FREE LEGAL AID SYSTEM IN UKRAINE:

THE FIRST YEAR OF OPERATION ASSESSMENT

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The study was conducted by Ukrainian Legal Aid Foundation, International Renaissance Foundation and Ukrainian Helsinki Human Rights Union.

Field studies were carried out by Kyiv International Institute of Sociology, Centre of Social Expertise with the Institute of Sociology of the National Academy of Sciences of Ukraine and Kharkiv Institute for Social Research.

The study was conducted with the financial support of International Renaissance Foundation and MATRA Program of the Embassy of The Netherlands to Ukraine.

Analysis of the results of field studies and the final report were made by Oleksandr Banchuk and Mykola Khavroniuk, experts of the Center for Political and Legal Reforms, and Ivanna Ibrahimova, expert with ULAF.

The preliminary results of the study, its conclusions and recommendations were presented for discussion at the Civic Platform for the development of Ukrainian legal aid system

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LIST OF ACRONYMS

ABA	American Bar Association
BCU	Bar Council of Ukraine
CCLAP	Coordination Center for Legal Aid Provision
CPC	Criminal Procedure Code
CIAS	Complex Information and Analytical System
CPLR	Center for Policy and Legal Reforms
CS	civil society
CSO	civil society organisations
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
FLA	free legal aid
FPLA	free primary legal aid
FSLA	free secondary legal aid
FSLAC	Free Secondary Legal Aid center
FSLACs	Free Secondary Legal Aid Centers (in oblasts/ regions)
IRF	International Renaissance Foundation
MIA	Ministry of Internal Affairs of Ukraine
MJ	Ministry of Justice of Ukraine
MDJ	Main Division of Justice in oblasts (regions) of Ukraine
ROLI	Rule of Law Initiative
UHHRU	Ukrainian Helsinki Human Rights Union
ULAF	Ukrainian Legal Aid Foundation
UNBA	Ukrainian National Bar Association

INTRODUCTION

> Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level,including, where applicable, in the constitution (Principle 1, paragraph 14).
>
> *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

Legal aid is a most essential element of a fair, humane and effective criminal justice system based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in paragraph 1 of Article 11 of the *Universal Declaration of Human Rights*, a prerequisite for the exercise of these rights and an important safeguard of fairness and public trust in the criminal justice process.

This study is one of the necessary steps towards promotion of access to justice in Ukraine and, in particular, support for the development of the free legal aid (FLA) system. This paper presents the results of an independent assessment of the first year of operation of the Ukrainian system of free secondary legal aid in criminal proceedings.

The system was evaluated in accordance with the international standards of access to legal aid, most fully presented in the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (of December 20, 2012).

The research focused on the accessibility and quality of legal aid granted by the state, effectiveness of the legal aid administration system and existing mechanisms, with analysis of the needs and opportunities for improvement. These basic criteria of assessment are reflected in the structure of the report (although it is evident that the topics and/or factors highlighted in its sections are interrelated and influence each other)1.

The report is based on feedback from different stakeholders of FSLA system, who were engaged in the number of surveys and an evaluation by independent experts who analyzed the regulatory framework for the legal aid system.

The surveys (conducted in July – November 2013) included:

- a (representative) public survey on awareness of the right to free legal aid (2,000 people over 16 years old in 5 regions);
- 20 focus groups with lawyers-attorneys involved in the provision of free secondary legal aid (per 2 focus groups in 10 regions of Ukraine);
- interviews with a total of 100 lawyers-attorneys (10 lawyers-attorneys in 10 regions) not engaged in provision of free legal aid;
- pilot interviews with clients who received free secondary legal aid services and those who waived legal aid (33 individuals);

1. Please see Scheme 7 at the end of the document (FLA assessment criteria) – 110 p.

- interviews with 50 law enforcement officials (duty officers and investigators, 5 in 10 regions), 30 judges and investigating judges (3 per 10 regions), and 20 prosecutors (2 in 5 regions);
- focus groups with the staff of Free Secondary Legal Aid Centers (FSLACs) – 3 focus groups with directors of such centers from 16 regions (including focus groups with the directors who are lawyers-attorneys and separately with those who has different background) and 3 focus groups with 20 duty officers from FSLACs from different oblasts);
- peer review (pilot) of lawyers-attorneys' performance.

The surveys present data as of Ukraine; regional differences were not addressed. The regions covered by the survey were selected in view of available resources, the level of successful performance (those who are considered to be successful, as well as those who faces more difficulties were engaged in assessment) and the geographical factor (from the Eastern, Western, Northern, Southern and Central Ukraine).

The study was conducted by International Renaissance Foundation (IRF), Ukrainian Legal Aid Foundation (ULAF) and Ukrainian Helsinki Human Rights Union. Surveys were carried out by Kyiv International Institute of Sociology, Centre of Social Expertise with the Institute of Sociology of the National Academy of Sciences of Ukraine and Kharkiv Institute for Social Research. The study was conducted with the financial support of IRF and MATRA Program of the Embassy of The Netherlands to Ukraine.

Analysis of the results of the surveys and the final report were made by Oleksandr Banchuk and Mykola Khavroniuk, experts of the Center for Political and Legal Reforms, and Ivanna Ibragimova, expert with ULAF.

The results of the study were presented for consideration of the Civic Platform – independent expert council which cooperate with the Coordination Center for Legal Aid Provision (CCLAP) and FSLACs to foster development of FLA in Ukraine

The researchers thank CCLAP and regional FSLACs for their support in conduction of the research.

EXECUTIVE SUMMARY: KEY FINDINGS

The study addressed the effectiveness of the first year of operation of the system of free secondary legal aid (FSLA) in criminal proceedings that was launched in Ukraine in 2013. It implied an expert evaluation of the relevant legislation in the light of international standards on access to legal aid laid down in the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (of December 20, 2012) and an assessment of the existing practices, by a survey of the population, lawyers-attorneys of the FSLA system, lawyers-attorneys not involved in the free legal aid system, judges, police officers, prosecutors, and the directors and duty officers of the regional Free Secondary Legal Aid Centers (FSLACs). The study was conducted by NGOs with the financial support of International Renaissance Foundation and, partly, MATRA, from July 2013 through February 2014.

The study confirmed the positive impact of the new free legal aid (FLA) system on the justice system as a whole and its general compliance with the relevant international standards. However, the study also revealed a number of challenges – some stemming from the gaps or contradictions in the current legislation while others transpire in the course of implementation of the existing rules and signal the necessity of development of new or best practices in the operation of all institutions involved in the provision of free legal aid.

The study generated a set of recommendations, which, for the convenience of the readers are presented at the end of each (sub) section of the report and also in the final part of the paper, in a consolidated format, depending on the issues they refer to, – legislation, implementation or build-up of FLA practices.

The system of free secondary legal aid (FSLA) has created the safeguards of early access to legal aid, which implies the crucially important possibility of defense as of the moment of de facto detention, and established rather strict time frames as regards the arrival of the lawyer to the detainee (within one hour and up to 6 hours in exceptional cases). According to the Coordination Center for Legal Aid Provision (CCLAP), the lawyers-attorneys usually arrive to meet with the detainees within the time frame established by law. There are some difficulties with access to lawyers-attorneys in remote areas because in some areas there are no FSLA lawyers-attorneys and it seems that at present it is impossible to engage a FSLA lawyer from another region.

There are additional possibilities created to access the legal aid as in the course of the operation of the FLA system it was decided to allow "direct address", when the centers are informed about detentions by detainees themselves or by their close relatives. This not only significantly widened the access to FLA but also created an additional mechanism of control over the timeliness of information on detention and prompt (early) access to lawyer.

An important characteristic of the system lies in ensuring the independence of defense. Under the current procedure of lawyers-attorneys' appointment the law enforcement authorities have no influence on selection of a legal aid provider (lawyer-attorney). According to the police, now they do not waste their time on finding lawyers-attorneys. Implementation of the new system affected activities of the police officers, particularly, limiting possibilities to use illegal pressure on detainees. In the opinion of the respondents the cases when detainees

being beaten by the police became noticeably less frequent because the officers are aware that sooner or later a lawyer-attorney will be assigned and inevitably will raise the issue of unlawful actions against the detainee.

A major factor affecting accessibility of legal aid is low awareness of the population about their rights in general and, in particular, about the right to defense in criminal proceedings and the possibilities of receiving free legal aid. In 2013 some public awareness activities were conducted (booklets and stickers distribution, advocacy videos broadcasting), but they proved to be insufficient. The survey showed citizens` poor knowledge of law. The *State Program for establishment of the system of free legal aid* does not envisage targeted allocations on information campaigns for the population, which does not allow planning of relevant activities in a systemic and meaningful manner.

Special attention should also be given to informing of persons about their procedural rights and guarantees in case of detention and/or criminal proceeding. The surveyed representatives of different target audiences mentioned existing of problems with informing of detainees about their right because of insufficiency of formalistic approach to notification about their rights by familiarization with a relevant document (the formatting of which does not contribute to easy and attentive comprehension of it). It is crucial to get a detainee to really understand his/her rights, by making use of all possibilities. At present there is a lack of visible notifications (posters, stickers) to inform the people at police stations (in investigators' offices, in entry/reception areas) and in the courts. It is worth to note, that CCLAP jointly with NGOs tried to arrange for centralized placement of such information on display at police stations but the Ministry of Internal Affairs (MIA) did not give its consent.

It should be noted that despite the clearly established safeguards of access to lawyer-attorney many police bodies still tend to by-pass the rules on mandatory engagement of a lawyer-attorney by not recording in a proper manner the time of detention or inviting persons in the capacity of witnesses and so forth, which enables pressure on such individuals and "collection of evidence" prior to their "registration" as suspects or accused and assignment of a lawyer. Another problem is the lack of conditions for private communication of the detained individual with the lawyers-attorneys at most police stations. Sometimes the police request FSLACs to appoint a lawyer-attorney to conduct a single (separate) procedural/investigative action without a thought about continuity of defense; according to the study, it may be done just to get rid of an "inconvenient" lawyer who worked at the earlier stages. Importantly, some FLACs try to keep track of such situations and ensure continuity of the defense.

