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Civil legal aid schemes in Council of Europe member states

Comparative analysis of existing data

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List of abbreviations

CEPEJ	– European Commission for the Efficiency of Justice
ECHR	– European Convention on Human Rights
ILAG	– International Legal Aid Group
NGO	– non-governmental organizations
UK	– the United Kingdom of Great Britain and Northern Ireland
UN	– the United Nations

Summary

i. The report is aimed at providing an overview of civil legal aid systems in Council of Europe (hereinafter - "CoE") member states. The report does not cover issues related to state-funded legal aid systems on criminal, immigration and administrative matters.

ii. First section of the report reiterates relevant European Court of Human Rights (hereinafter - "ECtHR") case-law and CoE standards concerning civil legal aid. The second section describes the variety of civil legal aid systems in Europe, reviews eligibility criteria, subject-matter coverage and types of services provided, and assesses practical availability of state-funded legal services. It also provides comparative data on funding and organisation of civil legal aid. Third section overviews the recent civil legal aid reforms and outlines their main trends.

iii. Fourth part of the report analyzes trends and factors influencing civil legal aid systems. In particular, it describes problems related to financial constraints and analyzes factors which increase costs of state-funded legal services and demand for such services. This section also analyzes influence of digital technologies on legal aid, describes benefits and opportunities brought by technological advancement as well as limitations and risks associated with digitalization of legal aid. Fourth section of the report also denotes alternative sources of legal assistance which help to reduce pressure on state-funded legal aid programs. Last section of the report outlines promising approaches to organization of legal aid and access to justice: creation of legal aid quality assurance mechanisms, development of first-line legal aid and broad access-to-justice strategies going beyond legal aid reforms.

iv. The report is based on desk research. It summarizes results of comparative and empirical studies examining legal aid systems, publications describing civil legal aid in a number of countries, expert opinions and other materials. Availability of information on legal aid systems in different European countries varies significantly. While plenty of publications address history and current state of legal aid systems in Finland, the Netherlands and the UK, less information is available on legal aid developments in other countries. Due to these limitations, the report does not provide equal representation of legal aid systems in each member state. At the same time, existing information is sufficient to provide general overview of the European legal aid systems and to identify main trends in the field of civil legal aid.

I. Relevant Council of Europe standards

1. Article 6 of the ECHR does not explicitly guarantee the right to legal aid in civil proceedings. However, according to ECtHR case-law, it compels state authorities to provide individuals with legal assistance when this proves indispensable for an effective access to court¹, or when lack of such assistance would deprive individual of a fair hearing².

2. The ECtHR has not identified specific areas of law or types of civil proceedings in which legal aid is required. The necessity of legal aid depends on the general criteria, including: the importance of what is at stake for the applicant³; the complexity of the case⁴; the applicant's capacity to represent him or herself effectively⁵; the existence of a statutory requirement to have legal representation⁶.

3. Even in the abovementioned circumstances access to legal aid may be conditional on litigant's financial situation and his or her prospects of success in the proceedings⁷. However, the ECtHR does not look at financial eligibility criteria in civil legal aid schemes as such. Rather it verifies whether the right of access to justice as a whole was ensured. This means that states enjoy broad discretion regarding eligibility criteria and types of disputes covered by their civil legal aid programs.

4. Assigning a lawyer to represent a party does not in itself guarantee an effective assistance⁸. Quality of assistance should not be so low as to deprive individuals of the practical and effective access to court⁹.

5. Article 6 of the ECHR does not guarantee the right to legal aid outside of judicial proceedings. However, the Committee of Ministers' (hereinafter - "CM") Resolution (78) 8 On Legal Aid and Advice recommends the member states to ensure that persons in an economically weak position are able to obtain necessary legal advice on civil, commercial, administrative, social or fiscal matters¹⁰. The CM Recommendation No. R (93) 1 On Effective Access to the Law and to Justice for the Very Poor invites the member states to promote legal services to the poor by defraying the cost of legal advice through legal aid schemes, by supporting advice centers in underprivileged areas, and by enabling NGOs or voluntary organizations providing support to the very poor, to give legal assistance.

¹ Airey v. Ireland, 9 October 1979, Series A no. 32. § 26

² *McVicar v. the United Kingdom*, 46311/99, ECHR 2002-III. § 48

³ *Steel and Morris v. the United Kingdom* 68416/01, ECHR 2005-II. § 61

⁴ Airey v. Ireland, 9 October 1979, Series A no. 32. § 24

⁵ *McVicar v. the United Kingdom*, 46311/99, ECHR 2002-III. §§ 48-64

⁶ *Gnahoré v. France*, 40031/98, ECHR 2000-IX. § 41

⁷ *Steel and Morris v. the United Kingdom* 68416/01, ECHR 2005-II. § 62

⁸ *Siałkowska v. Poland*, 8932/05, 22 March 2007, . §§ 110 and 116

⁹ *Staroszczyk v. Poland*, 59519/00, 22 March 2007 § 135

¹⁰ Resolution (78) 8 of the Committee of Ministers of the Council of Europe on legal aid and advice. Adopted by the Committee of Ministers on 2 March 1978

II. Variety of civil legal aid systems across Europe

6. Nowadays all CoE member states provide legal aid in civil cases¹¹, although the scope of legal aid programs varies substantially. This diversity reflects the variety of legal traditions existing in Europe, in particular, differences in dispute-resolution procedures, and different governmental policies.

Scope of legal aid programmes

7. Extra-judicial civil legal aid exists in less than a half of CoE member states¹². By contrast, in line with the ECtHR case law, all countries provide assistance in the form of legal representation in courts¹³, although availability of legal aid in judicial proceedings also differs from country to country due to differences in applicable eligibility criteria. For instance, in Belgium about 20% of the population are financially eligible for legal aid; in the Netherland about 36%; and in Scotland about 70%¹⁴.

8. Belgium, France, Germany¹⁵, and Italy¹⁶ provide assistance for all types of civil proceedings without limitations. However, majority of the member states exclude some matters and fields of law from the scope of civil legal aid. Subject-matters covered by legal aid programs vary significantly. In Russia, for instance, list of eligible court cases includes only housing and land disputes, cases related to alimonies, personal injury, children's rights, child adoption and guardianship, and some cases related to status of mentally ill persons. As regards other civil disputes, the state provides legal advice, but no representation before the courts¹⁷. By contrast, in Finland and the Netherlands representation is not provided only in simple family matters, some tax cases and court proceedings concerning small claims¹⁸.

9. Practical availability of legal aid in court proceedings may also depend on practices of state bodies which consider applications for state-funded legal assistance. For example, in Poland, law does not set financial eligibility criteria and does not exclude any type of cases from the scope legal aid. Courts may grant legal aid in any situation when professional legal assistance is essential for protecting a party's best interests and when costs of legal services would substantially effect financial well-being of the person concerned and his or her family¹⁹. Such flexible eligibility criteria may be both widely and narrowly interpreted. Apparently, in practice narrow interpretation prevails. According to expert estimations, in Poland legal aid is

¹¹ European judicial systems: efficiency and quality of justice, CEPEJ Report 2014 (2012 data), p.69 (hereinafter - CEPEJ Report 2014).

