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INTERNATIONAL STUDY OF PRIMARY LEGAL AID SYSTEMS WITH THE FOCUS ON THE COUNTRIES OF CENTRAL AND EASTERN EUROPE AND CIS

Prepared for UNDP Ukraine under the “Legal Empowerment of the Poor” project

Produced in the framework of the “Legal Empowerment of the Poor” joint project of UNDP and the Ministry of Justice of Ukraine.

Kyiv – 2012

This publication has been produced by Anna Ogorodova, expert of the United Nations Development Programme (UNDP) in the framework of the «Legal Empowerment of the Poor» joint project of UNDP and the Ministry of Justice of Ukraine.

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EXECUTIVE SUMMARY

This study examines the primary legal aid systems of a number of European countries, with the special focus on the countries of Central and Eastern Europe and former CIS. The countries covered in the review are: Georgia, Hungary, Moldova, Lithuania, Netherlands and Russia. Besides, examples are drawn from other countries which have a long-standing experience in organising primary legal aid, for instance the United Kingdom or Canada.

The review aims to provide **recommendations** to the **government of Ukraine** on how it can improve the organization and delivery of primary legal aid services. Another objective of the study is to develop **recommendations** to **UNDP and other development actors** as to how they could support the Ukrainian government in attaining this goal.

The following elements of the primary legal aid systems in the countries covered by the study are examined: management of primary legal aid; primary legal aid providers; scope and eligibility for primary legal aid and the procedure for the provision of such aid; as well as approaches to the funding of primary legal aid. Where relevant, comparisons are made with the Ukrainian situation.

The main findings related to each of the elements of primary legal aid systems outlined above, may be summarized as follows:

I. Management of primary legal aid

a. Legal aid management institution

The experience of the countries under review shows that it is advisable to establish a **separate body or structure**, whatever its formal status is, which would oversee legal aid as one whole system.

This body must have **sufficient human resources** and **financial capacity** to oversee the entire legal aid system. For illustration, the National Legal Aid Council and its territorial officers in Moldova are staffed by about 30 full-time employees (for the population of about 3.5 mln); the Legal Aid Board of the Netherlands has approximately 350 employees (for the population of around 17 mln). This institution should furthermore have **representations over the entire territory of the country** to have access to up-to-date and accurate information about the functioning of the legal aid system, particularly if the territory of the country is relatively large.

The institution managing free legal aid must have **operational autonomy** to take management decisions, for example to select legal aid providers, or to decide on spending of the legal aid budget (within the framework established by the law and policy priorities developed by the Government). This institution should also have the prerogative to implement initiatives aimed to improve the accessibility and quality of legal aid, such as e.g. innovative solutions of legal aid delivery, or training programs for legal aid providers.

To further guarantee independence of the legal aid management institution, and to ensure input to the development of legal aid policy from the relevant stakeholders, the establishment of an **advisory body**, similar to the legal aid coordination council created in Georgia, may be advisable. The legal aid coordination council could include the representatives of legal aid stakeholders, such as e.g. members of the Bar, civil society, justice institutions and other relevant government institutions, e.g. social services, and local authorities.

b. Functions of the management institution in respect of primary legal aid

In a number of the examined countries (Moldova, Georgia, Netherlands), the legal aid management institution contributes both to the development and to the implementation of the legal aid policy, including in the area of primary legal aid.

The responsibilities related to the development of primary legal aid policy may include:

- Systematic monitoring of the needs for primary legal aid;
- Making proposals to the Government on how the needs should be met, for instance through setting up new providers, contracts with the existing providers, experimenting with new models of legal aid delivery, etc.;
- Performing estimations of the financial needs for funding primary legal aid, and proposing the potential sources for funding;
- Proposing mechanisms for improving the quality of primary legal aid delivery.

Additionally, the legal aid management institution may have responsibility for the coherent implementation of primary legal aid policy on the national level, which may include such functions as:

- Developing the minimum conditions for engaging providers to deliver primary legal aid;
- Detailing the scope and nature of services to be minimally provided within the state-supported primary legal aid systems, based on the criteria established by the law, and the priorities established by the state policy on legal aid;
- Setting up new primary legal aid providers, or supporting other institutions, e.g. municipal authorities, in setting up new providers, where there are not enough providers to meet the existing needs for primary legal aid;
- Establishment of the procedures for coordination between the secondary legal aid and primary legal aid providers, and between the primary legal aid providers and other service providers, e.g. social services, medical services, etc.;
- In cooperation with other parties, e.g. Bar Association, local authorities and the civil society, setting up mechanisms for monitoring the quality and accessibility of primary legal aid;
- In cooperation with the parties mentioned above, implementing joint initiatives aimed to improve quality, e.g. provision of training to providers of primary legal aid, or setting up certification programs for primary legal aid providers;
- Experimenting with innovative methods of primary legal aid delivery;
- Developing proposals for funding primary legal aid, and making efforts to obtain additional funding sources, should the means available from the existing sources be too short to effectively finance the provision of primary legal aid.

c. Division of responsibilities for the management of primary legal aid between regional (municipal) and central authorities

In two countries under review, namely Lithuania and Russia, management of the primary legal aid system is delegated entirely to the regional or municipal level. The effectiveness of such delegation in either Lithuania or Russia has to date not been assessed. There is a number of good arguments in favor of delegating responsibilities for the organization of primary legal aid to the local or regional level: the latter are well aware of the local needs and priorities, they often have experience of organizing other, similar kinds of services (e.g. housing or social assistance), etc.

Where regional or local authorities are vested with the role to manage primary legal aid programs, the central government must be ready to step in when the financing of such programs becomes short, and/or otherwise support the functioning of such programs. Furthermore, it is advisable that the central government should retain the functions linked to ensuring coherent implementation and continuous development of the national legal aid system as the whole. These functions could include, for instance, monitoring to what extent regional legal aid programs adhere to the legislative norms that require to provide efficient access to justice to the poor and disadvantaged, and to the national legal aid policy priorities; proposing (and funding) solutions for improvement of such programs, e.g. piloting new models of legal aid delivery; assistance aimed to improve the quality of primary legal aid services; etc.

II. Providers of primary legal aid

a. Public or private providers?

Most of studied countries have opted — either on paper, or in reality -for a **mixed system** of primary legal aid delivery. That means that different types of providers are recognized: both such that are created directly by the government, and from bottom-up, i.e. by the civil society, such as e.g. NGOs, legal clinics or private providers. None of the studied systems relies solely on government-created providers. Furthermore, Moldova and the Netherlands opted for a system where the institutional and organizational framework for primary legal aid providers is set up by the state, but the providers themselves are fully independent from the government.

Mixed systems are **less expensive** than those that are based on only one type of provider. A mixed system, particularly when it is based on the contracting model — i.e. where the state enters into a contract with a given provider to provide a certain amount of services — allows for competition of providers, which ultimately leads to a **better cost- quality ratio**. In competitive conditions, providers of primary legal aid strive to attain better coverage and quality of services at a lower price.

On the other hand, a mixed system, due to the fact that it also includes government-run providers, embraces the advantages of such providers in that: a) they are potentially **more stable**, as long as the government is willing, and

has sufficient resources to finance them; b) they **may be set up relatively quickly** to address the needs which are not addressed by the existing providers, e.g. in particular types of services, or in a particular geographic area; c) **experimentation** with such providers is easier because changes may be relatively easier implemented from top-down. Thus, such providers may be used as “experimentation platforms” where the state wishes, e.g. to test new modalities of primary legal aid delivery.

In order to truly experience the advantages of the mixed system, however, the government legal aid policy should place **equal emphasis on both components of such system: public and private**. This is unfortunately often not the case: i.e. in the originally “mixed” systems often one type of providers — most often, those that are established by the state — is prioritized over the other.

Experience of the states under review shows that it is desirable to ensure cooperation with providers belonging to the private (including non-for-profit) sector from the very initial stages of setting-up/rebuilding the primary legal aid system. This cooperation has a number of advantages: firstly, the “burden” of organizing the system of primary legal aid provision will be shared with the private sector. Secondly, state authorities may learn from the successes and challenges experienced by the private providers when setting up their own providers’ network. Effective partnership between the public and private/civil society providers is necessary particularly in the countries with large territories, or countries where the need for, and/or demand for primary legal assistance from the population is very high.

b. Advantages and disadvantages of the different types of providers

Different types of primary legal aid providers exist in the countries under review. The table below presents an overview of the providers which are recognized — i.e. funded from the state legal aid budget — in the given countries. The overview includes types of providers that are explicitly recognized by law; or those that exist in practice — including in the experimental form — in the given countries, and fall under one of the (broader formulated) categories of providers included in the law.

Table 1. Types of primary legal aid providers existing in the countries under review

Type of provider/Country	Georgia	Netherlands	Hungary	Lithuania	Moldova	Russia
Network of legal advice bureaus established by the government	x	x	-	-	-	x
Network of (non-for-profit) legal advice centers established by the private sector	-	x	-	-	-	-
Public servants employed by the municipality or the executive authority	-	-	x	x	-	-
Individuals lawyers or law firms entering into contracts with state authorities	-	x	x	x	-	-
Paralegals or paralegal firms (for-profit) entering into contracts with state authorities	-	-	-	-	x	-
NGOs entering into contracts with state authorities for provision of specific types of services	x	x	x	x	x	x
Legal clinics at universities entering into contracts with state authorities	x	-	x	x	x	x

Most countries under review, as well as other countries with a longer history of primary legal aid provision, rely on the **state legal aid bureaus** or **NGO legal advice centers**, or a combination of the two, as the **main providers** of primary legal aid services.

State legal aid bureaus: An advantage of this model is that its management is relatively straightforward: government agencies retain direct control over the setting up and operation of the bureaus. The model is furthermore relatively easy to re-organise, should the structure of the needs for primary legal aid change.

The downside of the “state legal aid bureaus” — as compared, e.g. to networks of non-for-profit legal advice centers, or even lawyers — is that they are rather expensive, particularly when the advisors working for such bureaus provide the entire

range of primary legal aid services, and not only basic legal advice. Another setback of the “state legal aid bureaus” model that is sometimes voiced is the potential lack of independence of its employees. That is because they are employed by the government, unlike (certified) lawyers-members of the Bar who are independent in their operation. However, that these concerns may be addressed through creating a proper normative and organizational framework for the operation of “state legal aid bureaus”: e.g. defining explicitly that bureaus’ employees may represent clients against government authorities; granting status of an independent legal entity to the bureau; and advertising it to the population as an *independent* service provider.

NGO legal advice centers, as compared to the “state legal bureaus”, may be better positioned to provide community-oriented services, because the staff of such centers is usually well-embedded in the local communities. Furthermore, they are potentially cheaper for the state, because their operations are also funded from other sources. On the other side, NGO legal advice centers are potentially less stable than “state legal aid bureaus”, particularly where they have to rely to a great extent on external (i.e. other than from the state budget) funding and using volunteers to provide services. It may also be more difficult to ensure consistency in the service provision across the network of NGO “legal advice centers” than that of the “state legal aid bureaus”, because often each legal advice centre operates based on the local priorities, especially when it is dependant on funding from the local budget. However, government policy that takes into account these specificities of the networks of NGO “legal advice centers” may help to off-set these setbacks, whilst preserving their many benefits.

Other provider models discussed below are usually used as **complementary** to the main primary legal aid providers:

Public servants providing primary legal aid: An advantage of the model is that it is relatively easy to organize — more so than “state legal aid bureaus” — as it relies on the already existing infrastructure. Furthermore, where this model relies on the existing human resources (i.e. no new personnel is hired to provide the service), it may appear cheaper than the other alternatives — but with a potentially severe negative impact on the accessibility of the service, as explained below.

The downside of this model, however, is that such providers tend to be less accessible and visible to the potential beneficiaries as the others for various reasons. Another potential drawback of such providers is the lack of capacity: usually, the municipal or executive employees are vested with the task to provide legal advice in addition to their other job duties. Given the lack of time available to provide in-depth legal assistance, such providers are usually only able to give basic legal consultations, or refer applicants to other providers. Furthermore, such providers may struggle to gain sufficient trust, e.g. ensuring that the public would refer to them with all kinds of legal problems, including conflicts with the public institutions and state authorities.

Individual lawyers: Choosing for this model — particularly in the absence of another cheaper alternative which runs in parallel (e.g. the model based on paralegals) — is rather expensive, and may be unsustainable. Furthermore, countries, which rely solely on lawyers to provide primary legal aid, may experience shortage of lawyers willing to provide such assistance (unless there is an over-supply of lawyers in the given country). That is because certified lawyers often do not consider the provision of simple legal advice or legal information as a professionally or financially attractive area of work.

On the other side, contracts with lawyers may be successfully used — and are sometimes necessary — as a *complementary* model of primary legal aid. Lawyers’ assistance may be required e.g. in cases where a more in-depth legal inquiry into the problem is needed, or where there is a conflict of interest caused by the fact that the primary provider of legal advice is a government employee.

Paralegals have a number of important advantages as primary legal aid providers. Firstly, they are cheaper than many other providers, because their fees are lower than those of the certified lawyers. Secondly, paralegals are usually well-embedded in the local communities, and thus they are able to provide collectively-oriented, rather than individually-focused services. Collectively-oriented services — e.g. engaging with state authorities and/or private organizations to resolve collective disputes, or to create precedents which would help to resolve similar legal conflicts quicker — are more cost-efficient than individual services. Besides, the fact that paralegals are aware of the community problems may help them to identify problems in a proactive manner, and enter at an early stage to work out a solution, before the problem escalates. Fourthly, engaging with paralegals for the provision of primary legal aid may have an additional value of strengthening the paralegal profession in the country, which may compete with lawyers for the provision of out-of-court legal services. This competition could help to maintain an optimal cost-quality ratio of legal services by overcoming the monopoly of certified lawyers in certain areas of legal work.

A downside of engaging paralegals may be that the government or the legal aid institution has to invest substantial resources into their initial training and certification, as well as assisting paralegals to define and assert their professional domain vis-à-vis certified lawyers. Some initial resistance to the institutionalization of the paralegal profession from the lawyers- members of the Bar Association is also to be expected.

NGOs providing specialised services: NGOs entering into contracts with state authorities are to be distinguished from networks of non-for-profit legal advice centers created by the private sector in that universalized legal advice and assistance is not the only and primary purpose of such NGOs, unlike in the case of legal advice centers. I.e. such NGOs may combine provision of legal consultations and advice with advocacy, policy-oriented, human rights monitoring, training and capacity-building activities. They may also be specializing in (a) specific area(s) of law, or target a particular group of people, for instance immigrants or ethnic minorities.

Contracting NGOs to provide primary legal aid may be important, firstly, because it may fill in the gap in the supply of legal advice services which other providers are unable to cover. This would ensure better accessibility of the primary legal aid system to the marginalized groups, e.g. ethnic minorities, and the extremely poor. Furthermore, services offered by NGOs are potentially cheaper because they are usually funded from multiple sources, i.e. charities, donor organizations, member contributions, etc. Besides, NGOs normally rely to a great extent on volunteers in the exercise of their functions.

Legal clinics: Legal clinics have a dual goal of providing legal services, as well as educating future members of the legal profession in the spirit of social justice and *pro bono*. In absolute terms, services provided by a legal clinic may be slightly more expensive than e.g. those of a legal advice centre. That is because a legal clinic has to be staffed by law professors and/or engage professional lawyers, whose time is more expensive than those of paralegals. Besides, a legal clinic runs a number of educational activities, which are not directly linked to the provision of legal assistance, plus more time may be invested into one “case” in the clinic than with any other provider, because it is required by the educational process. At the same time, legal clinics are usually able to generate other funding in addition to the subsidies from the state legal aid budget — e.g. contributions from the university, or from the legal profession; and in this respect services provided by the clinic may cost less to the state, than those delivered e.g. by the “state legal aid bureaus”.

III. Scope and eligibility of primary legal aid, and the procedure for the delivery of such aid

a. Definition of primary legal aid

Crafting the definition of primary legal aid very carefully by distinguishing what is included into its scope and what is not — even if a general definition is already provided for in the legislation, as is the case in Ukraine — is important because this definition would serve as a basis for all other regulatory instruments for primary legal aid. For instance, it is based on this definition that the decision on what kind of services will be paid for under the legal aid scheme will be made.

In our view, a **general (non-exhaustive) definition of primary legal aid** that **distinguishes it from secondary legal aid** (i.e. from the assistance provided by certified lawyers, and/or linked to court procedures) is optimal. Listing the types of services to be provided under primary legal aid, as the legislation in most of the countries under review does, seems too limiting. Non-court legal action may take very different forms and shapes; depending on the circumstances of the case and the creativity of the legal aid provider. Confining such action to a pre- defined list of possible activities may interfere with this creativity. Besides, new forms of out-of-court legal action and provision of legal information are being proposed constantly, e.g. with the development of technology (e.g. interactive self-help legal materials), or with the change of vision as to which objective should the primary legal aid system serve. These activities may however not fall under the “traditional” definition of primary legal aid.

b. Ways to limit the scope of primary legal aid

Limiting the scope of primary legal aid may be necessary in order to effectively plan and control the resources to be spent on the provision of such services. There are two main ways to limit the scope of primary legal aid:

- by limiting the categories of cases for which such aid may be provided;
- by limiting the time during which such aid is provided.

Limiting the categories of cases falling under primary legal aid: Some states exclude certain categories of cases — e.g. disputes arising from entrepreneurial activities — from their primary legal aid scheme. The rationale behind this consideration is that presumably the livelihood and the personal sphere of the applicant is less implicated in cases concerning the protection of business interests. This, however, is at odds with the “legal empowerment” concept, which asserts that the ability to independently exercise entrepreneurial activities is often crucial for the livelihood of certain categories of persons, e.g. farmers.

In our view, it is **not understandable to limit the provision of primary legal aid to certain categories of cases**. The main objective of the primary legal aid system is to ensure access to justice to the poor and vulnerable groups of the society, no matter under which legal category their case may be classified. Presumably, persons who are relatively well-off are anyway not likely to use the state-funded primary legal aid system, because they have access to other sources of obtaining legal advice and information. It is the most poor and disadvantaged who are not likely to have access to such sources, and who are mostly likely to make use of primary legal aid services.

Limiting the duration of primary legal aid: Another option for limiting the scope primary legal aid is to restrict the duration of primary legal aid consultation to one hour. If the “case” requires more than one hour of legal assistance, the applicant would then be referred to the “secondary” legal aid system. In our view, such limitation **may be sustained**, but **only in respect of certain types of providers and/or types of legal services**. An acceptable solution to ensure economy of resources in the situation of the universal availability for legal aid, in our opinion, could be to ensure that there exists a state-supported system where everyone may receive simple legal advice or consultation of a limited duration. Such consultations may e.g. be provided by the providers established by the state: legal aid bureaus, or the municipal or executive officials. However, there must be another system in place — e.g. run by NGOs or private lawyers — to which the poor and disadvantaged in particular could turn for more in-depth/prolonged legal assistance that falls short of legal representation in court. Some applicants — the poorer, less educated, more vulnerable, etc. — may require more time to resolve their legal problem, even if it is simple in nature. In such cases, it is not understandable why a case should be sent to a more expensive secondary legal aid provider, if it may be successfully resolved within the primary legal aid system.

c. Procedural principles of primary legal aid provision

From the experiences of the countries under review, the following principles for the delivery of primary legal aid may be distilled:

- Accessibility of primary legal aid to the population
- Simplicity of the system for obtaining primary legal aid
- Speediness in the provision of such aid
- Effective coordination between different types of providers.