Refusals from services of lawyers-attorneys serve as an important indicator of the effectiveness of the FLA system. Interestingly, this is one of the indicators that dynamically changed during the first year of the operation of the system and first months of the second year of its operation (from 10% to 3%). It is important to monitor the cases of refusal (waiver) and of lawyer's replacement, with analysis of the reasons, at different stages of the process.

Indicatively, some respondents from the police believe that implementation of the legal aid system led to a "decline in crime detection" and reduces the number of solved cases because of a smaller number of confessions, and that a lawyer "may give the detainee a chance to circumvent the law". The interviewed investigators also mentioned such a "negative"

consequence of the launch of the system as "greater control over the actions of the police and the need for prompt informing about provision of legal aid to the detainees and suspects".

Provision of FSLA in cases of administrative detention requires a special approach and finding of ways to improve the situation for the best possible use of the system's resources and protection of detainees: the law provides only for three hours of such detention and waivers occur frequently, and quite often a lawyer arrives just to learn about refusal to get a FSLA lawyer-attorney or that the person was already released.

The survey showed the need for increased attention of judges to access to lawyers-attorneys of detainees and suspects at the pre-trial stage and for greater awareness on the part of judges and their assistants of the conditions and mechanisms of free legal aid provision.

Consideration should be given to regular meetings between judges, law enforcement personnel and the staff of FSLACs to reach a common understanding of the challenges faced by the legal aid system, the existing mechanisms for assigning of lawyers-attorneys (defenders) and the role of each institution in this process.

It is worth noting the importance of close cooperation between the police and the legal aid system. There is a need to introduce common (unified) approach to collection of data on detentions and consider possibilities for cross-checking of such data in order to decrease the number of misinforming about detention.

Building of trust for the system and effectiveness of provided legal aid are imperative for the development of the legal aid system. The 1st year of FSLA system performance already somehow contribute to trust development toward it, due to active, unpartisan, professional behavior of FSLA lawyers-attorneys. At the same time the survey has shown a widespread common stereotype (especially among those who are not aware about FSLA system) that a lawyer-attorney who is paid by the state is not sufficiently motivated and therefore works less than a privately hired defender. FLA lawyers-attorneys are sometimes judged by age and other criteria not related to professional performance (it is an assumption that the system is staffed with young lawyers-attorneys who are not qualified, or with pensioners, or with those who for whatever reason are not in demand and have no good client base). However, there is evidence that a number of clients who used the services of lawyers-attorneys of the FLA system advise others to use the services of these lawyers-attorneys. Growth of trust is also seen from a smaller number of refusal (waivers). Assessments of the level of active performance of legal aid defenders vary greatly: some respondents (in particular, judges, prosecutors, independent experts) state that their work affected an increase of appeals and more frequent application of restraints alternative to custody, others allege that the lawyers-attorneys of the FLA system are passive because of lack of motivation.

CCLAP activities require support and further development. Approval of the *Quality standards of the provision of free legal aid* signified a major step forward. In view of the different approaches to quality assurance it is crucial to pay due attention to the promotion of these standards and to use different mechanisms of monitoring of the lawyers-attorneys' performance, from client surveys to peer review. At the same time it is of paramount importance to promote the ideas of professional development of FLA lawyers-attorneys, sharing experience, use of the best practices of defense and so on.

A noteworthy factor is the somewhat limited connections with the end users of FLA services (e.g. detainees and suspects who receive legal aid). To get feedback from the clients it is necessary to develop sound mechanism of data collection on them and of getting their consent to participate in a survey/service evaluation. Notably, there is no data on clients' complaints about performance of free legal aid lawyers-attorneys, while the surveyed participants often referred to police grievances about "inconvenient" lawyers-attorneys.

One of the strengths of the legal aid system is the work of CCLAP with the lawyers-attorneys providing legal aid (continuous professional training, creation of a group of about 60 lawyers-attorneys to act as trainers at cascade trainings throughout Ukraine, preparation and distribution of training materials and guidelines for lawyers-attorneys, etc.). It gives grounds to speak about development of a network of the new generation of lawyers-attorneys committed to protection of the interests of their clients, eager about own professional development and open to learning.

Currently the need for granting adequate remuneration to lawyers-attorneys is under discussion, in particular the need for elimination of delays with payment, which can be achieved by "securing" this budget line. Many believe that FLA lawyers-attorneys' remuneration is too low as it fails to account for complexity of work, travel to remote areas at night, work on holidays, etc.; which does not motivate lawyers-attorneys to more active performance. Special attention should be given to social security safeguards, including provision of individual means of protection to those lawyers-attorneys who render services to persons with infectious diseases, including such transmitted by air.

The procedure for engagement of lawyers-attorneys to provide FSLA services was launched in 2013. The 3,619 selected lawyers-attorneys were included into the registers of legal aid providers. According to the respondents, the selection competitions were transparent and the tests were not very difficult, with the focus on assessment of knowledge of the law, and all those who really wanted managed to pass. However, some lawyers-attorneys drop out of the system later on. It is advised to further adjust the selection criteria, to give most weight to the interviews and to strengthen its methodology with relevant guidelines. The experience at the centers has shown that in each region there is a percentage of lawyers-attorneys (from 10 % in most regions and up to 50 %) who are not interested in working at night or during the holidays, or fail to meet the duty schedule; the centers do not plan to prolongate contracts with such lawyers-attorneys for another year. However, in some regions the current number of lawyers-attorneys is not enough to meet the real FLA needs. This does not allow FSLACs to take into consideration in assigning of lawyers-attorneys their specialization, experience, workload and complexity of cases.

FSLACs operate round the clock, in all regions and in the cities of Kyiv and Sevastopol;. The centers have professional and highly motivated staffs. Some FSLACs` directors are lawyers-attorneys and some have other background. The directors coordinate activities within their FSLACs; they communicate with lawyers-attorneys, explain how to fill out the reports, consider such reports and encourage lawyers-attorneys to more active defense. The directors disseminate information about the system and FSLACs ` work, but they emphasize that they do not have enough time for this. Similarly, they do not have enough time for systemic work with judges and other authorities, which affect the FSLA provision. Prosecutors, lawyers-attorneys and police officers positively evaluate their cooperation with FSLACs, as

well as FSLACs` performance. The majority of the directors are very motivated individuals well aware of their roles and the role of the centers.

At the same time FSLACs face lack of resources (human, material and financial). Most centers do not have enough personnel acting as duty officers, especially for full scale work on holidays or when some of them get sick leave; technical intervals are not scheduled; the centers do not have in-house analysts in charge of collection and processing of statistical data, security personnel, IT professionals, technicians, cleaners. They do not have the means to buy stationery or to renovate and equip the premises. Not all centers provide proper working conditions in view of the round the clock duty. The interviewed staff also emphasized low job compensation. The communication means is not working properly, which is critical for FSLACs work.

As some respondents mentioned, it should be taken into consideration that district police units often have not sufficient resources – they do not have operational faxes and the investigators do not have work e-mails to effectively communicate with FSLACs and quickly and properly inform about detentions.

The FSLACs also address the desire to have more of methodological support in their work on the part of the CCLAP: discussions of the best practices and sharing of experience are needed for the directors as well as other staff.

In order to improve the provision of legal aid the new approaches to statistics had been piloted and at the end of 2013 a new system of data collection was launched. The pilot results are expected to show the needs in resources and the feasibility of collection of the 300 indicators specified by CCLAP. Collection and analysis of information largely depends on the automated Comprehensive Information and Analysis System (CIAS) put in operation in 2013 with a limited set of functionalities. It supports internal document flow at the FSLACs but does not always relieve overload as issues of sufficient technology support is not handled (CIAS development is not properly financing). Many duty officers in parallel fill in paper copies of their registers. The WEB page of CCLAP present a lot of important information about the activities of the system, however it could be good to have special rubrics for reports, statistics, requests, complaints, etc. The indicators of the FLA system's performance should be visualized to the greatest possible degree.

The study has showed that many challenges of FLA system are of general nature, which is caused by the first year of operation, insufficient awareness of all stakeholders, existing stereotypes, lack of resources and the current situation of law enforcement and justice as a whole. Therefore, it is important to make necessary amendments to the legislation and to monitor the implementation of its provisions, as well as to support awareness of all stakeholders and capacity building of personnel, to form new modes of operation of the various actors in the system of criminal justice for safeguarding of the rights and interests of any person who needs such protection.

I. ACCESSIBILITY OF FREE SECONDARY LEGAL AID IN UKRAINE

Accessibility of legal aid is one of the key criteria of effectiveness of the FLA system and depends on a number of factors, including:

a) awareness of the population and of the key system players, such as the authorities in charge of detention, judges, prosecutors and lawyers-attorneys, as to the scope of the right and mechanisms of FLA provision;

(b) the level of trust in the system of public and key stakeholders;

(c) the balance of the criteria that determine the right to receive legal aid granted by the state. In the analysis of accessibility it is important to clarify whether any artificial barriers to obtaining of free legal aid exist.

In addition, in criminal cases a significant factor of FLA accessibility is the possibility of early/prompt access of a detained person to a lawyer-attorney, in view of the risks of human rights violations at the initial stage of detention.

When considering accessibility it is important to bear in mind not just a nominal presence of a lawyer-attorney during a person's detention but also available conditions and possibilities of real and effective legal aid.

All categories of the respondents, interviewed within the assessment, believe that legal aid in Ukraine has become available due to the new free legal aid system.

The system established in Ukraine has, in fact, implemented the principle of early access to lawyer-attorney by listing of the instances in which the state grants a lawyer-attorney -to the detained person.

The Ukrainian FSLA system contains several safeguards that allow us to speak about accessibility of legal aid and proper conditions for its real and effective provision — like the need for immediate provision of information about the detention to the relevant FSLA center, the two-hour[2] time frame for the arrival of a lawyer-attorney and the possibility to refuse to get services of FSLA lawyer-attorney only in his/ her presence and after a confidential meeting.

According to the CCLAP, from January 1 through December 31, 2013 the free secondary legal aid centers issued 76,406 assignments to FSLA lawyers-attorneys, including 22,345 — in case of detention on crime suspicion, 41,877 — for defense by appointment/ assignment, 2,175 — for participation in single (separate) procedural actions, and 10,009 — for provision of FSLA to individuals under administrative detention.