¹² Ibid.

¹³ Ibid.

¹⁴ Maurits Barendrecht, Laura Kistemaker, Henk Jan Scholten, Ruby Schrader, Marzena Wrzesinska, "Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice", 2014, p. 37 (hereinafter – "Legal Aid in Europe")

¹⁵ Ibid. p. 30

¹⁶ Latham & Watkins LLP for the Pro Bono Institute, "Pro Bono Practices and Opportunities in Italy", Excerpt from: "A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions", 2010, p. 2

¹⁷ Federal Law on Legal Aid N 324-FZ of 21 November 2011.

¹⁸ Legal Aid in Europe, p. 30.

¹⁹ "Comparative study of legal aid in England and Wales, Germany, Finland, France, Italy, Poland and Spain", Global Network for Public Interest Law (PILnet), 2015., unpublished (hereinafter – "PILnet research").

granted in only about 0.18% of non-criminal cases²⁰. In about 90% of cases parties remain unrepresented²¹.

10. Comparative studies reveal that there are more generous legal aid systems, covering wider spectrum of legal needs and providing assistance for more inhabitants. For instance, the Netherlands and Ireland grant legal aid in more than 1.000 cases per 100.000 inhabitants, while Malta, Romania, “the former Yugoslav Republic of Macedonia” and Turkey on less than 200 cases per 100.000 inhabitants²².

11. Apparently, countries with more generous legal aid schemes ensure better access to justice and compliance with fair trial requirements. Some studies show that countries with more extensive legal aid programs tend to have fewer violations of right to fair trial. For instance, in Germany, the Netherlands and the United Kingdom, where scope of civil legal aid is wider, number of article 6 of the ECHR violations per 100.000 inhabitants is less than in Poland, where legal aid is granted only in a limited number of civil cases²³. However, no comprehensive research on this matter is available.

Legal aid funding

12. Generous legal aid systems are associated with high expenses. England and Wales, Ireland, the Netherlands and Scotland were spending²⁴ and continue to spend on legal aid much more than other European countries per capita²⁵. Available statistical data demonstrates that legal aid expenditures per capita are lower in CoE member states with lower gross domestic product per capita²⁶. At the same time, there are deviations from this major pattern. For example, Portugal’s legal aid expenditures per capita are higher than of Austria, Italy and Spain, although its gross domestic product per capita is lower than in all the mentioned countries²⁷. It follows that less economically developed countries may be unable to maintain as comprehensive legal aid systems as more developed, although legal aid funding depends not only on financial capacities, but also on other factors including policies chosen by domestic authorities.

Organization of legal aid

13. Apart from the differences in scope and funding schemes, legal aid programs vary in organization of service delivery and governance²⁸. Organizational model of national legal aid system usually reflects specifics of legal market regulation, role and powers of organized legal profession, distribution of competencies between central government and local authorities and so on. There are no studies which compare effectiveness of different legal aid organization models in Europe. However, some researchers suggest that certain models of legal aid delivery, management and financing may be more efficient in comparison to others²⁹. Policy-makers prefer legal aid management schemes developed in certain countries. For example,

²⁰ “Pro Bono Practices and Opportunities in Poland”, Latham & Watkins LLP for the Pro Bono Institute, 2010, p.3.

²¹ Legal Aid in Europe, p. 37

²² CEPEJ Report 2014, p. 80

²³ Legal Aid in Europe, p. 63

²⁴ Ibid. p. 49.

²⁵ CEPEJ Report 2014, p. 75

²⁶ Ibid.

²⁷ Ibid.

²⁸ PILnet research

²⁹ PILnet research

legal aid quality assurance mechanisms used in England, Wales and Scotland were partially replicated in Finland, Northern Ireland, Moldova, the Netherlands, New Zealand and China³⁰. Finnish state legal aid offices, which provide legal assistance and coordinate the work of private lawyers providing free legal aid, inspired the Russian Ministry of Justice to create a network of state legal aid bureaus³¹. The Dutch online consultation service www.rechtwijzer.nl is considered to be an important innovation in the field of legal aid provision³². Further studies on organization and management of legal aid systems and exchange of best practices may help to improve legal aid systems across Europe.

III. Recent legal aid reforms

14. Comparative studies show that a number of CoE member states have recently implemented legal aid reforms or are currently planning to undertake such reforms³³. Governments modify eligibility criteria, legal aid delivery and management schemes, and introduce other changes. Scale and directions of reforms vary, although it is possible to identify three major reform trends.

Introduction and extension of civil legal aid

15. First trend is the development of legal aid programs, for instance, in Albania³⁴, Moldova³⁵, Russia³⁶ and Ukraine³⁷. Recent reforms resulted in creation of civil legal aid systems. Lithuania broadened the scope of legal aid and increased remuneration for legal aid lawyers³⁸. Reforms expanding provision of legal aid is more typical for countries where legal aid system did not previously exist or where it was recently introduced. At the same time, France, which has a long-standing tradition of civil legal aid, also expanded provision of state-funded legal services by raising financial eligibility threshold³⁹.

16. However, mentioned countries are in the minority. Increase of lawyers' fees as well as increase in a number of legal aid beneficiaries and amount of legal services provided inevitably

³⁰ Alan Paterson and Avrom Sherr, "Exporting quality", p. 6., Materials of the ILAG Conference 2015 (hereinafter – "Exporting quality")

³¹ Inga Zalutskaya, "Creation and the activity of state juridical bureaus", 2012

³² Roger Smith and Alan Paterson, "Face to Face Legal Services and Their Alternatives: Global Lessons from the Digital Revolution", https://www.strath.ac.uk/media/faculties/hass/law/cpls/Face_to_Face.pdf

³³ Materials of the ILAG Conferences 2013 and 2015.

³⁴ CEPEJ Report "Evaluating European judicial systems - 2012 edition (2010 data)", p. 63

³⁵ "Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid", Materials of the International Workshop, Chisinau, Republic of Moldova 25-26 April 2013

³⁶ Dmitry Shabelnikov, "Russian Legal Aid Bill Signed into Law", 20 December 2011

³⁷ Information and Communication Department of the Secretariat of the Cabinet of Ministers of Ukraine, "Ukraine henceforth to have free legal advice centers", 1 July 2015
http://www.kmu.gov.ua/control/en/publish/article?art_id=248289529&cat_id=244314971

³⁸ Agris Batalauskis, "New Developments in the Latvian Legal Aid System", 8 July 2016.
<http://internationallegalaidgroup.org/index.php/papers-publications/articles/13-new-developments-in-the-latvian-legal-aid-system>

³⁹ Jérôme Cayol, "Legal Aid: A Short Note on France", 2016.
<http://internationallegalaidgroup.org/index.php/papers-publications/articles/17-legal-aid-a-short-note-on-france>

leads to growth of budget spending on legal aid. The prevailing reform trend is the limitation or reduction of such spending⁴⁰.

