

Institutionalized Public Defence in Criminal Process: Recent Experience from Ukraine

Andriy Vyshnevsky, lawyer
Director of the Coordination Centre
for Legal Aid Provision
Ministry of Justice of Ukraine

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Fundamental Background for the Establishment of the Free Legal Aid System in Ukraine

Paragraph 1 Article 59 of the Constitution of Ukraine recognizes the right of any citizen to legal aid



Obligations of Ukraine as a Member State of the Council of Europe

Key Parameters of the Free Legal Aid System in Ukraine

System start-up – 00:00 1 January 2013

- **27** regional centres for free secondary legal aid provision;
- More than **3000** lawyers selected on the competitive basis to provide free secondary legal aid;
- More than **500** lawyers who are on duty at any moment of real time over the whole territory of Ukraine and are ready to arrive within **one** hour to a detained person;
- **200** staff employees of centres for free secondary legal aid provision, a half of them are on duty working 'day after 3 days-off' shift;
- Functioning «**24/7**»;
- More than **20000** assignments for free secondary legal aid provision during the period from 1 January, 2013 to 26 April, 2013;
- Waivers of counsel of persons suspected in a crime and detained by the authorized bodies is less than **8,5%**;
- Annual budget about **5 mln. euro for 2013**;
- Expenses for free legal aid system are **30 – 50 euro per client per year**;
- **Total expenses of functioning** of free legal aid system are about **12000 euro per day**.

Persons Eligible for Free Secondary Legal Aid in 2013

persons that have been detained or arrested under an administrative procedure

persons suspected in a crime and detained by the inquiry and investigation authorities

persons taken into custody as a preventive measure

persons whose cases presuppose mandatory involvement of the defender in accordance with the provisions of the Criminal Procedure Code of Ukraine

persons for whom an investigator, a prosecutor, an investigating judge or court decide to involve a public defender in the criminal proceedings for representation or for certain procedural action under the Criminal Procedure Code of Ukraine

Types of Legal Services Provided

1

Defence against prosecution

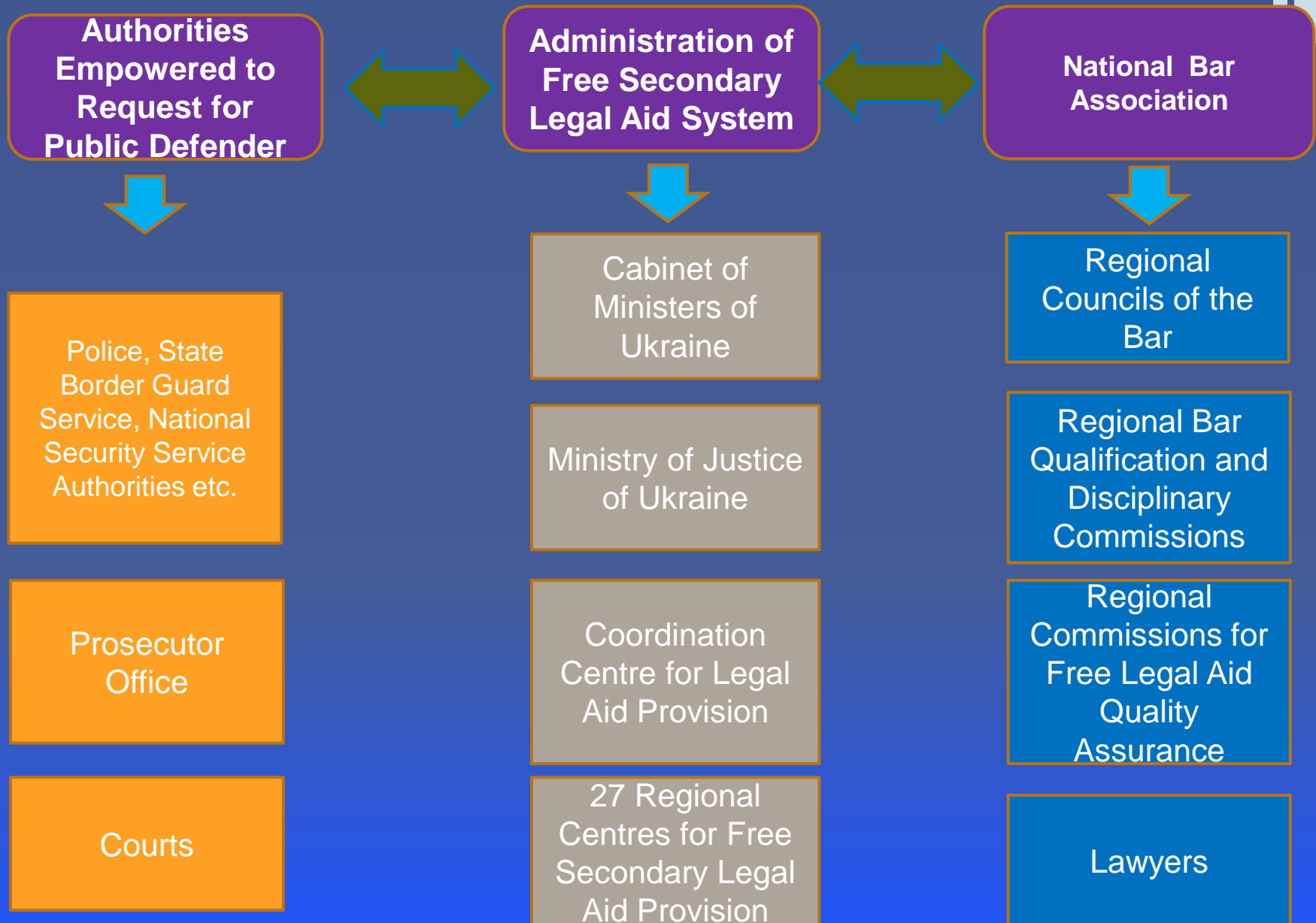
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Representation of the interests of persons eligible for free secondary legal aid in courts, other public authorities, local self-governance bodies, and in relations with other parties