Accessibility: Primary legal aid should be easily accessible to the population. This includes a range of organizational arrangements that must be put in place, including e.g. ensuring that there exists a certain (minimum) quantity of legal aid providers for certain areas/territories; that the geographic spread of primary legal aid providers is even, and that the hard-to-reach or rural areas are covered. Accessibility also means that the population should be sufficiently informed about the availability of primary legal aid services.

Accessibility of primary legal aid services means furthermore ensuring that the population trusts the provider, and thus refers to it for help with their legal problems. Ensuring trust from the population requires taking measures aimed at enhancing the perceived and real independence of a legal aid provider. Other measures to enhance trust from the applicants could be those aimed to ensure that “their feedback counts”, i.e. by undertaking client satisfaction surveys.

Individual providers may also enhance their accessibility by such simple actions as designing an open and “friendly” space for the applicants’ reception, or extending their opening times to the “out of work” hours. Furthermore, accessibility of a primary legal aid provider by telephone or internet in the modern technological era may be even more important than physical accessibility.

Simplicity of primary legal aid is one facet of accessibility, which means that the system for the provision of such aid should be organized in a simple manner, which is clear and understandable for its potential beneficiaries. This includes, in particular:

- simple and clear procedure for the application for primary legal aid;
- availability of information about the primary legal aid providers, the services that they offer, and conditions for obtaining such services, so that the potential applicants know exactly which provider to address.

In most of the countries under review obtaining primary legal aid is not linked to any conditions, and there is no special application procedure for such aid. Besides, countries with a complex system of providers developed information materials and software programs to inform the population about the existing legal aid providers and conditions for their service.

Speediness of primary legal aid means that where possible such aid should be provided “on the spot”, and with a minimum delay or waiting time if further action is necessary, such as e.g. requesting information from the state authority, or drafting a legal document. For instance, in Moldova it is 3 working days. More often than not the time period within which to handle the request for primary legal aid is within the full control of the provider of such aid (unlike in the case of secondary legal aid requests, which are linked to the court procedures). In an overwhelming majority of cases primary legal aid requests may be handled immediately, or after a short research or other follow up.

Furthermore, speedy provision of assistance is necessary because the problems for which primary legal aid is requested are usually pressing, or they are experienced as such by the applicants. Often the livelihood of the applicant is at stake, e.g. when the “case” concerns employment, housing, or social benefits’ payment. Besides, these problems often tend to escalate when not handled promptly, which also incurs a greater cost for the legal aid system.

Effective coordination between the providers of legal aid and other institutions (such as e.g. social help organizations, trade unions, etc.) is a crucial element of primary legal aid system. Such coordination is needed to ensure that where the provider of primary legal aid, which the applicant approaches with his problem, is unable to assist him, the latter should be referred directly to a provider or an organization, which is in the best position to provide help. Multiple referrals should be avoided, as the probability that the person would apply to the next provider diminishes, the more times he is being re-referred (the so-called “referral fatigue” phenomenon).

Coordination must exist on different levels, e.g.

- between primary legal aid providers: e.g. state providers who deliver basic legal advice, and non-state providers who may provide more in-depth assistance;
- between primary legal aid providers and institutions providing other types of services, e.g. related to social services, unemployment, medical services, etc.;
- between primary legal aid providers and secondary legal aid providers.

Cooperation with other organizations providing non-legal services is necessary because applicants often do not understand the nature of their problem, i.e. whether it is a legal problem or not. If the problem that the person applies with is not legal, primary legal aid providers should have a mechanism to refer them to the appropriate service provider. Cooperation with other organizations may also be useful to ensure early and proactive identification of legal problems: e.g. persons applying to other services’ organizations often do not (yet) recognize that they have a legal problem. If these organizations cooperate with the primary legal aid system, employees of such organizations may, for instance, be requested to ask a few diagnostic questions aimed to identify whether the applicant also has a legal problem, and if yes then to refer him to a primary legal aid provider.

It is furthermore self-evident that there primary legal aid providers should co-operate with the secondary legal aid providers, should it turn out that the applicant needs secondary legal assistance. Legal aid management institutions must ensure and facilitate such cooperation if necessary. The procedures for referral to other providers should exist on the level of the individual providers, as well as on the level of management of the legal aid system.

IV. Approaches to funding primary legal aid

In all countries under review, with the exception of Russia, legal aid — including primary legal aid — is financed from the central state budget. The amount of state funding designated for primary legal aid varies from one country to another. In the Netherlands, for instance, the yearly budget of primary legal aid constitutes about 24 mln EUR, or about 1.4 EUR spent on primary legal aid per capita. (These figures, however, do not take into account the grants given by the state to NGOs for primary legal aid provision). In Lithuania, by contrast, the yearly primary legal aid budget is about 550.000 EUR, or about 0.2 EUR per capita.

In reality, state authorities in the reviewed countries fund only a small portion of legal advice. In addition, in all reviewed countries the provision of primary legal aid is in practice financed from the other sources, such as e.g. funds provided by international donors; charities; grants provided by the local authorities; etc. Besides, some part of primary legal aid delivery is “financed” by volunteers and lawyers working *pro bono* to provide free legal assistance. The funding of 100% of the needs for legal advice by the state is probably unattainable.

Many countries, particularly less rich ones, struggle to provide even a modest contribution into the funding of primary legal assistance. This is especially so, because these states often strive first to meet their constitutional obligations to guarantee free legal assistance in criminal cases. At the same time, the importance of providing simple legal advice should not be underestimated. Not only is it an important tool to guarantee access to justice and legal empowerment for the poor and most vulnerable, it may also actually help states to save money. The “economy areas” would constitute the funds that are spent on secondary legal assistance and associated costs of organizing trials, as well as funds spent of the provision of other types of social services.

Where resources available for funding primary legal aid were limited, the following approaches have been tried in different countries:

- Employing creative cost-cutting solutions in the organization of primary legal aid delivery, such as e.g. involving paralegals instead of lawyers to provide the service; co-operation with the civil society and legal clinics in the provision of such aid;
- Other cost-cutting methods of primary legal aid provision are those aimed at collective assistance and addressing systemic legal problems rather than tackling individual problems one-by-one, for instance community-oriented services. Likewise, proactive services, i.e. those that are aimed at the early identification and tackling of the problem are cost-efficient, because they help preventing problems from escalating further, and thus to save state resources spent on saving these problems;
- The approaches employed by providers of primary legal aid to the resolution of disputes may have a cost-cutting effect: for instance, solutions based on mediation and reconciliation potentially save more resources than litigation-based approaches;
- The solutions using technology, such as e.g. interactive self-help programs or video-consultations are a great solution to cut costs. (However, it should be remembered that self-help programs alone are not apt to address the needs of the poor and disadvantaged to access justice, but that they can be used as complementary tools for legal education, or referral to an appropriate provider);
- Contracting out a bulk of services to providers, and stimulating competition among providers has proven to be an effective cost-cutting solution;
- Legal expenses insurance has proven effective in some countries, including a less wealthy South Africa to fund legal aid needs of medium-income households;
- Encouraging the individual providers — including those that belong to the state system — to apply the innovative and proactive approaches to fundraising;
- Seeking for funding from international donors to finance the provision of primary legal aid services.

The study concludes with a series of **recommendations** to the **Ukrainian government** and to **UNDP and other development actors**.

I. Recommendations to the Ukrainian government

1. Management of the primary legal aid system

- **Define the relationship and division of responsibilities between the various state authorities** — the Ministry of Justice, its territorial offices, and local authorities — in the management of primary legal aid; as well as procedures for coordination between these bodies. Given that local authorities are mainly responsible for managing primary legal aid, the Ministry should consistently assume a supervisory and/or monitoring role in respect of the regional primary legal aid systems.
- It is advisable to create **a separate entity or institution with regional offices to coordinate the implementation of the national legal aid policy**, including primary legal aid. If this is not possible, at least a separate department of the Ministry of Justice (with regional sub-divisions) should be created.

2. Primary legal aid providers

- **The to-be-developed primary legal aid system of Ukraine should rely both on the public (state-established) and private providers**, e.g. networks of NGO centers, lawyers, specialized NGOs, legal clinics, etc. Both components of the primary legal aid system — public and private — should receive due recognition and attention from the

very outset of the primary legal aid reform. This would ensure, in the short term, taking off the burden of meeting the growing demand for primary legal aid from the state-established provider system. In the long run, this would ensure competition between the two systems, which would lead to greater cost-quality ratio of the service.

- To this end, the Ministry of Justice and/or its territorial offices should **promote and facilitate cooperation agreements between municipalities and the existing providers of primary legal aid.**
- The Ukrainian government should take **additional steps** to designing an efficient policy concerning primary legal aid providers. Namely, these steps should be:

1. **reviewing** the advantages and disadvantages/potential limitations of the different types of providers — executive agencies, NGO legal advice centers, individual lawyers, legal clinics, paralegals, etc. — and the results of their performance, if they already exist. This review could focus on such issues as: cost-efficiency; (expected) quality of the service; accessibility of the provider to the population; level of trust from the population to the provider; capacity for community outreach. This review should also take into account the lessons learned in other countries. Furthermore, the review should be based on the results of the legal needs assessment of the population. E.g. the question should be asked: To what extent, and what portion of, the existing legal needs of the population does the given provider satisfy?

2. **experimenting** with other types of legal aid providers which do not exist in Ukraine as of yet, for example “state legal aid bureaus” or “paralegals”. For instance, creation of “state legal aid bureaus” may prove the only solution in the regions where no other providers, e.g. NGO legal advice centers, or lawyers willing to provide primary legal aid, exist. Paralegals, in their turn, are optimal to provide access to justice for persons living in rural areas.

- Based on the results of the reviews of advantages and disadvantages of, and experimenting with, different types of providers, the Ukrainian government should develop — in cooperation with the other stakeholders –regional and municipal authorities, Bar Association and the civil society — a **coherent national policy in respect of both public and non-state primary legal aid.** This policy should explicitly specify what types of providers will be supported and/or promoted by the state, and in which manner, the goals of the state policy in respect of each type of providers, and the minimum requirements to each type of providers.
- Only after the national policy on primary legal aid providers is formulated, may the **further regulations** related e.g. to the operational procedures and minimum requirements certain types of provider; standard contracts with providers; provider reporting forms; payment mechanisms; etc. be developed.
- The **organization** — and particularly the human capacity — and **procedures of the “public consultation centers”** of the executive authorities should be **improved** to increase their accessibility, visibility and speediness of the provision of the service. The performance of the “centers” must be monitored based on the substantive indicators.

3. Scope and eligibility for primary legal aid and procedures for obtaining such aid

- The **definition of primary legal aid** should be further specified in the implementing legislation.
- If necessary to save the resources for the provision of primary legal aid, the **eligibility may be differentiated depending on the different types of primary legal aid** — e.g. initial advice, and more in-depth consultation and/or assistance, and **different providers.**
- The **procedure for obtaining primary legal aid** from the executive and local authorities does not meet the principles of accessibility and speediness of the services discussed above, and thus it **should be revised.** Furthermore, additional procedures should be developed to ensure effective co-ordination between different primary legal aid providers, of primary legal aid providers with organizations providing other services, and with the secondary legal aid providers.

4. Funding of primary legal aid

- In preparing funding proposals for primary legal aid, the Government should make an **inventory of potential areas where savings may be achieved** due to the provision of such aid.
- **Creative cost-cutting solutions** to financing primary legal aid employed in other countries should be reviewed for their applicability in Ukraine.
- **Providers** of primary legal aid, including those that are state-run, should be **stimulated to undertake fundraising.**
- Financial support from **international donors** should be sought.

II. Recommendations to UNDP and other development actors

- UNDP and other development actors should support the government of Ukraine in the **development of an effective national policy on legal aid**, which integrates coherently both primary and secondary legal aid programs, and is conducive to the achievement of access to justice and legal empowerment.
- UNDP and other development actors should assist the government of Ukraine in the **development of the necessary institutional capacity and management structure for the legal aid system**, including primary legal aid.
- UNDP and other development actors should support the Ukrainian government in the development of **mechanisms for monitoring the provision of primary legal aid** by the existing providers, and **experimentation with the new models** of primary legal aid provision.
- UNDP and other development actors should assist the government in **designing an effective evidence-based approach to the delivery of primary legal aid** relying on **both public and private providers**, which would meet the requirements of **accessibility** and **cost-efficiency** of the service.
- UNDP and other development actors should provide **funding** to the to-be-established primary legal aid system in Ukraine, at least in the early stages of its development. Donor funding should also be available to **directly finance** (some part of the) **service provision**, should the intention be to roll out the provision of primary legal aid on a national basis, and to provide anything but a superficial and/or intermittent service.
- Besides financing primary legal aid service provision, donor **funding** should be aimed at **building capacity** of the newly-established providers; developing **management mechanisms** for primary legal aid at the regional levels; as well as **stakeholder coordination** on the central and regional level.
- UNDP and other development actors should **facilitate dialogue between the Ukrainian government and the civil society groups** that have developed innovative solutions to the delivery of primary legal aid services, or have extensive experience in the provision of primary legal aid, with the view to **enrich the debate** on the national policy on primary legal aid.
- UNDP and other development actors should furthermore **promote active cooperation between the state and the civil society** in the implementation of the to-be-developed primary legal aid policy. Such cooperation is necessary in order to establish **effective public-private partnerships** in the provision of primary legal aid, which would ultimately lead to more comprehensive and cost-efficient service provision.

INTRODUCTION

UNDP-Ukraine, in consultation with the Ministry of Justice of Ukraine, commissioned a study of primary free legal aid systems, with specific focus on the countries of Central and Eastern Europe and CIS. The report is aimed to inform the current policy debate on setting-up/revamping the primary legal aid¹ system in Ukraine, following the adoption of the Law on Free Legal Aid on 2 June 2011.

The Law on Free Legal Aid defines in general terms the scope and eligibility for primary legal aid, the types of primary legal aid providers, and the procedure for delivery of such aid.² The government of Ukraine is now facing a task of designing and implementing a workable system of primary legal aid. This system should meet the needs of the poor and disadvantaged for access to justice, and it should be conducive to their legal empowerment.

The objective of this report is to provide **recommendations**, based on the solid evidence collected from the countries studied, to the **government of Ukraine** on how it can improve the organization and delivery of primary legal aid services. The study also aims to develop **recommendations to UNDP and other development actors** as to how they could support the Ukrainian government in attaining this goal.

The study is divided into six parts. Firstly, it provides definitions of the main concepts and terms used throughout the report, such as “legal empowerment”, “primary legal aid”, “paralegals”, etc. Further, the study examines the various components of primary legal aid systems in the countries covered: namely, management of primary legal aid; primary legal aid providers; scope and eligibility for primary legal aid, and the procedure for the provision of such aid; and approaches to the funding of primary legal aid. Each of these components is addressed through an evaluative lens, i.e. advantages and disadvantages of each presented option are discussed. Comparisons are made with the Ukrainian situation where possible. The study concludes by drawing recommendations relevant to the Ukrainian context.

Early in the process of developing the study it became evident that (functioning) state-funded primary legal aid programs exist only in a handful of Eastern European and CIS countries,³ and that information about how these programs operate in practice is rather scarce.⁴ Certain evidence relied upon in this study was available only from the more developed Western primary legal aid systems and/or research studies originating from the West. Therefore, to expand on its evidence base, the study also made references to the relevant experiences in selected Western countries where primary legal aid systems have existed for a relatively long time.⁵

1 Here and below, for the sake of brevity the term “primary legal aid” instead of the term “free primary legal aid” will be used.

2 However, various provisions of the Law concerning primary legal aid leave room for improvement. For more detail, see below Chapter 4.

3 Such programs are operational, to the best knowledge of the author, in Georgia, Hungary and Lithuania. Furthermore, legislative frameworks for primary legal aid exist in Moldova and Russia. These countries have also done some experimentation with primary legal aid delivery models.

4 Mostly because of their relatively young age.

5 In particular, Netherlands, England and Wales, New Zealand, Canada and Australia.

CHAPTER ONE. CONCEPTS AND DEFINITIONS

Many of the terms used throughout the report — such as e.g. “legal empowerment”, “primary legal aid”, “paralegal”, “legal advice centre”, etc. — have a different meaning depending on the context of their usage. Therefore, it appears necessary to give definitions of these terms at the very outset of the study.

In the broadest sense, **legal empowerment** may be understood as the use of law by the poor and disadvantaged to strengthen their capacity to exercise control over their lives.⁶ Thus, any reform initiative designed to enhance legal empowerment should result in the greater ability of poor and disadvantaged individuals and communities to use law to resolve their livelihood problems, either on their own, or with help from others.

A well-functioning **state-supported free primary legal aid** system — i.e. such that is capable of meeting the needs of the poor and disadvantaged for legal information, advice and assistance; and such that (importantly) promotes self-initiative of such persons in obtaining and acting on such advice — may contribute greatly to their legal empowerment. The degree of state involvement in the primary legal aid system may differ from organizing the service provision directly, to funding and exercising general oversight of the independent (or quasi-independent) providers. Experience from other countries shows that some “distancing” of the state from providers of primary legal aid is needed to ensure that the latter are perceived by the population as independent for the state authorities. This perception of independence is, in its turn, an ultimate condition to generate trust to such providers from the population, and thus to ensure that the primary legal aid system is effectively used.⁷

There is no uniform definition of **primary legal aid** as such, or as opposed to secondary legal aid. In this study, I propose the following working definition of primary legal aid:⁸ **any form of individual or community-oriented legal advice, assistance or representation that may be provided by non-certified lawyers (paralegals), and which does not include representation before courts or other activities that may only be performed by certified lawyers.** This definition is generally in line with how primary legal aid is described in the Law on Free Legal Aid of Ukraine.⁹

This report will use the term **(community-based) paralegals** when referring to persons well-respected in their communities who possess certain legal knowledge and skills (but are not certified lawyers), and who undertake all or some of the following activities: provision of simple legal advice, information and assistance to individuals; referrals of individuals to other organizations providing legal services (if e.g. more complex legal assistance is needed); community legal education; mediation of legal conflicts within the community; identifying, and helping to resolve legal problems important for the entire community through community mobilization, or by taking other appropriate action.¹⁰

Legal advice centre is an independent non-for-profit organization, or a quasi-independent government organization¹¹ that provides primary legal aid services, staffed (predominantly) by paralegals. **Legal clinics**, for the purposes of this report, is a university-based program, where law students provide legal advice and assistance to (primarily) poor and disadvantaged members of the communities, under the supervision of university professors and/or experienced lawyers.¹²

6 See S. Golub, What is legal empowerment?, in S. Golub (ed.), *Legal empowerment: practitioners' perspective*, International Development Law Organisation, 2010, at p. 13.