Cost saving reforms

17. Reforms intended to limit or reduce public expenditures are typical for more developed and generous legal aid systems. Reformers demonstrate three major approaches to cost saving. First is to restrict number of legal aid beneficiaries and amount of provided services. Countries which chose this strategy narrow down eligibility criteria and stop to provide legal aid on certain categories of cases⁴¹. Apparently, the most radical reform of such sort took place in England and Wales⁴². Recently the UN Committee on Economic, Social and Cultural Rights expressed concern about reforms to the legal aid system in England and Wales, which have restricted access to justice in areas such as employment, housing, education and social welfare benefits⁴³. Although narrowing of legal aid scope may negatively affect access to justice, the Netherlands⁴⁴ and Finland⁴⁵ consider to excluding certain types of cases from their legal aid programs.

18. The second approach is to minimize costs of legal services⁴⁶. In order to reach this goal governments implement wide range of measures, including introduction of online technologies, changing contracting schemes and remuneration of lawyers⁴⁷. One or more measures of such type was introduced in England and Wales⁴⁸, Ireland⁴⁹ and the Netherlands⁵⁰. Apparently, some measures decreasing costs of legal services may also result in decrease of legal aid quality. For example, because of de facto lowering of remuneration paid to legal aid lawyers in Belgium and France legal aid is often supplied by inexperienced lawyers⁵¹.

19. The third approach is to find complementary sources of funding of legal aid systems, such as, for example, contributions paid by legal aid beneficiaries. Increase of the amount of beneficiaries' own contributions took place in France, England & Wales, Scotland and Ireland⁵², although experts estimate that this measure does not appear to bring in a lot of money⁵³.

⁴⁰ Materials of the ILAG Conferences 2013 and 2015

⁴¹ Legal Aid in Europe, p. 81 ; CEPEJ Report 2014, p. 88

⁴² "The Legal Aid Agency. England & Wales National Report", Materials of the ILAG Conference 2015; Legal Aid in Europe, p. 81

⁴³ Committee on Economic, Social and Cultural Rights, "Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland", E/C.12/GBR/CO/6, para. 20.

⁴⁴ Legal Aid in Europe, p. 81

⁴⁵ "Ministry of Justice of Finland. Department of Judicial Administration, Legal Aid and Enforcement Unit. National Legal Aid Report", Materials of the ILAG Conference 2015, p. 13.

⁴⁶ Ibid. p. 7-13; Steven Gibens, "Legal Aid in Belgium: A Work in Progress", 2016 <http://internationallegalaidgroup.org/index.php/papers-publications/articles/16-legal-aid-in-belgium-a-work-in-progress>

⁴⁷ Legal Aid in Europe, pp. 81-84

⁴⁸ "The Legal Aid Agency. England & Wales National Report", Materials of the ILAG Conference 2015

⁴⁹ "Republic of Ireland National Report", Materials of the ILAG Conference 2015

⁵⁰ "Legal Aid in the Netherlands. A Broad Outline", Legal Aid Board, 2015, pp. 30-34.

⁵¹ Legal Aid in Europe, p. 108.

⁵² Ibid. p. 81.

⁵³ Ibid. p. 109

20. Cost-saving reforms are necessary to ensure long-term sustainability of legal aid systems. For instance, Northern Ireland delayed implementation of such measures with regard to non-criminal legal aid. Consequently, expenditure on non-criminal legal aid increased from £37 million in 2009-10 to £57 million in 2014-15⁵⁴. Uncontrolled growth of expenditures may lead to default of legal aid system. However, cost-saving measures should be implemented with caution as they may negatively affect access to justice.

Improvement of legal aid organization and management

21. Improvement of legal aid organization is another focus of the recent legal aid reforms. Such reforms may modify legal aid management bodies. For instance, England and Wales abolished the Legal Services Commission (LSC), which was an executive non-departmental public body governing legal aid. Functions of the LSC were transferred to the Legal Aid Agency, an executive body of the Ministry of Justice⁵⁵. Finland is going to introduce six Legal Aid Bureaus lead by district directors, who will manage local legal aid offices⁵⁶. Some reforms are aimed at improving legal aid delivery scheme. For instance in Belgium, reforms will provide for better coordination between legal advice providers of the so called “first line legal aid” and social welfare bodies and organizations⁵⁷. Many countries also introduce digital document-flow to simplify processing of legal aid applications and to speed up payments to legal aid lawyers for the work done⁵⁸. Detailed description of developments related to digital technologies can be found in a special section of the report.

22. In general, experts found no evidence of systematic efforts to test and adjust reform proposals to ECHR requirements: “Policy changes are proposed in accordance with the regulatory policy making rules and traditions in the various countries, and do not tend to be very explicitly and exhaustively tested against ECHR requirements”⁵⁹.

IV. Major factors and trends influencing legal aid systems

Financial constraints

23. Nowadays lack of funds is the main factor affecting legal aid systems. As mentioned above, less economically developed countries are unable to spend much on civil legal aid. In the time of economic crisis more prosperous countries also started to downsize legal aid funding. Financial constraints make the question of how to limit expenses with no detriment to access to justice becomes more and more important.

⁵⁴ “Northern Ireland Audit Office. Managing Legal Aid”,. Media release of 21 June 2016

<https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Managing%20Legal%20Aid%20Media%20Release.pdf>

⁵⁵ “The Legal Aid Agency. England & Wales National Report”, Materials of the ILAG Conference 2015, p.1

⁵⁶ Muilu Merja, “Finnish Legal Aid: What’s Going On?”, 2016.

<http://internationallegalaidgroup.org/index.php/papers-publications/articles/14-finnish-legal-aid-what-s-going-on>

⁵⁷ Steven Gibens, “Legal Aid in Belgium: A Work in Progress”, 2016.

<http://internationallegalaidgroup.org/index.php/papers-publications/articles/16-legal-aid-in-belgium-a-work-in-progress>

⁵⁸ The next following section of the report provides more details

⁵⁹ Legal Aid in Europe, p. 103

24. Review of a legal aid system helps to identify gaps generating overspending and decreasing effectiveness. The best approach is to examine the entire justice supply chain⁶⁰. Legal aid is not a goal in itself, but one of the instruments to ensure access to justice. Access to justice depends on numerous intertwining factors and may be ensured by a variety of measures⁶¹. For this reason analysis of context in which legal aid system operates helps to identify factors generating demand for state-funded legal assistance and increasing legal aid costs. Dealing with these factors is a way to improve access to justice without increasing expenditures.

Factors increasing demand for legal aid and legal aid costs

25. Researchers assert that certain characteristics of domestic legal system may increase costs of access to justice⁶². Studies demonstrate that the following factors complicate access to justice, generate demand for legal aid and increase its costs:

- Mandatory representation

26. In so far as civil proceedings are concerned, in many member states individuals can choose between self-representation and being represented by a professional lawyer. However, in a number of countries⁶³ procedural laws forbid self-representation and require parties to certain kinds of judicial proceedings to be represented by a professional lawyer.