3

Drafting procedural documents

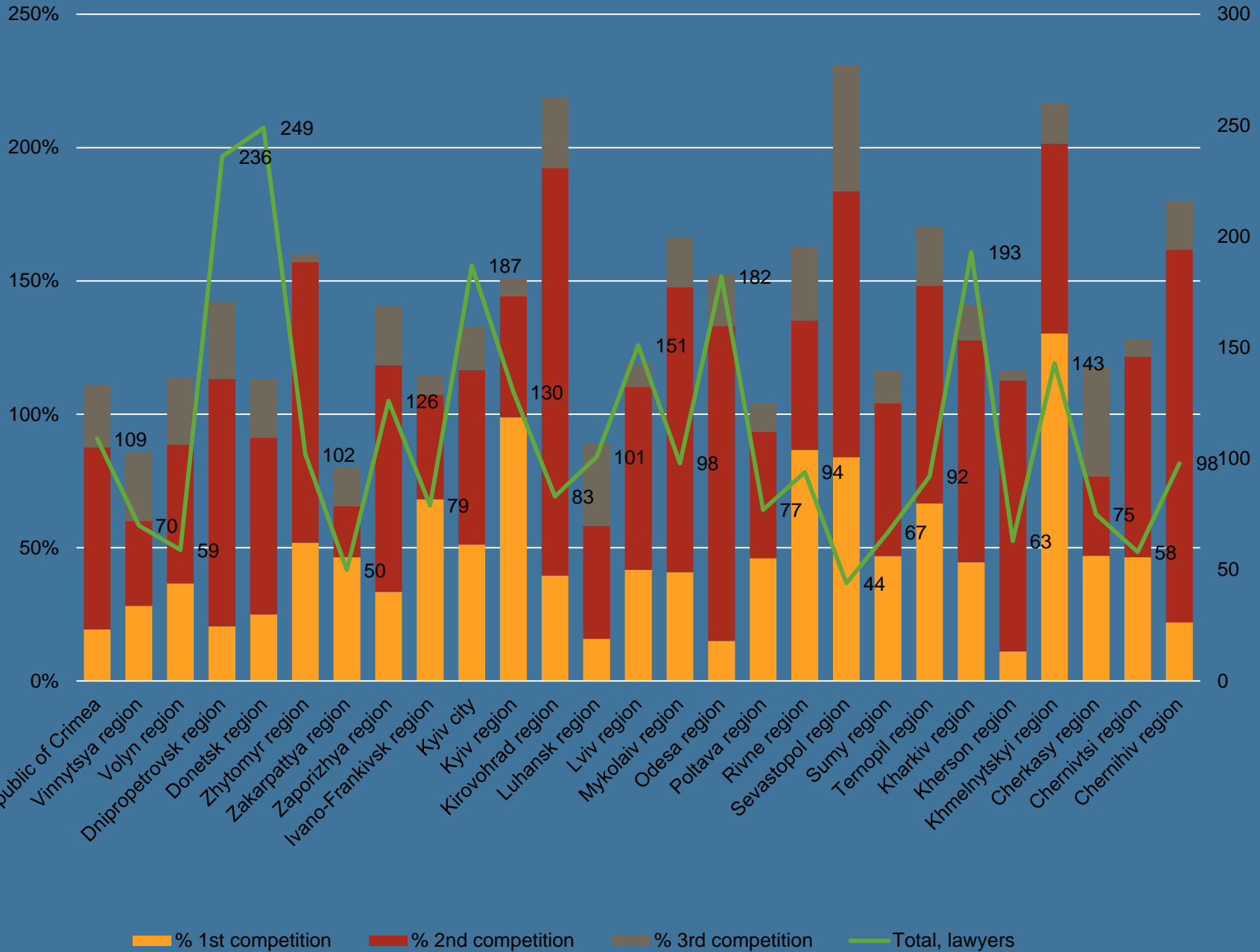
Key Stakeholders of the Free Secondary Legal Aid System in Ukraine