7 See e.g. D. Shabelnikov, O. Shepeleva, State-subsidised legal aid programs in the context of access to justice and ensuring the effectiveness of legal regulation: main conditions of success, in Public Interest Law Institute (ed.), *Access to justice and subsidized legal aid: analysis of the Russian and international experience*, Moscow, 2010, (in Russian), at p. 27.

8 Explained in more detail below in Chapter 4.

9 For a comparison of this definition with the definition given in the Law on Free Legal Aid, see below Chapter 4.

10 For a more detailed definition, see *Open Society Justice Initiative, Community-based paralegals: a practitioner's guide*, 2011, at p. 16.

11 For more details, see below Chapter 2.

12 A different definition of a “legal clinic” is used, e.g. in the Canadian province of Ontario, where a “legal clinic” corresponds to what in this report will be called a “legal advice centre”.

CHAPTER TWO. MANAGEMENT OF PRIMARY LEGAL AID

2.1. Management structures of primary legal aid delivery in the countries under review

a) Georgia

The legal aid system of Georgia — including both primary and secondary legal aid — is managed by the Legal Aid Service. Legal Aid Service (LAS) is a legal entity of public law¹³ under the jurisdiction of the Ministry of Corrections and Legal Assistance (the Ministry).¹⁴

The Ministry exercises the general supervision of the functioning of LAS based on the periodic reports, approves its statute,¹⁵ and appoints its director¹⁶ and members of its Monitoring Board.¹⁷ Besides, the Ministry decides on the establishment and winding up of the state-run legal aid providers — legal consultation centers and legal aid bureaus — based on the proposal from LAS director.¹⁸

The Legal Aid Services, however, have a great degree of operational independence from the supervising Ministry, both in the law and in practice. Art. 8¹ of the Georgian Legal Aid Law provides explicitly that LAS is “independent in its activities, and any influence on its activities is impermissible”. Independence of LAS is further guaranteed by the existence of the Monitoring Board.¹⁹ The latter approves the annual LAS strategy, where the service delivery priorities are defined. The Monitoring Board must approve any cuts of the LAS budget.²⁰

Furthermore, many important operational decisions are taken by the LAS director independently from the Minister. These include, for example: staffing of the legal aid bureaus and consultation centers; developing the conditions for, and contracting private providers; developing and implementing mechanisms for ensuring quality of primary legal aid provision.²¹ Other decisions, such as e.g. determining the priority areas of the consultation centers’ activities and appointment of their heads, are taken “in coordination with the Minister.” In practice, the decision-making independence of the LAS is enhanced by the fact that the Minister does not proactively manage and monitor the operation of the Service. Rather, the Minister relies on the recommendations of LAS director in taking management decisions, and exercises *ex-poste facto* supervision based on reports.

The Legal Aid Services have one central office in Tbilisi, which coordinates a network of 11 legal aid bureaus and 3 legal consultation centers spread throughout the country.²² A centralized structure without territorial divisions is justified by the relatively small size of the country (about 70 thousand sq. km.).

b) Hungary

In Hungary, both primary and secondary legal aid is managed by the Legal Aid Services within the Justice Service of the Ministry of Public Administration and Justice (Ministry).²³ In addition to managing the provision of legal aid, the Justice Service performs tasks related to victim protection, probation, compensation for the loss of life caused by state action, etc.²⁴

The Justice Service is an independent legal entity under the supervision of the Ministry. The Ministry of Justice sets the general framework for the provision of primary legal aid: e.g. defining the priorities of such provision, and approving the criteria for, and standard contracts for engaging legal aid providers.²⁵ However, like the Georgian Legal Aid Services, the Justice Service is independent from the Ministry in the exercise of the operational tasks, such as e.g. organizing the delivery of primary legal aid by the employees of the Justice Service — and for these purposes, defining the operational framework, and

13 Analogous to what in some countries, e.g. in the US, is called a “government regulatory agency”.

14 Art. 8 of the Law of Georgia on Free Legal Aid, available at http://www.legalaid.ge/cms/site_images/Documents/kanoni%20ENG.pdf; last accessed on 18 December 2011.

15 Art. 8 of the Law of Georgia on Free Legal Aid.

16 Art. 9 of the Law of Georgia on Free Legal Aid.

17 Art. 10 of the Law of Georgia on Free Legal Aid.

18 Art. 14 of the Law of Georgia on Free Legal Aid.

19 The Monitoring Board consists of five members, including representatives of the judiciary, Parliament, Bar Association, civil society and the executive power.

20 See Art. 21¹ of the Law of Georgia on Free Legal Aid.

21 Art. 14 of the Law of Georgia on Free Legal Aid.

22 See the information on the website of the Legal Aid Services at http://www.legalaid.ge/index.php?action=page&p_id=47&lang=eng; last accessed on 17 December 2011.

23 See M. Pardavi, The legal profession in Hungary, background report written for the Workshop on Reform of the Legal Profession organized by ODIHR, 2008, p.16, available at www.osce.org/odihr/36305; last accessed on 17 December 2011.

24 See *ibid.* Also see the information on the website of the Ministry of Public Administration and Justice (in Hungarian), available at http://www.kimisz.gov.hu/english_pages; last accessed on 17 December 2011.

25 See the Decree 322/2010 (XII.27) on probation, legal aid, victim assistance and monetary compensation by the state authorities (in Hungarian), available at [http://www.kimisz.gov.hu/data/cms26055/322_2010_\(XII.27\)_Korm._rendelet.pdf](http://www.kimisz.gov.hu/data/cms26055/322_2010_(XII.27)_Korm._rendelet.pdf); last accessed on 17 December 2011.

hiring staff to provide such services — as well as selecting and contracting primary legal aid providers; running the register of such providers; and ensuring coordination between the legal aid providers, local authorities and other institutions involved.

The Justice Services are divided into a central office (located in Budapest) and 19 regional offices. Regional offices select local providers, ensure coordination between the legal aid providers, local authorities and other institutions involved in the legal aid system, and collect the local-level statistics on the provision of legal aid.

c) Lithuania

In Lithuania, the state-guaranteed legal aid system is managed by independent institutions supervised by the Ministry of Justice called Legal Aid Services (LAS). LAS, however, manage only the provision of secondary legal aid.²⁶ The organization and management of the primary legal aid system is delegated by the state to the local authorities (municipalities).²⁷ The state allocates targeted funding to the municipalities to perform this function.²⁸ Municipalities are free to choose the organizational model that suits them best: provision of legal advice by the municipality employees; or by lawyers and other organizations (e.g. NGOs or legal clinics), with which the municipality concluded an agreement.²⁹ Certain elements of the procedure for primary legal aid provision are established by the law.³⁰ Otherwise, municipalities are free to decide on the organizational arrangements and procedures for primary legal aid provision.

The overall supervision of primary legal aid is exercised by the Minister of Justice, to whom municipalities report yearly.³¹

d) Moldova

In Moldova the primary legal aid system is expected to become operational by end of 2013.³² However, the legislative framework for the system already exists,³³ and the Government has a uniform vision of the organizational model for primary legal aid delivery, reflected, *inter alia*, in the draft Justice Sector Reform Strategy for 2011-2015 proposed by the Ministry of Justice³⁴ and other policy documents.³⁵ Thus, we decided to include Moldova in the scope of this study.

The legal aid system of Moldova is managed by the National Council for State Guaranteed Legal Aid (National Council), a collegial body with the status of a legal person of public law.³⁶ The National Council is thus structurally and operationally independent from the Ministry of Justice (Ministry).

The Ministry approves the state policy on legal aid, proposes the legal aid budget, and exercises the general oversight of the fulfillment of legislation on access to and quality of legal aid in Moldova.³⁷ In practice this means that the Ministry has very few direct management functions vis-à-vis the National Council. These are limited to adopting a regulation on its constitution and operation, appointment of its members (by an open public contest) and its secretary, and providing working space and a budget to the Council.³⁸ However, the president of the Council is elected by its members. The Council also submits periodic financial and operational reports to the Ministry (as well as to the Government and Parliament). All other decisions related to the management of legal aid providers, such as: developing the criteria for engaging legal aid providers (tender conditions and model contracts), setting up new legal aid providers and developing mechanisms for their operation and ensuring quality of their services, setting the remuneration levels for the services delivered by legal aid providers, are the prerogative of the National Council alone.³⁹

26 LAS, however, may be required to organise the provision of primary legal aid in case of a potential conflict of interest, should the service be provided by the municipality employee (e.g. because the applicant's problem involves a municipality authority as a potential counter-party). Art. 15 para. 8 of the Law on State-Guaranteed Legal Aid in Lithuania.

27 Art. 8 Para. 2 of the Law on State-Guaranteed Legal Aid in Lithuania, available in English from <http://www.legalaidreform.org/resources/national-legislation/item/72-national-legislation-on-legal-aid-in-lithuania>; last accessed on 17 December 2011.

28 Art. 33 para. 2 of the Law on State-Guaranteed Legal Aid in Lithuania.

29 Art. 15 para. 3 of the Law on State-Guaranteed Legal Aid in Lithuania.

30 *Ibid.*

31 Art. 8 para. 3 of the Law on State-Guaranteed Legal Aid in Lithuania.

32 See the National Action Plan of the Government for 2011-2014, approved by the Decision no. 179 of March 23, 2011 (in Romanian), available at <http://www.justice.gov.md/en/strateg/>; last accessed on 17 December 2011.

33 See the 2007 Law on State-Guaranteed Legal Aid in Moldova, available in English at <http://www.legalaidreform.org/resources/national-legislation/item/80-national-legislation-on-legal-aid-in-moldova>; last accessed 17 December 2011.

34 For the English-language version of the Draft Strategy, see http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf; last accessed on 17 December 2011.

35 See e.g. the Draft Action Plan to implement the Strategy of Justice Sector Reform 2011 — 2016, available in English at http://coe.md/images/stories/Art.s/JP-Dem/C1/2011.11.16_draft_action_plan_for_sjsr_implementation_en.pdf; last accessed on 17 December 2011; National Action Plan on human rights for the years 2011-2014, Parliament Decision no. 90 of July 12, 2011 (in Romanian), available at <http://www.justice.gov.md/ro/strategie/>; last accessed on 17 December 2011.

36 Art. 11 para. 1 of the Law on State-Guaranteed Legal Aid in Moldova.

37 Art. 9 of the Law on State-Guaranteed Legal Aid in Moldova.

38 See Arts. 9, 13, 17 and 18 of the Regulation of the National Council on State Guaranteed Legal Aid, approved by the Order of the Minister of Justice no. 18 of 24 January 2008, available in English from <http://www.legalaidreform.org/resources/national-legislation/item/80-national-legislation-on-legal-aid-in-moldova>; last accessed on 17 December 2011.

39 For examples of various regulatory instruments adopted by the National Council in English, see <http://www.legalaidreform.org/resources/national-legislation/item/80-national-legislation-on-legal-aid-in-moldova>; last accessed on 17 December 2011.

The National Council operates through the network of 5 territorial offices vested with the tasks to organize legal aid delivery on the local level. The territorial offices, for example, enter into contracts with local providers, organize payment to them, maintain the register of providers, examine complaints about primary legal aid and collect the regional statistical data. The competences of the territorial offices and their relationship with the National Council are worked out in great detail in the respective regulations.⁴⁰

e) Netherlands

In the Netherlands legal aid — both primary and secondary — is managed by the Legal Aid Board (LAB).⁴¹

The Legal Aid Board is an independent government body, to which the Ministry of Security and Justice (Ministry) has given the mandate to organise and manage the legal aid system.⁴² The Legal Aid Board is responsible for the administration of the legal aid system, namely its functions are to: ensure that the distribution of legal aid provision is even across the country; conclude contracts with and supervise legal aid providers, administer payment for legal assistance; and take measures in the area of quality of legal assistance.⁴³

Unlike secondary legal aid, primary legal aid is managed by LAB mostly indirectly, i.e. through subsidies to organisations providing such aid, e.g. the Legal services counters or NGOs. LAB analyses the results of their activities; and based on these, as well as on the policy instructions from the Ministry, makes proposals as to which areas of primary legal services, and which types of services, should be financially supported.

Besides, the LAB together with the Ministry played a leading role in setting up of the Legal services counters, a network of primary legal aid providers, which has later been re-organised into an independent Foundation.

Similar to the other reviewed countries, the Ministry formulates the legal aid policy, and exercises general oversight of the implementation of this policy by the LAB. In respect of the LAB, the Ministry has the following functions: appointment of the Management Committee of LAB; forming the Consultative Council for Legal Aid, which advises the Ministry on the internal policies and implementation of legal aid policy by the LAB; approving payment rates for the LAB management committee and Consultative Council members; providing the necessary facilities and funding to ensure its effective operation.⁴⁴ Furthermore, directors of the LAB submit yearly financial and operational reports to the Ministry.⁴⁵

All other management functions in respect of the legal aid providers — e.g. setting up criteria for the selection of providers; rules for payment to providers; developing quality assurance mechanisms; handling complaints from providers — are exercised by the LAB independently.⁴⁶ The Management Committee of LAB adopts its own statute.

LAB consists of a central office and 5 regional offices. The regional offices, however, have responsibilities mostly in the area of secondary legal aid, e.g. handling applications for secondary legal aid and payment to providers of such aid.

f) Russia

In Russia the new Law on the System of Free Legal Aid — which covers only civil legal aid — was adopted on 21 November 2011 and will enter into force on 15 January 2012.⁴⁷ The management structure of the newly created legal aid system is still to be developed. Historically, in Russia regional authorities have been responsible for the organisation of their own free legal aid programs.⁴⁸ The new law preserves the system where the choice of the legal aid provision models, engaging

40 See Regulation on the functioning of territorial offices of the National Council for State Guaranteed Legal Aid, approved by the Decision of the National Council for State Guaranteed Legal Aid no. 15 of 30 July 2008, available in English at <http://www.legalaidreform.org/resources/national-legislation/item/80-national-legislation-on-legal-aid-in-moldova>, last accessed on 17 December 2011; and the Regulation of the National Council on State Guaranteed Legal Aid.

41 See Art. 2 Law on Free Legal Assistance of Netherlands, last amended on 1 July 2009 (in Dutch), available at http://www.st-ab.nl/wetten/0694_Wet_op_de_rechtsbijstand_Wrb.htm; last accessed on 17 December 2011. An earlier version of the Law in English is available at <http://www.legalaidreform.org/resources/national-legislation/item/86-national-legislation-on-legal-aid-in-the-netherlands>; last accessed on 17 December 2011 (However, this version differs significantly from the version currently in force).

42 See the general information on the website of the Legal Aid Board (in Dutch), at <http://www.rvr.org/nl/organisatie>; last accessed on 17 December 2011.

43 See F. Ohm, Reforming primary legal aid in the Netherlands, in Public Interest Law Institute (ed.), *Making legal aid a reality: A resource book for policy makers and civil society*, Budapest, 2010, at p. 47.

44 For the list of the regulations detailing the distribution of responsibilities between the Ministry and the Legal Aid Board, see http://www.rvr.org/nl/subhome_rbv/Regelingen (in Dutch), last accessed on 17 December 2011.

45 Art. 7a of the Law on Free Legal Assistance of Netherlands.

46 See Chapter 2 of the Law on Free Legal Assistance of Netherlands and Art. 4 of the Statute of the Management Committee of the Legal Aid Board, available at <http://www.rvr.org/binaries/rbv-library/ressortelijke-regelgeving/overkoepelend/bijlagen-2010/reglement-bestuur-raad-voor-rechtsbijstand-versie-.pdf> (in Dutch), last accessed on 17 December 2011.

47 Federal Law of the Russian Federation on the System of Free Legal Aid, available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=121887> (in Russian); last accessed on 17 December 2011.

48 See O. Shepeleva, Subsidised legal aid in Russia: the experience of development, in Public Interest Law Institute (ed.), *Access to justice and subsidized legal aid: analysis of the Russian and international experience*, Moscow, 2010, (in Russian), at pp. 239-240.

providers of free legal aid, including the development of the criteria for selecting providers, payment mechanisms, etc., and coordination between the multiple providers in the region is the prerogative of the regional executive authorities.⁴⁹

The Ministry of Justice, according to the Law, does not have any direct management or supervision functions in respect of the *regional* free legal aid programs. (However, it organises the provision of free legal advice by employees of its territorial officers). At the same time, the Ministry retains the responsibilities for the development of the state policy on free legal aid and organising stakeholder discussions for these purposes; monitoring and analysing the practice of free legal aid provision; and providing technical assistance (“methodological support”) to the regional authorities in the organisation and management of legal aid.⁵⁰

2.2. Analysis of the experience of the countries under review: emerging themes

2.2.1. The role and position of the legal aid management institution

In most countries under review, with the exception of Lithuania and Russia, primary legal aid is managed jointly with secondary legal aid by **an independent institution** created especially for these purposes. In Lithuania that is because primary legal aid is managed by the municipalities; and in Russia because no such institution has been created there at all. However, the Russian Federal Ministry of Justice is vested with the task to monitor the implementation of the legal aid policy as a whole.

The experience of the countries under review shows that it is advisable to establish a **separate body or structure**, whatever its formal status is, which would oversee legal aid as one whole system. Legal aid is a complex policy field, which unites very diverse governance objectives — e.g. to ensure accessibility of legal aid to vulnerable groups, provide the minimum quality of the service, guarantee sufficient funding for legal aid (sustainability of the system), etc. There is furthermore the need to coordinate the multiple types of legal needs, services and providers. For example, primary legal aid may hardly be managed separately from secondary legal aid, because any changes in the former inevitably cause changes in the latter. These considerations call for establishment of a separate governance structure vested exclusively with the task to implement the government legal aid policy.

This body must have **sufficient human resources** and **financial capacity** to oversee the entire legal aid system. For illustration, the National Legal Aid Council and its territorial officers in Moldova are staffed by about 30 full-time employees (for the population of about 3.5 mln); the Legal Aid Board of the Netherlands has approximately 350 employees (for the population of around 17 mln). This institution should furthermore have representations over the entire territory of the country to have access to up-to-date and accurate information about the functioning of the legal aid system, particularly if the territory of the country is relatively large.

The institution managing free legal aid must have **operational autonomy** to take management decisions, for example to select legal aid providers, or to decide on spending of the legal aid budget (within the framework established by the law and policy priorities developed by the Government). This institution should also have the prerogative to implement initiatives aimed to improve the accessibility and quality of legal aid, such as e.g. innovative solutions of legal aid delivery, or training programs for legal aid providers.

To further guarantee independence of the legal aid management institution, and to ensure input to the development of legal aid policy from the relevant stakeholders, the establishment of an advisory body, similar to the **legal aid coordination council** created in Georgia, may be advisable. The legal aid coordination council could include the representatives of legal aid stakeholders, such as e.g. members of the Bar, civil society, justice institutions and other relevant government institutions, e.g. social services, and local authorities.