27. Professional legal representation might be mandatory in the proceedings before the highest instances such as supreme and constitutional courts. This is the case in Austria, Czech Republic, Estonia and Portugal⁶⁴. Legal representation may be mandatory also before courts of first and second instances. In Belgium, Germany, the Netherlands⁶⁵, Austria, Croatia, Luxembourg, Portugal and Italy⁶⁶ a qualified lawyer should represent a party to civil proceedings if claim amount exceeds a certain threshold established by law. In France, legal representation is required before first instance courts for certain types of cases, including divorce proceedings⁶⁷.

28. The aim of mandatory legal representation is to ensure better protection of litigants' rights as well as promptness and quality of judicial proceedings. At the same time, mandatory representation rules impede access to justice: hiring a lawyer and payment of legal fees becomes a necessary precondition to institute judicial proceedings. Provision of legal aid helps to overcome financial barrier associated with mandatory representation. Thus, mandatory legal representation increases costs of legal aid. While such expenses are justified in cases raising complex questions of law and fact, it may not be justified to incur these expenses in

⁶⁰ Face to Face Legal Services.

⁶¹ Report of the Special Rapporteur on the independence of judges and lawyers, 15 April 2013 A/HRC/23/43, Para. 79,

⁶² Gramatikov, Martin and Klaming, Laura, "Justice as Experienced by the User: A Study of the Costs and Quality of a Path to Justice in the Netherlands", 2009, Tilburg University Legal Studies Working Paper No. 004/2009.

⁶³ The exact number of countries requiring mandatory representation remains unknown. The CEPEJ report 2014 does not clearly distinguish between countries requiring mandatory representation and countries which permit self-representation but allow only professional lawyers to represent other individuals.

⁶⁴ CEPEJ Report 2014, p. 387

⁶⁵ Legal Aid in Europe, p. 26

⁶⁶ Ibid.

⁶⁷ Ibid. p. 26

simple cases. Instead, it might be reasonable to abolish mandatory representation requirement in so far as simple case and proceedings are concerned.

- Monopoly on provision of legal services

29. Many CoE member states allow only members of regulated legal profession to represent defendants in criminal procedures. Monopoly of regulated legal profession on representation in civil proceedings is not so widespread. Albania, Austria, Bosnia and Herzegovina, Bulgaria, Finland, England and Wales, Estonia, Ireland, Northern Ireland, Romania, Spain and Sweden permit family members, trade unions, or other actors to represent parties in civil court proceedings⁶⁸. Representation by a lawyer is mandatory in civil proceedings in Belgium, Cyprus, Luxembourg, France, Greece, Italy, Malta, Monaco and Turkey⁶⁹. In Germany, legal information and advice can also be provided only by professional lawyers⁷⁰.

30. Rationale for legal profession's monopoly is to protect clients and maintain quality of legal services. Admission criteria, obligation to comply with ethical rules, and disciplinary proceedings secure qualification and proper conduct of regulated profession members. Meeting these requirements is costly for the professionals. Therefore their services may not be cheap and states need to subsidize such services for the poor⁷¹.

31. Some studies cast doubt on the idea that monopoly rules, which increase costs of legal services, substantially benefit the clients⁷². Some other studies show that non-lawyers can provide services of the same quality as members of regulated legal profession⁷³. In addition, regulations of legal market may hamper innovative approaches to legal services' provision⁷⁴. For these reasons experts recommend to "gradually liberalize the market for legal services by reducing regulatory entry barriers for service providers, including non-lawyers, who are interested in offering legal services to the poor"⁷⁵.

- Complicated judicial proceedings

32. From ECtHR's reasoning in *Airey vs. Ireland* it follows that even when the law does not explicitly require representation by a lawyer, access to justice may be restricted when procedural rules are complicated and therefore make self-representation ineffective⁷⁶. Complexity of procedures generates demand for legal services and legal aid in particular⁷⁷.

33. Experts characterize German procedural requirements as being too complex to navigate without legal assistance⁷⁸. Apparently, in England and Wales, some family law procedures, which have recently been excluded from the legal aid program, are also too

⁶⁸ CEPEJ Report 2014, p. 381

⁶⁹ Ibid.

⁷⁰ Legal Aid in Europe, p. 26.

⁷¹ Barendrecht, Maurits, "Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared", TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 010/2010. p. 10

⁷² Maurits Barendrecht, Martin Gramatikov, Jin Ho Verdonschot and Robert Porter, "Towards Basic Justice Care for Everyone", 2012, p. 65 (hereinafter - Towards Basic Justice Care)

⁷³ Richard Moorhead, Avrom Sherr and Alan Paterson "Contesting Professionalism: Legal Aid and Non-lawyers in England and Wales", Law & Society Review, Volume 37, Issue 4, pp. 765–808, December 2003.

⁷⁴ Towards Basic Justice Care, p. 64

⁷⁵ "Making the Law Work for Everyone" Vol.1., Report of the Commission on Legal Empowerment of the Poor p. 62.

⁷⁶ *Airey v. Ireland*, 9 October 1979, Series A no. 32.

⁷⁷ Legal Aid in Europe, p.97

⁷⁸ PILnet research.

complicated for unrepresented litigants⁷⁹. However, no research assessing complexity of civil proceedings in all CoE member states is available.

34. Experts suggest that countries seeking to reduce expenditure on legal aid, might consider simplifying their procedures in order to make them friendly to self-represented litigants⁸⁰.

- Lack of information and services providing for solution of problems on early stage and preventing aggravation of problems

35. Experts claim that the availability of trustworthy and comprehensible legal information helps individuals to settle legal problems at their early stages⁸¹. In addition, when legal information is easily accessible, more people are able to solve their legal issues themselves, without having recourse to a legal counsel⁸².

36. Majority of CoE member states publish legal information⁸³. Non-state actors, including business, academia and NGOs⁸⁴ also contribute to dissemination of such information. However, available legal information does not necessarily enable people to find a solution for their problems. Researchers points out that non-state publishers of legal information often do not address the needs of ordinary people⁸⁵. At the same time, state authorities do not systematically review adequacy of publicly available legal information⁸⁶.

37. Early access to legal advice is also a way to prevent escalation of conflicts and aggravation of legal problems. It helps to minimize costs for an individual experiencing legal problem and for legal aid budget, since early intervention of legal counsel may prevent submission of case to a court and consequent applications for secondary legal aid⁸⁷.

38. Not all CoE member states provide early access to legal advice. As mentioned above, civil legal aid outside of court proceedings is available in less than a half of CoE member states⁸⁸. In addition, even where such type of legal aid is available, it may not be easily accessible. For instance, in Russia eligibility rules for legal aid in form of advice are the same as for representation in judicial proceedings⁸⁹.

Informational technologies

39. As mentioned above, legal regulations of legal market may impede innovations. However, development of information technologies is one of the key drivers of changes in legal market⁹⁰. Changes associated with such technologies alter the role of legal aid programs

⁷⁹ "Legal aid cuts: The forgotten pillar of the welfare state – a special report", The Guardian, 2014.