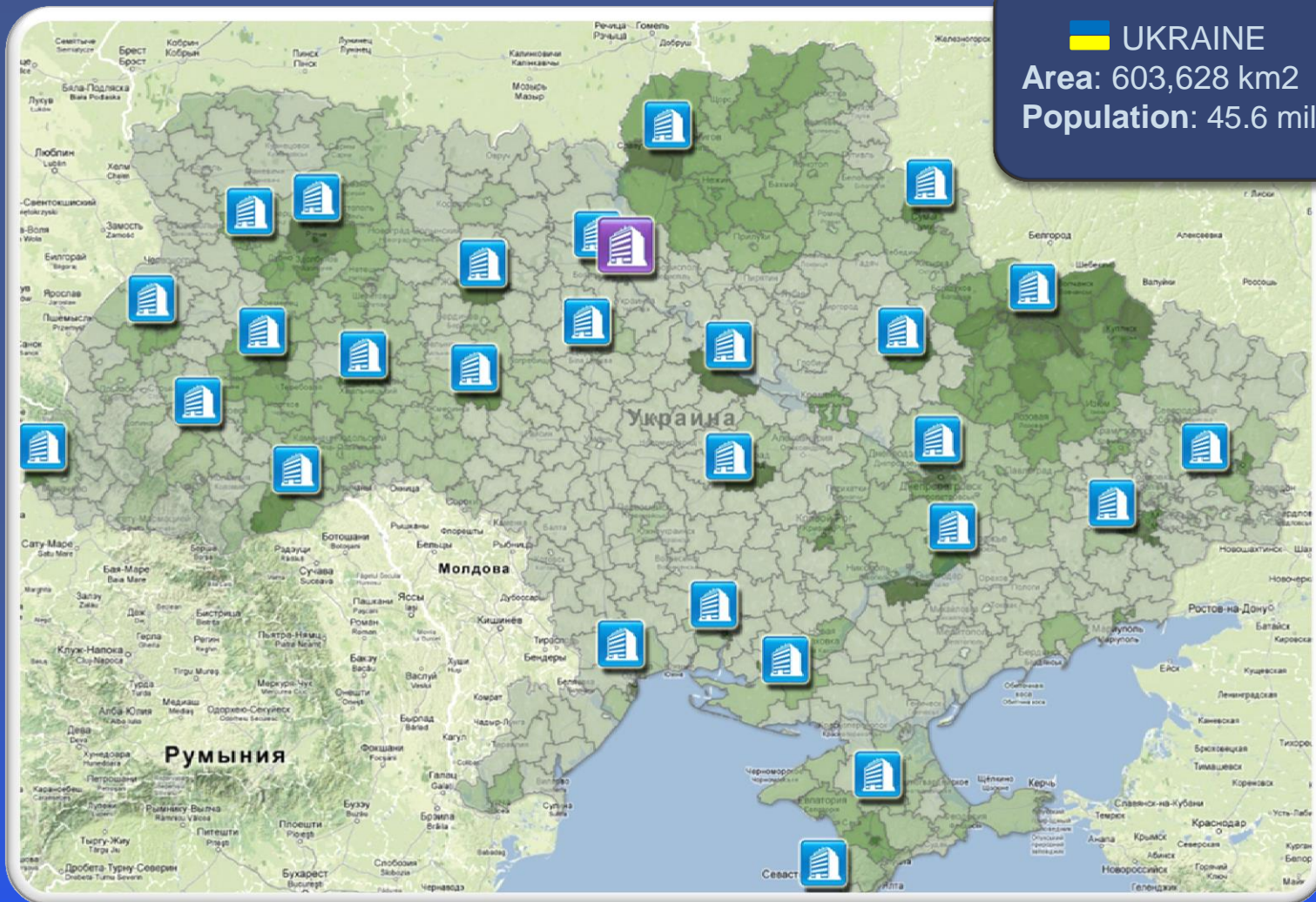
Legal Aid Lawyers Location by Districts



Coverage of lawyers (50 lawyers per 1 million of population, %)



Legal Aid Lawyers Coverage by Districts



Positive Developments in Ensuring the Right for Defence

... 2012



2013 ...

1

- Much wider list of persons eligible for free legal aid, primarily with regard to the persons detained for an administrative offence or suspected in a crime

2

- Secondary free legal aid is provided to detained persons on a 24-hour basis, a lawyer arrives to a client within two hours as a maximum starting from the moment of his/her detention in fact

3

- Appointment of lawyers by the centres for free secondary legal aid provision [in the past by an authorized official of inquiry, by a prosecutor, an investigator or a court through an association of lawyers or directly (!)] eliminates institutional conflict of interests between public prosecution and public defence

4

- Problem of denial of lawyer's access to a detainee that had systematic character in the past is now actually solved due to the obligation of the state centres to monitor the quality of free legal aid provision

Positive Developments in Ensuring the Right for Defence

... 2012



2013 ...

5

- Lawyers are involved by the state in free secondary legal aid provision voluntarily (earlier a lawyer was appointed obligatorily)

6

- Relationships between a lawyer and the State are based on a civil contract which determines his/her workload and guarantees of his/her activity