The Criminal Procedure Code of Ukraine (CPC) stipulates **the mechanisms that ensure the right to free secondary legal aid in criminal proceedings.** These mechanisms include:

2. Legislation envisage 1 hour for coordination activities of FSLAC to assign a lawyer-attorney and 1 hour for a lawyer-attorney to arrive to meet the client (in special condition – maximum 6 hours).

- the possibility of involving the defender in the criminal proceedings not only by the suspect, accused or their legal representatives but also by others upon request or consent of the suspect or accused, at any moment (part 1 of Art. 48);
- the duty of the officials who conducted the detention to give the detainee the opportunity to receive legal aid (immediately to notify the body (institution) authorized by the law to provide FLA), and the procedure for exercise of these responsibilities (part 4 of Art. 213);
- respective responsibilities of the investigator, prosecutor, investigative judge and the court:
  1. to provide the detainee or a person in custody with assistance in contacting the defender or persons who may invite such defender and with the opportunity to use the means of communication in order to invite the defender (parts 2 and 3 of Art. 48);
  2. to ensure the participation of defender in the criminal proceedings (parts 2 and 3 of Art. 49).

1.1. THE BALANCE OF THE FREE LEGAL AID ACCESSIBILITY CRITERIA

> *Principle 3.* Legal aid for persons suspected of or charged with a criminal offence
> *20.* States should ensure that anyone who is arrested, detained, suspected of or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.
> *21.* Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.
> *22.* Children should have access to legal aid under the same conditions or more lenient conditions as adults.
> *23.* It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer-attorney and/or who are vulnerable are provided access to legal aid.
>
> *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

Article 59 of the *Constitution of Ukraine* guarantees everyone the right to legal aid and the possibility of obtaining it free of any charge in cases prescribed by law.

People who have an insufficient level of financial security either have no or limited possibilities to get legal aid. Such a situation jeopardizes the exercise of a number of important individual rights, such as rights to equality before the law and justice (Articles 21, 24 and 129 of the Constitution) and the right to judicial defense (Article 55 of the Constitution).

Ukraine ratified the *International Covenant on Civil and Political Rights* and *the European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) and therefore committed to provide the possibility of free legal aid to the individuals of low income if charged with a criminal offense.

Thus, Article 6. 3 (c) of the ECHR provides that everyone charged with a criminal offense has the minimum right to defend himself in person or through legal aid of his own choosing or, if he has not sufficient means to pay for legal assistance to be given it free when the interests of justice so require.

In accordance with Article 14. 3 (d) of the *International Covenant* everyone charged with a criminal offence shall have the right … to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal aid, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

These criteria of granting FLA can be classified as follows:

- the financial criterion (the means test) — lack of means for paying a lawyer-attorney of own choosing, and
- the legal criterion, or that of the interests of justice (the merits test) — the urgency or complexity of the case or the severity of the potential penalty.

Full or partial free legal aid applies only to individuals who is detained, arrested, suspected of or charged with a criminal offence (principles 3); the states are not required to grant FLA to witnesses; principle 4 envisages that, without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime (the *UN Principles and Guidelines*).

At the same time the merits test for FLA is to prevail over the means test.

For example, p. 41 of the *UN Principles and Guidelines* lists a number of cases where legal aid should be provided by the state even without (or before) determining a citizen's eligibility for FLA – if, in particular, a person is at a police station, detention facility or court and needs such assistance. Children are always exempted from the means test.

Flexible application of a strict means test implies that legal aid should be provided by the state also in the instances when

- a person's income exceeds the minimum level but in the present circumstances this person can not afford to hire a lawyer-attorney;
- the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income; then only the income of the person applying for legal aid is used for the purpose of the means test.

The Ukrainian legislation (*CPC, Code of Administrative Offences* and the Law *on Free Legal Aid*) guarantees legal aid at the cost of the state to all persons detained (both administratively and in criminal proceedings) and grants criminal defense aid to the persons of low income less than the established monthly subsistence level (as of January 1, 2014 – less than 1,218 UAH).

However, even a minor amount of income in excess of the limit established by the legislator fully deprives a person of the right to free legal aid. For instance, if a person's average income amounts to 1,500 UAH such person loses the right to get the services of a lawyer-attorney at public expense. However, it is very unlikely that such person has more opportunities to hire a defender against criminal charges than a person with the income of 1,200 UAH.

We believe that a differentiated system of legal aid based on the income of a household is more in line with the needs of the society. Within such a system a person who needs legal aid is not completely deprived of the opportunity to obtain free legal aid from the state but has to pay for a part of it, in a certain amount that depends on the income level.

All instances of legal aid in criminal proceedings in accordance with the Ukrainian legislation can be divided into the following groups:

1. Mandatory involvement of a defender and his/her participation in the proceedings (Article 52 of the CCP).

   This occurs in the following proceedings

   - in especially grave crimes (punishable by imprisonment for a term exceeding 10 years or by life imprisonment);
   - against juvenile suspects or defendants (under 18 years of age);
   - on application of remedial/enforceable behavior-transforming measures;

- against persons with mental or physical disabilities (mute, deaf, blind, etc.);
- against individuals who do not speak the language of the criminal proceedings;
- on application of compulsory medical measures;
- on rehabilitation of the deceased.

Special conditions:
a) the defender is involved by the suspect or the accused or, if not, by the investigator, prosecutor or court;
b) financial eligibility of the person in question is not checked or considered, and
c) waiver of the defender is not allowed.

2. Mandatory engagement and short term participation of the defender in the proceedings (paragraphs 5 and 6 of part 1 of Article 14 of the Law "*On Free Legal Aid*", paragraph 5 of part 1 of Article 49, Article 53, part 3 of Article 193 and part 4 of Article 213 of the CCP).

This happens in the instances of:
- detention of a person on suspicion of a criminal offense;
- application of the custodial restraint, or
- for an immediate procedural action.

Special conditions:
a) the defender is invited by the authorized officials, investigator, prosecutor or court;
b) financial eligibility of the defendant is not checked or considered, and
c) waiver of the defender is possible (in the presence of the already involved defense counsel).

3. Engagement and short term participation of the defender in the proceedings at the request of the detainee (paragraph 4 of part 1 of Article 14 of the Law "*On Free Legal Aid*", part 5 of Article 5 of the Law "On the Police", paragraph 29 of Article 19 of the Law "*On the State Border Service of Ukraine*").

This type of legal aid is provided in case of administrative detention.[3]

Special conditions:
a) the defender is invited by the authorized officials at the request of the detained person;
b) financial eligibility is not checked or considered, and
c) waiver of the defender is possible (although relevant conditions are not specified).

4. Engagement and participation of defender throughout the criminal proceedings at the request of the suspect or the accused (paragraph 7 of part 1 of Article 14 of the Law "*On Free Legal Aid*", paragraph 2 of part 1 of Article 49 of the CCP).

This type of legal aid is provided in all criminal proceedings other than those listed in p. 1 above and at all stages other than those listed in p.2 above.

Special conditions:

3. This type of legal aid is also covered in this report as the authorities may resort to administrative detentions for purposes of criminal investigation.

a) the defender is invited by the investigator, prosecutor or court at the request of the suspect or accused;
b) financial eligibility is taken into account but not checked. Legal aid is available to persons of low income;
c) waiver of the defender is possible (in the presence of the defense counsel already involved).

5. Engagement and participation of defense counsel throughout the criminal proceedings (paragraph 7 of part 1 of Article 14 of the Law "*On Free Legal Aid*", paragraph 3 of part 1 of Article 49 of the CCP).

This type of legal aid is provided in all criminal proceedings other than those listed above, if "the circumstances of the criminal proceedings require a lawyer-attorney" (criterion of "the interests of justice").

Special conditions:

a) the defender is invited by the investigator, prosecutor or court if the person does not meet the FLA criteria as laid down in the law but the circumstances of the case require a lawyer-attorney's participation;
b) financial eligibility is not provided for;
c) waiver of the defender is possible (in the presence of the defender already involved).

There are also certain types of proceedings that require mandatory participation of a defender. Failure of the accused to invite a defender, failure of the prosecution or of the court to notify the accused of, or to explain to him/ her the possibility of defender's involvement may affect the exercise of other procedural rights of the accused (e.g. the right to appeal against conviction at the court) or may preclude full understanding of the charges and of the consequences of conviction.

Such proceedings include:

- proceedings on the basis of a plea agreement (Articles 468-470, 472-476 of the CPC);
- proceedings on the basis of reconciliation agreement (Articles 468, 469, 471 and 473-476 of the CCP);
- speedy disposition of a case (with no examination of evidence related to undisputable circumstances) (part 3 of Article 349 of the CCP).

In order to prevent the possibility of abuse of vulnerable suspects and defendants it is advisable to extend the range of the proceedings with mandatory participation of a lawyer-attorney (defender).

Although the system as a whole appears balanced, an abrupt limit behind which the possibility to get free legal aid is terminated renders defenseless a large number of people whose income exceeds the level set by the legislator although not enough to enable them to hire a lawyer-attorney.

RECOMMENDATIONS

1. To amend the Law of Ukraine "On Free Legal Aid" by providing for a differentiated system of legal aid at the cost of the state budget that envisages partial payment of such aid by its recipients depending on the household income.
2. To establish the procedure for recognition of the right to legal aid at the expense of the state in special circumstances when the person has no real access to his/ her nominally owned resources.
3. The senior management of pretrial investigation authorities should obligate investigators to engage defenders under paragraph 3 of part 1 of Article 49 of the CPC in all proceedings under the plea bargaining, reconciliation agreement or in speedy disposition of a case (part 3 of Article 349 of the CPC).

1.2. ACCESSIBILITYOF THE PROCEDURE FOR REQUESTING AND RECEIVING FREE SECONDARY LEGAL AID

> States should consider the provision of legal aid as their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible (Principle 2, paragraph 15).
>
> *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

Accessibility of the procedure for requesting and obtaining legal aid implies a clear and comprehensible mechanisms of the free legal aid (FLA) system in terms of the possibility to request such aid, to have a defender appointed and to have the opportunity to appeal against the decisions made.