<http://www.theguardian.com/law/2014/sep/25/-sp-legal-aid-forgotten-pillar-welfare-state-special-report-impact-cuts>

⁸⁰ Legal Aid in Europe, p.96

⁸¹ Ibid. pp. 102, 107-108.

⁸² Towards Basic Justice Care, p. 83

⁸³ State of democracy, human rights and the rule of law (2016), Report by the Secretary General of the Council of Europe, pp. 24-25

⁸⁴ Greenleaf G., "The Global development of free access to legal information", European Journal of Law and Technology, Vol. 1, Issue 1, 2010.

⁸⁵ Towards Basic Justice Care, p. 74

⁸⁶ Legal Aid in Europe, p 77

⁸⁷ "Legal Aid in the Netherlands. A Broad Outline", Legal Aid Board, 2015, pp. 11-12

⁸⁸ CEPEJ Report 2014, p. 69

⁸⁹ Federal Law on Legal Aid N 324-FZ of 21 November 2011

⁹⁰ The Law Society of England and Wales, "The Future of Legal Services", 2016, p.11

in provision of access to justice and open new opportunities to increase effectiveness of state-funded legal assistance.

- Technologies make legal services more affordable

40. Information technologies dramatically simplify legal research and reproduction and dissemination of legal information. They enable automatic assembling of legal documents, simplify communication between providers and beneficiaries of legal services⁹¹. Information technologies induce standardization of legal services, development and dissemination of protocols for solution of most typical problems⁹². Consequently, providers are able to offer cheaper services, accessible to those groups which were not traditionally served by lawyers⁹³. Thus, wider use of information technologies may broaden access to justice and decrease need in state-funded legal services, especially if governments will create regulatory regimes providing for innovative provision of legal services.

41. Experts suppose that the following low- income groups will benefit from technological developments in legal market: people with enough literacy and education to be able to handle the share of work necessary for solution of their legal problems with providers of ‘unbundled’ legal services; those with problems in areas shared by wealthier clients; and finally those with enough disposable resources to make them of commercial interest⁹⁴. It is the responsibility of state to ensure access to justice for other low income groups.

- E-justice

42. E-justice is one of the developments which is important for the future of legal aid. Courts in Europe are moving online⁹⁵. This process does not develop simultaneously in all the member states. However, in many European countries, courts websites now offer online support to case-parties. Online services may include downloadable forms of procedural documents, opportunity to file complaint online and to present evidence electronically, possibility to track a case and to be informed about major procedural developments⁹⁶. Innovations also influence alternative dispute resolution (“ADR”). The European Union endorsed development of online platforms for ADR in consumer cases⁹⁷. The Netherlands provides online support to solution of certain kinds of neighbor disputes⁹⁸ and develop online ADR platform for separation cases⁹⁹. England and Wales created online ADR platform on divorce cases¹⁰⁰. Development of e-justice induces digital provision of legal aid.

⁹¹ BA Commission on the Future of Legal Services, “Report on the Future of Legal Services in the United States”, 2016. pp. 18-19.

⁹² The Law Society of England and Wales, “The Future of Legal Services”, 2016, p. 11

⁹³ Face to Face Legal Services, p. 14

⁹⁴ Ibid. p. 78.

⁹⁵ Legal Aid in Europe, p. 80

⁹⁶ CEPEJ Report 2014, pp. 123-126

⁹⁷ Towards Basic Justice Care, p. 104

⁹⁸ Roger Smith, “Digital Delivery of Legal Services to People on Low Incomes”, Materials of ILAG conference 2015, p 10 (hereinafter – Digital Delivery).

⁹⁹ Legal Aid in Europe, p. 80

¹⁰⁰ Digital Delivery, p. 10

- Role of state actors in provision of legal information in digital environment

43. Since information helps to cope with legal problems, increased access to legal information associated with digital technologies is presumed to empower individuals¹⁰¹. However, despite enormous reduction of costs related to delivery of information, market actors rarely provide quality legal information online¹⁰².

44. In order to provide for solution of legal problems, information should be presented in a form that is understandable for intended users without having to consult a lawyer; tailored to the problem; sufficient to cope with the problem; arrive when needed¹⁰³. Commercial actors do not invest in putting legal information into form suitable for public needs, because selling of such information bring little profit¹⁰⁴. Experts suggest that governments should fill this gap by developing of their own information services or by subsidizing non-state actors to do so¹⁰⁵.

- Digital delivery of legal aid

45. Information websites is a proliferating form of state-funded legal services¹⁰⁶. These services are available not only to the groups which are eligible for other forms of legal aid, but to many other users. Usually they provide standardized guidelines for resolving the most typical and widespread problems, rather than individualized services. However, projects in this sphere are developing so rapidly¹⁰⁷, that it is difficult to provide an up-to-date overview of state-funded websites with legal information and advice, and to assess their efficiency. Researchers note that the best websites have the following features: they provide accurate and correct information and advice; they are oriented to users, not lawyers; they meet current standards of design; they are interactive and integrated with individualized assistance, including face-to-face legal aid services; they are helping users to identify, define and resolve their problems¹⁰⁸. According to the experts, one of the best examples of legal aid provision via website is the Rechtwijzer ('conflict resolution guide' or 'interactive platform to justice'), a legal advice website developed by the Dutch Legal Aid Board and run by a joint committee with the support of a number of stakeholders, including the Bar¹⁰⁹. This website provides legal assistance by means of a 'decision tree', helping people to find solutions for their legal problems in an interactive manner. The website also refers users to an appropriate expert or organization if necessary. Important feature of this website is an online platform which allows people to settle legal conflicts by means of negotiations with another side of the conflict and by involvement of a neutral third party in an online 'dialogue'. In particular, this type of assistance is provided in divorce cases¹¹⁰.

46. Apart from provision of legal information and advice via websites, legal aid providers use technologies for remote delivery of individualized legal services, for example via e-mail or videoconferencing. They also use digital technologies to simplify and speed up processing of legal aid applications, to improve management, and to deliver services. An application for legal

¹⁰¹ Barendrecht, Maurits, "Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared", TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 010/2010. p. 8

¹⁰² Legal Aid in Europe, p. 76.

¹⁰³ Towards Basic Justice Care, p.7

¹⁰⁴ Ibid. p. 73

¹⁰⁵ Legal Aid in Europe, p. 76

¹⁰⁶ Digital Delivery, p 6

¹⁰⁷ Face to Face Legal Services, p. 8

¹⁰⁸ Digital Delivery, pp.7-14

¹⁰⁹ Face to Face Legal Services, p. 59.

¹¹⁰ "Legal Aid in the Netherlands. A Broad Outline. Legal Aid Board", 2015, pp. 8-9.

aid may be filed online in Finland, the Netherlands, Scotland¹¹¹ and Spain. In Finland and the Netherlands legal aid authorities also have online access to tax information, which helps them to verify an applicant's financial eligibility for legal aid without requiring him or her to submit a documentary proof of financial status. In those countries, lawyers can use online system to submit bills for legal aid work. In Ireland, the Legal Aid Board use digital technologies for case management¹¹². By contrast, in Germany, Italy and Russia applications for legal aid cannot be lodged online¹¹³. Legal aid authorities and providers in some regions of the Russian Federation have online access to of social services' databases and can verify financial eligibility of applicants and use electronic referral systems. Nevertheless in Russia organization and management of legal aid is mostly paper-based¹¹⁴. Again, use of information technologies develops so rapidly, that it is difficult to provide a comprehensive account on how legal aid programs in different CoE member states apply these technologies to increase access to legal aid services and raise management efficiency.