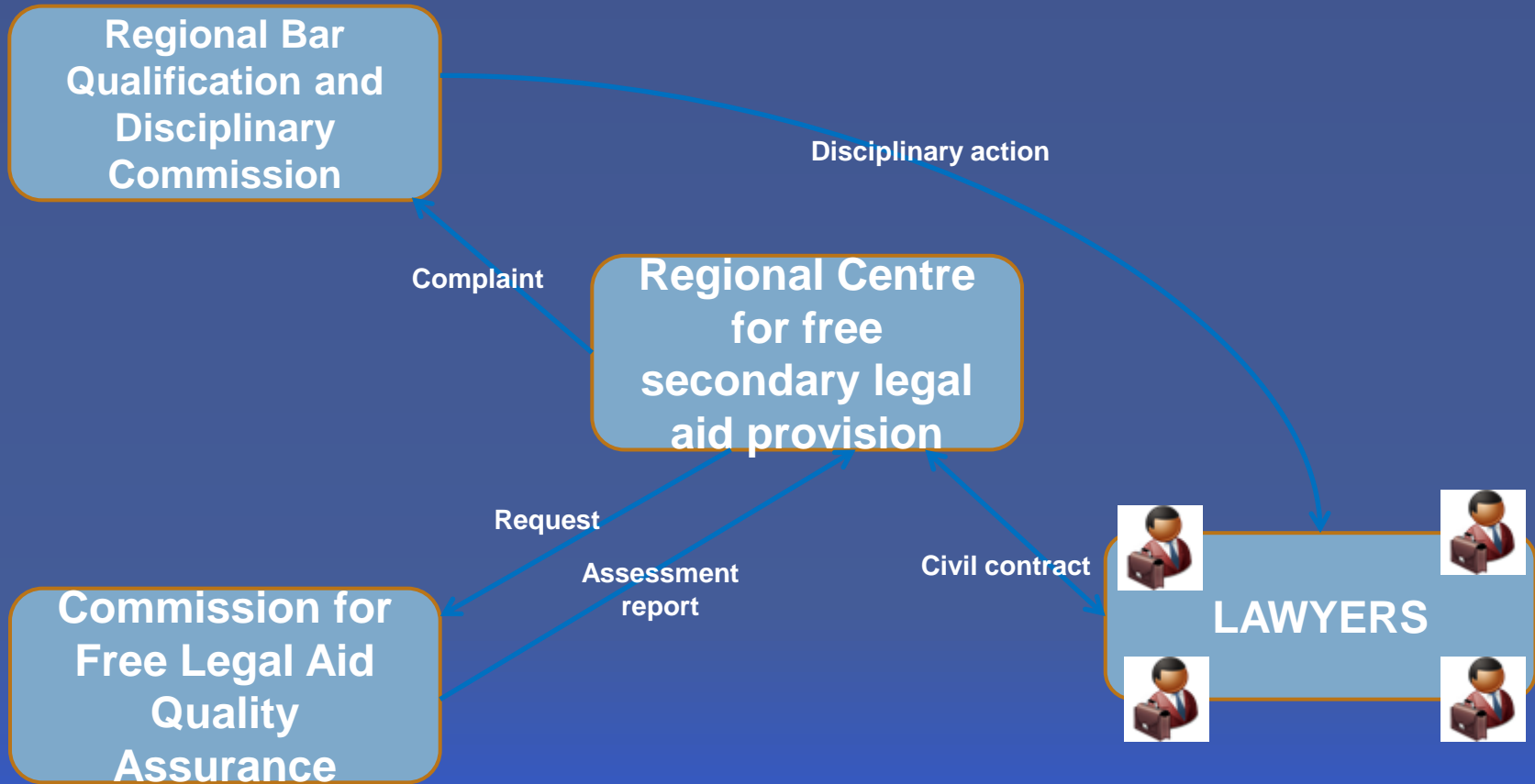
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- Funding of free legal aid system from the State budget increased by 16 times (from 180 thousand in 2012 to 2,9 million euro in 2013)

8

- Maintaining competition between involved lawyers leads to improvement the quality of free legal aid

Interaction between the State Centres, Lawyers and the National Bar Association Bodies



Advantages of Administration of the Free Legal Aid System through the Network of State Centres

- State centres provide the common approach in implementation of legislation on free legal aid all over the country;
- State centres provide implementation of new legislation in the field of criminal justice, particularly provisions of the Criminal Procedure Code, through trainings for the lawyers, monitoring of the CPC implementation by investigators and reacting on violations through administrative channels;
- State centres have interaction with police bodies, essentially strengthening the position of defence generally and ensures the correction in the practice of pre-trial investigation;
- State centres encourage an exchange of experience, best practices, development of common strategies for defence among lawyers providing free secondary legal aid;
- State centres stimulate transparency in operations of police;