The FLA system in Ukraine is set up in such a way that a lawyer-attorney may be provided at public cost (state budget) mostly by a decision of a representative of the state (investigator, prosecutor, investigative judge or court) (Article 49 of the CPC). FLA lawyers-attorneys provide their services round the clock as assigned by FSLACs on the basis of information and procedural documents provided from bodies authorized to detain on suspicion of a criminal offense, bodies in charge of administrative detention, pre-trial investigation, prosecutors, investigative judges and courts.

As of the establishment of the FLA system the experts have stressed the need to create the opportunities for the so-called "direct" application for legal aid, especially in instances of detention. This, in essence, serves as a kind of a check on the performance of the detaining authorities and also widens individuals' opportunities to get free legal aid and streamlines the procedure of applying for such aid.

The detainees' and their families' possibility to directly apply to FSLACs appeared due to p. 2–1 of the *Procedure of informing FSLACs about detention*. The detainees and their families can directly address such a center on a need of FSLA if they have any information on the detention (*see Section 3*).

An important guarantee of the availability and accessibility of the procedure of applying for legal aid is the right to appeal against a refusal of the exercise of the right to legal aid on the grounds of a means test.

Articles 30 and 31 of the Law "*On Free Legal Aid*" guarantee the right to administrative or judicial appeal of the refusal to appoint a defender. However, in the triangle consisting of the "suspect, – the prosecution and/ or the court – and the FSLA center "no person enters into direct relations with the FSLAC until the moment of involvement of a lawyer-attorney – and, thus, no person has any chance to exercise this right in full. The suspect, therefore, has but one possibility to appeal such a refusal to the investigative judge (according to the Article 303 of the CPC).

However, according to all stakeholders interviewed during the surveys, including judges, prosecutors, police officers, lawyers-attorneys and their clients, the new system of FLA has

made legal aid really accessible.[4]

> *Now the suspect always has a defender,regardless of status, which greatly simplifies and shortens the proceedings. The state increasingly tries to ensure the right to defense. We can state that Ukraine is getting closer to the EU nations" (from a survey of judges).*
>
> *The staff of FSLA centers emphasized that legal aid has become available,especially in* serious offences (*grave crime cases). The category of those eligible to FSLA has expanded. It has been also suggested that accessibility is not only related to the financial aspects (that legal aid is available not only to those who can afford it),but also implies some aspects of the guarantee of defense. Many directly linked availability of defense with awareness of access to it. "Now it's like what we saw only in the movies before".*
>
> *The investigators have noted that now they do not have to waste time looking for lawyers-attorneys: "in the past there was no chance to find a lawyer-attorney for a suspect in the evening,they all were working only until 6 PM".*
>
> *FLA lawyers-attorneys have emphasized that the system actually created the conditions for access to legal aid: earlier such aid either was not available in criminal proceedings at all or was offered by some lawyers-attorneys on voluntary basis,while today such work of lawyers-attorneys is paid for,and the citizens can get access to their services.*

It should be noted that the clarity of the procedure for access to legal aid (as regards application and making decision on its provision) is closely tied with the awareness of the people about the possibility of such aid and the process of getting it.

We think that at this stage it is premature to speak about full access to legal aid in terms of clarity of the relevant procedure, as the system has been in place for only a year and over this time in the majority of cases FSLA lawyers-attorneys were involved at the initiative of the detaining and investigating authorities or courts.

However, an important step in the development of the system is the emergence of the possibility of direct application for legal aid and the possibility of informing by the family members of close relatives about a person's detention. At the same time it should be noted that this mechanism now works as informing about the detention and not as a request to appoint a lawyer-attorney.

Another remaining issue is that of the possibility to appeal against the decision to refuse in appointing of a FLA lawyer-attorney as a person does not directly apply to the FSLA center for assigning of a defender.

4. The survey did not contain any questions about appeal.

RECOMMENDATIONS

1. To provide for mandatory presence of a defender in every instance when an individual is officially informed about a suspicion. Further FSLA at the next stages of the process is possible only for low-income suspects.
2. To take measures to support the mechanism of direct application of the suspects, accused and their relatives to FSLACs for appointment of a defender, by raising the awareness of such possibility and placement of relevant information on FSLA in the premises where detainees may be kept. To collect relevant statistical data on such requests.
3. To conduct monitoring and analysis of the decisions (requests)[5] of authorized bodies on appointment of a lawyer-attorney for consolidation of data on the existing practices and in order to reach a common understanding of the grounds for appointment of FSLA lawyers-attorneys.

5. This decisions have different titles depending of the type of the body (including police investigators or judges), which are to be communicated /send to relevant FSLAC with address (request) of the need to appoint a lawyers-attorneys . FSLACs issue its own decision on appointment/ assignment of a lawyer-attorney.

1.3. AWARENESS OF THE RIGHT TO FREE SECONDARY LEGAL AID

States are obliged to:
- enhance knowledge of the people about their rights and obligations under law through appropriate means;
- endeavor to enhance the knowledge of their communities about their justice system and its functions.

To this end, the States should ensure that:
- the criteria for applying the means test are widely publicized(paragraph 41—b, Guideline 1);
- information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means(paragraph 42—a, Guideline 2);
- information is made available to isolated groups and marginalized groups; use should be made of radio and television programs, regional and local newspapers, the Internet and other means, in particular following changes to the law or specific issues affecting a community, of targeted community meetings (paragraph 42—b, Guideline 2).

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

Awareness of the people about the possibility of obtaining free legal aid and the opportunity to engage a lawyer-attorney at public expense immediately upon detention is an essential precondition for the effectiveness of the system. Therefore, it is important to make efforts to ensure that this information is available, especially in remote areas or for the people who for various reasons have limited access to information.

The *State Program of FLA system establishment for 2013 – 2017* (the State Program) approved by the Cabinet of Ministers of Ukraine on February 13, 2013, № 394, includes, as one of its components, a public information campaign among FLA providers, lawyers-attorneys, bodies authorised to conduct detention, take into custody, local self-government authorities and civil society (CS) organizations.

This campaign implies printing of information sheets for persons detained on suspicion of having committed a criminal or administrative offense; making of posters, stickers and brochures with FSLA hotline numbers for placement in the premises of duty police units, investigators' and detectives' offices, rooms for apprehended and detained individuals, police vehicles, including transportation vehicles for suspects and defendants, remand prison cells and so on.[6]

13 kinds of activities specified in the *State Program* target different audiences and not only consist of immediate measures to inform the public but also seek to enhance the capacity of the involved professionals and CS activists with regard to dissemination of information about the FLA system.

6. http://www.minjust.gov.ua/44693

The awareness campaign on the right to defense and free legal aid possibilities[7] started in the second half of 2013. This campaign was carried out in a cooperation of CCLAP, Ukrainian Legal Aid Foundation (ULAF) and Ukrainian Helsinki Human Rights Union (UHHRU). Development and publication of information products about the FSLA system were supported by «FAIR» USAID, International Renaissance Foundation (IRF), the French Embassy in Ukraine and MATRA Program of the Embassy of The Netherlands to Ukraine. The booklets addressed such topics as "Detention on suspicion of a criminal offense" (issued in 34 thousand copies), "Measures of restraint in criminal proceedings" (34 thousand copies), "The right to free legal aid in criminal proceedings" (160 thousand copies) and "The plea of guilt and its essence" (34 thousand copies.). These booklets are disseminated by FLA lawyers-attorneys, in CS and human rights organizations, in hospitals, at public consultation offices within executive bodies, at schools and universities, in adaptation centers for the homeless and at police stations.

23.5 thousand printed posters presented information about free legal aid, and two types of stickers (issued in 52 thousand copies) with information on FSLA and legal aid hotline number.[8] These posters and stickers were distributed among FLA lawyers-attorneys, in the public reception offices of human rights organizations and at the public consultation units of the Ministry of Justice. It was also planned that they would be available in the premises of duty police units, investigators' offices, rooms for apprehended and detained individuals, police vehicles, including transportation vehicles for detained/suspects, and vehicles dispatched to crime scenes, and the cells at pre-trail custody, etc. However, the matter of placement of the booklets, posters and stickers at police stations still remains unsolved, although it is crucial that all people brought to such locations (where their right to FLA is most frequently violated) become aware of all their rights. In January 2014 the Ministry of Internal Affairs refused to exhibit such materials in its units.

Information on the right to free legal aid is also disseminated by FSLACs. For example, some FSLACs` directors appear on local TV and radio, some (who are lawyers-attorneys) give lectures at universities, providing information about FSLACs activities, and also make presentations in penitentiaries, pre-trail custody and other institutions of the State Penitentiary Service. At the same time the employees of FSLACs emphasized that they do not have the resources to carry out awareness campaigns among the population.

The specially filmed promotional videos[9] were, as of August 1, 2013, over 500 thousand times shown on the First National TV Channel, with, in parallel, 13,220 showings of the social ads, both on the national and local television channels. Various respondents noted the importance of the visuals (posters and stickers) in places of detention and of the televised products. According to the FSLACs` personnel, information in such videos and ads is to help people to better understand their right to legal aid and services provided by FSLACs; they have also stated that video ads should "be about real happenings" and "urge the viewers to watch them till the very end".

It should also be noted that, according to the survey, most people learned about FLA

7. For more info see http://issuu.com/93307/docs/vers3.ppt.

8. See http://legalaid.gov.ua/ua/mediafiles/biblioteka.

9. Please watch the videos at http://legalaid.gov.ua/ua/ та http://www.youtube.com/watch?v=RTHIB9-Vurg, http://www.youtube.com/watch?v=cuyhY7GqdBg.

thanks to television. In the opinion of FSLACs' personnel, it was active campaigning "on the ground" and, in particular, advertising on television (that began in August 2013) made the people aware of the FSLACs existence. At the same time the people do not know FSLACs responsibilities and what services and how they provide and, consequently, often call to the centers for various purposes, such as to obtain legal consultations.

