic of Moldova continuity of representation, but not in Ukraine; in Armenia, Republic of Moldova and Georgia prohibition on charging fees are part of the assurance standards; and both employment of appropriately qualified and experienced staff, and personal supervision of, and support for, staff and appropriate training for staff in Armenia, Georgia and Republic of Moldova. In all countries checks include responding timely and appropriately, gathering relevant information, determining vulnerabilities, checking legality of police etc. actions, advice before during and after interviews, making appropriate representations, ensuring representation and recording relevant information. Liaising with the client's family or other relevant people was only checked in Azerbaijan and Georgia.

Civil and family law cases are in general covered by legal aid where there are special needs or inadequate income or specific cases. Ukraine gives advice and assistance on civil matters to all (primary legal aid). Armenia and Republic of Moldova have income and capital criteria for eligibility, though Azerbaijan does not but provides court representation and no pre-trial advice and assistance. This work of civil legal aid, advice and assistance is largely carried out by employed lawyers and the system for organizing is very similar to those for each country for crime.

Armenia, Georgia, Republic of Moldova and Ukraine have established Legal Aid bodies. There is a guarantee of independence of those bodies in Georgia and Republic of Moldova, and no such guarantee in Ukraine. Those countries also have clear Regulations regarding the responsibilities of the legal aid body and arrangements for allocating funds, and reporting and monitoring of the work of the legal aid body. There the legislation decides how legal aid is to be apportioned and also how the work is monitored. The legal aid body has responsibility for raising awareness in Georgia and Ukraine.

Costs can transfer to the side that loses the case in Armenia and Republic of Moldova. There are no alternatives to legal aid funding in Georgia and Ukraine, but international donor projects sometimes help in Azerbaijan. Republic of Moldova allows "cooperation agreements" with other institutions to augment legal aid and advice.

In Summary, the attention to international and European regulation is high and in general there is full attention to appropriate standards. Azerbaijan is yet to legislate in this area and Ukraine, which has regulation, seems to have a lack of agreement with the Bar on the alleged need for attention to the independence and performance of its state funded organisations.

## Section V. Good Legal Aid Practices as learned from Presentations given during the meeting, followed by the Presentations in detail

A presentation on “**United Nations Principles on Access to Legal Aid in Criminal Justice Systems and International standards for legal aid**” was delivered by Mr Avrom Sherr during the meeting.

14 main principles were addressed and outlined as follows:

- Principle 1. Right to legal aid: recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.
- Principle 2. Responsibilities of the State
- Principle 3. Legal aid for persons suspected of or charged with a criminal offence
- Principle 4. Legal aid for victims of crime
- Principle 5. Legal aid for witnesses
- Principle 6. Non-discrimination
- Principle 7. Prompt and effective provision of legal aid
- Principle 8. Right to be informed
- Principle 9. Remedies and safeguards
- Principle 10. Equity in access to legal aid
- Principle 11. Legal aid in the best interests of the child
- Principle 12. Independence and protection of legal aid providers
- Principle 13. Competence and accountability of legal aid providers
- Principle 14. Partnerships (with pro bono, university clinics, etc)

**The Article 6** of the European Convention on Human rights was also addressed during the meeting. The Article 6 refers to the right to a fair trial. This means that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. According the Article 6, everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

**Early access to a lawyer** should also be provided. Suspects or accused persons should be entitled to access to a lawyer before the start of any questioning by the police and throughout criminal proceedings wherever they are in the EU

In general, in carrying out their role, **legal aid providers must:**

- loyally respect, and take any necessary actions to further, the interests of their clients, having particular regard to the client's age, gender, ethnicity or sexual orientation;
- seek to ensure that their clients are treated with dignity, that their human rights are respected and that they are treated in accordance with the law;
- provide advice and assistance to and, as appropriate, representation for, their clients, taking into account their particular needs and any relevant vulnerability;
- seek to ensure that decisions of their clients are respected;
- challenge, in an appropriate way, any unlawful or unfair treatment of their client;
- seek to ensure that clients continue to receive legal advice, assistance and representation until their case is finally disposed of, including in any appeal.

**Article 6 and non-criminal Law cases** topic was also addressed during the presentation, giving *Airey v. Ireland* case as an example. In *Airey v. Ireland* [1979] 2 EHRR 305 a victim of domestic violence had been trying to gain a judicial separation from her husband on the grounds of alleged physical and mental cruelty to her and her four children. She had been refused legal aid, and could not afford a lawyer. The European Court of Human Rights stated that Convention rights must be 'practical and effective' to safeguard an individual. It added that this was particularly important 'in view of the prominent place held in a democratic society by the right to a fair trial.' The Court found that while there is no general right to legal aid in civil cases, legal aid is required when legal representation is compulsory, because of the complexity or nature of the proceedings or the ability of an individual to represent him or herself.