2.2.2. Functions of the legal aid management institution in respect of primary legal aid

In a number of the examined countries (Moldova, Georgia, Netherlands), the legal aid management institution contributes both to the **development and to the implementation of the legal aid policy**, including in the area of primary legal aid.

The responsibilities related to the **development of primary legal aid policy** may include:

- Systematic monitoring of the needs for primary legal aid;

⁴⁹ See Arts. 12, 15 and 29 the Russian Law on the System of Free Legal Aid.

⁵⁰ See Art. 11 of the Russian Law on the System of Free Legal Aid.

- Making proposals to the Government on how the needs should be met, for instance through setting up new providers, contracts with the existing providers, experimenting with new models of legal aid delivery, etc.;
- Performing estimations of the financial needs for funding primary legal aid, and proposing the potential sources for funding;
- Proposing mechanisms for improving the quality of primary legal aid delivery.

Additionally, the legal aid management institution may have responsibility for **the coherent implementation of primary legal aid policy on the national level**, which may include such functions as:

- Developing the minimum conditions for engaging providers to deliver primary legal aid, such as e.g. the scope, amount and nature of services to be delivered, as well as the minimum requirements that the provider must meet, pertaining e.g. to the organizational set-up, range of the services offered, response times, etc.;
- Detailing the scope and nature of services to be minimally provided within the state-supported primary legal aid systems, based on the criteria established by the law, and the priorities established by the state policy on legal aid;
- Setting up new primary legal aid providers, or supporting other institutions, e.g. municipal authorities, in setting up new providers, where there are not enough providers to meet the existing needs for primary legal aid;
- Establishment of the procedures for coordination between the secondary legal aid and primary legal aid providers, and between the primary legal aid providers and other service providers, e.g. social services, medical services, etc.;
- In cooperation with other parties, e.g. Bar Association, local authorities and the civil society, setting up mechanisms for monitoring the quality and accessibility of primary legal aid;
- In cooperation with the parties mentioned above, implementing joint initiatives aimed to improve quality, e.g. provision of training to providers of primary legal aid, or setting up certification programs for primary legal aid providers;
- Experimenting with innovative methods of primary legal aid delivery;
- Developing proposals for funding primary legal aid, and making efforts to obtain additional funding sources, should the means available from the existing sources be too short to effectively finance the provision of primary legal aid.

2.2.3. Division of responsibilities for the management of primary legal aid between regional (municipal) and central authorities

In two countries under review, namely Lithuania and Russia, management of the primary legal aid system is delegated entirely to the regional or municipal level. In both countries, the reason for doing so was because historically primary legal aid had been organized by regional or local authorities.⁵¹ The effectiveness of such delegation in either Lithuania or Russia has to date not been assessed.

The argument in favor of **delegating responsibilities for the organization of primary legal aid to the local or regional level** are that the regional or municipal authorities are better equipped to organize such services. That is because: a) they are well aware of the local needs and priorities; b) they often have **experience of organizing other, similar kinds of services** (e.g. housing or social assistance); c) they usually **experience the burden of the absence of such services**, because the local residents often address these authorities “by default” with all sorts of problems, including those which would otherwise be handled by the primary legal aid system. Furthermore, some degree of **de-centralization of management of legal aid services’ provision** is necessary to decrease the administrative burden on the state executive apparatus, and to increase cost-efficiency of such services. Particularly in states with large territories, the administrative burden of creating and running legal services organizations centrally may be too unwieldy, and creates a risk of bottlenecks and waste of administrative resources.

Similarly to Lithuania and Russia, many Western countries, and particularly federal states, delegated the responsibilities for organizing the provision of legal aid to the provincial (regional) authorities. This is the case, e.g. in Australia, Canada, New Zealand and the US. In these countries, given their size and the federal state structure, de-centralized management of the legal aid system is probably the only viable option. However, there have been two down-sides to it: firstly, in most of these countries central (federal) government was gradually disposing of its responsibility to fund, or in any way support, the systems of non-criminal, including primary, legal aid services run by the regional authorities.⁵² Regional authorities, in their turn, have been unable to provide adequate financial support to the rising demands for non-criminal legal aid. Secondly, comprehensive reviews of national legal aid systems in these countries revealed significant discrepancies in

⁵¹ For Lithuania, see L. Sesickas, P. Koverovas, Legal aid reform in Lithuania: a system in transition, in Public Interest Law Institute (ed.), *Making legal aid a reality: a resource book for policy makers and civil society*, Budapest, 2010, at p. 108.

⁵² See M. Buckley, Moving forward on legal aid. Research on needs and innovative approaches, Report to the Canadian Bar Association, 2010, at p. 44.

the scope of services, working processes and quality of legal assistance provided under the different regional legal aid programs.⁵³ Likewise, a recent review of the primary legal aid system in Lithuania revealed differences in the arrangements for the provision of such services by the various municipalities, which had had an impact on their accessibility and quality.⁵⁴

Thus, where regional or local authorities are vested with the role to manage primary legal aid programs, the central government must be ready to step in when the financing of such programs becomes short, and/or otherwise support the functioning of such programs. Furthermore, it is advisable that the **central government** should retain the functions linked to **ensuring coherent implementation and continuous development of the national legal aid system as the whole**. These functions could include, for instance, monitoring to what extent regional legal aid programs adhere to the legislative norms that require to provide efficient access to justice to the poor and disadvantaged, and to the national legal aid policy priorities; proposing (and funding) solutions for improvement of such programs, e.g. piloting new models of legal aid delivery; assistance aimed to improve the quality of primary legal aid services; etc.

2.3. Analysis of the findings in respect of Ukraine

From the text of the Law on Free Legal Aid of Ukraine, it is difficult to discern what the division of responsibilities between the Ministry of Justice (Ministry), municipal authorities and other state institutions in the management of the state-supported primary legal aid system would be.

According to the text of the Law, the Ministry will “ensure coordination” between the executive agencies providing free legal aid in implementation of the state free legal aid policy; be responsible for the “general management” of free primary legal aid; provide methodological assistance to executive agencies and local authorities on the issues related to provision of free primary legal aid; approve quality standards for provision of free legal aid; approve the model regulation on the entities providing free primary legal aid; and approve the procedures and criteria for involvement of private law legal entities by local public authorities to provide free primary legal aid.⁵⁵

The prerogatives of the local authorities in managing primary legal aid are listed in Article 12: these are to establish specialized institutions to provide free primary legal aid and, *inter alia*, regulate the powers and operating procedures of the specialized institutions providing free primary legal aid in the Regulation on the institution providing free legal aid based of the standard regulation on institutions providing free primary legal aid adopted by the Ministry; enter into contracts with legal private law entities that can provide legal aid based on their Charter on providing primary legal aid; and engage lawyers or other specialists in the corresponding field of law to provide free primary legal aid.

It is advisable that the relationship between the Ministry, local authorities and other state institutions potentially involved in the management of primary legal aid — such as e.g. territorial offices of the Ministry — was specified further in implementing regulations. Particularly, the role of the Ministry towards the regional primary legal aid programs should be worked out: e.g. what does the “general management” of free primary legal aid imply? How would the Ministry implement the quality standards for primary legal aid: is it by direct imposition, or by encouragement? (The latter seems more appropriate, given that regional governments are primarily responsible for managing their primary legal aid systems.) How prescriptive would the “model regulations on the entities providing free primary legal aid” be? (In our view, these model regulations should provide the minimum standards only, which would include, for instance, the principles of service delivery (see below Chapter 4) and other requirements that the entities must meet with regard to e.g. scope of the provided service, eligibility criteria, etc. Legal aid providers themselves, in consultation with the local authorities, should be able to decide how these minimum standards may be best met in their practice). Etc.

Furthermore, in our opinion the Ministry, or an especially created legal aid management institution, should be explicitly vested with the task to propose and implement the government policy on free legal assistance, including primary legal aid. The tasks for coordination of the regional legal aid systems should be clearly allocated: it appears, for instance, that the territorial offices of the Ministry of Justice (or of a legal aid management institution) would be in the best position to oversee the regional legal aid programs in general.⁵⁶ In that case, the position of the local authorities — who appear to play a greater role in managing *primary* legal aid programs — *vis-à-vis* the territorial offices of the Ministry should be clearly defined.

53 E.g. the reviews of the Australian primary legal aid systems conducted in mid-90s described in J. Giddings, A.M. Noone, Australian community legal centers move into the

twenty-first century, *International Journal of the Legal Profession*, 11:3, 2004, pp. 257-282.

54 For instance, some municipalities did not provide information about the availability of primary legal aid services on their website. In most municipalities alternative providers were not available where a problem referred to a municipality employee involved a (potential) conflict of interest. Some municipalities did not have arrangements in place to ensure that primary legal aid is accessible for persons who do not speak the Lithuanian language. Furthermore, some municipalities failed to implement recommendations of the Ministry of Justice aimed to improve accessibility of the services, by e.g. extending the opening hours for primary legal aid consultations, or disseminating information about the service. See Human Rights Monitoring Institute, Accessibility of state-guaranteed legal aid: primary and secondary legal aid, 2011, available at http://www.hrmi.lt/uploaded/TYRIMAI/VGTP_tyrimas_20111216_FINAL.pdf; last accessed 4 January 2011.

55 Art. 28 para. 1 of the Law of Ukraine on Free Legal Aid, available at <http://helsinki.org.ua/en/index.php?id=1311157859>, last accessed 17 December 2011.

56 I.e. both primary and secondary legal aid programs, with the view to ensure coherence between the two.

CHAPTER THREE. PROVIDERS OF PRIMARY LEGAL AID

3.1. Providers of primary legal aid in the countries under review

a) Georgia

Primary legal aid in Georgia may be provided by the state-established Legal consultation centers⁵⁷ and legal consultants working in the legal aid bureaus,⁵⁸ as well as “legal entities of private law” (for instance, NGOs) and individual lawyers contracted by LAS.⁵⁹

Legal aid bureaus and consultation centers are the structural divisions of LAS. There are currently 11 bureaus and 3 consultation centers in operation. Most bureaus and centers are staffed by 1 consultant; only the Tbilisi bureau employs 2 consultants.⁶⁰ In 2010, each bureau/center provided between 400 and 3000 consultations.⁶¹ Primary legal aid provided by the consultants consists of giving oral advice and consultations, and drafting legal documents.⁶² All consultants employed by LAS have a law degree.

Besides, consultants, as well as legal aid lawyers, organize legal education campaigns for school children and community residents. They also organize meetings with the local authorities and other government institutions to discuss systemic problems that the communities face, e.g. civil registration or land ownership matters. Consultants and lawyers make a concerted effort to participate in the community events, and to be accepted both by the residents and by the local authorities. In some regions, for example, they participate in the activities of local councils. Further, lawyers and consultants organize mobile sessions to provide consultations to the communities that are otherwise hard to reach. In 2010, for example, particular attention was paid to legal needs of internally displaced persons.

In 2010 thanks to an intensive information campaign the number of persons who applied for primary legal aid increased drastically: up to 30%-80% in each bureau/centre.⁶³ The issue of capacity, however, remains acute. The demand for legal assistance is going to increase the more assistance is provided, and the more population knows about the availability of such service. With the current staff of 14 consultants for the entire country, it is unrealistic that the needs of the whole Georgian population for legal advice will be met.

b) Hungary

Primary legal aid in Hungary may be provided: a) by employees of the regional offices of the Legal Aid Services within the Justice Services,⁶⁴ when it concerns basic legal advice, and information about the procedure for the application to other providers if more in-depth assistance is needed; b) by various other providers registered in the Register of legal aid providers,⁶⁵ such as NGOs, foundations and minority local governments, law universities (legal clinics), as well as attorneys, lawyer's offices and notaries.⁶⁶

LAS have 19 regional offices and one central office in Budapest. Given that LAS are located in the administrative centers, LAS employees also travel to provide consultations in other locations. Consultations provided by LAS employees are limited to giving brief and simple legal information, or advice as to, e.g. which authority is entitled to handle the

57 Art. 17 of the Law of Georgia on Free Legal Aid.

58 Legal aid bureaus are primarily responsible for the delivery of secondary legal aid. See Art. 16 of the Law of Georgia on Free Legal Aid.

59 Art. 19 of the Law of Georgia on Free Legal Aid.

60 Legal aid bureaus also employ legal aid lawyers who provide secondary legal aid. These lawyers are certified members of the Bar.

61 The number of consultations appears to vary drastically per consultant. See the statistical information on the website of LAS: www.legalaid.ge. Last accessed on 18 December 2011.

62 This latter function is performed by consultants only until a separate secondary legal aid system in civil and administrative cases is implemented. Drafting legal documents — at least those to be submitted to court — is thus not included into the scope of primary legal aid in Georgia.

63 See the graph in the LAS Annual Report, 2010, on p. 13, available at http://www.legalaid.ge/index.php?action=page&p_id=161&lang=eng; last accessed on 18 December 2011.

64 See Section 28 of the Law on Legal Aid in Hungary, the English translation available at <http://www.legalaidreform.org/resources/national-legislation/item/61-national-legislation-on-legal-aid-in-hungary>; last accessed on 17 December 2011.

65 Published online at <http://www.kimisz.gov.hu/alaptev/nepugyvedje/nevjegyzek>; last accessed on 17 December 2011. See Section 64 of the Law on Legal Aid in Hungary.

66 Section 66 para. 1 of the Law on Legal Aid in Hungary.

applicant's legal problem. The main role of LAS employees is to refer applicants to other providers: e.g. attorneys or NGOs. In doing so, they explain in detail the procedure for obtaining free legal aid.

Thus, the Hungarian primary legal aid system is based mostly on the private providers. The effectiveness of this system, to our knowledge, has not been assessed. Hungary does not have a network of NGOs providing generalist legal advice spread over the territory of the country, which exist e.g. in England, Scotland, Australia, some provinces of Canada, or Poland. It seems thus that the primary legal aid system in Hungary relies mostly on assistance provided by private attorneys. This is proven by statistics: in 2009, for example, 97% of all legal aid (both primary and secondary) in Hungary was provided by private attorneys; and only 1% each by municipalities, NGOs and legal clinics.⁶⁷

The system appears sustainable, because primary legal aid, like secondary-legal aid, in Hungary is means-tested (for more detail see below Chapter 3), i.e. only the persons whose income is below a certain level are eligible for it. However, a system based on the lawyers with universal eligibility would appear unsustainable, if a) lawyers were to be paid close-to-the market price for their services, and if b) lawyers were to provide all types of primary legal aid, including relatively uncomplicated legal advice. Furthermore, the accessibility of a system whereby in most cases applicants must be referred through to another provider appears questionable. (On accessibility, see below Chapter 4).

c) Lithuania

In Lithuania, primary legal aid is mostly provided by lawyers working for the municipalities, whose job descriptions originally included work of the legal nature. In practice, these are employees of legal departments of the municipalities. Municipal lawyers provide legal information, give advice and draft legal documents, with the exception of documents to be submitted to court. For instance, in Vilnius such services are provided by the legal department of the municipality, which is staffed with 7 persons.⁶⁸ In 2010, lawyers working for the department provided about 5500 consultations.⁶⁹

Another model that exists in some localities is the provision of primary legal assistance through contracts with private lawyers. This model, however, has been chosen by a minority of municipalities: only 4 out of 60 municipalities entered into contracts for the provision of primary legal aid with lawyers.⁷⁰ This is problematic, as it means that most municipalities do not provide an opportunity to engage an alternative provider in case of a conflict of interest, which is provided for by law.⁷¹ There is furthermore a possibility under the legal aid law to engage NGOs and legal clinics to the provision of primary legal aid, which appears not to be used.⁷²

A recent independent review of primary legal aid has shown that, on the one hand, most clients who received such aid were satisfied with the provided service.⁷³ On the other hand, serious issues with the visibility and accessibility of primary legal aid were revealed. These included, firstly, the lack of information about the availability of the service. Another survey conducted in 2009 has shown that about 40% of the population had not been aware about the existence of primary legal aid.⁷⁴ The 2011 report furthermore found that most applicants for primary legal aid learned about it from friends and relatives, but not from the providers of the services themselves (e.g. thorough internet, or media advertisements).⁷⁵ Most municipalities did not advertise their service in mass media, despite the fact that funds were designated to them for this purpose. Likewise, the information about the service on the municipalities' websites was either absent, or it was difficult to find, or such information was not available in other commonly spoken languages than Lithuanian.⁷⁶ Furthermore, applicants for primary legal aid interviewed by researchers complained about lack of information about where to apply for assistance, and long waiting lists to obtain personal consultations.⁷⁷

The costs of the service provided by the municipality employees in Lithuania in comparison with the lawyers have not been carefully studied. There are indications, however, that these costs are not less, if not more, than those of the lawyers'

67 See the statistical report for 2009 (in Hungarian), available at http://www.kimisz.gov.hu/data/cms21917/2009_evi_statistikai_adatok.pdf; last accessed on 17 December 2011.

68 See the information on the website of the Vilnius municipality, Free primary legal aid (in Lithuanian), available at <http://www.vilniaus-r.lt/index.php?id=3575>; last accessed 4 January 2011.

69 See Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), 2010, at p. 6, on file with the author.

70 *Ibid.* at pp. 2-5.

71 Art. 15 para. 8 of the Lithuanian Law on State-Guaranteed Legal Aid.

72 *Ibid.* at p. 5.

73 About 80-90% of the clients surveyed by the researchers were either very satisfied or satisfied with the service received. See Human Rights Monitoring Institute, Accessibility of state-guaranteed legal aid: primary and secondary legal aid, 2011 (in Lithuanian), at p. 28, available from http://www.hrmi.lt/uploaded/TYRIMAI/VGTP_tyrimas_20111216_FINAL.pdf; last accessed on 4 January 2011.

74 RAIT, Survey of the legal knowledge of the Lithuanian population, conducted on request from the Ministry of Justice (in Lithuanian), 2009, at p. 14, on file with the author.

75 Human Rights Monitoring Institute, Accessibility of state-guaranteed legal aid: primary and secondary legal aid, 2011 (in Lithuanian), at p. 11.

76 E.g. Polish and Russian.

77 *Ibid.* at p. 27.

services.⁷⁸ For instance, in 2009 the average cost of primary legal aid services in the municipalities, where such aid was provided exclusively by lawyers, was lower than in those where the services were delivered by municipality employees.⁷⁹

Likewise, the question to which extent the population trusts the advice provided by municipality employees, particularly with problems related to potential legal conflicts with government authorities, has not been studied. Statistical data shows, for instance, that applicants were much more likely to approach the municipalities with problems of family and civil law character, than with issues related to e.g. administrative or social security law. In 2010, there were about 18,000 applications in the area of civil law and about 15,000 applications with family law questions, in contrast to only about 2,000 applications on administrative law issues, and approximately 1,500 applications on questions related to social security law.⁸⁰ It would be interesting to assess whether these proportions correspond to the real needs of the Lithuanian population in legal advice (which unfortunately have not yet been studied).

d) Moldova

The Moldovan Law provides for a possibility to engage paralegals and NGOs to provide primary legal assistance. A primary legal aid system based on paralegals is quite unique for the region, and for the entire world.

