

## **ACCESS TO LEGAL AID IN UKRAINE<sup>1</sup>**

*1.. The legislation which regulates the right to access the services of a lawyer and the right to get legal aid in criminal cases.*

The right to access the services of a defender (attorney) and the right to get legal aid in criminal cases are first of all stipulated in the International Pact on Civil and Political Rights as of December 16, 1966 ratified by the Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR as of October 19, 1973 № 2148-VIII, the Convention on Human Rights and Fundamental Freedoms as of November 4, 1950 which was ratified by the Supreme Soviet of Ukraine on July 17, 1997 on the national legislation level in the Constitution of Ukraine, Criminal-Procedure Code of Ukraine, laws of Ukraine On the Bar, On the Office of Public Prosecutor and On Militia. Besides the provisions of the above laws are also stipulated in and specified by the decision of the Constitutional Court of Ukraine as of November 16, 2000 №13-pp/2000, by the resolution of the Plenary Session of the Supreme Court of Ukraine as of October 24, 2003 №8 On the Application of the Legislation Providing the Right for Defense in Criminal Legal Proceedings and also Rules of Advocate Ethics approved by the Supreme Qualification Commission of the Bar in the Cabinet of Ministers of Ukraine of October 1, 1999 (protocol of October 1 – 2, 1999 №6/VI).

*1.1. Constitutional guarantees of the right to access the services of an attorney and the right to get legal aid in criminal cases.*

Article 59 of the Constitution of Ukraine provides for the fact that everyone has the right to legal aid. Such aid is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights. In Ukraine, the advocacy acts to ensure the right to a defense against

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<sup>1</sup> On the materials of the Report Access to the legal assistance in criminal process in Ukraine that was prepared by the members of the Council on coordination of reform of free of charge legal assistance at the Ministry of Justice of Ukraine within the framework of the reform with the assistance of the International Renaissance Foundation.

accusation and to provide legal aid in resolving cases in courts and other state bodies.

Part two of article 63 of the Constitution of Ukraine additionally specifies that a suspect, an accused, or a defendant has the right to a defense.

Point 6 of part three of the article 129 of the Constitution of Ukraine determines that the main principles of judicial proceedings are ensuring the right of an accused person to a defense.

It should also be stated that the decision of the Constitutional Court of Ukraine as of November 16, 2000 №13-пн/2000 on a case on the basis of the constitutional appeal of a citizen Gennadiy Ivanovych Soldatov in relation to the official interpretation of the provisions of article 59 of the Constitution of Ukraine, article 44 of the Criminal-procedure code of Ukraine (CPC), articles 268 and 271 of the Code of Ukraine on Administrative Offences (a case on free choice of a defender) determines the following. "The provisions of part one of article 59 of the Constitution of Ukraine on the fact that "everybody is free in the choice of a defender of his rights"... should be understood as a constitutional right of a suspect, an accused and a defendant at protection from the accusation and a person, who will be made administratively answerable with the purpose of getting legal aid, can choose a defender of his or her rights a person who is a legal professional and can by law render legal aid either in person or on the basis of a power of attorney of a legal entity.

Provisions of part two of the article 59 of the Constitution of Ukraine about the fact that " to provide the right to a defense against accusation advocacy acts in Ukraine" should be understood as one of the constitutional guarantees that gives a suspect, an accused or a defendant the opportunity to realize the right to freely choose a defender in criminal legal proceedings, a lawyer who can act as an attorney.

*2. The situation concerning the access to the legal aid in Ukraine is similar to that in the countries of Central and Eastern Europe.*

The main problems in the sphere of granting free of charge legal aid are

as follows:

### *2. 1. A limited access to free of charge legal aid*

The Ukrainian legislation guarantees the right to free of charge legal aid to many categories of persons (persons requiring psychiatric help; minors; those who have suffered from the Chornobyl catastrophe; victims of political repressions who were rehabilitated according to the Law of Ukraine On rehabilitation of victims of political repressions; persons who have suffered from illegal actions of inquest organs, preliminary investigation organs, office of the public prosecutor and court; veterans of war who are entitled to legal aid concerning the matters related to their social security; persons who are subject to the decision of processing the documents concerning the decision of granting refugee status and refugees entitled to any type of legal assistance; persons who are not able to take care of themselves through their senior age, illness, or disability and having no relative who must give them help and care; foreign citizens who are entitled to legal assistance in cases envisaged by law by international agreements of Ukraine on legal assistance in civil and criminal cases). But for the moment state budgeting is only provided for the payment for legal aid stipulated by the Criminal-procedure Code Ukraine (the payment of attorneys' work in cases "on appointment").