In *Steel and Morris v. the United Kingdom* [2005] 41 EHRR 22 the Court held that the lack of civil legal aid in that case was a violation of Article 6. The case concerned libel proceedings brought by the fast food chain McDonalds against the two applicants, who had distributed a leaflet severely criticising McDonalds' practices and food. Having been refused legal aid, the defendants represented themselves through the trial which, at 313 court days, was the longest case in English legal history. The Court noted that the case was factually and legally complex, and that the volunteer lawyers and the extensive judicial assistance and latitude granted to the defendants did not substitute for counsel experienced in libel law. The Court held that 'equality of arms' was central to the concept of a fair hearing. Absolute 'equality of arms' was not required, provided both sides have a reasonable opportunity to present their case effectively. Access to legal aid for a fair hearing should depend on what was at stake for the individual, the complexity of the law and procedure and the person's ability to represent themselves.

Other civil cases were discussed, on the topics such as: housing and homelessness, immigration and asylum, welfare benefits, mental health, employment and dismissal care, prisoners.

**The Article 2** of the European Convention on Human Rights and, in particular, the right to life-deaths in custody, was also referred to during the meeting. According to the Article 2:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

**Legal aid in crime** conception was addressed. Criminal defence clients are especially in need of the "equality of arms" guaranteed them by international standards. There should be a clear regulatory framework for criminal defenders, who should be suitably qualified lawyers/paralegals who are members of an independent body. They need to comply with duties to act in the best interests of the client, client confidentiality, and duty to the Court. They must be able to recognise and resolve conflicts of interest especially those between different defendants. Regulations should ensure open and transparent ability for clients to choose their own representative and there should be a confident quality assessment of legal aid lawyers' work. In summary a 'Fit for purpose' regulatory framework for Criminal Legal Aid would be State funded (annual funding indexed by law to the prosecution spend); independently administered; with allocation, disciplinary and complaints procedures free of State control; free at point of delivery to all suspects in custody; and judicial sanctions available for violations. The service should be available after charge where liberty or livelihood are at risk with additional provision for vulnerable groups. There should be simple, quick means-testing, or exclusion, for those with the means to pay without hardship; and recoupment from convicted criminals in suitable cases. Delivery can be through a Public Defender Service or through private practice, but all lawyers must meet the standards and be remunerated at least as well as the prosecutors. There should be unfettered client choice of representative, incentives to form group practices to increase efficiency, Duty Provider schemes to provide cover, for example, in unsociable hours, or where the lawyer of choice is not available or conflicted and a system of Peer Review to ensure that all legal aid lawyers continue to observe high professional, ethical and performance standards.

A presentation on "**Regulatory Framework for an Effective, Independent Legal Aid for Suspects and Defendants**" was delivered by Mr Philip Whittaker during the meeting. First of all, the Regulatory Framework for an effective Legal Aid Scheme should have the following **objectives**:

- sustainable and Sufficient Funding ("make the criminal pay", pro-bono, state funding and other possibilities discussed);
- compliance with U.N., ECHR 6.3, or similar 'Rights' directives, in particular, "Equality of Arms";
- sufficient in scope;
- efficient in delivery.

The Regulatory Framework **for the suppliers** should have the following features:

- suitably qualified lawyers/paralegals who are members of an independent body;
- must demonstrate in addition a thorough grasp of, and compliance with the following: duty of always acting in the best interests of the client; duty of client confidentiality; duty to the court; recognising and resolving conflicts of interest; have a transparent procedure for handling complaints; possibly have undergone advocacy training.

The issues of choice of representative as well as the peer review were addressed within the **regulation for independence, transparency and accountability** concept.

The regulations for **quality assurance** were outlined as follows:

- qualifications;
- training;
- ethics and professional standards of behaviour.