Paralegals will function according to the Rules approved by the National Council of State-Guaranteed Legal Aid.⁸¹ They will be entirely independent from any state authority: in fact, they will operate based on the contract concluded with the National Council. Local administrations, however, may provide premises and otherwise facilitate their functioning. Paralegals will have a complete or incomplete education, and will enjoy high standing in their respective community.

It is expected that paralegals will undertake the following functions:

- Educate community members about their rights,
- Provide basic legal advice for members of the community,
- Refer community members to lawyers when the problem is a complicated legal question that only a qualified professional can answer properly,
- Refer community members to appropriate institutions for a concrete problem,
- Solve local conflicts, including through mediation,
- Advocate issues pertinent to the entire community,
- Help the community fundraise for particular issues,
- Provide legal education / support to the local government authority,
- Provide continuous information to the managing institution or partner on the problems faced by the community and propose pertinent solutions, where available.⁸²

Paralegals will serve both as points of entry for the local communities to the legal aid system, and as a referral mechanism to other legal aid providers, if more in-depth legal assistance is needed. They will be mostly located in the rural areas, where access to another provider — e.g. an NGO or a lawyer — is limited.⁸³

A project on piloting paralegals in rural areas — where social assistants or social workers serve as paralegals — is being piloted by the Soros Foundation-Moldova in cooperation with the National Council, Ministry of Justice and other government institutions. The model developed by the project, with necessary modifications, is expected to be implemented as the national model for the provision of primary legal aid. Additionally, specialized NGOs will be engaged to provide services in the areas where no especially qualified lawyers or paralegals exist.⁸⁴

78 However, lawyers are paid a fee which is significantly below the market price for their services.

79 See Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), 2009, at p. 26, on file with the author.

80 See Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), 2010, at p. 10, on file with the author.

81 See Art. 16 para. 1 of the Moldovan Law on State-Guaranteed Legal Aid.

82 See the description of the Legal empowerment of rural communities project within the larger project on Improving good governance in Moldova through increased public participation, Soros-Foundation Moldova, 2009, on file with the author, pp. 3-4.

83 See N. Hriptievski, National report for Moldova, prepared for the Conference of the International Legal Aid Group, 2009, on file with the author, p.11.

84 *Ibid.*

e) Netherlands

The Dutch landscape of primary legal assistance is rather complex. The most known providers of primary legal assistance in the Netherlands are the network of Legal service counters — which have been originally created by the government, but are now functioning under the umbrella of an independent non-for-profit organization; as well as NGOs that have traditionally provided poverty law services called law shops (*rechtwinkels*). Besides, other specialised NGOs, e.g. aimed at the youth, or immigrant population, provide legal advice in the area of their expertise, in addition to other types of services. Finally, lawyers are contracted to provide more in-depth legal advice, if such is needed.

The difference between the legal services counters and other NGO providers is that the former are 100% subsidized by the Legal Aid Board: i.e. both their operation and the service provision are paid for by the government. Other providers normally receive only targeted subsidies from LAB, i.e. funds for the provision of certain types of services. Their operation is however funded mostly from other sources, such as grants from the municipalities, charities and collected contributions. They also largely rely on volunteers in the provision of services.

Legal services counters emerged as successors of legal advice centers, which had been combining the functions of both primary and more extensive legal aid and representation. Such combination had been considered ineffective by the government in the sense that the function of provision of basic legal advice — which the Dutch government had seen as an essential public function — was suffering at the expense of secondary legal aid provision.⁸⁵ Furthermore, the visibility of the legal services counters has been increased to ensure that the population knows about the services.

Legal services counters are staffed by paralegals (persons with non-university legal education), which ensures their cost-efficiency. Paralegals working in the counters provide basic legal advice and consultation for the duration not exceeding one hour. Recently paralegals working in the legal services counters started to provide off-site consultations, e.g. to persons detained in detention centers. However, legal services counter employees do not provide any sort of community-oriented services.

There are 30 legal services counters in the Netherlands staffed by about 300 paralegals in total. They provide consultations and advice — including personally, by phone and email — to about 750,000 persons (most of them, however, are contacts by phone of the duration not more than 15 minutes).⁸⁶

If the applicant's legal problem can not be resolved in one hour, he is referred to a lawyer to receive a so-called "light advice". "Light advice" given by a lawyer may not exceed three hours, and should not involve litigation. This option is however used relatively rarely: in 2009, for instance, about 5% (about 40,000) of all legal services counters' clients were referred to lawyers.⁸⁷

Besides the legal services counters and lawyers, primary legal aid in the Netherlands is provided by NGOs called law shops. They emerged in the 70s as volunteer organizations of law students and lawyers who provided poverty law services *pro bono*. Currently, law shops are mostly staffed by law students who work under the supervision of lawyers. They are united into a loose network.⁸⁸ Law shops do not have any specific applicant eligibility requirements; but rather they specialize in the areas of law in which the most poor and disadvantaged most frequently encounter problems, e.g. rent, employment, social security or family law.

The advantages of the law shops are numerous: firstly and perhaps most importantly, they provide assistance of the type and duration that is needed until the legal problem of the applicant is resolved. The service provided by the law shops is not limited in duration; and they rely on a network of *pro bono* lawyers, should litigation or other action requiring assistance of a lawyer be necessary. Secondly, their assistance is entirely free for the applicants, unlike the state-subsidized legal aid (beyond the free-of-charge one hour of legal advice), which in most cases requires a financial contribution from the client.

Thirdly, law shops are less costly for the government because they are partly financed from other sources such as e.g. charities, and they rely on volunteers. On the other hand, government funding (municipal or central) remains crucial for their sustainability. The current financial crisis, for instance, caused some municipalities to announce withdrawal of their funding from the law shops, which had created significant difficulties for their survival.

⁸⁵ See F. Ohm, Reforming primary legal aid in the Netherlands, in Public Interest Law Institute (ed.), *Making legal aid a reality: a resource book for policy makers and civil society*, Budapest, 2010, at p. 49.

⁸⁶ See Annual report of the Legal Services Counters Foundation (in Dutch), 2010, available at <http://www.juridischloket.nl/overhetjuridischloket/organisatie/jaarplan/Documents/Het%20Juridisch%20Loket%20Jaarverslag%202010.pdf>; last accessed on 18 December 2011.

⁸⁷ See Annual report of the Legal Services Counters Foundation (in Dutch), 2009, available at <http://www.juridischloket.nl/overhetjuridischloket/organisatie/jaarplan/Documents/Het%20Juridisch%20Loket%20Jaarverslag%202009.pdf>; last accessed on 18 December 2011.

⁸⁸ See <http://www.platformrechtswinkels.nl/>.

f) Russia

Before the new Russian Law on the System of Legal Aid had been adopted, a unified system for the provision of civil legal aid had not existed in Russia.⁸⁹ The organization of legal aid had been the responsibility of the regional authorities; and where such systems existed they have relied mostly on the lawyers that provided legal consultations to the public on a walk-in basis (organized by the local Bar Associations).

The new Law does not explicitly make a distinction between primary and secondary civil legal aid, however it is implied in the text. The Law recognizes both public and private civil legal aid providers. Public providers, according to the new Law, may include, employees of the executive authorities entitled to provide primary legal aid “within the areas of their competence”, as well as the so-called “state legal bureaus” which would employ paralegals to provide both primary and secondary legal assistance. Besides, municipalities may also provide primary legal assistance through assigning this task to their employees. Private providers may include certified lawyers and their associations, law clinics and NGOs.

The “state legal bureaus” would be modeled after the experimental “bureaus” which were created in 2005 in 10 regions of the country. They were staffed by 123 paralegals⁹⁰ in total who provided both primary (legal consultations) and secondary legal aid (court representation).⁹¹ Consultations were held during the working hours 5 times a week, and several paralegals were available simultaneously to provide legal advice. Besides, on certain days of the week, “mobile” consultations were provided.⁹² In 2006, one paralegal employed by the bureau provided on average 85 consultations, drafted 25 documents and represented clients in 8 court cases. When “legal aid bureaus” were just opened, concerns were voiced about whether its employees would be able to act independently, given that they were employed by the government. However, these concerns have proved to be unwarranted: employees of the “bureaus” were actively representing clients also vis-à-vis government authorities. Besides, they could use their official status to leverage support from other government institutions to participate in the resolution of the applicants’ problems. The independence of the bureaus’ employees was guaranteed through clearly defining their mandate in the respective regulations.⁹³

It is not clear from the text of the new Law which “executive authorities” will provide legal assistance, i.e. whether these would be the representatives of each Ministry or only the Ministry of Justice; and what does “within the areas of competence” mean. Presumably, these would be at least the regional departments of the Ministry of Justice. To date, at least some of the regional departments of Justice (e.g. Novosibirsk, Primorskii Krai) opened “public consultation centers”, where employees of the department or invited attorneys provide legal consultations to the public.⁹⁴ However, the scope of the provided service, opening hours, manner in which the services are obtained, etc. vary considerably. For instance, in Primorskii Krai the opening hours of the “public consultation centre” are limited to 3 hours 2 times a week.⁹⁵ Thus, the number of persons that may be advised in this manner would be very limited; and probably nothing more than simple legal information, or advice with a minimum follow-up would be given. (Or alternatively, these centers would serve to re-direct the applicants to other providers where more in-depth assistance can be obtained.) Besides, in most cases legal advice will be provided by the executive employees, which may lead to a conflict of interest where the dispute referred by the applicant involves a state authority. Given these limitations, it is evident that this form of primary legal aid assistance may only be used as a complementary to other models of primary legal aid provision.

Having recognized this, the new Law places an emphasis on other models of legal aid provision — which would combine primary and secondary legal aid — established on the regional level. The regions may choose between the “state legal bureaus” (see above), or other forms of primary legal aid, e.g. organized by regional Bar Associations. Regions may also attract specialized NGOs and clinics to the provision of free legal assistance.

In any case, even if “state legal aid bureaus” would be created in the form established by the experiment, it is likely that this would not be sufficient to meet all the needs for primary legal advice. For instance, the needs of the population living in faraway areas and in towns other than where “state bureaus” are located, are likely to remain unaddressed. Recognizing this, in Samara region, for instance, a partnership between the “state legal aid bureau” and private lawyers had been created, which operated quite successfully: both “components” of the primary legal aid system had experienced a high level of demand from the population for free legal services.⁹⁶

89 See O. Shepeleva, *Subsidised legal aid in Russia: the experience of development*, in Public Interest Law Institute (ed.), *Access to justice and subsidized legal aid: analysis of the Russian and international experience*, Moscow, 2010, at p. 261.

90 Persons, who had a university law degree, but were not certified members of the Bar.

91 See *ibid.*

92 Email communication with O. Shepeleva, Senior Legal Officer at Public Interest Law Institute, 16 December 2011, on file with the author.

93 *Ibid.*

94 See the webpage of the Centre of free legal assistance to the population, Regional Department of Justice of Primorskii Krai (in Russian), at <http://www.prim-just.ru/tsentr-besplatnoji-juridicheskoi-pomoshhi-naseleniju/tsentr-besplatnoji-juridicheskoi-pomoshhi-naseleniju/2609/>; last accessed 27 December 2011; and the information on the website of the Regional Department of Justice of Novosibirsk (in Russian), at <http://djsib.atlas-nsk.ru/index.php?pagealias=LawHelp&PHPSESSID=adccdbcb223f8c79c8491d88d9313516>; last accessed 27 December 2011.

95 See *ibid.*

96 See *ibid.* at p. 264.

3.2. Analysis of the experience of the countries under review: emerging themes

3.2.1. Focus on public or private providers?

Most of studied countries have opted — either on paper, or in reality -for a **mixed system** of primary legal aid delivery. That means that different types of providers are recognized: both such that are created directly by the government, e.g. the Legal consultation centers in Georgia or Legal Aid Services in Hungary, and from bottom-up, i.e. by the civil society, such as e.g. NGOs, legal clinics or private providers. None of the studied systems relies solely on government-created providers. Furthermore, Moldova and the Netherlands opted for a system where the institutional and organizational framework for primary legal aid providers is set up by the state, but the providers themselves are fully independent from the government.

Mixed systems are **less expensive** than those that are based on only one type of provider. A mixed system, particularly when it is based on the contracting model — i.e. where the state enters into a contract with a given provider to provide a certain amount of services — allows for competition of providers, which ultimately leads to a **better cost- quality ratio**. In competitive conditions, providers of primary legal aid strive to attain better coverage and quality of services at a lower price.

On the other hand, a mixed system, due to the fact that it also includes government-run providers, embraces the advantages of such providers in that: a) they are potentially **more stable**, as long as the government is willing, and has sufficient resources to finance them; b) they **may be set up relatively quickly** to address the needs which are not addressed by the existing providers, e.g. in particular types of services, or in a particular geographic area; c) **experimentation** with such providers is easier because changes may be relatively easier implemented from top-down. Thus, such providers may be used as “experimentation platforms” where the state wishes, e.g. to test new modalities of primary legal aid delivery.

In order to truly experience the advantages of the mixed system, however, the government legal aid policy should place **equal emphasis on both components of such system: public and private**. This is unfortunately often not the case: i.e. in the originally “mixed” systems often one type of providers — most often, those that are established by the state — is prioritized over the other.

In this respect, an example of Georgia is illustrative. The Georgian government has invested a considerable effort in setting up a network of legal aid bureaus and legal consultation centers since 2007. However, cooperation of the state-run free legal aid system with the civil society has been non-existent. This has created a large degree of pressure on the state-run primary legal aid system.⁹⁷

Experience of the states under review shows that it is desirable to ensure cooperation with providers belonging to the private (including non-for-profit) sector from the very initial stages of setting-up/rebuilding the primary legal aid system. This cooperation has a number of advantages: firstly, the “burden” of organizing the system of primary legal aid provision will be shared with the private sector. Secondly, state authorities may learn from the successes and challenges experienced by the private providers when setting up their own providers’ network.

Effective partnership between the public and private/civil society providers is necessary particularly in the countries with large territories, or countries where the need for, and/or demand for primary legal assistance from the population is very high. This is certainly the case of Russia; but also some Western countries, for instance the Netherlands and England and Wales where public, or state-created, providers and private/civil society, e.g. Citizen Advice Bureaus, law firms, paralegals successfully co-exist.

Furthermore, the experiences in Moldova and the Netherlands demonstrate that even when the state participates in the establishment of legal aid providers, it is desirable — in order to ensure trust to them from the population, and to boost their cost-efficiency and competitiveness with other providers — to grant full independence to such providers from the very beginning of their operation.

3.2.2. The different types of primary legal aid providers: advantages and disadvantages

Different types of primary legal aid providers exist in the countries under review. The table below presents a rough overview of the providers which are recognized — i.e. funded from the state legal aid budget — in the given countries. The overview includes types of providers that are explicitly recognized by law; or those that exist in practice — including in the experimental form — in the given countries, and fall under one of the (broader formulated) categories of providers included in the law.

⁹⁷ Notes of interview with Zaza Namoradze, Director of the Budapest Office of Open Society Justice Initiative, held on 5 December 2011, on file with the author. Open Society Justice Initiative had played a leading role in reforming the legal aid system in Georgia.

Table 1. Types of primary legal aid providers existing in the countries under review

Type of provider/Country	Georgia	Netherlands	Hungary	Lithuania	Moldova	Russia
Network of legal advice bureaus established by the government	x	x	-	-	-	x
Network of (non-for-profit) legal advice centers established by the private sector	-	x	-	-	-	-
Public servants employed by the municipality or the executive authority	-		x	x	-	-
Individuals lawyers or law firms entering into contracts with state authorities	-	x	x	x	-	-
Paralegals or paralegal firms (for-profit) entering into contracts with state authorities	-	-	-	-	x	-
NGOs entering into contracts with state authorities for provision of specific types of services	x	x	x	x	x	x
Legal clinics at universities entering into contracts with state authorities	x	-	x	x	x	x

Below is the comparison of the organizational options that exist in respect of these providers (including the advantages and disadvantages of each), with some concrete examples from the reviewed countries.

3.2.3. Networks of legal advice bureaus established by the government

Such providers exist in the great majority of the reviewed countries. Governments often choose for the “legal advice bureaus” model, because they retain direct control over the setting up and management of the bureaus. The model is furthermore relatively easy to re-organise, should the structure of the needs for primary legal aid change.

In most of these countries, “state legal aid bureaus” are staffed with paralegals and/or lawyers who provide consultations and other kinds of legal assistance on a full-time basis. The organizational models of state legal aid bureaus differ. In most countries, with the exception of Georgia and the Netherlands, such “bureaus” have the status of a legal entity. They are thus operationally independent from the government. However, state authorities in most of these countries retain the possibility to exercise a great amount of indirect influence over the operation of “state legal aid bureaus”. In the Netherlands, for example, the Legal Aid Board defines the “key framework” for the operation of the Foundation of Legal Service Counters.⁹⁸ Furthermore, the fact that the state is responsible for 100% of funding of such providers constitutes a strong control mechanism, e.g. through designating the conditions to which such funding is linked, objectives for which funds may be used, etc.

Whatever the relationship of the state with the “legal aid bureaus” is, it is important to ensure that the employees of the “legal aid bureaus” act, and are seen by the public as independent from the state authorities, or from any other potential influence. This may be achieved by a variety of means: e.g. through the information campaigns, through physically separating the premises of the “bureau” from the government premises, or directly stating in the job descriptions for such employees that they are entitled, and indeed obliged, to protect the interests of the applicants also against the state authorities.

In some countries, e.g. in the Netherlands, “state legal advice bureaus” are staffed with paralegals only, and thus they provide only primary legal aid services. In others, for example in Georgia, they are staffed by both lawyers and paralegals, and thus they provide both primary and secondary legal assistance. Experience of the countries under review — as well as other countries e.g. South Africa — shows that “linking” primary and secondary legal aid services is beneficial for applicants because they may receive all types of legal services at one place (a “one-stop shop” concept).⁹⁹ That means that applicants do not have to apply to another provider located elsewhere in case their problem requires the provision of secondary legal aid.

“State legal aid bureaus” may provide a range of services — from legal consultations, advice to drafting legal documents. However, they rarely provide community-oriented services. That is probably because these bureaus are not embedded in the local communities because they were created from the “top down.” Some bureaus however make concerted efforts to become accepted in the communities. For example, in Georgia employees of the legal consultation centers visit the local communities and provide educational activities.

⁹⁸ See Annual report of the Legal Services Counters Foundation (in Dutch), 2009, at p 7; available from <http://www.juridischloket.nl/overhetjuridischloket/organisatie/jaarplan/Documents/Het%20Juridisch%20Loket%20Jaarverslag%202009.pdf>; last accessed on 27 December 2011.