- Limitations of digital delivery

47. Experts warn that even though digital provision of legal aid helps to minimize costs, it has some weaknesses. As it was already mentioned, use of information technologies leads to standardization of legal services. However, in some cases in order to solve a legal problem individuals need to be provided not only with general information and guidelines, but also with an individualized care, including emotional support and assurance¹¹⁵. It means that digital delivery models should not be fully automated and should provide some individual support.

48. Experts also draw attention to the phenomenon of digital exclusion of some groups which is due not only to the lack of physical access to digital technologies, but mainly to cognitive abilities, skills and culture¹¹⁶. To prevent discrimination of such groups governments should maintain access to traditional face-to-face legal services.

Alternative ways to satisfy legal needs

49. In many European states state-funded legal aid programs co-exists with a variety of other actors and instruments, which also help individuals to benefit from legal services for a reasonable prices or free of charge: legal insurance, pro bono, legal clinics and NGOs.

- Legal expenses insurance

50. Experts note that "legal expenses insurance contributes to making access to justice affordable for the middle class"¹¹⁷. Although insurance schemes normally cover limited spheres of legal problems, they can secure access to affordable services in cases like traffic accidents, personal injuries, consumer problems, social security issues, and employment¹¹⁸.

¹¹¹ Legal Aid in Europe, pp. 79-80

¹¹² Ibid. pp. 79-80

¹¹³ PILnet research

¹¹⁴ Findings of the project "Free Civil Legal Aid and Assistance for Vulnerable Groups in the Russian Federation" 2015-2016 (hereinafter – Findings of the FCLA project). Justice and Legal Cooperation Department Directorate General of Human Rights and Rule of Law., for details see <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168059988f>

¹¹⁵ Face to Face Legal Services, p 83

¹¹⁶ Digital Delivery , p 3

¹¹⁷ Legal Aid in Europe, p. 109

¹¹⁸ Ibid.

51. Legal expenses insurance is actively developing in continental Europe. While in 2012 private legal expenses insurance was available in 29 CoE member states, now it exists in 34 of them¹¹⁹. Legal expenses insurance does not exist in Armenia, Bulgaria, Croatia, Ireland, Latvia, Malta, Republic of Moldova, Montenegro, Romania, Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia” and Turkey.

52. The Netherlands and Germany have the most developed markets of legal expenses insurance¹²⁰. Based on experience of those two countries it is possible to make assumptions about regulatory regimes and practices which are favorable for development of legal insurance markets. According to some studies, development of legal expenses insurance in Germany can be explained by fixed lawyers’ fees, which helps insurance companies to calculate their risks and offer attractive premiums¹²¹. However, regulation of prices on legal market is not the only way to provide for development of legal expenses insurance. In the Netherlands, where lawyers’ fees are not regulated, insurance companies may forecast costs because legal proceedings are rather transparent. In addition, unlike in Germany, in the Netherlands the market for legal services is not monopolized by regulated legal profession. Therefore, insurance companies can process legal problems of their clients in-house, which gives them more control over costs¹²². In addition, in the Netherlands insurers manage to settle up to 90% of legal problems without referring a case to a lawyer or going to court. In other jurisdictions where legal services are not monopolized, insurers manage to reach settlement rates of 50-70%¹²³.

- Pro bono

53. Pro bono is a professional legal work undertaken voluntarily and without payment. Members of regulated legal profession and other stakeholders on legal market volunteer their time and skills to provide services to those who are unable to pay for them.

54. About two decades ago pro bono legal practice in Europe nearly did not exist, since welfare state concept imposed primarily responsibility to ensure access to justice on governments rather than legal profession. Development of pro bono in Europe started about 15 years ago. It resulted from the growing influence of American law firms and from reduction of expenditures on state legal aid programs¹²⁴.

55. In some states legislative regimes for pro bono are more favorable than in some others. Pro bono legal services are affected by: minimal fee requirement, prohibition to provide free legal services, limitation or prohibition of advertising, practice restrictions for foreign lawyers. The latter point negatively influence pro bono because international law firms actively promote pro bono and support pro bono activities of their lawyers. At least one of these rules is in force in 31 CoE member states, although explicit prohibition of free legal services exists only in Bulgaria, Montenegro, Finland, Greece, Latvia, Slovakia and Turkey¹²⁵.

¹¹⁹ CEPEJ Report 2014, p. 74

¹²⁰ Legal Aid in Europe, p. 59

¹²¹ Ibid. p. 59

¹²² Ibid. p. 60

¹²³ Towards Basic Justice Care, p. 66.

¹²⁴ Deborah L. Rhode, “Pro Bono in Principle and in Practice: Public Service and the Professions”, Stanford Law and Politics, 2005. pp. 100-104.

¹²⁵ “A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions” by Latham & Watkins LLP for the Pro Bono Institute, 2016, pp. 715-724

56. Creation of favorable regulatory regime for pro bono may contribute to access to justice for disadvantaged groups.

- Legal clinics and NGOs

57. Term 'legal clinic' describes "varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centered, problem-based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals"¹²⁶. Involving students in resolution of real legal problems, legal clinics provide free legal services to the poor and disadvantaged. Doing so, clinics supplement services provided by state-funded legal aid programs. Other non-profit actors, including community advice centers, consumers' associations, trade unions, charity organizations and human rights NGOs are also active in provision of free legal advice and other types of assistance.

58. While clinical movement is well developed in the UK and in Eastern Europe¹²⁷, in other parts of the continental Europe law schools are reluctant to open and support legal clinics¹²⁸. Apparently, in Europe non-for-profit sector is much more developed, than legal clinics. At the same time, there are no studies available to estimate contribution of NGOs in provision of free legal assistance in different CoE member states.

- Legal aid programs in context of alternative ways to satisfy legal needs

59. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System encourage state authorities to recognize the role of law societies and bar associations, university legal clinics and non-governmental and other organizations in providing access to justice and recommend to cooperate with them in provision of legal services¹²⁹. Examples of integration of legal services delivered by alternative providers exist in number of CoE member states.

60. For instance, in the countries where legal expenses insurance is available, competent authorities might decide to refuse legal aid to individuals who can receive legal assistance through insurance scheme. Relevant clauses in eligibility criteria for legal aid exist in Denmark, Finland, France and Sweden¹³⁰.

