



ANALYSIS

of draft Law of Ukraine no. 5107 “On amendments to several legislative acts of Ukraine on simplifying access to and improving the quality of free legal aid”

April 2021

The analysis is provided in the framework of the Council of Europe Project “Support for judicial institutions and processes to strengthen access to justice in Ukraine”

Introduction

1. By letter of 15 March 2021, the Chair of the Verkhovna Rada of Ukraine Committee on Legal Policy, Mr Kostin, requested an analysis of draft law no. 5107 “On amendments to several legislative acts of Ukraine on simplifying access to and improving the quality of free legal aid” (hereafter – “**the draft Law**”).

2. The analysis is prepared by the international consultant Mr Oleksandr Ovchynnykov¹ in the framework of activities of the Council of Europe Project “Support for judicial institutions and processes to strengthen access to justice in Ukraine” (hereinafter – “**the Project**”).

3. On 22 April 2021, the consultant took part in online consultations with representatives of the Ministry of Justice of Ukraine, the Coordination Centre for Free Legal Aid, the Ukrainian National Bar Association (hereafter – “**the UNBA**”) and members of Parliament from the Parliamentary Committee on Legal Policy.

4. During the above-mentioned meetings, a position of each stakeholder in relation to the draft Law was discussed.

5. The draft Law was elaborated by the Ministry of Justice of Ukraine. On 19 February 2021, the draft Law was submitted to the Verhovna Rada² by the Cabinet of Ministers of Ukraine³.

6. The draft Law envisages amendments to the current Law on Free Legal Aid and to two others legislative acts (Civil Procedure Code and the Law on Psychiatric Assistance).

7. The explanatory note to the draft Law recalls that the system of free legal aid operates in Ukraine since 2013. It is funded from the State budget. The explanatory note provides the following arguments to support the need for the improvement of the current system:

- The present law does not set out a procedure for obtaining free legal aid (treatment of applications, taking decisions).
- Under the present law, minors aged between 14 and 18 years are excluded from the “secondary” free legal aid. At the same time, the Ukrainian legislation allows such minors to act in certain types of judicial proceedings.
- The above shortcoming also applies to incapacitated and partially incapacitated persons.
- At present, legal representatives of minors or of incapacitated/partially incapacitated persons do not always act in good faith and fail to submit requests in the best interests of such persons.
- Certain issues relating to the mandatory participation of lawyers in proceedings on incapacity issues, on psychiatric treatments or the treatment of tuberculosis are currently not regulated.
- The current version of the Law on Free Legal Aid does not regulate the issue of the involvement of interpreters in the “secondary” free legal aid.

¹ Mr Oleksandr Ovchynnykov is a lawyer in the Strasbourg Bar and an international consultant of the Council of Europe.

² The Verhovna Rada is the Parliament of Ukraine. Both spellings may be used throughout the text with the same meaning.

³ According to the information indicated on the Verhovna Rada’s website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71159

- The Law of Ukraine “On the prevention of human trafficking” provides that the victim shall have the right, among other things, to free legal aid. Despite this, the Law on Free Legal Aid does not envisage such a category of beneficiaries.
- The assessment of the quality of lawyers’ work needs to be improved, which is confirmed by various reports of the Council of Europe.

8. The aim of the current analysis is to provide assessment of the proposed amendments in the light of the Council of Europe standards.

9. The standards on the provision by the states of free legal aid are to be found in:

- I. Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law and explanatory memorandum⁴;
- II. Resolution (78)8 of the Committee of Ministers on legal aid and advice⁵;
- III. Recommendation of the Committee of Ministers to the member States No. R(2000)21 on the freedom of exercise of the profession of lawyer⁶.

10. In addition to the documents detailed above, the standards of the Council of Europe on legal aid provision can be found in several other sources, most notably in the case-law of the European Court of Human Rights⁷.

11. It should be noted that the Council of Europe standards in connection with the provision of free legal aid do not impose on the member States any particular model. The member States enjoy a large margin of appreciation as to the particular form of free legal aid system.

12. Nevertheless, the above-mentioned standards set out general principles which should govern the provision of free legal aid. Among those principles are, in particular, the accessibility, the effectiveness and the sustainability of free legal aid. In addition, the standards require that free legal aid is provided in a non-discriminatory manner.