As of August 2013 the level of awareness in the surveyed 5 oblasts as to the right to legal aid and the existence of FSLACs was rather low. For example, only 4% of the respondents were aware of the very existence of such centers. According to the survey conducted in 5 regions of Ukraine, 58.6% of the respondents had practically no information about the possibility of receiving legal aid. Another 28.9% of the respondents had heard of the legal aid system but did not know in which cases one could obtain it. Remarkably, the least informed about the right to FLA are those people who are not financially secure or experience financial difficulties – about 90% of this category of people did not know anything at all about FLA or did not know in what instances one is eligible. The share of the knowledgeable citizens proved disappointingly small – only 12.5% of the respondents. Almost a third of those who are aware of the possibility of legal aid in Ukraine do not know who provides such assistance (29.9%). The answers of the respondents also showed a lack of information on the different types of primary and secondary free legal aid.

Survey data shows that the number of people ignorant about FLA is greater in rural area than in big cities. Both FLA lawyers-attorneys and other FSLACs employees indicate the need for a special approach to informing of the rural dwellers who often have nowhere to learn from about the legislative changes and about their rights, as a whole. For example, the people who live in mountainous areas often have no access to media. Therefore, the most appropriate way of making them aware might be by exhibiting the leaflets and spreading the word at community meetings at local councils. The survey also showed regional differences in the level of people awareness.

The survey have demonstrated that all respondents, including police officers, investigative judges and prosecutors, think that the awareness of the people about their right to legal aid in criminal proceedings is very low.

Many of interviewed people in selected 5 oblasts of Ukraine failed to articulate what rights a person has in the event of detention. Specifically, the right to know the reason for the detention was named by 47.2% of the respondents, and the right to have a third party informed about the place of detention – by 45%. Slightly over a third of the respondents (35.4%) said that the police must inform the detainee of the right to have a defender. The right to have a FSLA lawyer – attorney was mentioned by even less – by 29.6% of the respondents. The prevailing majority of people agree that it is the police that has to inform detainees about their rights (88.6% of the respondents).

According to the survey, the people learned about the right to a FLA lawyer-attorney mostly from the television; this answer was given by 46.9% of the respondents (from the number of those who is aware of the system. Others received this information from the following sources: 11.2% – from friends, relatives, co-workers; 9.0% – learned it from newspapers;4.7% – became aware from personal experience; 4.4% – read about FLA on Internet sites; 2.6% – learned from police officers; 2% – from notice boards, brochures and information materials in the authorities; 1.8% – from discussions on Internet forums

and in social media; 1.7% – from lawyers-attorneys; 1.6% – from employees of the system of justice; 1.1% – from NGOs; 0.8% – from prosecutors; 0.7% – from court staff, etc. Interviews of legal aid recipients have shown that they also spread the word about FLA. (About a half of the interviewed FLA recipients first learned about the right to FLA defender from friends, family, co-workers, one third (36%) learned about this right from officials of the police, 9% of respondents reported that they had first learned of the FLA possibility from newspapers, 6% – from Web sites and television programs, and 3% first received such information from notice boards and informational materials at public bodies and in the course of discussions on Internet forums).

Obviously, the Euro Maydan events in the winter of 2013–2014, distribution of booklets and stickers by UHHRU and ULAF[10] and further active participation of FSLA lawyers-attorneys in the defense of detained people allowed these individuals and the society as a whole to become better aware about the FLA system.

The conducted study confirms the fact that in the society there are some stereotypes which could negatively affect access to legal aid. They are referred to the assumption that everything which is provided free of charge is of poor quality and that legal aid services are provided by inexperienced lawyer-attorney. Existence of such a mindset was mentioned by the FSLACs` staff and lawyer-attorney. One should note that, as the study has shown, some judges and, to a certain extent, some lawyer-attorney, that are not engaged in the FLA system, are also under the influence of such thinking. A number of lawyer-attorney (not engaged in FSLA system) mentioned that the society has no proper level of trust in FSLA lawyer-attorney yet and that the people often immediately refuse their services as they can hardly confide in a defender invited by the investigator and they think that the lawyer-attorney, provided free of charge and the investigator are always in sort of an agreement. FSLA lawyers-attorneys also stated, that there are stereotypes about a lawyer-attorney, who is not paid by the client, that she/he is a bad lawyer and this assumption often makes people to refuse such lawyer-attorney's services and hire private defenders. However, there are also some cases where those who have had experience with FSLA lawyers-attorneys give them full preference over others.

According to the survey, more than a half (51.9%) of the respondents do not trust "free"/ unpaid lawyer-attorney (including 33% of those who "rather distrust than trust" and 18.9% –"fully distrust" them). Nearly a third (29.2%) of respondents are more inclined to trust FSLA lawyers and only 7.4% of the respondents fully trust FLA lawyer-attorney, One out of nine is undecided (11.5%). The level of confidence in FLA varies by region.

The results of the survey show that the trust in FLA lawyers-attorneys directly depends on the awareness of the legal aid system. For example, 49.4% of those who know what legal aid is and when it can be obtained - trust "free" lawyer-attorney, (3.7% of the respondents trust them "fully" and 35.7% – "rather trust than not"); while among those who "heard something about FLA but do not know in which cases one can get it" the share of those who trust is lower – 38.3% (6.4% – "trust fully" and 31.9% –"rather trust than distrust"). Among the respondents who did not hear anything about the possibility to obtain legal aid the level of trust in the legal aid system is the lowest – 33% (6.5% of such respondents

10. During the protests in the Maydan ULAF alone distributed over 6 thousand booklets and 7 thousand stickers about the right to free legal aid.

"fully trust" FSLA system and 26.5% –"rather trust it than not").

RECOMMENDATIONS

1. To continue activities on informing the public of the right to defense/ FSLA. To develop, with the assistance of independent experts and NGOs, an awareness strategy, with special attention to rural and mountainous areas, and to clearly define the channels of communication with various target audiences, to identify the underlying reasons of mistrust and the existing barriers to awareness and to elimination of stereotypes. Particular attention should be given to dissemination of information on television.
2. To consider possible allocation of additional/ special funds to FSLACs for awareness and information campaigns at the regional level.
3. Special attention should be given to explanation of the functions of FSLA centers and mechanisms of access to legal aid, as well as of as the term "free legal aid", in order to overcome the stereotype of allegedly poor quality of provided for free legal aid.

   The *State Program* envisages public awareness activities in 2014-2017. It is necessary to draw up a specific plan of action to support public awareness efforts and to assign a relevant separate budget to implement it.

   Clear separation of information and methodological support and public awareness activities, with indication of the sources of their funding, would enhance transparency of the processes and clear it out what resources are needed and what are missing.
4. To ensure placement and availability of information on rights to FSLA in the premises of duty police units, investigators' offices, rooms for apprehended and detained individuals, police vehicles, including vehicles for transportation of detained, suspects, accused, the cells at pre-trail custody and near the entrances to police stations, where such information may prove critical for proper awareness of detainees and other people.

1.4. NOTIFICATION ABOUT PROCEDURAL RIGHTS AND SAFEGUARDS

> States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights (Principle 8).
>
> *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

The prerequisite for the use of the right to legal aid is being informed by the representatives of the state about the existence of such right, its scope and the mechanisms of receiving legal aid. Without such notification many people will not know of this right and, naturally, will not be able to exercise it.

The *International Covenant on Civil and Political Rights* stipulates everyone's right "to defend himself … through legal assistance of his own choosing; to be informed, if he does not have legal aid, of this right" (subparagraph d of paragraph 3 of Article 14).

The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* reiterate this provision in Principle 8, and Principle 12 specifies the duty of the state to inform any person, prior to any questioning and at the time of deprivation of liberty, about

- the right to legal aid;
- other procedural safeguards;
- the possible effects of voluntary waiver of those rights and safeguards.

In order to fulfill this duty, the States should:

- ensure that information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centers, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused (subparagraph d of paragraph 42, Guideline 2, subparagraph e of paragraph 44,Guideline 4),
- promptly inform every person detained, arrested, suspected or accused about the right to remain silent, the right to consult with counsel at any stage of the proceedings, and especially before being interviewed by the authorities, and the right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions (subparagraph a of paragraph 43, Guideline 3);
- to require judges and prosecutors to explain the rights to the suspects and the accused in clear and plain language (subparagraph g of paragraph 45 of Guideline 5).

It is also important to put in place the means of verification that a person has actually been so informed (subparagraph f of paragraph 42,Guideline 2).

If, however, a person was not properly informed as described above, the state should have some effective remedies and safeguards (paragraph 31, Principle 9), such as

- a prohibition of a procedural action;
- release from custody;
- exclusion of specific evidence from the case file, or
- judicial review of the case and a compensation (subparagraph e of paragraph 42, Guideline 2).

The provisions of the Ukrainian legislation in general meet these international requirements. Thus, paragraph 4 of Article 29 of the *Constitution of Ukraine* guarantees everyone who is arrested or detained the right to be informed about the reasons for arrest or detention, explanation of his/her rights and the possibility, as of the moment of detention, to defend oneself in person or to have the assistance of a lawyer—attorney.

This constitutional provision is further specified in the *Criminal Procedure Code* (CPC) and the Law "*On the Police*".

Part 2 of Article 20 and paragraph 2 of part 3 of Article 42 of the CPC establish the general obligation of the investigator, prosecutor, investigative judge or court to explain to the suspect or the accused all his/her rights. This is to be done

- before the consideration of the motion on application of restraint measures – by the investigative judge or court (part 2 of Article 193 of the CPC);
- at the moment of detention – by the officials, authorized to detain (part 4 of Article 208 of the CPC, part 8 of Article 5 of the Law on the Police);
- at the time of registration of the detention – by the official in charge of custody of the detained (part 3 of Article 212 of the CPC);
- prior to each investigative action – by the investigator or prosecutor (part 3 of Article 223 and part 3 of Article 224 of the CPC);
- at the time of notification of suspicion – by the investigator or prosecutor (parts 2 and 3 of Article 276 of the CPC);
- at the beginning of the court hearing – by the presiding judge (part 2 of Article 345 of the CPC).

Most of the interviewed investigators, prosecutors and judges know of their duty to inform people about their procedural rights, including the right to FLA, to a telephone call for such aid and to remain silent before the arrival of the defender; they said they did not see any obstacles to compliance with these provisions of the law.