61. NGOs and legal clinics may be integrated to legal aid system as additional providers of services to increase outreach¹³¹. In Georgia, Hungary, Moldova and Russia legislation explicitly lists legal clinics and NGOs among legal aid providers^{132 133}. In England and Wales legislation enables charities without solicitors to provide legal aid services and to claim state

¹²⁶ Definition provided by the European Network for Clinical Legal Education <http://www.encl.org/about-encl/definition-of-a-legal-clinic>

¹²⁷ Frank S. Block, "The Global Clinical Movement: Educating lawyers for Social Justice", Oxford University Press, 2011

¹²⁸ Richard J. Wilson, "Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education", German Law Journal, Vol. 10, No. 6, pp. 359-382, 2009

¹²⁹ Guideline 16, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 3 October 2012, UN Doc. A/C.3/67/L.6.

¹³⁰ CEPEJ Report 2014, p. 74

¹³¹ Guideline 16, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 3 October 2012, UN Doc. A/C.3/67/L.6.

¹³² UNDP Ukraine, "International study of primary legal aid systems with the focus on the countries of central and Eastern Europe and CIS", 2012, pp. 21-25

¹³³ Ibid.

funding¹³⁴. The Scottish Legal Aid Board has several grant programs to support activities of non-state and non-profit providers delivering services to specific vulnerable groups or using non-traditional ways of legal aid delivery¹³⁵. In the Netherlands, primary legal aid is provided by a network of NGOs called law shops, which receive funding from municipalities and central state authorities¹³⁶.

62. At the same time alternative providers have certain limitations. Experts note that NGOs experience difficulties with scaling up and ensuring sustainability of legal services delivery¹³⁷. Capacity of legal clinics is limited by the fact that their primary function is educational¹³⁸. Creation of regulatory regime providing for pro bono may contribute to access to justice for disadvantaged groups. However, scholars warn policymakers that pro bono cannot replace legal aid, because the amount of services provided on pro bono basis is unable to cover all legal needs of the poor, and because pro bono provision is very unevenly spread geographically, concentrating in big cities¹³⁹. In its turn private legal expenses insurance is not affordable for the poorest members of the society.

V. Promising approaches to legal aid and access to justice

63. Comparative studies help to identify measures which can increase efficiency of legal aid systems. Range of measures includes those related to budget planning and control, to organization of service delivery, to clients' outreach, etc. Expected impact of different measures varies. For this reason, this section of the report describes only two groups of measures, which seem to contribute to ensuring access to justice. The first is the quality assurance, and the second is the development of the so called first-line legal aid.

64. Existing body of research proves that reforming the legal aid systems as such result in a limited improvement. The goal of ensuring access to justice without imposing excessively heavy burden on public budget require more radical measures going beyond legal aid programs. Broad access to justice approach is also described in this section of the report.

Quality control and assurance

65. Access to legal services does not ensure access to justice if the legal assistance provided is of low quality. Despite the importance of quality for overall effectiveness of legal aid programs, until the end of the 1980s governments undertook no specific measures to control quality of legal aid services¹⁴⁰. Legal aid, where existed, was provided by members of

¹³⁴ Morag McDermont, "Access to justice, advice agencies and the impact of funding", p. 1, Materials of the ILAG Conference 2015

¹³⁵ "The Scottish Legal Aid Board, National report from Scotland", p. 7, Materials of the ILAG Conference 2015

¹³⁶ UNDP Ukraine, "International study of primary legal aid systems with the focus on the countries of central and Eastern Europe and CIS", 2012, pp. 21-25

¹³⁷ Towards Basic Justice Care, pp. 75-78.

¹³⁸ Elaine Campbell and Victoria Murray, "Mind the gap: Clinics and the Access to Justice Dilemma, International Journal of Legal and Social Studies", Vol. II (3), September 2015

¹³⁹ Richard Moorhead, "The limits of pro bono", 2010 <https://lawyerwatch.wordpress.com/2010/10/14/the-limits-of-pro-bono/>

¹⁴⁰ Exporting quality, pp. 1-

regulated legal profession. This was considered to be a sufficient guarantee of quality, since regulated legal profession had admission requirements, rules of conduct and so on¹⁴¹.

66. At the end of the 80s and early 90s growing costs of legal aid and shortage of funds drew attention of UK policy makers to the quality of legal aid services¹⁴². Legal aid authorities started to question monopoly of legal profession on provision of quality services and proposed to transfer state-funded legal aid from members of regulated profession to other providers, which reinforced discussion about quality of legal aid and ways to ensure it¹⁴³. England and Wales were the first to implement quality assurance measures beyond traditional guarantees provided by the rules of regulated legal profession¹⁴⁴. They were followed by Scotland¹⁴⁵ and then by the Netherlands¹⁴⁶.

67. Quality assurance mechanisms developed in the abovementioned jurisdictions are operated by legal aid authorities rather than regulated legal professions and apply methods validated by social science. Such mechanisms have three key components: quality indicators, quality verification procedures and measures to maintain required level of quality. Indicators usually includes those related to preconditions necessary for provision of qualitative legal services, such as number of specialists delivering legal services, their training and specialization; presence of a case management system; existence of internal supervision, etc¹⁴⁷. Legal aid authorities also use indicators of outcome, such as level of clients' satisfaction¹⁴⁸. Quality indicators may also measure important aspects of service delivery process: compliance with procedural time-limits, keeping clients' case-files, compliance with rules of professional conduct, accuracy of advice, quality of legal documents, etc.

68. To assess quality, relevant authorities analyze statistics and documentation, carry out client satisfaction surveys¹⁴⁹ and perform peer review¹⁵⁰. Assessment of quality is used to select competent providers of legal aid services, to motivate them to maintain appropriate level of quality, and to eliminate those who fail to do so¹⁵¹. In addition, legal aid authorities assist legal aid providers in maintaining a proper level of quality providing advice concerning improvement of service organization and delivery, organizing trainings, establishing minimal standards¹⁵².

¹⁴¹ Richard Moorhead, Avrom Sherr and Alan Paterson "Contesting Professionalism: Legal Aid and Non-lawyers in England and Wales", *Law & Society Review*, Vol. 37, Issue 4, pp. 765–808, December 2003

¹⁴² Exporting quality, pp. 1-2.

¹⁴³ Richard Moorhead, Avrom Sherr and Alan Paterson "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales", *Law & Society Review* Vol. 37, Issue 4, pages 766–767, December 2003

¹⁴⁴ Lee Bridges, "Recent Development in Criminal Legal Aid in England and Wales – Contracting, Quality and the Public Defender Experiment", p. 9, Materials of the ILAG Conference 2001.

¹⁴⁵ Exporting quality, p.3.

¹⁴⁶ P.J.M. van den Biggelaar, "Reporting on the Dutch Revolution", pp. 7-8, Materials of the ILAG Conference 2005

¹⁴⁷ See, as an example the Specialist Quality Mark Standards developed by the English Legal Aid Agency https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384583/specialist-quality-mark-standard.pdf

¹⁴⁸ "Legal Aid in the Netherlands. A Broad Outline", Legal Aid Board, 2015. p.29

¹⁴⁹ Ibid.