13. The quality of free legal aid is another essential principle.

14. The standards also require that the member States use various tools to collect data on legal aid systems, including surveys, focus groups, complaints mechanisms, lawyer self-assessments and case-management systems.

15. The consultant was provided with the Ukrainian version of the draft Law and of the explanatory note detailing the reasons for the adoption of the new law and summarising its content⁸. The draft Law was also presented in a comparative table detailing the present text and the proposed amendments.

⁴ Adopted on 31 March 2021.

⁵ Adopted on 2 March 1978.

⁶ Adopted on 25 October 2000.

⁷ The most general principles relating to the provision of free legal aid in civil and administrative cases can be found in the following judgments of the European Court: *Airey v. Ireland* (appl. No. 6289/73, judgment of 9 October 1979); *Steel and Morris v. the United Kingdom* (appl. No. 68416/01, judgment of 15 February 2005); *Gnahoré v. France* (appl. No. 40031/98, judgment of 19 September 2000); *Essaadi v. France* (appl. No. 49384/99, judgment of 26 February 2002); *Bakan v. Turkey* (appl. No. 50939/99, judgment of 12 June 2007); *Santambrogio v. Italy* (appl. No. 61945/00, judgment of 21 September 2004); *Tabor v. Poland* (appl. No. 12825/02, judgment of 27 June 2006); *Granos Organicos Nacionales S.A. v. Germany* (appl. No. 19508/07, judgment of 22 March 2012).

⁸ The consultant confirms that he is fluent in Ukrainian.

General comments

16. The draft Law does not modify the organisational system of free legal aid.

17. The changes which are proposed concern mainly the procedure for the examination of applications for free legal aid, the powers and obligations of the free legal aid centres and of the beneficiaries of free legal aid.

18. 20 out of the 28 commented Articles of the draft Law, or 72% of the total, do not require any comment and can be regarded as fully compliant with the Council of Europe standards.

19. The majority of comments regarding the remaining Articles concern minor and editing aspects of the draft Law.

20. Certain Articles of the draft Law, however, require careful examination as they might raise concerns as to their full compliance with the existing standards. This concerns the following Articles: **6-2** ("Assessment of the quality of the provision of free legal aid"), **10** ("Examination of the application for granting free legal aid"), **14** ("Persons eligible for the "secondary" legal aid provision") and **18** ("Procedure for application to be granted the "secondary" free legal aid"). The comments to these Articles are provided further in this analysis.

Comments on specific Articles

Amendments to the Civil Procedure Code

Article 62. Documents confirming the lawyer's powers.

21. The proposed amendments extend the list of documents which confirm the lawyer's powers to represent clients in the court proceedings. In addition to the existing two (the power of attorney or the "order"), the draft Law adds one more: the power of attorney issued by the authority empowered by law to provide free legal aid. The explanatory note to the draft Law states that this amendment is intended to regulate the issue of the powers of lawyers in certain specific proceedings (relating to incapacity, psychiatric or tuberculosis treatments).

22. It is observed that the current version of the Law on Free Legal Aid provides (Article 17 § 8) that the free legal aid centres issue powers of attorney for lawyers, in particular to act in the court proceedings. Accordingly, the proposed amendment simply transposes the existing provision in the Civil Procedure Code. This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.

Article 293. Special proceedings

23. The proposed amendment completes the existing Article 293 with a new paragraph 5. It provides that in cases of the mandatory participation of a lawyer (reference being made to the proceedings relating to incapacity, psychiatric or tuberculosis treatments), the court shall (if the person has not instructed a lawyer to represent him or her) engage a lawyer through free legal aid centre.

24. This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.

Article 299. Examination of cases

25. The proposed amendment adds a specific reference to the mandatory participation of a lawyer in the proceedings relating to incapacity.

26. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Article 341. Examination of the case

27. The proposed amendment adds a specific reference to the mandatory participation of a lawyer in the proceedings relating to compulsory psychiatric treatment.

28. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Article 345. Examination of the case

29. The proposed amendment adds a specific reference to the mandatory participation of a lawyer in the proceedings relating to compulsory treatment for tuberculosis.

30. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Amendments to the law on psychiatric assistance

Article 22. Procedure for the examination of cases relating to the compulsory psychiatric treatment

31. The proposed amendment adds a specific reference to the mandatory participation of a lawyer in the proceedings relating to compulsory psychiatric treatment.

32. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Amendments to the Law on Free Legal Aid

Change of the name of the law

33. The draft Law proposes to replace the name of the law as regards “free **legal**⁹ aid” and to align it with the term used in the Constitution.

Recommendation

34. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards. It is observed, however, that during the discussions with the representatives of the UNBA it emerged that the use of the new term was not supported by them. The reason for this was the fact that, according to the UNBA, the new term relates to the kind of legal aid which can only be provided by advocates.*

Article 1. Definition of the terms

35. The draft Law proposes two amendments to this Article. The first amendment, concerning paragraph 2, relates to the exclusion from the list of the legal representatives the “patronage educators”, as recommended by the Ministry of Social Policy. The second amendment provides, in a new paragraph 5, the definition of raising of legal awareness among the public.

36. *The above amendments do not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Article 6-2. Assessment of the quality of the provision of free legal aid

⁹ There are two close synonyms in Ukrainian to designate legal aid.

37. This amendment proposes to introduce a new Article to the Law on Free Legal Aid in force. It is indicated in the explanatory notice that this is done with a view to implementing the decree of the President No. 837 of 8 November 2019 on immediate measures to reinforce the state as regards the regulation of the quality of free legal aid using the “peer review” method. The assessment concerns only the “secondary” free legal aid. The amendment proposes to establish a Commission tasked with independent assessment. It is envisaged by this amendment that the composition of the Commission, its rules of procedure and all other details of its functioning shall be approved by the Ministry of Justice. It is also envisaged that the Free Legal Aid Coordination Centre shall have certain powers in the new system, in particular as regards the determination of the mechanisms of the assessment and the further monitoring of its implementation.

Recommendation

38. *It should be recalled at the outset that the Council of Europe standards envisage the possibility of assessment of the quality of free legal aid. The above-mentioned Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law indicate that:*

“Mechanisms and measures should be in place to ensure the quality of legal aid schemes, both in terms of their general functioning and, more importantly, in terms of the legal services delivered by legal aid providers” (§ 7). (...) “Consideration should be given, in particular, to the following mechanisms and measures, all of which should be implemented with full respect for the principles of professional independence (of all legal aid providers) and legal advice privilege:

(...)

- the use of quality assessment tools such as client satisfaction surveys **and peer reviews by other legal aid providers, based on objective sets of criteria and/or rating systems**, and carried out by either an independent body or by individuals (for example, fellow lawyers) (...)” (§ 9).

The Guidelines also indicate that

“In designing mechanisms for legal aid delivery and possible changes to them, consideration should be given to the needs of and difficulties faced by potential users of the legal service; consulting users as to whether the legal aid scheme as designed meets their needs is likely to produce a more resilient and effective overall structure” (§ 8).

In light of the above considerations, it is observed, firstly, that it is not apparent from the draft Law or its explanatory note what difficulties might have been reported in connection with the quality of free legal aid provided by lawyers¹⁰. However, being aware of those difficulties might be useful in order to determine the most suitable form of the quality assessment. Secondly, as the draft Law provides that all the details regarding the functioning of the assessment mechanism are to be defined by a separate enactment of the Ministry of Justice, it is difficult to evaluate the compliance of the assessment mechanism with the Council of Europe standards. Thirdly, it is observed that the whole procedure of the Commission’s functioning is to be defined by the Government (the Ministry of Justice). The draft Law does not appear to suggest that the UNBA is to be somehow involved in this process. This might be a source of concern. Fourthly, it is observed that the provision of the “primary” legal aid appears to escape

¹⁰ The decree of the President of 8 November 2019 does not provide any additional detail in this regard either: <https://www.president.gov.ua/documents/8372019-30389>.

from the quality assessment. This also might be a source of concern as in practice the “primary” legal advice might be determinant for the subsequent proceedings.

In the course of the consultations held on 22 April 2021 with the relevant Ukrainian stakeholders it appeared that this provision was the most controversial. The position of each stakeholder can be summarised as follows:

- **Ministry of Justice / Coordination Centre:** full support.