All surveyed police officers denied the existence of any problems with informing people about their rights and procedural safeguards. The police usually claim that they always inform detainees of the right to FLA and that there are no problems with timely provision of legal aid by FSLACs. At the time of arrest and procedural actions investigators verbally inform detainees of their right to legal aid. Most police officers believe that for the detained persons the police is the key source of information about FLA. (The survey also shows that the people expect this information to come from the police).

However, the data of other interviews indicates existence of serious problems with the procedure of providing information on the rights required by law. The majority of surveyed respondents mentioned about the problems in informing of detainees by relevant authorities on their rights and possibility to get FSLA lawyer-attorney.

For example, some interviewed judges have noted that law enforcement officers often inform citizens about legal aid in such a way as if to give an impression that a lawyer-attorney providing services free of charge would take own duties all too formalistically and has no interest in helping the client in a qualified manner, or that assistance by a FLA lawyer-attorney would create the risk of a maximum sentence, while a privately hired lawyer-attorney would be able to minimize the punishment. Moreover, the judge noted that "the people are in such shock that they do not understand anything, they ask their relatives to find a lawyer-attorney, and the relatives begin looking for a lawyer-attorney to pay, being certain that this is the best option ...".

A pilot survey of FSLA clients showed some ambiguous tendencies. Only 36% of those who received assistance through the free legal aid system had first received information about such possibilities from the police, and 38% of FLA recipients claim they were not informed by the police about their right to a have a FLA lawyer-attorney. Out of those who received information about the possibility of exercising the right to have a FSLA lawyerattorney the vast majority (69%) said that information was quite detailed, while the other 31% report that they were informed superficially and hastily. 76% of the respondents have stated that they were not informed about any of their rights except the right to defense; 14% have said that their rights were clearly explained, 5% – that they were informed about their rights, but quickly, and the remaining 5% did not remember. The fundamental rights referred to were the right not to incriminate oneself and the right not to testify in the absence of a defender.

2.9% of the surveyed in 5 oblast people dealt during 2013 with the police. Almost a half of them (47.3%) were not informed of their rights; less than one third (31.1%) had their rights explained verbally and 14.9% were given due time to read a paper with a description of their rights.

The respondents from among the staff of FSLACs also noted a lack of awareness of the law enforcement/police about the legal aid system, stemming from high personnel turnover, lack of professional staff, inefficient system of training and absence of guides on the procedures under the new CPC and on involvement of defense lawyers-attorneys.

It should also be noted that the duty to inform about the right to FSLA is tied to the status of "the detained"; therefore, the law enforcement can just "invite" individuals, interview them as witnesses, get incriminatory evidence from them and, in doing so, not inform them about their right to legal aid.

33.21% of the FSLA lawyers-attorneys who participated in CCLAP survey (in May 2013) confirmed that they had heard from their clients about violations of their rights in detention (15.96% referred to violation of the right to be informed about the grounds of detention, 22.94% – to violations of the right to be informed about FLA, 21.83% – to violations of the right to have relatives and family members informed).[11]

11. http://legalaid.gov.ua/images/Actual/Results_research.pdf.

According to the lawyers-attorneys, pre-trial investigation officials violate the right to defense in the following ways:

- by conducting procedural actions with individuals who were not informed of their procedural status (in 48.45% of all instances);
- by exerting psychological or physical pressure on detainees (40.75%);
- by violating the rights during the actual arrest (33.25%);
- by not allowing the lawyer-attorney to the detainee (20%);
- by not informing the defender about a procedural action (18%).

The reasons for such abuse are the prosecution's ample opportunity for manipulation, as a result of legislative flaws, and the lack of understanding on the part of the detained, suspected or accused persons of what rights are granted to them by law and how to exercise such rights.

This data of CCLAP survey was confirmed by focus groups (conducted within our survey) with FSLA lawyer-attorney. During the focus groups they emphasized that still on some occasions the investigators were recommending to detainees "their" lawyer-attorney; yet, it worked only in the instances when only a one-time involvement of such "pocket" lawyer-attorney was expected (as nobody would pay for his work, or the police, in the best scenario, would pay for one visit). The focus group participants also emphasized that suspects were pressured to waive legal aid "in such a tough manner that they would be ready to sign anything in advance and fear to say anything contrary". The lawyer-attorney noted that "the *Criminal Code* envisages liability for violation of the right to defense by an investigator or prosecutor, but nothing of the kind for such violations on the part of precinct police officers or criminal police detectives. There are rules on criminal liability for unlawful deprivation of liberty of abuse of office, but such "stillborn" provisions never work".

The situation with information at the trial stage remains difficult. About a quarter of the surveyed FLA service recipients said that they had not received such information at the stage of judicial proceedings in the court of first instance. This requires further careful research.

Interestingly, the surveyed judges who referred to the low awareness of the citizens about their rights also noted that they themselves were not familiar with how the citizens were actually informed about the opportunities of receiving legal aid and expressed a hope that someone was still conducting relevant awareness activities. Most judges noted that this should be the responsibility of the law enforcement authorities. As a rule the judges observed that in person they had not seen any visual information about the right to legal aid and only some judges mentioned the availability of information on FLA in their courts: "The court always explains the right to legal aid and provides an information sheet; relevant info is also posted on the court's site and on posters in the premises".

The majority of judges do not have a clear understanding of the mechanism of assignment and re-assignment of lawyers-attorneys by FSLACs; moreover, during interviews they often referred to the rules of the old CPC and made incorrect statements (for instance, about the time frame for notification of the FSLACs by the police and for arrival of legal aid lawyers-attorneys. According to some judges, the process of getting a lawyer-attorney for a detainee "may take as long as two weeks or a month", "it is easier to get a lawyer-attorney for money" ("just one call and right away he is around"), "it is necessary to get

a permission from the investigator or prosecutor's office", it is possible "orally to waive a lawyer-attorney" or "to have a lawyer-attorney replaced by applying to the board of FLA lawyers-attorneys").

Some judges (including some respondents in Kharkiv, Mykolayiv, Zhytomyr and Sumy) stated that the suspects whose criminal cases they had heard lately nearly always had defenders at hearings, regardless of their economic and social status. However, according to other judges, in the courts of first instance they often hear cases where lawyers-attorneys were never involved in the pre-trial proceedings. The share of such cases is estimated by various judges at 30 to 50 per cent – or at least a third of all criminal cases reaching the judicial stage.

It should be taken into account that the role of the court is crucial, since control over the exercise of the right to defense primarily implies making sure that a defender participates in the trial if the suspected or accused individual requested his/her participation, if such participation is mandatory or if the investigative judge or the court decides that the circumstances of the criminal proceedings require participation of a defender. Judges have to control whether a suspect is made aware of his/her rights and procedural safeguards.

According to the *Criminal Procedure Code (CPC)*,

- "investigative judge, court before whom the suspect, accused appeared or was brought for participation in the consideration of the motion to enforce a measure of restraint, is required to advice the suspect, accused of his rights"(part 2 of Article 193);
- "investigating judge, court is required to take all necessary measures to provide a defender to the suspect, accused if the latter asked for engaging a defender, if participation of a defender is mandatory, or if investigative judge, court finds that the circumstances of the proceeding require participation of a defender" (part 3 of Article 193);
- "investigative judge is required to take necessary measures to ensure a defender for the person deprived of liberty and postpone any trial in which such person takes part for the time necessary to ensure a defender for such person if he/she is willing to have a defender or if the investigative judge decides that circumstances as established during criminal proceedings require participation of a defender" (part 9 of Article 206);
- "if public defender does not appear in court session upon notice in criminal proceedings in which the participation of the defender is mandatory, the court postpones the trial, fixes the date, time and place of a new court session, and takes measures to ensure their appearance in court. At the same time, if the reason for non-appearance is frivolous, the court address the issue of liability of the defender who failed to appear in court to the bodies authorized by law to initiate disciplinary proceedings against them". "If defender is no longer able to participate in the trial, the judge presiding in court session proposes to the accused to select another defender within three days. If in criminal proceedings where the participation of defender is mandatory, the appearance of the defender selected by the accused at court session is not possible within three days, the court postpones the trial for a period necessary for the defender to appear, or concurrently with postponing the trial, shall involve a defender

to provide defense by appointment". "The court shall be required to give a defender, who previously did not participate in the proceedings concerned, the time sufficient for reviewing materials of the criminal proceedings and preparing for participation in the court session" (Article 324);

- "prior to taking the decision on approval of the plea bargain or reconciliation agreement, the court, during court session, must find out whether the accused individual understands clearly enough that he/she has the right to a fair trial during which the prosecution shall be required to prove beyond any reasonable doubt each circumstance in respect of the criminal offence of which he/she is accused, and be represented by the defender, including getting legal aid free of charge in accordance with the procedure and in the cases stipulated by law, or conduct his own defense" (Article 474).

FSLA lawyer-attorney who participated in the focus groups indicated that despite all awareness-raising efforts some judges still did not want to comply with these requirements of the law. These lawyer-attorney emphasized the importance of the judges' scrutiny of the conditions, under which a person was detained, of the extent to which such person having been informed and of how evidence was collected.

In addition, a pilot survey of FSLA recipients has shown that there were cases when at the stage of proceedings before the court of first instance the defendants did not receive information from the judge about the opportunity to get FSLA lawyer-attorney.

The interviews with judges has shown that they do not have a clear understanding of the mechanism of assignment and reassignment of a FSLA lawyer-attorney, although the judges are involved in the process.

* * *

The system of control over information provision to the people about their rights is not fully regulated or practiced. However, court proceedings are recorded in all cases, which allow those interested to obtain printouts of transcripts and confirm that the rights were explained or not explained.

However, at the pre-trial stage the *Memo on procedural rights* (given along with the protocol/minute of a procedural action) remains as a rule the only evidence, and, thus, the signature on the protocol (minute) means that the person have got acquainted with all his/her rights.

Moreover, the right to use the technical means for recording the proceedings is state in currently existing *Memos on rights for criminal suspects* (paragraph 11 of part 3 of Article 42 of the CPC) but it is not mentioned there that a request of video or audio recording is obligatory for satisfaction by the investigator and prosecutor (as required in part 1 of Article 107 of the CPC).