The mechanism of the Criminal-Procedure Code of Ukraine, which provides for the appointment of an attorney via bar associations was set up in other historical circumstances and does not take into account modern forms and operating conditions of the legal profession. Therefore it is unable to provide for granting instant and high-quality legal assistance. For the categories of persons determined by other legislative acts, there is no budgeting as well as the mechanism of receiving free of charge legal aid.

### *2.2. Low rate of attorneys' remuneration and ineffective way of payment procedure*

The operating legislation envisages that the amount of the attorney's remuneration for granting legal assistance in criminal cases on appointment

makes 15 UAH (3 dollars) per a day of work. Such level of remuneration cannot provide attorneys' systematic and initiative participation as well as adequate quality the legal aid granted at the expense of the state budget. In addition, the complicated procedures of confirming attorney's participation in a case often result in an attorney's refusal to get even that money for the work done.

### *2.3. Lack of effective management in the sphere of granting free of charge legal aid*

It could be said that there is a lack of unified state policy in the sphere of providing physical persons with free of charge legal aid. The legislation only laid the function of paying for the participation of an appointed attorney in a criminal case on Ministry of Justice of Ukraine at the expense of the state budget. Instead there is no monitoring of actual needs in legal aid and budgeting is carried out on the basis of outdated data.

### *3. The state of free of charge legal aid reform in Ukraine.*

Besides the above mentioned constitutional guarantees to the persons who legally live in the territory of Ukraine, making an efficient system of access to justice is one of Ukraine's unfulfilled obligations to the European Union<sup>2</sup>.

The attempts to change the situation in this sphere through legal initiatives were not supported in the Ukrainian Parliament, first of all, through unsystematic approaches and inconsistency of the suggested decisions.

Under the auspices of the International Renaissance Foundation and Open Society Justice Initiative in 2005 the Ministry of Justice of Ukraine

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<sup>2</sup> Document № 19676 of 05.10.2005 On performance of duties and obligations by Ukraine.. Resolution № 1466 (2005) On performance of duties and obligations by Ukraine and recommendation № 1722 (2005) On performance of duties and obligations by Ukraine..

started a wide-scale project of reforming free of charge legal aid and to be more specific - forming (designing) an efficient system which will include a complex of legal steps, organs of managing free of charge legal aid system and subjects of granting such aid and regulating the relations which are formed among the organs of management, subjects of granting free of charge legal aid and physical persons who intend to get and /or get free of charge (partially paid) legal aid at the expense of state budget.

*The main steps of the reform are:*

1. making a political decision -

1.1. Government's action program called Towards the People (2005) includes the task of ensuring effective access to the legal aid, firstly for low-income people;

1.2. approval by the President of Ukraine of the Plan of steps on implementation of duties and obligations of Ukraine to the European Union (January, 2006), where it is provided for the Conception of making the system of free legal aid and conducting pilot projects on establishing experimental centers of granting free of charge legal aid;

2. appointing a government body responsible for the reform -

2.1. establishing the Council of Reform on Free of Charge Legal Assistance Co-ordination by the Minister of Justice (hereinafter – the “Council”) whose functions will include the preparation of the documents, making conditions for holding experiments and reform support;

3. getting a wide support of public and professional associations -

3.1. in December 2005 All Ukrainian Forum of organizations granting free of charge legal assistance was held. All present law-enforcement agencies and advocate associations supported the reform and expressed their willingness to take part in its realization;

4. the draft of Conception of making the system of free legal aid was developed -

4.1. it was submitted to the President's of Ukraine consideration in March 2006;

5. pilot offices of attorneys granting free legal aid - are being prepared

5.1. the first region (Kharkiv) was selected and the competition among advocates will be conducted; setting up the first office is planned at the end of May;

5.2. The Council is preparing the introduction of pilot offices in 30 other regions of Ukraine in 2006-2007.

In 2006 Ministry of Justice of Ukraine plans to carry out sociological research of the quality of granting free of charge legal aid by advocates and submit to the President of Ukraine another bill on free legal aid.

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***Kyiv, 2006***