A suggested **'Fit for purpose' Regulatory framework model for Criminal Legal Aid** is described below:

- State funded (annual funding linked by law to the Prosecution spend);
- Independently administered, e.g as suggested by the Ukrainian National Bar Association, (decision of the Bar Council of Ukraine №125 as of November 13, 2015); annual accounts published;
- Disciplinary and complaints procedures free of state control;
- Free at point of delivery to all suspects in custody; judicial sanctions available, (e.g exclusion of evidence) for violations;
- Available after charge where liberty or livelihood at risk...additional provision for vulnerable groups.
- Simple, quick systems of means-testing, or exclusion, for those with the means to pay without hardship; provision for recoupment from convicted criminals in suitable cases;
- Delivery: creation of a Criminal Defence Service (a "CDS") is one possibility; membership open to all lawyers/paralegals who meet the standards and who are remunerated and resourced to the same level as the prosecutor;
- Unfettered client choice of representative from members of the CDS
- Possible encouragement/incentives to members of CDS to form group practices to increase efficiency;
- An obligation on CDS members in each area to form/join Duty Provider schemes to provide cover, for example, in unsociable hours, or where the lawyer of choice is not available or conflicted;
- A system of peer review to ensure that all legal aid lawyers continue to observe the highest professional, ethical and performance standards.

**Legal Aid for family and child law** issues were also addressed during the presentation. Legally aided family and children work can include divorce or dissolution of civil partnerships, resolution of financial issues on divorce between spouses, financial issues on breakdown of a relationship between unmarried partners (heterosexual and gay), financial obligations of parents towards children, including claims by older children for support in education or on the death of a parent, disputes between parents about the care of children, issues of harm and neglect by parents towards children, resulting in state intervention and protection of victims of domestic abuse and harassment. Unless the state is involved to protect the interests of children or victims of harassment or violence, these will generally be

private disputes and so both parties might be legally aided. There can be many parties where the protection of children is involved and lawyers may act for Social Work Department, Health Department, School as well as parents and grandparents.

Funding without pressure or interference is essential for the independence of the lawyers working in this area. Regulations need to be clear, transparent and transparently administered for systems of funding, involvement of experts, eligibility of clients and lawyers, quality and quality assessment of lawyers' work. The public needs to be aware of their legal aid rights, though alternative systems for funding of legal cases exist including out of the financial settlement between the parties relating to home ownership etc.

The United Nations Convention on the Rights of the child states that the voice of the child needs to be heard in all proceedings which may affect the child, as appropriate to age and ability. This may sometimes mean that the child needs to be separately represented.

**Regulatory Framework for Independent Legal Aid in Family & Children Cases** was presented by Mr Peter Whitfield.

### **Scope of Family and Children Law**

Depending upon individual national laws this area may cover:

- divorce/dissolution of civil partnership;
- resolution of financial issues on divorce between spouses;
- financial issues on breakdown of a relationship between unmarried partners (heterosexual and gay);
- financial obligations of parents towards children, including claims by older children for support in education or on the death of a parent;
- disputes between parents about the care of children;
- issues of harm and neglect by parents towards children, resulting in state intervention;
- protection of victims of domestic abuse and harassment.

The key difference from Legal Aid for criminal cases is that these are private disputes between individuals, except when the state is involved to protect the interests of children (see below).

### **Regulatory framework**

To ensure the independence and appropriate quality provision in family Legal Aid the following aspects are relevant:

#### **1) Regulatory Framework for Independence:**

- funding to employed or salaried Legal Aid lawyers (and do salaried Legal Aid lawyers have less independence);
- are lawyers free from direct or indirect pressure from the funder (e.g. outcome targets or minimum case levels);



- clear professional rules and obligations (e.g. overriding duty to the Court; limits on acting in circumstances, e.g. conflict of interest between parents and child).

## **2) Regulatory Framework for Funding of representation**

- administration of funding at arm's length from the state;
- does funding on a case by case basis provide for greater independence or is there uncertainty of delivery;
- transparency regarding guaranteed payment rates;
- consideration of relative rates of payment between Legal Aid lawyers - lawyers in public service - those acting for privately paying individuals;
- mechanisms for timely payment;
- do funding constraints limit effective representation (e.g. cost of experts, contrast resources of state and parties in public law children cases).

## **3) Regulatory Framework for Eligibility for funding:**

- clear criteria for eligibility (e.g. what are complex cases, how are merits assessed);
- simple assessment of eligibility;
- devolution of authority to assess eligibility to providers (limited to cases of urgency?);
- payment on fixed fee/hourly basis.

## **4) Regulatory Framework for Quality of representation:**

- quality panels independent of funding agency (e.g. administered by professional association or national law society);
- limiting representation in some areas to those with minimum threshold of quality/experience (e.g. in children cases, membership of a specialist panel or at least 3 years' post qualification experience);
- training and continuing development requirements.

## **5) Regulatory Framework for Assessment of quality:**

- measuring outcomes;
- interface between quality and cost;
- reviewing the work of Legal Aid lawyers;
- complaints mechanisms and monitoring.