Nothing prevents the senior management of pre-trial investigation and prosecution authorities to adopt a regulation requiring mandatory video recording of the first

interrogation of suspects, especially of the moment of informing them about (and explanation of) their rights.

Such elements of control would ensure the effectiveness of legal defense measures existing in Ukraine in any case of violation of the right to information about procedural rights, including

- the criminal: the Criminal Code stipulates liability for compulsion to testify (Article 373) and for violation of the right to defense (Article 374);
- procedural: article 87 of the CPC lays down progressive rules on inadmissibility of evidence obtained as a result of substantial violations of human rights, including the right to defense and the right to obtain information about procedural safeguards;
- disciplinary: failure to comply with the proper course of procedural action and, specifically, failure to inform a person about his/her rights serves as grounds for disciplinary proceedings against law enforcement officials in accordance with the disciplinary statutes.

It is the active position of lawyers-attorneys that will influence proper judicial practices which would make it possible to create a system in which everywhere one would be informed about procedural rights, and if the relevant requirements are not complied with or breached the officials in question will always be brought to disciplinary or criminal liability and any evidence obtained in violation of the existing rules will be deemed inadmissible.

RECOMMENDATIONS

In order to improve the situation with informing of people about their rights we recommend the following:

1. The senior management of pre-trial investigation authorities should include into the Memo of procedural rights the provision on mandatory satisfaction by an investigator or prosecutor of a request for video or audio recording of the proceedings (part 1 of Article 107 of the CPC).
2. The senior management of pre-trial investigation authorities should ensure mandatory video recording of the first interrogation, including the moment of notification and explanation of the rights.
3. The Ministry of Justice of Ukraine and the Ministry of Internal Affairs of Ukraine should draft and approve a Memo for detainees, with a short list of their rights presented in a user-friendly format and with the FSLA hotline number.
4. Lawyers-attorneys should, in every instance of not informing or not properly informing a person about procedural rights, file a statement on a criminal disciplinary offense and a request on inadmissibility of evidence obtained as a result of relevant procedural actions.

5. The senior management of pre-trial investigation authorities and courts should continue training/ awareness efforts with their staff, including assistants to judges, with regard to the rules of information provision to people and ensure availability of appropriate information materials on the right to legal aid both for the officials and for the public.
6. To amend the Criminal Procedure Code
   - by stipulating mandatory video recording of all procedural actions with detainees and of interrogation of witnesses;
   - with regard to exclusively the judicial procedure of summoning the participants of the proceedings for procedural actions;
   - by prohibiting engagement of another defender for conduct of a single (separate) procedural action if the defendant is already using the services of a lawyer-attorney of own choice and does not want his/ her replacement (Article 53);
   - by providing for a possibility to appeal against a decision of the investigative judge to challenge/ recuse the defender (Article 309).
7. To include into the Law "On the Judiciary and Status of Judges" (Article 54) a general duty of judge to control provision of legal aid to the participants of the criminal process.

1.5. ACCESS OF DETANIED PERSONS TO LEGAL AID

Early access of a detainee to a lawyer-attorney is crucial because the initial stages of a criminal investigation pose the greatest danger of violation of rights – in particular, for obtaining the evidence of the detainee's guilt.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems envisage unimpeded access of detainees to legal aid and requires from the states the following:

- persons urgently requiring legal aid at police stations, detention centers or courts should be provided preliminary legal aid while their eligibility is being determined (paragraph 41 c);
- to ensure that persons meet with a lawyer-attorney or a legal aid provider promptly after their arrest (paragraph 43 d);
- to make available in police stations and places of detention the means to contact legal aid providers (paragraph 43 h).

The Ukrainian legislation[12] requires mandatory engagement of a lawyer-attorney to defend a detained person. This occurs without any "means test" as to the financial situation of detainees. The *Procedure for informing of FSLACs about detention* cases (hereinafter – the Procedure) establishes the obligation of the body that made the detention to report the case to the relevant FSLACs.

Various surveyed groups differently assess the informing procedure on detention. Investigators know all relevant requirements and do not see any problems with compliance. Directors and duty officers of FSLACs indicate that the situation with reporting of detention cases became better as of the beginning of the year but point out that FSLACs are not notified of all instances of detention. The quoted reasons include excessive caseload of the law enforcement and insufficient use of electronic communications. There is an opinion, that detention cases are mostly not reported in "complex, political cases". Still, the general impression is that the informing procedure "performs to the extent of 90%".

Typically, legal aid lawyers-attorneys arrive to detainees on time – in accordance with the law (within one hour, and in exceptional cases – within six hours). Information on time of arrival of lawyers-attorneys is collected but not presented in the CCLAP's consolidated report. The interviews with detainees (clients of FSLA services) has shown that almost a third of them (29%) were able to talk to a lawyer-attorney within less than an hour after detention; 19% got that opportunity after 2 or 3 hours; 14% – had to wait for 6 to 10 hours to meet with the legal aid lawyer-attorney. (Another 15% of the respondents indicated that in their cases they had their first contact with the FSLA lawyer–attorney in more than 72 hours after detention).

12. The CPC and the Procedure for information provision to FSLACs on cases of detention (CMU Regulation of December 28, 2011 #1363).

It is worth noting the following reasons of not informing of FSLACs about instances of detention. The CPC and the Informing procedure on detention do not contain an exhaustive list of bodies whose employees authorized to detain, therefore, to inform the FSLACs (as per part 4 of Article 213 of the CPC). At the same time part 3 of Article 207 of the CPC stipulates that official authorized to conduct detention is "a person entitled by law to detain".

Under p. 1 of the informing procedure of FLACs is done by

- bodies authorized to conduct administrative detentions;
- bodies authorized to conduct detention on assignment of law enforcement authorities; pre-trial investigation authorities(investigators of the police bodies, prosecution, tax police and Security Service).

The law stipulates that officials authorized to conduct detention are:

- employees of the Internal Affairs bodies (paragraph 5 of Article 11 of the Law "*On the Police*");
- employees of Security Service units involved in counter-intelligence activities (paragraph 7 of part 1 of Article 7 of the Law "*On Counter-Intelligence Activity*");
- employees of the State Border Service (paragraph 7 of Article 20 of the Law "*On the State Border Service of Ukraine*", paragraph 5 of Article 18 of the Law "*On the Organizational and Legal Framework of Combating of Organized Crime*");
- military personnel of the Military Law Enforcement Service of the Armed Forces of Ukraine (paragraph 4 of Article 7 of the Law "*On Military Law Enforcement Service of the Armed Forces of Ukraine*");
- employees of the State Penitentiary Service (paragraph 4 of part 2 of Article 18 of the Law "*On the Criminal Enforcement Service of Ukraine*");
- personnel of security entities and the railroad security staff (paragraph 3 of part 1 of Article 12 and part 2 of Article 16 of the Law "On Security Activities", p. 4 of the *Regulation-statute of sectorial militarized protection on the railroad transport*, as approved by the Cabinet of Ministers Regulation on January 11, 1994).

The law does not obligate any others except pre-trial investigation bodies and the Border Service authorities to notify FS LACs about each instance of detention. However, such obligation is established in the CMU regulation *on procedure of information provision to FSLACs on detention cases*.

In addition, there are various manipulative practices that allow the authorities to circumvent the requirement of mandatory involvement of a lawyer-attorney.

The widespread phenomenon is the improper definition of the time of detention, which exist despite of the clear provisions in CPC Article 209 This time is counted not from the moment of the de facto detention but as of the moment of detention minute[13] drafting. Therefore, a person may spend some time in detention while such minute being made much

13. Detention minute is a document (called protocol of detention) where the details of detention and on detainee is described (incl. name, mental status, his/ her behavior, clothes and items held at the moment of detention, etc.)

later; but procedural actions with the detainee begin as of the moment of his/her de facto apprehension[14]. The time gaps of this kind are still quite frequent and may take from one to seventy-two hours. This time gets lengthier on holidays/days-off and at night. Instead of following the procedure laid down in CPC Article 208 the investigators resort to mental and/or physical pressure and conduct the investigative actions they need. In the night time detainees are held at police stations of sub-district (sub-rayon) level; then they are made aware of the investigator's motion on restraint measures in a form of taking into custody and brought to the court, and only after the court's decision on detention the information is provided to the FSLACs.

Administrative detention and administrative arrest are also practiced for criminal prosecution purposes. This practice was specifically noted in the ECtHR judgment in *Balitskiy v. Ukraine* (p. 51): "the Court emphasized that by having formally placed the applicant in administrative detention but in fact treating him as a criminal suspect, the police deprived him of access to a lawyer-attorney, which would have been obligatory under the Ukrainian legislation had he been charged with the offence of murder committed by a group of persons and/or for profit, an offence in respect of which he was in fact being questioned."

This method is used by drug enforcement units. At first a potential suspect is detained administratively and persuaded to waive his right to defense (in such instances the law does not require any information provision to FSLACs). Next, the examination is conducted and as a result of it "suddenly" it turns out that the amount or volume of the possessed substance is sizeable, and the person is detained under the criminal proceedings on suspicion of having committed a crime under Article 309 of the CPC. In such cases the lawyer-attorney appointed by FSLACs usually find the following violations of the part of drug enforcement police: conduct of search in the investigator's office, engagement of drug addicts as witnesses, absence of detective actions that are to precede a detention, etc. Thus, individuals are detained, subjected to procedural actions and interrogated, and only after that the police inform the FSLACs.

An individual may also be summoned for questioning as a witness in criminal proceedings and has to appear, under the threat of a fine and/or being brought to the police by force. The police interrogate such person, get the information they need, at the end of this procedure inform their "guest" that he is detained as a suspect and only then inform a FSLAC. This police approach was confirmed by various target groups of the survey. Ex-officers of the law-enforcement bodies who now work at FSLACs referred to "playing with the statuses": "Now and again the police invite a person as a witness, that person may come over on his own. In fact as of the moment of getting inside a police station one's liberty of movement is restricted, and this should be properly registered (in the list of visitors at the entrance turnstile). But in practice investigators can just allow people in, saying there is no need to register or that the person just accompanies the officer. After that the "required" information is "obtained" and only then the fact of detention is recorded, with indication of

14. http://legalaid.gov.ua/images/Actual/Results_research.pdf.

the time that suits the police and without indication of the place of apprehension… Then the detainee who in fact is the suspect undergoes investigative actions, including interrogation in the capacity of a witness…"[15]

A person may also be called (invited) to the police to provide written or oral explanations about the materials in the proceedings of a certain authority. The procedure for obtaining such explanations is not specified in any regulation. However, as a result of such "interview" a person may be detained on suspicion of a crime.