⁹⁹ Popularized by the South African Legal Aid Board. See D. McQuoid-Mason, South-African legal aid in non-criminal cases, in Public Interest Law Institute (ed.), *Making legal aid a reality: a resource book for policy makers and civil society*, Budapest, 2010, at p. 22.

The downside of the “state legal aid bureaus” — as compared, e.g. to networks of non-for-profit legal advice centers, or even lawyers — is that they are rather expensive, particularly when the advisors working for such bureaus provide the entire range of primary legal aid services, and not only basic legal advice. That is because the state funds 100% of the operations of such centers; whilst NGOs networks or lawyers providing free legal assistance rely on other sources of funding for their operation. Furthermore, “state legal aid bureaus” are cost-efficient only in densely-populated areas, where the turnover of applicants is high.

Another setback of the “state legal aid bureaus” model that is sometimes voiced is the potential lack of independence of its employees. That is because they are employed by the government, unlike (certified) lawyers-members of the Bar who are independent in their operation. The Russian experience shows, however, that these concerns may be addressed through creating a proper normative and organizational framework for the operation of “state legal aid bureaus”: e.g. defining explicitly that bureaus’ employees may represent clients against government authorities; granting status of an independent legal entity to the bureau; and advertising it to the population as an *independent* service provider.

3.2.4. Networks of (non-for-profit) legal advice centers established by the private sector

From the countries reviewed, networks of legal advice centers originally established by the private sector (civil society) and supported by the government exist only in the Netherlands. Outside of these countries, however, such networks also exist in England and Wales, Scotland, Canada, Australia and Poland.¹⁰⁰ These are the countries where the civil society pioneered the establishment of “poverty legal services”, i.e. legal advice and assistance to the poor and disadvantaged on a mass scale as a charitable (*pro bono*) activity, with the goal to combat poverty. The governments of these countries then pledged to provide funding for these “poverty legal services” at the moment when their state-funded legal aid systems were established.

Organizationally, legal advice centers established by the private sector are not very different from “legal aid bureaus”. In particular, the range of the individually-oriented legal services that they provide is similar to those of the “legal aid bureaus.” NGO legal advice centers, however, may be better positioned than “state legal advice bureaus” to provide community-oriented services, because the staff of such centers is usually well-embedded in the local communities. Furthermore, they are potentially cheaper for the state, because their operations are also funded from other sources.

On the other side, NGO legal advice centers are potentially less stable than “state legal aid bureaus”, particularly where they have to rely to a great extent on external (i.e. other than from the state budget) funding and using volunteers to provide services. It may also be more difficult to ensure consistency in the service provision across the network of NGO “legal advice centers” than that of the “state legal aid bureaus”, because often each legal advice centre operates based on the local priorities, especially when it is dependant on funding from the local budget. However, government policy that takes into account these specificities of the networks of NGO “legal advice centers” may help to off-set these setbacks, whilst preserving their many benefits.

3.2.5. Public servants employed by municipalities or executive authorities

This type of primary legal aid providers exists in a minority of the reviewed countries: namely, Hungary, Lithuania and (most recently) Russia. An advantage of this model is that it is relatively easy to organize. Furthermore, public servants working for the municipalities or executive authorities may employ their official status to leverage more support from other state institutions to assist the applicant in resolving his problem. And finally, where this model relies on the existing human resources (i.e. no new personnel is hired to provide the service),¹⁰¹ it may appear cheaper than the other alternatives — but with a potentially severe negative impact on the accessibility of the service, as explained below.

The downside of this model, however, is that such providers tend to be less accessible and visible to the potential beneficiaries as the others. The issues with accessibility of primary legal aid are not *per se* embedded in the public servants’ model of primary legal aid provision, as they may arise whatever type(s) of provider(s) are chosen. However, the Lithuanian experience proves that the model where primary legal aid is delivered by public servants working for government authorities, for whom the provision of such aid is not their primary function, is more susceptible to such problems.

This may occur for a range of reasons. For instance, the provision of primary legal aid may be only one in the long list of services that the relevant authorities provide. Thus, it may have to “compete” with the other services for e.g. accessible working space (e.g. such that is easy to locate for the potential clients), visibility on the authority’s website, resources spent on advertising the service,

¹⁰⁰ In Poland, however, they have not yet received recognition as part of the state-supported legal aid system due to the fact that a law to comprehensively regulate the legal aid system in Poland has not been adopted as to date.

¹⁰¹ However, where the human resources and other costs needed to organise the provision of primary legal aid services are taken into account more realistically, this model may turn out to be not cheaper than the others. As said above in Chapter 3, the experience of Lithuania shows, for instance, that the “net” costs of the service provision by the municipality employees in this country are higher or comparable to the services provided by the individual lawyers. (However, one should bear in mind that the lawyers’ fees for the provision of primary legal aid services are significantly below the market price). See Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), on file with the author, 2009, at pp. 25-27.

etc. Secondly, the working processes of the government authorities may not be adjusted to the goal of “attracting” clients — which is inherent in primary legal services — by *inter alia* advertising and marketing the service, and ensuring its better accessibility.

Another potential drawback of such providers is the lack of capacity: usually, the municipal or executive employees are vested with the task to provide legal advice in addition to their other job duties. Thus, they can not devote full attention to the function of rendering primary legal assistance. Given the lack of time available to provide in-depth legal assistance, such providers are usually only able to give basic legal consultations, or refer applicants to other providers. Besides, their physical availability for the public is usually limited, which may create another barrier for the population to benefit from their services (and indeed, to be willing to apply to them for help).

Furthermore, such providers may struggle to gain sufficient trust, e.g. ensuring that the public would refer to them with all kinds of legal problems: i.e. not only issues related to e.g. civil and family law, but also problems and conflicts that they are undergoing with the public institutions and state authorities.

Given these drawbacks, two of the three countries under review — Russia and Hungary — chose to employ this model as complementary to the other providers.

3.2.6. Individual lawyers or law firms entering into contracts with state authorities

Only a small minority of the countries under review uses certified lawyers as *main* providers of primary legal aid: namely, Hungary, and some regions of Russia. In both countries, this practice was introduced due to the shortage of other legal aid providers. Otherwise, choosing for this model — particularly in the absence of another cheaper alternative which runs in parallel (e.g. the model based on paralegals) — is rather expensive, and may be unsustainable.¹⁰² Furthermore, countries, which rely solely on lawyers to provide primary legal aid, may experience shortage of lawyers willing to provide such assistance (unless there is an over-supply of lawyers in the given country). That is because certified lawyers often do not consider the provision of simple legal advice or legal information as a professionally or financially attractive area of work.

However, as the Lithuanian and Dutch experiences show, contracts with lawyers may be successfully used — and are sometimes necessary — as a *complementary* model of primary legal aid. Lawyers’ assistance may be required e.g. in cases where a more in-depth legal inquiry into the problem is needed, or where there is a conflict of interest caused by the fact that the primary provider of legal advice is a government employee.

Entering into *contracts with law firms* for the provision of primary legal aid may be more cost-efficient than contracting certified lawyers, because such firms may designate their paralegals to perform this work. However, contracting law firms for primary legal aid provision has a number of disadvantages, most importantly linked to the fact that law firms usually run a commercially-oriented practice. Thus, unless the particular firm has a socially-oriented nature, or the legal profession in the country generally possesses high degree of social responsibility, law firms may tend to prioritize commercial clients and complex litigation over the socially disadvantaged clients and “simple” legal advice cases. This may have a negative impact on the quality of primary legal aid services.

3.2.7. Paralegals or paralegal firms entering into contracts with state authorities

Individual paralegals as providers of primary legal aid have a number of important advantages: firstly, they are cheaper than many other providers, because their fees are lower than those of the certified lawyers, and because the costs of their operations for state are minimal (particularly where paralegals are able to ensure operational support from the alternative sources, e.g. charities or the local community).

Secondly, paralegals are usually well-embedded in the local communities, and thus they are able to provide collectively-oriented, rather than individually-focused services. Collectively-oriented services — e.g. engaging with state authorities and/or private organizations to resolve collective disputes, or to create precedents which would help to resolve similar legal conflicts quicker — are more cost-efficient than individual services. Besides, the fact that paralegals are aware of the community problems may help them to identify problems in a proactive manner, and enter at an early stage to work out a solution, before the problem escalates.¹⁰³ Thirdly, paralegals due to their connections within the community are better placed to refer persons who have other than legal problems to the organizations which may provide other kinds of help.

¹⁰² Unless lawyers are paid fees that are significantly lower than the market prices for their services, which may have negative implications on the quality of the assistance provided.

¹⁰³ In fact, the focus on the systemic rather than individual problems, and early intervention in the legal problems before they escalate are the principles proclaimed in the most recent policy documents on legal aid of several countries, e.g. England and Wales, New Zealand and Australia. See, for instance, A Fairer deal on legal aid, Department for Constitutional Affairs of England and Wales, 2005, at p. 30 and further; Transforming the legal aid system: final report and recommendations, Ministry of Justice of New Zealand, pp., 60 and further, available at <http://www.justice.govt.nz/publications/global-publications/t/transforming-the-legal-aid-system/>

Fourthly, engaging with paralegals for the provision of primary legal aid may have an additional value of strengthening the paralegal profession in the country, which may compete with lawyers for the provision of out-of-court legal services. This competition could help to maintain an optimal cost-quality ratio of legal services by overcoming the monopoly of certified lawyers in certain areas of legal work.

An important condition for engaging paralegals, however, as the example of Moldova demonstrates, is that the government or the legal aid institution has to take care of their initial training and certification, as well as assist paralegals to define and assert their professional domain vis-à-vis certified lawyers. Some initial resistance to the institutionalization of the paralegal profession from the lawyers- members of the Bar Association is also to be expected.

3.2.8. NGOs entering into contracts with state authorities for the provision of specific types of services

The possibility for contracting NGOs to provide primary legal aid services is provided for in all countries under review. NGOs entering into contracts with state authorities are to be distinguished from networks of non-for-profit legal advice centers created by the private sector in that universalized legal advice and assistance is not the only and primary purpose of such NGOs, unlike in the case of legal advice centers. I.e. such NGOs may combine provision of legal consultations and advice with advocacy, policy-oriented, human rights monitoring, training and capacity-building activities. They may also be specializing in (a) specific area(s) of law, or target a particular group of people, for instance immigrants or ethnic minorities.

Contracting NGOs to provide primary legal aid may be important, firstly, because it may fill in the gap in the supply of legal advice services which other providers are unable to cover. This would ensure better accessibility of the primary legal aid system to the marginalized groups, e.g. ethnic minorities, and the extremely poor.

Furthermore, services offered by NGOs are potentially cheaper because they are usually funded from multiple sources, i.e. charities, donor organizations, member contributions, etc. Besides, NGOs normally rely to a great extent on volunteers in the exercise of their functions.

3.2.9. Legal clinics at universities entering into contracts with state authorities

Legal clinics have a dual goal of providing legal services, as well as educating future members of the legal profession in the spirit of social justice and *pro bono*. In absolute terms, services provided by a legal clinic may be slightly more expensive than e.g. those of a legal advice centre. That is because a legal clinic has to be staffed by law professors and/or engage professional lawyers, whose time is more expensive than those of paralegals. Besides, a legal clinic runs a number of educational activities, which are not directly linked to the provision of legal assistance, plus more time may be invested into one “case” in the clinic than with any other provider, because it is required by the educational process.

At the same time, legal clinics are usually able to generate other funding in addition to the subsidies from the state legal aid budget — e.g. contributions from the university, or from the legal profession; and in this respect services provided by the clinic may cost less to the state, than those delivered e.g. by the “state legal aid bureaus”.

3.3. Analysis of the findings in respect of Ukraine

The new Law on Free Legal Aid in Ukraine, like in all reviewed countries, provides for a mixed system of primary legal aid delivery. In particular, primary legal aid will be delivered, according to the Law, by the executive authorities, local authorities, individuals and private entities, and specialized institutions.¹⁰⁴

The Law provides that “specialized institutions” for the provision of primary legal aid may be created by local governments which would have a status of a non-for-profit legal entity.¹⁰⁵ A useful model for such institutions has been created within the network of 27 community law centers funded by the International Renaissance Foundation.¹⁰⁶ Furthermore, local government authorities may, according to the Law, conclude contracts with “private entities”, lawyers and “other specialists”

[transforming-the-legal-aid-system-final-report-and-recommendations-1#download-the-pdf-version](#); last accessed on 18 December 2011. Also see J. Giddings, M. A. Noone, Australian community legal centers move into the twenty-first century, *International Journal of the Legal Profession*, 11 (3), 2004, pp. 257-282.

¹⁰⁴ Art. 9 para. 1 of the Law of Ukraine on Free Legal Aid.

¹⁰⁵ Art. 12 of the Law of Ukraine on Free Legal Aid.

¹⁰⁶ See International Renaissance Foundation, *Legal empowerment of the poor initiative in Ukraine: implementation outcomes, 2009-2011, 2011*, available at www.pravo.prostir.ua; last accessed on 18 December 2011, at p. 27 and further.

(presumably, paralegals) to provide primary legal aid in a respective area. “Specialized entities”, in their turn, would be created on the initiative from local governments and financed by the latter, and only where respective “community needs exist”. The central government, however, would regulate the “powers and operating procedures of the specialized institutions”. In a similar vein, the Ministry of Justice will establish criteria for contracting private legal aid providers.

It appears from the text of the Law that the main emphasis — as far as the central government is concerned — would be placed on the “executive agencies” providing primary legal aid. These “executive agencies” are in fact employees of the territorial divisions of the Ministry of Justice, who are vested with the task to provide primary legal advice in addition to their other job functions. The Order of the Ministry of Justice of Ukraine of 21.09.11 “On approval of the operation order of the state office of free legal aid” regulate functioning of 730 “public consultation centers”, created¹⁰⁷ under the auspices of the Ministry of Justice. The centers are located at the premises of the territorial Justice offices. The centers are open for in-person consultations for a few hours once or twice a week. Additionally, telephone “hotline” services are provided.

It is commendable that the Ukrainian government initiated the provision of basic legal advice to all persons. This proves its commitment to the Constitution that provides for the right free legal assistance to all, under certain conditions; and to the principles of legal empowerment and access to justice.

However, it appears that certain aspects of functioning of the “public consultation centers” should be reviewed. In particular, these include: human capacity to provide the service and the related issues of accessibility of the “centers” and speediness of the provided service; visibility of the “centers”; structural and perceived independence of the “centers”; clear definition of the scope of the services that the centers are entitled to provide; provisions for situations where a conflict of interest occurs; procedures for referral of applicants to other providers if more in-depth legal assistance is needed. Besides, the performance of the “centers” must be continuously monitored based on such “substantive” criteria as: whether and to what extent they meet the actual legal needs; whether the population trusts them; whether the services provided by the “centers” are conducive to the legal empowerment, etc.

The example of the countries under review reveals that there is no one-size-fits-all solution as far as the choice of models of primary legal aid provision is concerned. The success of a certain delivery model depends, on the one hand, on how this model is organized and run. On the other hand, it depends on the factors which are unique for each country, e.g. its size, geographic characteristics, nature of the legal needs of the population, structure of the legal profession, etc. Thus, the advantages and disadvantages of certain models have to be studied in relation to the Ukrainian context.

This could be done based on the experiences of the already-existing providers, e.g. legal advice centers, NGOs, individual lawyers, public consultation centers, legal clinics, etc. This review should focus on such criteria as for instance: cost-efficiency and (expected) quality of the service; accessibility of the provider to the population; level of trust from the population to the provider; capacity for community outreach. Furthermore, the review should be based on the results of the legal needs assessment of the population. E.g. the question should be asked: To what extent, and what portion of, the existing legal needs of the population does the given provider satisfy?

Besides, experimentation with different models that are not yet in existence in Ukraine — e.g. state legal aid bureaus or paralegals — is recommended. For instance, creation of “state legal aid bureaus” may prove the only solution in the regions where no other providers, e.g. NGO legal advice centers, or lawyers willing to provide primary legal aid, exist. Paralegals, in their turn, are optimal to provide access to justice for persons living in rural areas.

Based on the results of the reviews of advantages and disadvantages of, and experimenting with, different types of providers, the Ukrainian government should develop — in cooperation with the other stakeholders –regional and municipal authorities, Bar Association and the civil society — a **coherent national policy in respect of both public and non-state primary legal aid**. This policy should explicitly specify what types of providers will be supported and/or promoted by the state, and in which manner, the goals of the state policy in respect of each type of providers, and the minimum requirements to each type of providers.

107 Or in fact the coverage of the already existing centers of the Ministry of Justice was broadened by including the responsibility to provide legal advice and consultations to all applicants notwithstanding their financial status (before only persons with a low income were eligible).

CHAPTER FOUR. SCOPE, ELIGIBILITY AND PROCEDURE FOR PRIMARY LEGAL AID DELIVERY

4.1. Scope and eligibility for primary legal aid and procedure for the delivery of such aid in the countries under review

a) Georgia

In Georgia, according to the text of the Law, primary legal aid includes provision of legal advice and consultations only.¹⁰⁸ Assistance in the drafting of legal documents and representation of persons before administrative institutions falls, according to the terms of the Law, under “secondary legal aid”.¹⁰⁹ Currently, however, consultants of LAS — who are according to the Law vested with the task to provide legal advice only — also draft legal documents (they will be doing so until the new system of secondary legal aid in civil and administrative cases is implemented). Furthermore, consultants also undertake public legal education, and represent community interests before the state authorities. Eligibility for primary legal aid is universal: i.e. every natural person is entitled to free legal aid. Legal assistance provided by consultants should take no longer than one hour.

There is no application form or any other requirement to fulfill to obtain a consultation. Consultations are provided on a walk-in basis, or by prior appointment, during the working hours of the bureau/consultation centre. Furthermore, consultations are provided by phone — on one central phone number — and through internet (Skype).

b) Hungary

In Hungary, universal eligibility exists only in respect of very basic and quick legal advice, and/or a consultation on the available providers and the procedure for application for free legal aid given by an employee of LAS. Otherwise, a means test applies.¹¹⁰ Furthermore, certain categories of cases are excluded from the scope of free legal aid (including primary aid), e.g. cases related to entrepreneurial activities, taking of a loan, customs matters, or establishment of a social organization.¹¹¹ The procedure for obtaining more in-depth primary legal aid implies an application to the LAS first, and then a decision of granting free legal aid¹¹² and designation of the provider. The further procedure for the provision of primary legal advice varies depending on each individual provider.

c) Lithuania

In Lithuania, primary legal aid includes “provision of legal information, legal consulting and drafting of documents intended for state and municipal institutions, excluding procedural documents, advice on extrajudicial dispute settlement, actions on amicable settlement of dispute and drafting of agreement on amicable settlement.”¹¹³ Like in Georgia, every natural person is eligible for primary legal aid. However, persons may apply only to the municipality where they are resident, which creates a barrier for those who find themselves on the territory of Lithuania temporarily. The consultation may not exceed one hour (which may be prolonged to another hour in exceptional circumstances); and only one consultation may be provided on one matter. If an answer to the applicant’s question may not be given immediately, it should be provided within 5 working days. In addition to consultations in person, in some municipalities lawyers give advice by phone.