## **6) Publicity:**

- public awareness of rights and potential availability of Legal Aid;
- ability to access Legal Aid lawyers – different methods of delivery;
- availability of information (online resources, court forms, publication of legal materials).

Alternative Schemes for financing:

- private insurance;
- recovering costs from financial benefits received;
- allocation of costs - should Legal Aid in care proceedings form part of the budget for children protection?; are court fees part of the Legal Aid budget?

## **7) Regulatory Framework for Children**

### **8) Regulatory Framework for Private law children:**

- disputes between parents about children's best interests (including arrangements for care, arrangements for education and health, and child abduction);
  - how is the voice of the child heard in this process.
1. *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
  2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

*Article 12 UNCRC*

### **9) Regulatory Framework for Public law children:**

- a dispute between state and parents about whether care is sufficient;
- how is the child's voice heard in these proceedings, when is separate representation required and how is this provided?; see for example, the relevant guidance in England and Wales (may refer to PD16A);
- protection of children and other vulnerable people in proceedings in the absence of Legal Aid (recent example *Re K-H (Children)*).

## **10) Alternative forms of funding**

State funded legal aid is not the only way to provide access to a lawyer. In many countries insurance schemes exist to assist with legal costs. These may be attached to more general insurance such as home owners' insurance or car drivers' insurance. In some countries lawyers can fund their own work provided they gain their fees if they win the case, through contingency fee schemes or "no win no fee". Court rules can ensure that both sides' costs of the legal action are paid by the losing party. It is

possible in some countries also to fund such costs through an outside source, who will recoup their costs if the case wins. Many lawyers' representative bodies or regulators insist on a certain amount of pro bono work to be carried out by members. Non-profit organisations including non-governmental organisations may also work in providing legal assistance, on a charitable basis, or funded by local government or charitable gifts. In addition, law schools and practitioner training colleges may operate clinical legal education programmes as part of their educational mission.

A presentation on **Alternative Financing Schemes for Financing Legal Assistance** was prepared by Prof. Dr. Matthias Kilian and delivered during the meetings. The presentation covered self-financing and third-party financing (public purse, commercial sector, service providers/lawyers).

Self-financing overview was given by the speaker. In an ideal world, every person with a legal need would be self-funding, i.e. paying legal services out of his/her own pocket – in reality, many cannot afford legal services. From a policy perspective, there is a middle way between self-funding and third-party financing. Regulation can support self-funding = „indirect financing scheme“(regulation of fees for lawyers and courts, tax incentives). From the perspective of lawyer independence, attractive because no third-party with vested interests gets involved.

The concept of **self-financing** was presented during the presentation. The first component of it is **fee regulation**. The presentation covered the following aspects of it:

- regulation of fees in order to improve access to legal services:
  - not: stipulating binding fees and thus limiting market forces and competition between legal service providers;
  - condition to avoid competition/anti-trust-law issues: regulated fees apply only by default, individual agreements must still be possible;
- value-based fees vs. input-based fees: for the same amount of input (i.e. time invested), a low value claim attracts lower fees, a high value claim attracts higher fees;
- poorer clients typically have legal needs linked to low(er) values, clients who are better off have higher value cases;
- those better off indirectly make legal services for those who are poorer more affordable by paying more for their legal services;
- German concept for court fees and lawyers' fees: (some) US commentators: „a form of socialism“;
- example:
  - court case with a value of 1.000 EUR = 159 EUR in court fees and 347 EUR in lawyers' fees;
  - court case with of a value of 10.000 EUR = 723 EUR in court fees and 2.139 EUR in lawyers' fees;
- added benefit: predictability of costs;
- requirement: sufficient number of lawyers in the market to avoid cherry-picking of cases;
- in an ideal market, those who earn fees (courts, lawyers) all deal with a well-balanced basket of low and high value cases = leads to cross-subsidisation of cases and allows taking on potentially loss-making cases;

- as there is only *one court system*, concept always works for the courts;
- as there *many legal service providers*, effectiveness in the law firm market depends on its segmentation: the more segmented the market, the more high and low value cases are clustered in specific types of law firms;
- from the clients' perspective, in a segmented market cross-subsidisation still works, but it is de facto kept functioning by those firms dealing with a large number of relatively poorly paid low value cases – while those law firms benefit that can cream off the high value cases: system then moves from indirect funding by the public to funding by a sub-group of lawyers who are still willing to accept low-values cases;
- example for another type of fee regulation: setting court fees depending on the means of a client, particularly in B2C-scenarios with asymmetrical financial powers that can be a deterrent for one of the parties of a dispute.