- State centres stimulate changes in Bar community introducing new standards of legal aid in general.

Present Main Challenges and Possible Solutions (I)

1. Certain cases of 'free' legal aid provision by lawyers recommended by investigators to clients

2. Certain cases of non-informing or delayed informing on detention facts by detention authorities



Implementation of quality standards of free legal aid provision, regular monitoring and quality assurance



Awareness-raising campaign, regular monitoring, administrative audit check and addressing every case

Present Main Challenges and Possible Solutions (II)

3. Lack of knowledge about right for public defender; certain cases of persons' waivers of counsel



Awareness-raising campaign among target audience (including places of detainees keeping)

4. Lack of funding of free legal aid system



Lobbying of funding increase by all stakeholders

Present Main Challenges and Possible Solutions (III)

5. Need for professional improvement of lawyers' pool



Networking lawyers

Stimulating competition among lawyers involved to the free legal aid system

Thank You for Your Attention!

Ministry of Justice of Ukraine

ANDRIY VYSHNEVSKY, lawyer,
Director of the Coordination Centre for Legal Aid Provision

73 Artema Str., 04053, Kyiv, Ukraine

tel. +38 044 486 71 06

fax +38 044 486 77 45

e-mail andriy.vyshnevsky@minjust.gov.ua

andriy.vyshnevsky@legalaid.gov.ua

www.legalaid.gov.ua