In case of a conflict of interest — e.g. where a person approaches a municipal employer with a potential legal dispute with the municipality, or another state or municipal authority — he is informed about the possibility to engage a private lawyer contracted by the Legal Aid Services.

In most municipalities, legal departments are open for consultations every working day during the working hours.¹¹⁴ Furthermore, the Ministry of Justice recommended that municipalities should be open for consultations for at least two hours a week outside of the “usual” working hours.¹¹⁵ (Unfortunately, only the three largest (out of 60) municipalities have implemented these recommendations).¹¹⁶ The organization of service provision differs from one municipality

108 Arts. 2 and 17 of the Law of Georgia on Free Legal Aid.

109 Arts. 2 and 3 of the Law of Georgia on Free Legal Aid.

110 See Sections 5-9 of the Law on Free Legal Aid in Hungary.

111 Section 3 para. 3 of the Law on Free Legal Aid in Hungary.

112 The decision has to be taken within 3 working days.

113 Art. 2 para. 2 of the Law on Lithuania on State-Guaranteed Legal Aid.

114 Human Rights Monitoring Institute, Accessibility of state-guaranteed legal aid: primary and secondary legal aid, 2011 (in Lithuanian), at p. 21.

115 Ministry of Justice, Recommendations for the organisation and delivery of primary legal aid (in Lithuanian), 26 May 2009, Nr. (1.16.) 7R-399.

116 Human Rights Monitoring Institute, Accessibility of state-guaranteed legal aid: primary and secondary legal aid, 2011 (in Lithuanian), at p. 22.

to another, depending on the size of municipality. For instance, in Vilnius (one of the largest municipalities) two persons are available at any time to provide assistance. Consultations are provided both by prior appointment and on a walk-in basis. In smaller municipalities with legal departments staffed by 1-2 persons, however, the availability of employees to provide assistance is significantly more limited, e.g. only by prior appointment; long waiting lists; etc.

According to a recent government report, limitation of consultation time to one hour is experienced by some employees as too short to examine the client's problem, and propose a detailed solution.¹¹⁷ Besides, it was found that the limitation of the consultation duration to one hour may deter the municipality employees from advising mediation, since assistance in the mediation process requires more time.¹¹⁸

d) Moldova

According to the Moldovan law, primary legal aid includes "provision of information regarding the legal system of the Republic of Moldova, the normative acts in force, the rights and the obligations of subjects of law, the method of enforcing and exercising the persons' rights both in the judicial and extrajudicial proceedings; delivering counseling on legal issues; delivering assistance in drafting juridical acts; delivering other forms of legal aid that do not constitute qualified legal aid."¹¹⁹ The representation before administrative authorities and in courts falls under the qualified (secondary) legal aid.

The procedure for obtaining primary legal aid is similar to the one in Lithuania, with the exception that there is no specific residency requirement to apply for such aid, and the response to the question that may not be answered immediately must be provided within 3 working days (instead of 5).

e) Netherlands

In the Netherlands, scope, eligibility and procedure for obtaining legal aid depend on the individual provider. However, every natural person finding himself on the territory of the Netherlands is eligible for free legal consultation of the maximum duration of one hour provided by the government-funded legal services counters. Legal services counters are open on workdays during the working hours. Consultations are provided mostly on a walk-in basis. Every client is first directed to the reception for a short "diagnostic" conversation, during which an appointment for a one-hour consultation is made if needed. Consultations are also delivered by phone and online: in fact, about 70% of the consultations are provided in this manner. Legal services counters employ a concept of an open and client-friendly space, they are highly visible from the outside (marked with posters), and are easily accessible from the major public transportation hubs.

In addition, legal services counters employ a self-help tool called *Rechtwijzer*: an interactive program that suggests possible solutions to the legal problems and/or authorities or legal aid providers that are entitled to deal with the problem, through a series of simple questions.¹²⁰

f) Russia

The new Russian legal aid Law does not distinguish the eligibility for primary and secondary legal aid. Thus, same categories of persons are eligible to benefit from the state-supported free legal aid if they request simple legal advice only, or representation of their interests in court. These are the persons whose income is lower than the minimum subsistence amount established by the law, and representatives of some other vulnerable groups.¹²¹ The extremely low threshold for obtaining free legal aid, which would prevent a large number of poor and disadvantaged persons from obtaining free legal aid, has been criticized elsewhere.¹²² Regional authorities, as well as the individual private providers (lawyers, NGOs, legal clinics), however are entitled to raise the eligibility criteria. Furthermore "state legal aid bureaus" are entitled to provide free legal assistance only in the areas defined by the law, among which are the "poverty-law" related issues, e.g. housing, employment, family matters, social benefits, etc.¹²³ Private providers are not limited in the choice of the areas of laws in which they wish to provide assistance.

The procedures for obtaining primary legal assistance are not defined in the law and will be determined by each provider.

117 Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), 2010, at pp. 27-28, on file with the author.

118 *Ibid.* Under the law, municipality employees are required to search for a peaceful resolution of a conflict before advising litigation.

119 Art. 2 of the Law of Moldova on State-Guaranteed Legal Aid.

120 www.rechtwijzer.nl

121 Art. 20 para. 1 of the Law of Russia on the System of Free Legal Aid.

122 See e.g. D. Shabelnikov, Russian Legal Aid Bill introduced into the Duma, blog post PILnet, posted on 6 July 2011, available at <http://www.pilnet.org/public-interest-law-programs/legal-aid-reform/dimas-blog/109-russian-legal-aid-bill-introduced-to-the-duma.html>; last accessed on 18 December 2011.

123 Art. 20 para. 3 of the Law of Russia on the System of Free Legal Aid.

4.2. Analysis of the experience of the countries under review: emerging themes

4.2.1. The definition of primary legal aid

In the countries under review, the scope and eligibility of primary legal aid is determined by the following criteria:

- Types of services that are provided within the primary legal aid system;
- Types of cases that fall, or are excluded from, the coverage of primary legal aid;
- In some countries, the scope of primary legal aid is limited to a certain time;
- Persons to whom (different types of) primary legal aid services may be provided.

Crafting the definition of primary legal aid very carefully by distinguishing what is included into its scope and what is not — even if a general definition is already provided for in the legislation, as is the case in Ukraine — is important because this definition would serve as a basis for all other regulatory instruments for primary legal aid. For instance, it is based on this definition that the decision on what kind of services will be paid for under the legal aid scheme will be made. Thus, it appears necessary to review the elements of the scope of primary legal aid in further detail.

4.2.2. Is it necessary to specify the types of services falling under primary legal aid?

The distinction between the different types of services listed in legal aid laws of the reviewed countries under “primary legal aid” is rather blurred. Many of them overlap: e.g. the provision of legal information may be considered a service on its own, or may be classified under “legal advice (counseling)” or “legal education”. At the same time, the definition of secondary legal aid in most legal aid laws is clear. It is usually linked to representation before courts and tribunals. Thus, in our view, a more effective definition of primary legal aid would be such that distinguishes it from secondary legal aid, of the kind that exists in Moldova.

Furthermore, listing the types of services to be provided under primary legal aid seems too limiting. Non-court legal action may take very different forms and shapes; depending on the circumstances of the case and the creativity of the legal aid provider. Confining such action to a pre- defined list of possible activities may interfere with this creativity. Besides, new forms of out-of-court legal action and provision of legal information are being proposed constantly, e.g. with the development of technology (e.g. interactive self-help legal materials), or with the change of vision as to which objective should the primary legal aid system serve. For instance, with the rise of the “legal empowerment” concept, the unorthodox community-oriented legal services — e.g. the use of law to mediate community disputes or to ensure cooperation from legal authorities with community initiatives — are rising in importance. These activities may however not fall under the “traditional” definition of primary legal aid, which centers upon individual legal consultations and advice.

Thus, in our view if the legislative definition of primary legal aid were to mention the different kinds of services, it would be advisable in the regulation implementing the law to include the text that also “other services that are not included in the scope of secondary legal aid” fall under primary legal aid. The reason behind this addition would be to ensure sufficient flexibility of the primary legal aid system.

Another distinctive feature of primary legal aid is that such aid may be provided by non-certified lawyers. This should, in our view, also be made explicit in the definition of primary legal aid in the implementing regulations.

4.2.3. Should the categories of cases for which primary legal aid provided be limited?

Another theoretical possibility is that the implementing regulations may limit the categories of cases for which primary legal aid may be provided. Some countries, e.g. Hungary and Russia, have excluded certain categories of cases from the scope of state-supported primary legal aid system. The reason for this exclusion was the economy of resources. These states found that the protection of interests linked e.g. to entrepreneurial activity is less important than e.g. the interests of obtaining social security benefits, or securing custody of the child. The rationale behind this consideration is that in the latter categories of cases the livelihood and the personal sphere of the applicant are presumably implicated more than e.g. in cases concerning the protection of business interests. This, however, is at odds with the “legal empowerment” concept, which asserts that the ability to independently exercise entrepreneurial activities is often crucial for the livelihood of certain categories of persons, e.g. farmers.

In our view, it is not understandable to limit the provision of primary legal aid to certain categories of cases. The main objective of the primary legal aid system is to ensure access to justice to the poor and vulnerable groups of the society, no matter under which legal category their case may be classified. Presumably, persons who are relatively well-off

are anyway not likely to use the state-funded primary legal aid system, because they have access to other sources of obtaining legal advice and information, e.g. their own lawyer, acquaintances with legal education, internet, etc. It is the most poor and disadvantaged who are not likely to have access to such sources, and who are mostly likely to make use of primary legal aid services.

4.2.4. Should the provision of primary legal aid be limited in time?

Most of the countries studied — Georgia, Moldova, Lithuania and Netherlands — limit the duration of primary legal aid consultation to one hour. If the “case” requires more than one hour of legal assistance, the applicant is then normally referred to the “secondary” legal aid system. The reason for limiting the duration of the “primary” consultation is the desire to save costs: eligibility for “secondary” legal aid is not universal, i.e. a means test is applied to it. Thus, what everyone receives for free, notwithstanding the financial status, is one hour of legal consultation.

In our view, such limitation may be sustained, but only in respect of certain types of providers and/or types of legal services. An acceptable solution to ensure economy of resources in the situation of the universal availability for legal aid, in our opinion, could be to ensure that there exists a state-supported system where everyone may receive simple legal advice or consultation of a limited duration. Such consultations may e.g. be provided by the providers established by the state: legal aid bureaus, or the municipal or executive officials. However, there must be another system in place — e.g. run by NGOs or private lawyers — to which the poor and disadvantaged in particular could turn for more in-depth/prolonged legal assistance that falls short of legal representation in court.

The rationale behind not universally limiting the provision of primary legal aid to one hour is the following: A great majority of legal problems may be resolved with a relatively little effort by means of out-of-court procedures. Often, the intensity of such effort on behalf of the provider depends on the characteristics of the applicant: normally, the poorer, less educated, more vulnerable, etc. the applicant is, the more time is needed to resolve his or her legal problem. This difference in the time is often not the result of the need to employ special procedures, but of the combinations of factors like: more time is needed to identify the legal problem and explain the possible ways of action to the applicant; the applicant is less capable of undertaking certain actions himself/needs more guidance to solve the problem. In such cases, it is not understandable why a case should be sent to a more expensive secondary legal aid provider, if it may be successfully resolved within the primary legal aid system.

4.2.5. Procedural principles of primary legal aid provision

From the experiences of the countries under review, the following principles for the delivery of primary legal aid may be distilled:

- Accessibility of primary legal aid to the population
- Simplicity of the system for obtaining primary legal aid
- Speediness in the provision of such aid
- Effective coordination between different types of providers: among primary legal aid providers; between primary and secondary providers; and the providers of other (non-legal) services

Primary legal aid should be **easily accessible** to the population. This includes a range of organizational arrangements that must be put in place, including e.g. ensuring that there exists a certain (minimum) quantity of legal aid providers for certain areas/territories; that the geographic spread of primary legal aid providers is even, and that the hard-to-reach or rural areas are covered. Accessibility also means that the population should be sufficiently informed about the availability of primary legal aid services. Governments of Georgia and the Netherlands have taken a considerable effort in the recent years to increase the visibility of primary legal aid services.

Accessibility of primary legal aid services means furthermore ensuring that the population trusts the provider, and thus refers to it for help with their legal problems. Ensuring trust from the population requires taking measures aimed at enhancing the perceived and real independence of a legal aid provider. Thus, for example, in the Netherlands legal services counters are now structurally fully independent from the government. They also advertise themselves as independent service providers. Other measures to enhance trust from the applicants could be those aimed to ensure that “their feedback counts”. Most primary legal aid providers in the Western countries, including the UK, Netherlands and Canada undertake client satisfaction surveys and provide other possibilities for clients to give feedback.

Individual providers may also enhance their accessibility by such simple actions as designing an open and “friendly” space for the applicants’ reception, or extending their opening times to the “out of work” hours. For example, the

opening hours of community law centers¹²⁴ in England and Wales are extended into one late evening a week and Saturdays.¹²⁵ This presumably enhanced their accessibility to the working individuals. In a similar vein, the Ministry of Justice of Lithuania recommended that municipal lawyers were available to provide consultations at least for two hours outside of the “usual” working hours per week.

Furthermore, one English research study has shown that in the modern technology era accessibility of a primary legal aid provider by telephone is even more important than physical accessibility.¹²⁶ Having recognized this, the Dutch legal services counters set up a telephone hotline for the provision of primary legal aid consultations, which currently covers about 60% of all primary legal advice given by the counters. The use of internet is increasing in importance: thus, for instance, legal aid consultants in Georgia have started to use Skype to provide legal consultations.

Simplicity of primary legal aid is one facet of accessibility, which means that the system for the provision of such aid should be organized in a simple manner, which is clear and understandable for its potential beneficiaries. This includes, in particular:

- simple and straightforward procedure for the application for primary legal aid;
- availability of information about the primary legal aid providers, the services that they offer, and conditions for obtaining such services, so that the potential applicants know exactly which provider to address.

For instance, in most of the countries under review — with the exception of Hungary — obtaining primary legal aid is not linked to any conditions, and no special application for such aid is necessary. Besides, countries with a complex system of providers developed information materials and software programs (e.g. the *Rechtwijzer* program in the Netherlands described above) to inform the population about the existing legal aid providers and conditions for their service. The National Legal Aid authority in Australia maintains the following Best Practice standard for the providers of state-supported primary legal aid: “Services should be clearly defined and should be apparent to the clients using the service. Information [about the service — A.O.] may be available to clients through telephone services, in-person services or published materials.”¹²⁷

Speediness of primary legal aid means that where possible such aid should be provided “on the spot”, and with a minimum delay or waiting time if further action is necessary, such as e.g. requesting information from the state authority, or drafting a legal document. For instance, in Lithuania such delay constitutes 5 working days; in Moldova it is 3 working days. More often than not the time period within which to handle the request for primary legal aid is within the full control of the provider of such aid (unlike in the case of secondary legal aid requests, which are linked to the court procedures). In an overwhelming majority of cases primary legal aid requests may be handled immediately, or after a short research or other follow up.

Furthermore, speedy provision of assistance is necessary because the problems for which primary legal aid is requested are usually pressing, or they are experienced as such by the applicants.¹²⁸ Often the livelihood of the applicant is at stake, e.g. when the “case” concerns employment, housing, or social benefits’ payment. Besides, these problems often tend to escalate when not handled promptly. For instance, many areas of law — e.g. consumer, employment, environmental law — provide for a certain period within which the case may be directly mediated with the counter-party.¹²⁹ If this time limit is passed, the case has to be referred to the court/tribunal, which incurs a much greater cost for the legal aid system.

Effective coordination between the providers of legal aid, and other institutions (such as e.g. social help organizations, trade unions, etc.) is a crucial element of primary legal aid system. Such coordination is needed to ensure that where the provider of primary legal aid, which the applicant approaches with his problem, is unable to assist him, the latter should be referred *directly* to a provider or an organization, which is in the best position to provide help. Multiple referrals should be avoided, as the probability that the person would apply to the next provider diminishes, the more times he is being re-referred (the so-called “referral fatigue” phenomenon).¹³⁰

124 Providers of the “state legal advice bureaus” type.

125 See C. Fox et al, Community legal advice centers and networks: a process evaluation, Legal Services Commission, 2010, at p. 131.

126 See H. Genn et al, Understanding advice-seeking behaviour: further findings from the LSRC survey on justiciable events, Legal Services Research Centre, 2004, at p. 17.

127 See National Legal Aid, Best practice standards — Legal information and advice services, available at <http://www.nla.aust.net.au/res/File/PDFs/BPS-InfoAdviceServices.pdf>; last accessed on 18 December 2011; at pp. 3-4.

128 See e.g. the English research mentioned *supra* at 108, which found that an overwhelming majority of the applicants apply for primary legal aid as soon as, or very shortly after, the problem arises. See p. 19.

129 E.g. a period within which a complaint about the quality of the product may be submitted to the producer/vendor.

130 I.e. a person is much less likely to apply to the third provider/organisation for assistance, than to the second, and even less so to the fourth, fifth, etc. See H. Genn et al, Understanding advice-seeking behaviour: further findings from the LSRC survey on justiciable events, Legal Services Research Centre, 2004, p.31.

Coordination must exist on different levels, e.g.

- Between primary legal aid providers: e.g. state providers who deliver basic legal advice, and non-state providers who may provide more in-depth assistance;
- Between primary legal aid providers and institutions providing other types of services, e.g. related to social services, unemployment, medical services, etc.
- Between primary legal aid providers and secondary legal aid providers.

Cooperation with other organizations providing non-legal services is necessary because applicants often do not understand the nature of their problem, i.e. whether it is a legal problem or not. If the problem that the person applies with is not legal, primary legal aid providers should have a mechanism to refer them to the appropriate service provider. Cooperation with other organizations may also be useful to ensure early and proactive identification of legal problems: e.g. persons applying to other services' organizations often do not (yet) recognize that they have a legal problem. If these organizations cooperate with the primary legal aid system, employees of such organizations may, for instance, be requested to ask a few diagnostic questions aimed to identify whether the applicant also has a legal problem, and if yes then to refer him to a primary legal aid provider.

It is furthermore self-evident that there primary legal aid providers should co-operate with the secondary legal aid providers, should it turn out that the applicant needs secondary legal assistance. Legal aid management institutions must ensure and facilitate such cooperation if necessary. The **procedures for referral to other providers** should exist on the level of the individual providers, as well as on the level of management of the legal aid system. For instance, the Legal Services Commission in the UK¹³¹ developed standards for referral procedures to other providers, which every provider who wishes to conclude contract for the provision of legal services must meet.¹³² These standards, for example, make a distinction between **signposting**, i.e. simply providing contact information of another provider, and **referral**, i.e. taking steps to facilitate contact of the applicant with another provider. Referral, other than signposting, is required for certain vulnerable categories of applicants, e.g. juveniles, foreigners or disabled persons.