The second component is **tax incentives**:

- the effectiveness of tax incentives depends on the effectiveness of the tax system in general and the amount of taxes that has to be paid by the individual
- tax incentive = legal expenses qualify for a tax break:
  - all types of cases?
  - all types of clients?
  - only beyond a certain threshold?

The presentation also addressed the issues of **third party financing**. An overview for commercial sector was given:

- commercial sector typically offers two types of financing:
  - before the event (BTE) concept = risk insurance;
  - after the event (ATE) concept = litigation funding;
- BTE covers an abstract risk that may or may not materialize at some point in the future;
  - chances of an actual loss relatively low if no adverse selection;
  - costs to obtain coverage therefor low as risk is spread across large risk pool;
- ATE covers a risk that has already materialized;
  - chances of an actual loss much higher than in an BTE scenario;
  - costs to obtain coverage for the individual therefore higher as risk is not spread across a risk pool;
- BTE model: legal expenses insurance first offered in France more than 100 years ago:
  - today, Germany by far largest legal expenses insurance in the world (German market almost as large as the combined markets of all other European countries);
  - can be offered as an add-on or as a stand-alone product;
  - pros from lawyer's perspective: someone more solvent than the typical client will pay;
  - cons from lawyer's perspective: third party will assess if an "insurance case" triggering the duty to pay exists and may challenge the lawyer's analysis of the case; insurance companies are bulk-buyers of legal services and will try to drive down costs for fees and administration = limited number of service providers who typically work for relatively low negotiated fees in exchange for business.
- BTE model: legal expenses insurance challenges:
  - requires a sufficiently large risk pool to keep premiums low;
  - getting started is difficult because of adverse selection (dilemma: add-ons

- minimize those problems, but make LEI as a funding mechanism less recognizable);
- insurance companies will not offer policies for areas of law that carry a disproportionately high risk (e.g. family law, businesses) or are incompatible with the concept of insurance (criminal law, advice work): consequence: insurance cover will never be comprehensive, but always selective → typically, LEI is based on a modular concept;
  - if service providers do not work for lump sums or regulated fees, risk calculation is difficult and therefore policies often work with caps (consequence: the insured does not know if his coverage is sufficient to cover all costs – which makes the insurance less attractive).
  - BTE model: legal expenses insurance:
    - Example Germany: Germany has a LEI-friendly regulatory framework approx 45 per cent of all Germans have some sort of stand-alone LEI coverage; typical comprehensive insurance (family policy) costs 200-300 EUR p.a.; problem: most regard LEI as useful, but prioritise other types of insurance if budget for insurance premiums is limited; only works well because of fee regulation
  - BTE model: legal expenses insurance incentivizing:
    - tax breaks for premiums (available for other types of indemnity insurance);
    - subsidies for taking out cover for certain population groups;
    - compulsory LEI?
  - ATE model: litigation funding. Concept:
    - litigation funding company will assume all costs risks of an already existing legal dispute in exchange for a share of the proceeds;
    - more comprehensive than no win no fee agreements offered by lawyers;
    - not bound by professional rules that apply to output-based fees of lawyers;
    - Challenges: very selective screening – only cases with high chance of winning are accepted; only cases which promise a monetary return of some size are covered, so limited scope; only regulated by general principles of contract law, so difficult to control fairness of agreements.

An overview of the **service providers** was also presented:

- speculative funding of lawyers' fees. Concept: explicit agreement that in case of no win, no fee is due; lawyer assumes the risk of client's liability for his fees;
- challenges: in cost-shifting jurisdictions, only a third of the typical costs are taken care of – unless lawyer is allowed to act as litigation financier; should criminal and family law be excluded?; avoiding windfall profits and solicitation of cases; research shows; clients are often unwilling to pay an uplift; a group of lawyers is unwilling to gamble on their fee as a matter of principle; a lot of private clients don't ask for it;
- unpaid legal services. Concept: implicit understanding that client has no means to pay, but lawyer's services may result in funds becoming available;
- pro Bono Legal Services. Concept: explicit agreement that legal services are provided for free.