The representatives of the Ministry of Justice and of the Coordination Centre emphasised that the purpose of the new evaluation system was not to “punish” individual advocates but to ensure the quality of the free legal aid paid from the State budget.

- **UNBA:** full rejection.

The representatives of the UNBA noted at the outset that the proposed draft Law was absolutely unacceptable. They noted that it was drafted without due consideration for the independence of lawyers. They further observed that the provision relating to the assessment of the quality of free legal aid was unacceptable in principle, in particular because no statistical information had been provided in the explanatory notices as to the scale of the “quality problem” and the corresponding need to improve it. They also regretted that the UNBA was not consulted in connection with the draft Law.

The consultant was also able to examine various decisions and statements of the UNBA voicing strong disagreement with the draft Law¹¹.

- **Parliamentary Committee on Legal Policy:** cautious support.

As the meeting with the Parliamentary Committee was held after the discussions with the other stakeholders, the consultant exposed to them first the positions of the latter in connection with the draft in general and this provision in particular. The representatives of the committee noted at the outset that it was composed mainly (approximately 80%) by former advocates. Therefore, they were fully aware of the UNBA’s concerns. They further noted, however, that as a matter of State policy the new assessment system should not be opposed in principle. They observed nevertheless that the lack of sufficient details about the system’s functioning in the draft Law was to be regretted.

It is not the purpose of the present analysis to determine whether or not the Ukrainian authorities should introduce the assessment mechanism. As noted above, such mechanisms are fully compliant with the existing standards of the Council of Europe.

However, as already noted, the draft Law does not contain sufficient information about the envisaged assessment system, which makes it difficult, if at all possible, to ascertain its compliance with the Council of Europe standards.

Having regard to the principles of professional independence (of all legal aid providers) and legal advice privilege the Ukrainian authorities should include in the draft Law at least the most essential features of the envisaged evaluation system. They might also wish to study the relevant experience of other Council of Europe member States in this field. It can also be recommended that the UNBA is involved in the discussions about the envisaged system.

¹¹ In particular: Decision No. 33 of the Council of Advocates of the UNBA (https://unba.org.ua/assets/uploads/legislation/rishennya/2021-03-31-r-shennya-rau-33_60816feb1345d.pdf), in Ukrainian); statement of 1 April 2021 (<https://unba.org.ua/news/print/6443-naau-zaklikae-vr-vidpraviti-na-doopracyuvannya-zakonoproekti-shodo-sproshennya-dostupu-do-bpd.html>), in Ukrainian).

Article 7. Definition of the “primary” legal aid

39. This amendment contains two elements. The first concerns the replacement of the former “legal” term by the new one. The second concerns the deletion of paragraph 3-1 of this Article which provided that the “primary” legal aid covers the consultations and other legal work in connection with the use of land plots by the inhabitants of villages. It is explained that this deletion is warranted by the fact that the same provision is already contained in another part of the law.

40. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Article 9. Persons (subjects) of the “primary” legal aid

41. This amendment broadens the list of subjects that could provide legal aid. In addition to lawyers, the amendment envisages that free legal aid might be provided by:

- (i) special institutions established by the local authorities;
- (ii) private companies whose purpose includes the possibility to provide “primarily” legal aid, and
- (iii) “other specialists in law”.

Recommendation

42. *This amendment does not appear to be incompatible with the existing standards as such. Additional clarifications would, however, be useful as to the definition of “other specialists in law”. Similarly, it is not fully clear from the proposed amendment what the composition and functioning of “special institutions established by the local authorities” is supposed to be.*

Article 10. Examination of the application for free legal aid

43. This amendment opens the possibility to lodge an application for the provision of free legal aid by children and incapacitated persons in person. The amendment also envisages that the “patronage educators” shall have the right to request the “secondary” free legal aid in the name of the persons they are in charge of.