4.3. Analysis of the findings in respect of Ukraine

The new Law of Ukraine on Free Legal Aid provides a definition of primary legal aid based on the types of services that it includes. These are: provision of legal information; granting consultation and explanation of legal issues; drafting requests, complaints and other legal documents (except for procedural documents) and assisting in individual's access to the secondary legal aid and mediation.¹³³ This appears to be a closed list of options. Every natural person within the jurisdiction of Ukraine is entitled to free primary legal aid.¹³⁴ Primary legal aid may be provided in respect of all kinds of legal issues.

It appears that the procedure for obtaining primary legal aid — which presumably applies only to cases where such aid is provided by the executive and local authorities¹³⁵ — is as follows: applicant may send a written request for the provision of primary legal aid services to the executive or local authorities. The authorities must then provide assistance within 30 or 15 (when it concerns request for legal information) working days. Should the authority be unable to provide assistance, they should re-direct the applicant's request to the "corresponding authority" (?), within 5 working days, notifying the applicant about it. If it turns out that the person needs secondary legal assistance, the procedure for obtaining such assistance will be explained to him.

The definition of primary legal aid in the new Ukrainian law is also broad enough to encompass a wide range of services. It is recommended, however, to specify the definition of primary legal aid in the implementing legislation to include the following elements:

- that primary legal aid may include individually-oriented, as well as community-oriented services;
- that primary legal aid includes any kind of legal advice and assistance which may be provided by non-certified lawyers, and does not include assistance in respect of court representation;
- that primary legal aid may include also other types of services that those listed in Art 7 of the Law on Free Legal Aid, which do not fall under the category of "secondary legal aid."

131 A "legal aid board" type of a body.

132 See the standards described e.g. in the Legal Services Commission Response to the Legal Services Consumer Panel investigation into referral arrangements, available at [http://www.legalservices.gov.uk/docs/consultations/1_LSB_Referral_fees_call_for_evidence_-_Feb_10_\(182kb\).pdf](http://www.legalservices.gov.uk/docs/consultations/1_LSB_Referral_fees_call_for_evidence_-_Feb_10_(182kb).pdf); last accessed on 18 December 2011.

133 Art. 7 para. 2 of the Law of Ukraine on Free Legal Aid. Secondary legal aid is, in its turn, described as: defense against prosecution; representation of the interests of persons that have a right to free secondary legal aid in the courts, other state agencies, self-governing authorities, and versus other persons (?); and drafting procedural documents. See Art. 13 para. 2 of the Law.

134 Art. 8 Law of Ukraine on Free Legal Aid.

135 This is however not sufficiently clear from the text of the Law. The respective norms (see Art. 10) are drafted as if this was the universal procedure for the application for primary legal aid, irrespective of the type of provider.

It is remarkable that under the new Law on Free Legal Aid all persons are eligible for primary legal aid, notwithstanding their financial status, and the kinds of legal issues for which they require assistance. However, it may turn out in the course of the implementation of the Law that universal provision of primary legal aid — i.e. ensuring that all providers deliver all types of primary legal aid to all persons — is unsustainable. In that case, the eligibility may be differentiated depending on the different types of primary legal aid — e.g. initial advice, and more in-depth consultation and/or assistance, and different providers.

For instance, it may be decided that state-established legal aid providers (e.g. executive or municipal authorities) would provide basic legal advice to everyone notwithstanding their financial status of the maximum duration of 1 hour.¹³⁶ More extended state-supported primary legal services, e.g. representation before/petitioning to government authorities, drafting complex legal documents, as well community-oriented services, e.g. community legal education, or mobilization of the community to resolve legal problems that are relevant for the entire community — may be provided by other types of providers to certain groups of population (e.g. the poor, vulnerable groups, etc.), or to certain communities.

Various aspects of the procedure for obtaining primary legal aid from the executive and local authorities do not meet the principles of accessibility and speediness of the services discussed above. These include, for instance: the need to submit a written request for primary legal aid, instead of being able to obtain advice on the spot; the need to specify the type of service that is being asked for (applicants for primary legal aid are often not able to formulate their problem in legal terms, let alone know which path they should take to resolve it!); the waiting times of 30 (15) working days to receive a response to a request for legal advice. These provisions should be revised, if possible. Furthermore, additional procedures should be developed to ensure effective co-ordination between different primary legal aid providers, of primary legal aid providers with organizations providing other services; and with the secondary legal aid providers.

¹³⁶ In that case, however, it should be explicitly stated in the regulation for such providers that their services are limited to the provision of legal information and simple advice.

CHAPTER FIVE. APPROACHES TO FUNDING PRIMARY LEGAL AID

In all countries under review, with the exception of Russia, legal aid — including primary legal aid — is financed from the central state budget.¹³⁷ In Russia, according to the new Law, the provision of primary legal aid will be financed primarily from the regional budgets; with the exception of services provided by the executive authorities and NGOs, which may also be funded from the federal budget.¹³⁸ An earlier draft of the Russian Law had contained a provision stating that funds may be designated from the federal budget for financing regional legal aid programs, should the funding available in the regions be too short.¹³⁹ This provision was unfortunately deleted from the later drafts. This is regrettable because most Russian regions are dependent on subsidies from the federal budget; and are unlikely to designate significant own funding for legal aid programs.¹⁴⁰ In contrast to Russia, in Lithuania funds for primary legal aid are allocated by the central government to the municipalities, which organize the provision of such aid.

The amount of state funding designated for primary legal aid varies from one country to another. In the Netherlands, for instance, the yearly budget of primary legal aid constitutes about 24 mIn EUR,¹⁴¹ or about 1.4 EUR spent on primary legal aid per capita. (These figures, however, do not take into account the grants given by the state to NGOs for primary legal aid provision). In Lithuania, by contrast, the yearly primary legal aid budget is about 550.000 EUR,¹⁴² or about 0.2 EUR per capita.^{143 144}

In reality, state authorities in the reviewed countries fund only a small portion of legal advice. In addition, in all reviewed countries the provision of primary legal aid is in practice financed from the other sources, such as e.g. funds provided by international donors (Georgia; Moldova); charities (Netherlands; Russia; Hungary); grants provided by the local authorities (Netherlands; Russia); etc. Besides, some part of primary legal aid delivery is “financed” by volunteers and lawyers working *pro bono* to provide free legal assistance. The funding of 100% of the needs for legal advice by the state is probably unattainable.

Many countries, particularly less rich ones, struggle to provide even a modest contribution into the funding of primary legal assistance. This is especially so, because these states often strive first to meet their constitutional obligations to guarantee free legal assistance in criminal cases. At the same time, the importance of providing simple legal advice should not be underestimated. Not only is it an important tool to guarantee access to justice and legal empowerment for the poor and most vulnerable, it may also actually help states to save money. The “economy areas” would constitute the funds that are spent on secondary legal assistance and associated costs of organizing trials, as well as funds spent of the provision of other types of social services. For instance, research conducted by the Citizen advice bureaus¹⁴⁵ demonstrated that an early and effective help in an emerging legal problem may help prevent it from escalation into a court dispute, or prevent other problems from adding on to the initial problem. Thanks to this prevention mechanism, in the UK context an economy of 2.5-9 British pounds¹⁴⁶ per one British pound spent may be achieved.¹⁴⁷

137 See e.g. Art. 33 of Law on State-Guaranteed Legal Aid in Lithuania; Art. 22 of the Law of Georgia on Free Legal Aid; Art. 42 para. 1 of the Law on Free Legal Aid of the Netherlands.

138 See Arts 10 and 29 of the Russian Law on the System of Free Legal Aid.

139 See the draft of the Russian Law on the System of Free Legal Aid published on the website of the Federal Bar Association, Art. 9 para. 4, available at http://www.fparf.ru/help/bespl_pom.htm; last accessed on 27 December 2011.

140 See, among others, Public Interest Law Institute, Expert opinion on the draft Law on the System of Free Legal Aid (in Russian), 2011, available at http://old.pilnet.org/images/stories/events/LegalAid/pilnet_legal%20aid_draft%20law%20statement.pdf; at p.4, last accessed on 27 December 2011. Also see D. Shabelnikov, Civil legal aid reform in Russia, blog post PILnet, posted on 18 March 2011, available at <http://pilnet.org/public-interest-law-programs/legal-aid-reform/dimas-blog/92-civil-legal-aid-reform-in-russia.html>; last accessed on 27 December 2011.

141 See the information on the legal aid budget of the Netherlands on the website of the Dutch Government (in Dutch), available at http://www.rijksbegroting.nl/2011/voorbereiding/begroting_kst148608_7.html; last accessed on 4 January 2011.

142 About 1.900.000 Lithuanian litas. Ministry of Justice, Annual report on the organisation and delivery of primary legal aid (in Lithuanian), 2010, at p. 16, on file with the author.

143 One should bear in mind however that in the Netherlands the amount of consultations provided yearly per capita is about 3.5 times higher than in Lithuania: if in Lithuania one in about 75 persons is consulted yearly, in the Netherlands it is one in about 20 persons.

144 The amounts of state expenditures for primary legal aid in the other countries under review are unavailable either because they are not kept (e.g. in Hungary and in Russia primary and secondary legal aid are not separated from each other, and thus no separate budgetary estimations exist), or because the primary legal aid system has not yet become (fully) operational in these countries.

145 A network of “legal advice centres” established by NGOs that operates in Great Britain.

146 Depending on the area of intervention, e.g. employment, social benefits, etc.

147 See Citizens Advice, Towards a business case for legal aid, Paper to the Legal Services Research Centre's eighth international research conference, at p. 1, available at http://www.citizensadvice.org.uk/index/policy/policy_publications/towards_a_business_case_for_legal_aid.htm; last accessed on 18 December 2011.

Where resources available for funding primary legal aid were limited, the following approaches have been tried in different countries:

- Employing creative cost-cutting solutions in the organization of primary legal aid delivery, such as e.g. involving paralegals instead of lawyers to provide the service; co-operation with the civil society and legal clinics in the provision of such aid;
- Other cost-cutting methods of primary legal aid provision are those aimed at collective assistance and addressing systemic legal problems rather than tackling individual problems one-by-one, for instance community-oriented services. Likewise, proactive services, i.e. those that are aimed at the early identification and tackling of the problem are cost-efficient, because they help preventing problems from escalating further, and thus to save state resources spent on saving these problems. (See, for more detail, Chapter 3 above);
- The approaches employed by providers of primary legal aid to the resolution of disputes may have a cost-cutting effect: for instance, solutions based on mediation and reconciliation potentially save more resources than litigation-based approaches;¹⁴⁸
- The solutions using technology, such as e.g. interactive self-help programs or video-consultations are a great solution to cut costs. However, it should be remembered that self-help programs alone are not apt to address the needs of the poor and disadvantaged to access justice, but that they can be used as complementary tools for legal education, or referral to an appropriate provider;¹⁴⁹
- Contracting out a bulk of services to providers, and stimulating competition among providers has proven to be an effective cost-cutting solution;
- Legal expenses insurance has proven effective in some countries, e.g. the Scandinavian countries and the UK, but also in a less wealthy South Africa¹⁵⁰ to fund legal aid needs, including for primary legal assistance, of medium-income households;
- Individual providers — including those that belong to the state system — should be encouraged to apply the innovative and proactive approaches to fundraising. They could, for instance, employ a system of contribution towards the service costs from their better-off clients; organize fundraising activities; etc. For instance, Paralegal Advice Offices¹⁵¹ in South Africa may charge wealthier clients for their services, and organize fairs and charity events to seek for sponsors.¹⁵² Law Centers¹⁵³ in England and Wales raise funds from the charities, municipal councils, but also legal professionals' associations, and government authorities such as e.g. the Equality and Human Rights Commission and the Department of Trade and Industry.¹⁵⁴ Whatever the potential funding sources in the given country may be, providers should be motivated –e.g. through training– to make creative use of such sources;
- Funding from international donors to finance the provision of primary legal aid services should be sought.

148 This has been recognized by the Dutch Legal Aid Board which is actively promoting mediation programs in an attempt to decrease litigation costs.

149 See J. Giddings, M. Robertson, Large-scale map of the A to Z? The place of self-help services in legal aid, in R. Moorhead, P. Plaesance (eds.), *After universalism: re-engineering access to justice*, Bristol, 2003, at pp. 204-w05.

150 See D. McQuoid Mason, South African models of legal aid delivery in non-criminal cases, paper published on www.legalaidreforms.org (last accessed on 18 December 2011); at p.4.

151 Similar to "legal advice centers", but which employ only paralegals.

152 See Open Society Justice Initiative, Comparative memorandum on community legal centers, unpublished paper, 2009, on file with the author, pp. 74-75.

153 "Legal advice centers", which employ both paralegals and certified lawyers.

154 *Ibid.* at p. 49.

CHAPTER SIX. RECOMMENDATIONS

6.1. Recommendations to the Ukrainian government

6.1.1. Management of the primary legal aid system

- **Define the relationship and division of responsibilities between the various state authorities** — the Ministry of Justice, its territorial offices, and local authorities — in the management of primary legal aid; as well as procedures for coordination between these bodies. Given that local authorities are mainly responsible for managing primary legal aid, the Ministry should consistently assume a supervisory and/or monitoring role in respect of the regional primary legal aid systems.
- It is advisable to create **a separate entity or institution with regional offices to coordinate the implementation of the national legal aid policy**, including primary legal aid. If this is not possible, at least a separate department of the Ministry of Justice (with regional sub-divisions) should be created.

6.1.2. Primary legal aid providers

- **The to-be-developed primary legal aid system of Ukraine should rely both on the public (state-established) and private providers**, e.g. networks of NGO centers, lawyers, specialized NGOs, legal clinics, etc. Both components of the primary legal aid system — public and private — should receive due recognition and attention from the very outset of the primary legal aid reform. This would ensure, in the short term, taking off the burden of meeting the growing demand for primary legal aid from the state-established provider system. In the long run, this would ensure competition between the two systems, which would lead to greater cost-quality ratio of the service.
- To this end, the Ministry of Justice and/or its territorial offices should **promote and facilitate cooperation agreements between municipalities and the existing providers of primary legal aid**.
- The Ukrainian government should take **additional steps** to designing an efficient policy concerning primary legal aid providers. Namely, these steps should be:
 1. **reviewing** the advantages and disadvantages/potential limitations of the different types of providers — executive agencies, NGO legal advice centers, individual lawyers, legal clinics, paralegals, etc. — and the results of their performance, if they already exist. This review could focus on such issues as: cost-efficiency; (expected) quality of the service; accessibility of the provider to the population; level of trust from the population to the provider; capacity for community outreach. This review should also take into account the lessons learned in other countries. Furthermore, the review should be based on the results of the legal needs assessment of the population. E.g. the question should be asked: To what extent, and what portion of, the existing legal needs of the population does the given provider satisfy?
 2. **experimenting** with other types of legal aid providers which do not exist in Ukraine as of yet, for example “state legal aid bureaus” or “paralegals”. For instance, creation of “state legal aid bureaus” may prove the only solution in the regions where no other providers, e.g. NGO legal advice centers, or lawyers willing to provide primary legal aid, exist. Paralegals, in their turn, are optimal to provide access to justice for persons living in rural areas.
- Based on the results of the reviews of advantages and disadvantages of, and experimenting with, different types of providers, the Ukrainian government should develop — in cooperation with the other stakeholders –regional and municipal authorities, Bar Association and the civil society — **a coherent national policy in respect of both public and non-state primary legal aid**. This policy should explicitly specify what types of providers will be supported and/or promoted by the state, and in which manner, the goals of the state policy in respect of each type of providers, and the minimum requirements to each type of providers.
- Only after the national policy on primary legal aid providers is formulated, may the **further regulations** related e.g. to the operational procedures and minimum requirements certain types of provider; standard contracts with providers; provider reporting forms; payment mechanisms; etc. be developed.
- The **organization** — and particularly the human capacity — and **procedures of the “public consultation centers”** of the executive authorities should be **improved** to increase their accessibility, visibility and speediness of the provision of the service. The performance of the “centers” must be monitored based on the substantive indicators.

6.1.3. Scope and eligibility for primary legal aid and procedures for obtaining such aid

- The **definition of primary legal aid** should be further specified in the implementing legislation.
- If necessary to save the resources for the provision of primary legal aid, the **eligibility may be differentiated depending on the different types of primary legal aid** — e.g. initial advice, and more in-depth consultation and/or assistance, and **different providers**.
- The **procedure for obtaining primary legal aid** from the executive and local authorities does not meet the principles of accessibility and speediness of the services discussed above, and thus it **should be revised**. Furthermore, additional procedures should be developed to ensure effective co-ordination between different primary legal aid providers, of primary legal aid providers with organizations providing other services, and with the secondary legal aid providers.

6.1.4. Funding of primary legal aid

- In preparing funding proposals for primary legal aid, the Government should make an **inventory of potential areas where savings may be achieved** due to the provision of such aid.
- **Creative cost-cutting solutions** to financing primary legal aid employed in other countries should be reviewed for their applicability in Ukraine.
- **Providers** of primary legal aid, including those that are state-run, should be **stimulated to undertake fundraising**.
- Financial support from **international donors** should be sought.

6.2. Recommendations to UNDP and other development actors

- UNDP and other development actors should support the government of Ukraine in the **development of an effective national policy on legal aid**, which integrates coherently both primary and secondary legal aid programs, and is conducive to the achievement of access to justice and legal empowerment.
- UNDP and other development actors should assist the government of Ukraine in the **development of the necessary institutional capacity and management structure for the legal aid system**, including primary legal aid.
- UNDP and other development actors should support the Ukrainian government in the development of **mechanisms for monitoring the provision of primary legal aid** by the existing providers, and **experimentation with the new models** of primary legal aid provision.
- UNDP and other development actors should assist the government in **designing an effective evidence-based approach to the delivery of primary legal aid** relying on **both public and private providers**, which would meet the requirements of **accessibility** and **cost-efficiency** of the service.
- UNDP and other development actors should provide **funding** to the to-be-established primary legal aid system in Ukraine, at least in the early stages of its development. Donor funding should also be available to **directly finance** (some part of the) **service provision**, should the intention be to roll out the provision of primary legal aid on a national basis, and to provide anything but a superficial and/or intermittent service.
- Besides financing primary legal aid service provision, donor **funding** should be aimed at **building capacity** of the newly-established providers; developing **management mechanisms** for primary legal aid at the regional levels; as well as **stakeholder coordination** on the central and regional level.
- UNDP and other development actors should **facilitate dialogue between the Ukrainian government and the civil society groups** that have developed innovative solutions to the delivery of primary legal aid services, or have extensive experience in the provision of primary legal aid, with the view to **enrich the debate** on the national policy on primary legal aid.
- UNDP and other development actors should furthermore **promote active cooperation between the state and the civil society** in the implementation of the to-be-developed primary legal aid policy. Such cooperation is necessary in order to establish **effective public-private partnerships** in the provision of primary legal aid, which would ultimately lead to more comprehensive and cost-efficient service provision.

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