An overview of **public purse** concept was also given and the following was covered:

- legal Aid;
- avoiding Spending Money On Legal Services;
- Dutch Example: Rechtwijzer 1.0 and 2.0;
- avoiding Spending Money On Legal Services
- Dutch Example: Rechtwijzer 2.0:
  - the platform allows people to manage the process and desired outcome in their

own home, using their own words and at their own pace. This puts the user in control when working towards an effective solution that safeguards their interests;

- through the platform, people can learn about their legal options while receiving rich support for an interest-based dialogue between the people involved. When they need more than this, Rechtwijzer 2.0 provides mediation, adjudication, and a neutral review of all agreements;
- provides an Online Dispute Resolution for relational disputes by focusing on „empowerment instead of efficiency, interests instead of positions and putting people first instead of rules“.

## Section VI. Conclusion and considerations

The European Commission for the Efficiency of Justice (CEPEJ), Council of Europe’s Report on judicial systems of the Eastern European countries looks closely at the amounts spent by Eastern European countries on their judicial systems including Legal Aid. The Table which is extracted from this study (CEPEJ Studies N21) shows the comparative financial outlay for the year 2010 including the spend of a number of the countries involved in this working group.

States/entities	Total annual approved public budget allocated to all courts with neither prosecution nor legal aid	Total annual approved public budget allocated to legal aid	Total annual approved budget allocated to the public prosecution system	Total annual approved budget allocated to all courts and legal aid	Total annual approved budget allocated to all courts and public prosecution	Total annual approved budget allocated to all courts, public prosecution and legal aid
Armenia	11 285 536	294 140	4 496 722	11 579 676	15 782 258	16 076 398
Azerbaijan	40 315 230	345 054	40 007 281	40 660 284	80 322 511	80 667 565
Estonia	26 797 340	2 982 213	9 135 614	29 779 553	35 932 954	38 915 167
Georgia	16 214 854	1 080 548	7 333 463	17 295 402	23 548 317	24 628 865
Latvia	36 919 820	842 985	15 913 545	37 762 805	52 833 365	53 676 350
Lithuania	50 567 945	3 906 105	29 555 000	54 474 050	80 122 945	84 029 050
Russian Federation	2 912 743 823	105 836 124	934 551 021	3 018 579 947	3 847 294 844	3 953 130 968
Ukraine	264 262 150	NA	115 165 081	NA	379 427 231	NA

**Table on spend of eight Eastern European Countries taken from CEPEJ Study in 2010**

The CEPEJ Report notes the considerable differences in efficiency and quality indicators of these countries which are most often below European average. There are also some major differences between them and Azerbaijan, for example, had double the GDP of Armenia and Georgia. It will also be seen from the Table that at 2010, no clear amounts could be stated for Ukraine’s spend on Legal Aid. However, very much the same as our findings from this Working Group, the CEPEJ says that:

- “despite the particular historical, economic, social, political and cultural background of these States, the latter comply fully with their conventional commitments in the matter of justice... the countries of Eastern Europe show the most satisfactory outcomes as concerns the endeavours to reform their justice systems. Moreover, it is noteworthy that since recently, with regard to certain particular parameters, some of these States are very close to the Western European countries and even out run their results.”

In our snapshot, taken a few years later from the date of these figures and Report, we notice similarly the strong level of compliance with European and international norms for the provision of legal aid. Across the board there was a service in place of publicly funded legal aid for defending the accused in Criminal cases. There were also special arrangements for children and people with disabilities in most countries. There is not legislation in every country, but where there is no specific law all lawyers can take such cases. It is possible to learn from the legislative successes of others.

Organisation, funding, independence and selection for cases vary, but all have some system working. Even where regulation is fully in place, it is possible for some to find it unsatisfactory in performance. Once again it is possible to learn from other systems for securing independence in other countries, though political difficulties may not always assist. Republic of Moldova has a well-developed system for paralegal involvement which all might learn from. Pro bono work exists in most countries, but in general does not seem to be regulated. Armenia, Georgia and Republic of Moldova consider the current provision of legal aid appropriate to the demand. All should have compulsory continuing education for their legal aid lawyers. All should have an independent quality check including complying with ethical standards and obligation to accept cases, adequate response times and appropriate methods of delivering legal advice and assistance, continuity of representation, prohibition on charging fees, employment of appropriately qualified and experienced staff, personal supervision of, and support for, staff and appropriate training for staff, and liaising with the client's family or other relevant people. Most have reached these standards already and others can follow them. In all countries checks include responding timely and appropriately, gathering relevant information, determining vulnerabilities, checking legality of police etc. actions, advice before during and after interviews, making appropriate representations, ensuring representation and recording relevant information.

Civil and family law cases are in general covered where there are special needs or inadequate income or specific cases. Apart from Azerbaijan, all countries give some advice and assistance on civil matters, though Armenia and Republic of Moldova have income and capital criteria for eligibility, and Azerbaijan only provides court representation and no pre-trial advice and assistance. This work of civil legal aid advice and assistance is largely carried out by employed lawyers and the system for organizing is very similar to those for each country for crime.