¹⁵⁰ "Legal Aid Agency. England and Wales. National Report", p.3, Materials of the ILAG Conference 2015

¹⁵¹ P.J.M. van den Biggelaar, "Reporting on the Dutch Revolution. The value-added of a good gateway to the legal aid system". Materials of the ILAG Conference 2005.

¹⁵² PILnet research

69. Although better quality of services is a secondary or subsidiary motive of legal aid reforms¹⁵³, the number of countries implementing measures to improve legal aid quality is increasing. Recently Belgium¹⁵⁴, Finland¹⁵⁵, Moldova¹⁵⁶ and Russia¹⁵⁷ undertook such measures.

Development of primary legal aid

70. Traditionally, legal aid programs are focused on litigation. However, assistance at an early, pre-litigation, stage can help people to solve problems by means of negotiations with another side of the conflict without having recourse to a court. Thus early intervention reduces the money to be spent on legal aid at the litigation stage¹⁵⁸.

71. The Netherlands pioneered in development of a specialized information and advice service providing for early detection of legal problems and early intervention in order to solve them¹⁵⁹. This service, which is called the Legal Services Counters, provides primary legal assistance, which includes provision of information and advice. When necessary the Legal Services Counters refer clients to private lawyers or mediators, who act as the secondary line of legal aid, or to other professionals or support agencies¹⁶⁰. Recently the Legal Services Counters Recently have been supplemented with information and advice website¹⁶¹.

72. Important feature of this service is that anybody may apply to the Legal Services Counters and receive free legal assistance¹⁶². Legal aid authorities encourage individuals to address the Legal Services Counters before going to a private lawyer. Those who go to the Counters get a discount of € 53 on individual contribution, should it turn out that they require secondary legal aid¹⁶³. Another important feature is organizational separation between primary legal aid and other types of proceedings (mediation and assistance in relation to judicial proceedings). The Legal Services Counters focuses exclusively on primary legal aid, its staff is not empowered to represent clients in court or mediation proceedings¹⁶⁴.

73. Presently the Dutch Legal Services Counters has no analogues in other CoE member states, although some of them also have mechanisms of primary legal aid provision. For instance, in Belgium, the law strictly distinguishes between primary and secondary legal aid¹⁶⁵. In England and Wales there is a telephone gateway via which an applicant can have access to primary legal aid. Telephone gateway is a mandatory prerequisite for applying for secondary legal aid¹⁶⁶. Norway is planning to make primary legal aid free of charge¹⁶⁷. Despite these

¹⁵³ Legal Aid in Europe, p. 101

¹⁵⁴ Ibid.

¹⁵⁵ Ministry of Justice of Finland. Department of Judicial Administration, Legal Aid and Enforcement Unit, National Report, Materials of the ILAG Conference 2015, p.12

¹⁵⁶ Exporting quality, p.6

¹⁵⁷ Findings of the FCLA project

¹⁵⁸ Legal Aid in Europe, pp. 98-99

¹⁵⁹ Nick Huls, "Putting legal aid at a distance: Recent trends in the Netherlands", pp.1-2, Materials of the ILAG Conference 2003

¹⁶⁰ Legal Aid in the Netherlands. A Broad Outline. Legal Aid Board, 2015, p. 6

¹⁶¹ Ibid. p 8

¹⁶² Ibid. p. 11

¹⁶³ Ibid. p. 18

¹⁶⁴ Ibid. p. 10

¹⁶⁵ Legal Aid in Europe, p.44

¹⁶⁶ Ibid p. 43

¹⁶⁷ CEPEJ Report 2014, p. 88

developments, it is not clear whether special primary legal aid services will become a major trend across Europe. As it was already mentioned, still more than a half of CoE member states provide no legal aid outside of court proceedings.

Broad access to justice strategies

74. A number of member states implemented measures influencing access to justice and demand for state-funded legal services. For instance, the Netherlands abolished requirements for mandatory professional representation with regard to employment, tenancy and consumer-related cases. In addition, the legislature raised up to €25,000 the amount of claims in respect which no professional legal representation is required¹⁶⁸. Belgium and Ireland decreased the number of procedures in which legal representation is required¹⁶⁹. England and Wales deregulated legal services market¹⁷⁰. However, implemented changes do not form part of a comprehensive strategy. Only Scotland adopted a comprehensive access to justice program¹⁷¹.

VI. Conclusions

75. Nowadays all CoE member states provide legal aid in civil cases, although the scope of legal aid programs varies substantially. Extra-judicial civil legal aid exists in less than a half of the member states¹⁷². By contrast, in line with the ECtHR case law, all countries provide assistance in the form of legal representation in courts, although availability of legal aid in judicial proceedings also varies from country to country.

76. A number of CoE member states have recently implemented legal aid reforms or are currently planning to undertake such reforms. Governments modify eligibility criteria, legal aid delivery and management schemes, and introduce other changes. Although the scale and directions of the reforms vary, it is possible to identify three major reform trends: i) development of legal aid programs; ii) improvement of legal aid organization and management; iii) reforms intended to limit or reduce public expenditures.

77. Lack of funds is the main factor affecting legal aid systems. Analysis of context in which legal aid system operates helps to identify factors generating demand for state-funded legal assistance and increasing legal aid costs. Dealing with these factors is a way to improve access to justice without increasing expenditures. Such factors include: i) mandatory representation; ii) monopoly on provision of legal services, iii) complexity of judicial proceedings; iv) lack of information and services providing for solution of problems on early stage and preventing aggravation of problems.

78. Provision of legal aid on individual basis is an expensive method to ensure access to justice¹⁷³. Instead experts recommend adopting a broader approach to provision of access to justice¹⁷⁴. Such approach includes two types of measures: i) measures to decrease a need for

¹⁶⁸ Legal Aid in Europe, p. 26.

¹⁶⁹ Ibid. p. 82

¹⁷⁰ "A vision for legislative reform of the regulatory framework for legal services in England and Wales. The Legal Services Board Report", 2016

¹⁷¹ Legal Aid in Europe, p. 81

¹⁷² Ibid.

¹⁷³ Towards Basic Justice Care, p.

¹⁷⁴ Richard Moorehead, "Legal Aid – System Failure or Broken Law?", 2010

professional legal assistance where possible, and ii) measures to increase availability of legal services beyond state-funded legal aid.

79. Since access-to-justice provision systems include legislation and other rules, such as courts' and tribunals' rules of procedure¹⁷⁵, first type of measures may include simplification of laws and adjudication proceedings¹⁷⁶ and abolishment of mandatory legal representation. Second type of measures include deregulation of legal market aimed at establishing a favorable regime for innovative approaches to legal services provision, in particular, provision of legal services using digital technologies, legal expenses insurance, pro bono, and provision of legal services by NGOs and legal clinics¹⁷⁷.

80. It should be, however noted that trying to reduce expenditure on legal aid and implementing innovative approaches in this field the member states are facing or may face certain challenges which should be effectively addressed.

¹⁷⁵ Legal Aid in Europe, p. 101.

¹⁷⁶ Richard Moorehead, "Legal Aid – System Failure or Broken Law?", 2010

¹⁷⁷ Towards Basic Justice Car, p. 65