Recommendation

44. *This amendment raises a serious issue as to the usefulness in practice of the proposed model. It might happen in practice that the apparent simplification turns out to be an additional complication. As the children and incapacitated persons are by definition vulnerable and probably unaware of the mechanisms of free legal aid, additional safeguards might be envisaged with a view to rendering the exercise of this right effective. In this context, the reflection on the potential role of state services for the protection of children or incapacitated persons, or specifically dedicated associations, might be recommended. It emerged from the discussions of 22 April 2021 that it would be useful to envisage additional safeguards for the effective implementation of this provision.*

Article 11-1. Procedure for the provision of the “primary” legal aid by the free legal aid centres

45. The proposed amendment sets out the procedure for the examination of applications for granting the “primary” legal aid. It specifically envisages the obligation of the centre to provide all the necessary information about the procedure for applying for the “secondary” legal aid in cases when such aid is required in place of the “primary” one.

46. *This amendment does not warrant any comments and can be regarded as fully compliant with the Council of Europe standards.*

Article 12. Provision of free legal aid by specialised institutions and other subjects upon request by the local authorities

47. The Law on Free Legal Aid currently in force already contains the provision according to which the local authorities have the right to engage “lawyers or other specialists in law” to provide free legal aid. The proposed amendment does not modify this right. It gives the Ministry of Justice the right to determine the procedure and the criteria for the implementation of this right by the local authorities.

Recommendation

48. *It does not transpire from the explanatory note to the draft Law what the current situation is concerning the application of this provision. If there are certain difficulties the local authorities face with the exercise of this right, this is not reflected in the justification of this proposal. Accordingly, it is difficult to assess the potential impact of this amendment. Neither is it clear what will happen with the agreements the local authorities might have concluded with the providers in the past: will they need to be renegotiated? Even though this amendment does not appear to raise any particular issue under the Council of Europe standards as such, the rationale for its introduction might need additional clarification.*

Article 14. Persons eligible for the “secondary” legal aid

49. The proposed amendment broadens the list of beneficiaries of the “secondary” free legal aid and specifies the types of free legal aid available for certain categories of beneficiaries. As a novelty, the new version of Article 14 provides that the right to benefit from free legal aid for certain beneficiaries is extinguished after it has been used 6 times during the budgetary year.

Recommendation

50. *It is fully compliant and even required by the Council of Europe standards that vulnerable persons benefit from free legal aid. The States also certainly enjoy a wide margin of appreciation as to the precise list of such persons. Overall, the proposed amendment does not raise any comment.*

As regards, however, the extinguishing of the right to free legal aid after it has been used 6 times during the budgetary year, it can be understood that the purpose of this provision is to prevent abusive applications and, more generally, to ensure that the beneficiaries have recourse to free legal aid only in cases of real need. That being said, as the provision is worded now, it leaves the centres’ staff with no option but to dismiss the seventh application on purely formal grounds. This might not be justified in certain exceptional cases. As an alternative, paragraph 4 of Article 14 might contain the following sentence opening the possibility to grant the legal aid nevertheless (for instance: “In exceptional cases, free legal aid centres might grant free legal aid even though the right to it had been extinguished, in view of the particular situation of the applicant or the interests of justice”). It is also possible to provide for a particular procedure in such cases (approval by the Coordination Centre, detailed written reasoning of the decision, etc.). (See also the comment under Article 20 below).

Article 16. Free legal aid centres

51. The amendment is of a technical nature. It contains only terminological changes in order to make uniform use of the language throughout the text of the law.

52. *The proposed amendment does not raise any comment.*

Article 17. Powers of the free legal aid centres

53. The proposed amendment broadens the list of powers of the centres (providing the “primary” legal aid and the raising awareness about the law). It also provides the centres with the right to conclude agreements with the lawyers who are included in a special register eligible to provide free legal aid. The amendment also provides that the centres shall have certain mediation functions with regard to the reinsertion of minor offenders.

54. *The proposed amendment does not raise any comment.*

Article 18. Procedure for obtaining the “secondary” free legal aid

55. The amendment is supposed to facilitate the application procedure by introducing the possibility to lodge an application through electronic means. In addition, the amendment envisages the possibility to lodge an application by minors aged 14 and incapacitated or partially incapacitated persons.