Armenia, Georgia, Republic of Moldova and Ukraine have established Legal Aid bodies. There should be a guarantee of independence of all such bodies. Armenia, Georgia, Republic of Moldova and Ukraine have clear Regulations regarding the responsibilities of the legal aid body and arrangements for allocating funds, and reporting and monitoring of the work of the legal aid body. The legislation decides how legal aid is to be apportioned and also how the work is monitored. The legal aid body has responsibility for raising awareness in Georgia and the Ukraine and this is an item which might be followed elsewhere.

Alternatives to Legal Aid are **not** plentiful across all countries, although there are some good services of pro bono work both from Bar Associations and charitable donor organisations, and NGOs. Insurance should be considered for the future where possible as well as clinical legal education programmes and alternative approaches to the systems of lawyers and judicial decision making should be considered.

The Working Party participants suggested that a document might be produced as part of this group process which would elaborate recommendations for the provision and regulation of legal aid services in EaP countries. It was reported that such a document is under consideration at Strasbourg as part of another incentive.

Protection of the rights of lawyers and equality of arms/funds were also mentioned as items which needed special attention, perhaps in the manner suggested by the presentations above in Section 5. Quality control in general had been a recurrent item during the Workshop with questions about the use of Mystery Shoppers, standards of file management, communication with clients and feedback. Other participants were concerned about how to solve the problems of Conflict of Interests where there was one



service providing legal aid. There were suggestions to use civil society or not-for-profit organisations to assist where e.g. an institution of government was a litigant or where members of the same family were parties.

Professional liability insurance for lawyers was raised as an issue, an item which is regulated as essential in most European countries. And further questions were asked about methods for ensuring quality including lawyer responsibility, violations of ethical codes, training issues, enhancement and Peer Review which had been discussed and presented during the workshop. Information on the latter has been included in The Council of Europe cloud site covering the workshop.

A suggestion was made that clients might be asked to articulate in writing what they wanted from the Bureau in relation to their case. This might then be used as a measure of efficiency and as a guide to the lawyers involved.

Most important, it was said, was ensuring the independence of free legal aid- independent from the State and its institutions, independent also from control by the bar and carried out in the interests of clients and society.

In conclusion, the attention to international and European regulation is high among the countries present and in general there is full attention to appropriate standards, though not all countries have appropriate regulation. We look forward to legislation in each country and fuller attention to the independence and performance of all state funded organisations. Coming together in a Working Group has helped each country to evaluate its position and to see good working practices elsewhere in the region. Spending more time together and with outside informants would enhance attention to the more specific needs of each country. Moving forwards this should assist all to find methods and approaches to continue to raise their performance.

## Annex I. Programme of the Meeting 10-11 December 2015 and List of Participants

### First meetings of the three Working Groups for Regional Dialogue on Judicial Reform in EaP Countries

Supreme Court of Georgia, Tbilisi - 7-11 December 2015

#### WORKING GROUP C – LEGAL AID 10-11 DECEMBER PROVISIONAL PROGRAMME

Strasbourg, 27 November 2015

#### Topic to be examined:

Legal Aid schemes, with focus on:

- How to ensure the independence of legal aid financed lawyers
- Regulatory framework
- Alternative financing schemes of financing legal assistance

#### Items for discussion:

- Overview of relevant European and other international standards
- Overview of the situation in participating countries
- Identification of key challenges, possible solutions and ways in which a regional approach could contribute to tackling them

The meeting will be opened by Ms. Tea Tsulukiani, Minister of Justice of Georgia

#### Thursday 10 December 2015

14.00 – 15.45 10 mins	Welcome/opening
15 mins	A general introduction to the themes of the Workshop. <b>Avrom Sherr</b>
60 mins	<b>An introduction to issues related to independence of legal aid lawyers in Criminal Defence, the necessary Regulatory Framework which should enable criminal defence. Philip Whittaker</b> Contributions by participating countries and discussions
15.45 – 16.00	Coffee Break
16.45 – 17.30	<b>Discussion relating to both general issues and particularly the problems of Legal Aid for Criminal Defence.</b> Contributions by participating countries and discussions