Recommendation

56. *As noted above, the minor aged 14 might not be fully aware of the procedure for lodging an application for free legal aid. The proposed amendment envisages the possibility according to which such an application might be lodged **also** by the legal representatives of the minor or the “patronage educators”. However, such a model might not offer sufficient protection in regards to the minors as no mandatory intervention of the minor protection service or the dedicated association is envisaged. The same applies to incapacitated or partially incapacitated persons. Finally, as regards those incapacitated or partially incapacitated persons who are involuntarily held in specialised institutions, no mechanism for lodging applications appears to be envisaged by the draft Law (by contrast, for instance, with the prisoners). The provisions of decision of the Constitutional Court of Ukraine no. 8-r/2018 of 11.10.2021 regarding the constitutional right of incapacitated persons to apply to state authorities to defend their rights should also be taken into account. It emerged from the discussions of 22 April 2021 that it would be useful to envisage additional safeguards for the effective implementation of this provision.*

57. *According to Article 18 of the draft Law as amended the request for free legal aid should be in written form with copies of documents certified as required by law proving eligibility to obtain services. Moreover, if a request is lodged by electronic means electronic signature is required. Taking into account the vulnerability of children and incapacitated or partially incapacitated persons, it is highly doubtful that they can comply with these formal requirements. Obviously, some simplified procedure should be envisaged for the children and incapacitated persons who wish to apply for the free legal aid personally.*

58. *Free legal aid should be available to every individual without discrimination. It means that children aged 14 who are held in orphanages also have the right to obtain free legal aid on equal grounds. However, no specific mechanisms to ensure access of such children, who are completely under the control of the respective authorities, is envisaged.*

Article 19. Procedure for obtaining the “secondary” free legal aid

59. The proposed amendment details the procedure for the examination of applications for obtaining the “secondary” free legal aid. As a novelty compared with the current version of the law, the amendment provides that the centres shall have the right to engage interpreters.

60. *The proposed amendment does not raise any comment.*

Article 20. Grounds for the refusal to grant the “secondary” free legal aid

61. Except minor terminological revision, the new Article 20 contains one additional ground for the refusal to grant free legal aid, namely the exhaustion of the right to benefit from free legal aid. Article 20 also provides that the legal aid application can be refused if the applicant's claims are "unlawful".

Recommendation

62. *The draft Law does not allow the free legal centres' staff to refuse an application which is manifestly ill-founded. It appears that the existing ground for refusal "unlawful" does not concern the applications relating to the claims deprived of any chance of success, abusive or vexatious claims. It appears also the authors of the draft Law de-facto acknowledge that there is a problem of such abusive applications.*

In this context, it is recalled that the Council of Europe standards specifically recommend the existence of merits testing schemes. The Guidelines of 31 March 2021 indicate that:

"With a view to contributing to robust and financially sound legal aid schemes, procedures for testing an applicant's means and the likelihood of a successful outcome of the legal proceedings should be in place". (§ 10).

It appears that granting the free legal centres' staff the power to refuse manifestly ill-founded or abusive applications in the first instance would be more in line with the Council of Europe standards. The existence of an appeal against the decision to reuse free legal aid appears to constitute a sufficient safeguard against the illegal decisions. Instead, the proposed system would de-facto allow 6 abusive applications.

This issue was also discussed with the relevant stakeholders on 22 April 2021. However, no conclusive opinion emerged. Each interlocutor indicated that the issue was complex and necessitated further research.

Article 21. Provision of free legal aid (organisational issues)

63. The proposed amendment provides that free legal aid centres conclude agreements only with the lawyers included in a special register. The amendment also lists the specification of documents which confirm the powers of the centres' staff to act in the interests of the free legal aid beneficiaries.

64. *The proposed amendment does not raise any comments.*

(Former) Article 22. Provision of the "secondary" free legal aid on the basis of an agreement

65. The proposal to delete Article 22 is explained by the fact that the provision of free legal aid on the basis of an agreement is regulated by the new version of Article 21.

66. *The proposed amendment does not raise any comments.*

Article 23. Grounds and procedure for the termination of free legal aid

67. The amendment expands the grounds for the termination of free legal aid. It provides that the termination shall occur in case of the abuse of right (an opinion confirming this should be drafted by the lawyer or the centre's representative). The amendment also provides that free legal aid shall be terminated when the person "had used all the available domestic remedies in the case". This ground for the termination is also envisaged in the current version of the law. However, unlike Article 20 – "Grounds for the refusal to grant free legal aid" – Article 23 (in both current and the proposed version) does not envisage that a written explanation

concerning the application to an international body is given together with the termination decision.

Recommendation

68. *The proposed amendment does not raise any comments. However, additional explanation as to the absence of a written explanation required in Article 20 but not required in Article 23 would be useful in order to achieve coherency of the law.*

Article 25. Rights of the subjects providing the “secondary” free legal aid

69. The amendment contains only terminological and technical modifications aligning it with other new provisions of the law.

70. *The proposed amendment does not raise any comments.*

Article 26. Obligations of the subjects providing the “secondary” free legal aid

71. The amendment contains only terminological and technical modifications aligning it with other new provisions of the law.

72. *The proposed amendment does not raise any comments.*

Article 26-1 (new). Rights and obligations of the beneficiaries of the “secondary” free legal aid

73. The proposed amendment sets out a list of rights and obligations of the beneficiaries of free legal aid. One of the obligations of the beneficiaries is defined as “*to comply with the generally accepted rules of behaviour and communication*”.

Recommendation

74. *The proposed list of the rights and obligations appears to be fully in line with the nature and the purpose of free legal aid. However, the obligation of the beneficiaries “to comply with the generally accepted rules of behaviour and communication” might appear to suggest that there is a serious problem in that regard warranting regulation at the legislative level, which is probably not the case.*

Article 27. The powers of the Cabinet of Ministers

75. The amendment details and expands the list of powers of the Cabinet of Ministers in connection with the regulation of free legal aid, including the financing of it.

76. *The proposed amendment does not raise any comments.*

Article 28. The powers of the Ministry of Justice

77. The amendment details and expands the list of powers of the Ministry of Justice in connection with the regulation of free legal aid, including the elaboration of various methodological and model regulations.

78. *The proposed amendment does not raise any comments.*

Article 29. Funding of free legal aid

79. The amendment proposes only technical changes aligning this Article with the other provisions of the law.

80. *The proposed amendment does not raise any comments.*

Summary of the conclusions and recommendations

81. As noted above, the present draft Law appears to be fully compliant with the Council of Europe standards in several aspects which are of organisational and technical nature. Thus, the following amendments do not raise any issue in terms of compliance:

- To the Civil Procedure Code;
- To the law on psychiatric assistance;
- To Articles **1, 7, 11-1, 16, 17, 19, 21**, (former) **22, 25, 26, 26-1 (new), 27, 28** and **29**.

82. Certain amendments appear to require clarifications as regards the practical impact of their introduction (Articles **9, 12, 20, 23**).

83. The Ukrainian authorities could consider an opportunity to implement the mechanism of a case viability assessment before deciding on the provision of free legal aid. In such a case, the law should provide a clear and transparent criteria for assessing such a viability. In addition, the law should contain provisions on a mechanism for appealing against a refusal to provide free legal aid in this regard. At the same time, the Ukrainian authorities could reconsider the provisions on the quantitative restriction of free legal aid.

84. The Ukrainian authorities should consider a more detailed description in the draft law of the proposed system for assessing the quality of free legal aid. In particular, clarify whether such a system is planned to operate on the basis of relevant complaints from users of free legal aid, or on the basis of other principles (for example, using the method of random checks on the quality of legal services, even in the absence of complaints from users). Furthermore, in order to ensure the effectiveness of the assessment system, the Ukrainian authorities may be recommended to study the relevant experience of those Council of Europe member states that have such quality assessment systems.

85. It is necessary to consider the potential role of state services for the protection of children or incapacitated persons, or specifically dedicated associations during the procedure of rendering of the free legal aid services to children and incapacitated persons.

86. The draft Law does not envisages any mechanism for the lodging of applications by the incapacitated or partially incapacitated persons who are involuntarily held in specialised institutions (by contrast, for instance, with the prisoners). The proper mechanisms should be envisaged in the draft Law with due regard to their status.

87. It is necessary to consider a possibility to simplify for children and incapacitated or partially incapacitated persons the procedure of application for the free legal aid by electronic means. For instance, the procedure of applying without digital signature.

88. Free legal aid should be available to every individual without discrimination. It means that children aged 14 who are held in orphanages also have the right to obtain free legal aid on equal grounds. Accordingly, the draft Law should envisage a procedure enabling such children to have access to free legal aid services with due regard to their status.