**Friday 11 December 2015**

09.00 – 10.45 5-10 minutes	<p>Introduction of the themes for the day- <b><i>Avrom Sherr</i></b></p> <p><b>An introduction to issues related to independence of legal aid lawyers in Family and Children work, the necessary Regulatory Framework which should lie behind and enable family and children cases and any alternative schemes for financing family and children cases. The distinction between private and public children cases. Involvement of children and separate representation issues. <i>Peter Whitfield</i></b></p> <p>Contributions by participating countries and discussions</p>
10.45 – 11.00	Coffee Break
11.00 – 12.30	<p><b>A consideration of issues relating to other types of civil cases, including Housing and Homelessness, Immigration and Asylum, Welfare Benefits, Mental Health, Employment and Dismissal. <i>Peter Whitfield, Avrom Sherr and Matthias Killian</i></b></p> <p>Contributions by participating countries and discussions</p>
12.30 – 14.00	Lunch Break
14.00 – 15.30	<p><b>Alternative means of financing and organising legal aid cases, particularly civil law cases including also family; ensuring independence in such cases and regulating systems for handling these. <i>Matthias Killian</i></b></p> <p>Contributions by participating countries and discussions</p>
15.30 – 15.45	Coffee Break
15.45 – 17.00	<p>...</p> <p>Conclusions and way forward. <b><i>The team</i></b></p>

**First meetings of the three Working Groups for Regional Dialogue on Judicial Reform in  
EaP Countries**

**Supreme Court of Georgia, Tbilisi  
7-11 December 2015**

**WORKING GROUP C – LEGAL AID  
10-11 DECEMBER**

**List of Participants**

Strasbourg, 3December 2015

**The meetings will be opened by:**

- Ms Tea Tsulukiani, Minister of Justice of Georgia
- Mr Christian Urse, Head of Office, Council of Europe Office in Tbilisi
- Mr Stephen Stork, Deputy Head of Operations Section, EU Delegation to Georgia

**Chair**

- Ms Sophio Gelashvili, Head of Unit, Legal Co-operation Division, Council of Europe

**International expert/facilitator**

- Prof Avrom Sherr, Institute of Advanced Legal Studies, University of London

**Members of the Regional Steering Committee for regional dialogue on judicial reform**

- |   |                       |   |
|---|-----------------------|---|
| 1 | Mr Artur Hovhannisyan | First Deputy Chairman of the Chamber of Advocates of Armenia  |
| 2 | Ms Gulnar Gurbanova   | Member of the Azerbaijan Bar Association  |
| 3 | Mr Zaza Khatiashvili  | Chairman of Georgian Bar Association  |
| 4 | Mr Alexandre Tsuladze | Head of the Department of International Co-operation and Quality Management of the High Council of Justice of Georgia   |
| 5 | Ms Tamar Zubashvili   | Head of the Strategic Development Division, Department of Prosecutorial Activities, Supervision and Strategic Development of the Prosecutor's Office of Georgia |
| 6 | Mr Valentyn Gvozdiy   | Deputy Head of the Ukrainian National Bar Association and the Bar Council of Ukraine  |

**Additional participants**

- Prof Matthias Kilian, Hans-Soldan-Professor for Private Law, Business Law, Procedural Law and Law of the Legal Profession at the University of Cologne (ILAG)
- Mr Philip Whittaker, lawyer, Expert in quality analysis of legal aid work in England (criminal law)
- Mr Peter Whitfield, Lawyer and judge, Expert in quality analysis of legal aid work in England (family law)
- Ms NatiaMezvrishvili, Head of the Department of Prosecutorial Activities, Supervision and Strategic Development of the Prosecutor's Office of Georgia
- Mr KakhaberSopromadze, Member of the High Council of Justice of Georgia

- Mr FarhadNajafov, Deputy Chairman of Azerbaijan Law Reform Centre (ALRC)
- Ms ZamiraSaidova, Legal Exert in the Department of Criminal Justice, Centre of Policy and Legal Reform, Ukraine
- Ms Ani Aghagulyan, Human Rights Advocate, NGO "Protection of rights without borders – Armenia
- Mr Aram Orbelyan, Senior Partner, Attorney at Concern Dialog law firm and founding member of International and Comparative Law Center NGO – Armenia
- Mr Gia Gvilava, Projects Manager, Transparency International Georgia
- Ms Nino Elbakidze, NGO Article 42 of the Constitution – Georgia

**Rapporteur**

- Ms Rita Marascalchi, Project Co-ordinator, Legal Co-operation Division, Council of Europe

## Annex II. Useful References on International Standards for Legal Aid

The Johannesburg Declaration on the Implementation of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

14.07.2014 International Standards

United Nations Convention on the Rights of the Child, which contains Article 40, covering juvenile justice

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