In some cases law enforcement officers create an impression that the suspect is already represented by a lawyer-attorney. In such instances investigators do not inform the FSLAC and within one hour go to the court "with their own lawyer-attorney" and motion on the restraint measures of taking into custody or house arrest. When asked why they did not inform a FLAC they claim that the suspect had a defender from the very outset.[16]

Often police officers use pressure on the suspects to waive their right to FSLA lawyer-attorney or persuade them that at this stage a lawyer-attorney is not required. Even in the instances of mandatory participation of a defender it sometimes happens that a person is "forced" into signing all documents and then fears to say anything contrary. The experts indicate that the police widely practice blackmail and make threats of physical violence. Occasionally such pressure takes place even in the presence of a lawyer-attorney.[17]

Also, law enforcement officers violate the right to defense by postponing, under various pretexts, the moment of the detainee's confidential meeting with the defender, by wrongly informing about the place of such meeting or by changing the location of the detainee before the lawyer-attorney's arrival. In the nighttime a lawyer-attorney may not be allowed in for, allegedly, security reasons, on the basis of the detainee's waiver statement made without participation of a defender.

There were also cases where

- a lawyer-attorney was not allowed to meet with his/her client as a result of arbitrary actions of the convoy that took the clients out of the police premises without their meeting with the lawyer-attorney within the time required for a lawyer-attorney's arrival;
- after notification of the FSLAC the police called an ambulance, told the lawyer-attorney on his/her arrival that the detainee was in a hospital and then after the lawyer-attorney's departure got the detainee back to the police station;
- lawyers-attorneys are not allowed into pre-trail custody without a permission of the investigator, and such permission is not obtainable because of the absence of the investigator, or the absence of the seal of the district police unit station, or the absence of the chief of the police unit who applies this seal, and so forth;

15. http://legalaid.gov.ua/images/Actual/Results_research.pdf.
16. http://legalaid.gov.ua/images/Actual/Results_research.pdf.
17. http://legalaid.gov.ua/images/Actual/Results_research.pdf.

- the pre-trail custody authorities do not allow the lawyer—attorney to use a laptop or a voice recorder during the meeting with the client and explain that any use of such devices is to be authorized by the investigator in his permission of such meeting;
- the lawyer-attorney was called to the police station in the evening time (after 20:00) despite the fact that 12 hours passed from the moment of detention, and on arrival was told that investigative actions in the nighttime (from 22:00 through 6:00) were prohibited (CPC, paragraph 4 of Article 223); the detainee was left overnight in the police station and at that very time urged to refuse from getting a lawyer-attorney. Afterwards the lawyer-attorney was not given access to the procedural action (first interrogation) where he could contest (litigate) the unlawful actions. This was in violation of the requirements of parts 2 and 3 of Article 278 of the CPC;
- there was a violation of the right of the lawyer-attorney to meet with his/her client confidentially at a temporary detention facility. The staff of the facility referred to their "in-house regulations" without being able to name the document (the Order of the Ministry of Internal Affairs of Ukraine of December 2, 2008, № 638,"*On approval of Internal rules for temporary detention facilities of the bodies of Internal Affairs of Ukraine*"). Subsection 3.1.9 of these Rules provides for the right of persons held at such facilities to eight uninterrupted hours of sleep at night (from 22:00 through 06:00), during which they may not be involved in procedural and other actions, except urgent cases; however a confidential meeting with a lawyer-attorney is not on that list. All references made by the lawyer-attorney to the CPC were not given any attention.[18]

CCLAP initiated the checking by comparison of the data on detentions available to FSLACs and regional police departments. This is expected to improve the situation with informing about detention.

Besides, in order to have a possibility to provide FSLA to detainees in cases when authorized officials will not properly inform FSLACs on detention the new Order titled "*Some aspects of receiving and processing by FSLACs the information on detention cases*" (of August 30, 2013) obligated the FSLACs to respond to informing about detention coming not only from authorities eligible to conduct detention, but also directly from detained persons or their close relatives. This innovation has created a mechanism for monitoring the reports of detention and actually put an end to the detaining authorities' monopoly on provision of information about detention.

To ensure prompt informing of FSLACs about detention cases, engagement of legal aid defenders on assignment/appointment and conduct single (separate) procedural actions the system of legal aid operates a hotline **0—800—213—103,** on 24/7 basis (just as the telephone numbers of FSLACs). Calls from landline phones in Ukraine are free. During 2013 this number received 79,950 incoming calls.[19]

18. http://legalaid.gov.ua/images/Actual/Results_research.pdf
19. http://legalaid.gov.ua/ua/holovna/sichen-2014/u-2013-rotsi-bezoplatnu-vtorynnu-pravovu-dopomohu-otrymaly-bilshe-75-tysiach-osib

Contrary to measures to ensure early access to a lawyer-attorney in criminal cases, his/her engagement in cases of administrative detention proved to be less efficient. In 2013 FSLACs received 24,666 reports of administrative detention and gave 10,009 relevant assignments (40.5%) but the lawyers-attorneys made only 9,949 visits (40.3%) to such clients. These indicators are noticeably contrasting with those related to detention in criminal proceedings: 24,178 notifications, 22,345 assignments (92.4%) and 22,360 (92.5%) visits.

This suggests that the arrangements for FSLA lawyer-attorney engagement do not meet the conditions of administrative detention and, specifically, its brief time – no more than 3 hours. Given that the procedure of informing, lawyer-attorney's appointment and his/her travel may take about the same time, in many cases lawyer-attorney arrive to their client after expiry of the period of administrative detention.

The data from focus groups with FSLACs` directors and duty officers has shown that response to administrative detentions implies a significant additional administrative burden on the providers. For lawyers-attorneys this kind of work is not attractive because of low pay and high rate of futile interventions (for expiration of the time of administrative detention or clients' waivers of the right to have a lawyer-attorney).

RECOMMENDATIONS

In order to improve legal aid provision to detainees we recommend the following:

1. The Ministry of Justice of Ukraine and the Ministry of Internal Affairs of Ukraine (MIA) should develop a common policy of fixation/ registration and accounting of detention of the MIA and CCLAP.
2. Courts should exclude any use of evidence, testimony or other information against defendants if obtained as a result of violation of the right of the detained person to defense, use of pressure on such individuals, his/ her lawyer-attorney or others.
3. To relieve pre-trial investigation authorities of the power to call (invite) persons under any procedure other than stipulated in the criminal procedure law.
4. To amend the CPC by providing exclusively for a judicial procedure of summoning the participants of proceedings for procedural actions.
5. To adopt, as soon as possible, the Code of administrative misdemeanors.
6. To launch a system of electronic exchange of information between the bodies authorized to conduct detention and FSLACs.
7. CCLAP should consider the feasibility of establishment of a system of lawyers-attorneys duty (shift) that can shorten the time of travel/ arrival for provision of legal aid.

II. QUALITY OF FREE SECONDARY LEGAL AID IN UKRAINE

> Principle 7. Prompt and effective provision of legal aid
> 27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.
> 28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defense.
>
> *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

One of the key criteria for assessment of legal aid effectiveness is the quality of aid granted by the state. Quality is a complex concept associated with a number of factors that affect or may affect the quality of legal aid. There is no single agreed position as to what constitutes high-quality services, what standards should be applied, which factors contribute to the training and professional development of lawyer-attorney, what conditions contribute to the provision of quality of services and which mechanisms exists to ensure the quality of legal aid.

It should be noted that although the Law "*On Free Legal Aid*" describes the authority of the Ministry of Justice with regard to guaranteeing the quality of legal aid granted by the state, drafting of quality standards or implementation of monitoring mechanisms were not the priorities during the first year of the FLA system development. This was justified by the need to focus on the institutional capacity building of the system, to ensure citizens' access to legal aid and to raise public awareness of the available opportunities.

In fact, by the end of 2013 the stakeholders began the discussion and elaboration of the quality standards. These standards were drafted by the lawyer-attorney and, in the words of the document` authors, "standards are the rules of the work of any professional lawyer-attorney". In due course these standards were adopted by the Bar Council of Ukraine and, in early 2014, approved by Order of the Ministry of Justice.

2.1. QUALITY OF LEGAL AID AND THE MECHANISMS OF ITS ASSESSMENT

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recognize that for the purpose of prompt and effective legal aid the states should ensure that it is provided without delay at all stages of the criminal justice process - with legal aid providers being able to perform their professional duties effectively, freely and independently.

The system of free secondary legal aid is not only to grant a nominal presence of a lawyer-attorney, but also an adequate quality and effectiveness of his/her assistance.

The European Court of Human Rights has often stated that the *European Convention* is not just about appointment of defender but implies "ensuring of legal aid". For instance, in the judgment in *Artico v. Italy* the Court indicated that "mere nomination does not ensure effective assistance since the lawyer-attorney appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations"(p. 33).

The Law "*On Free Legal Aid*" defines quality assurance as one of the principles of the state policy in the sphere of FLA (Article 5); establishes the lawyer-attorney' duty "to provide high quality legal aid to the extent as necessary"(Article 26) and obligates the Ministry of Justice to adopt legal aid quality standards (Article 28).

The CPC of Ukraine obligates the defender

- to use all means of defense as laid down in the law for ensuring the respect of therights, freedoms and legitimate interests of the suspect or accused and to ascertain the circumstances that refute the suspicion or accusation and mitigate or eliminate criminal liability of the suspect or accused.

Since it is the state that in fact hires the services of a lawyer-attorney to perform the functions that grant equal access to legal aid, an issue that transpires is the responsibility of the state before customers of legal aid for the proper level of service provision and accountability of lawyers-attorneys for the quality of their services. This entails the possibility of evaluation of such services. At the same time it is paramount to ensure independence of lawyers-attorneys and the safeguards of their professional activity.

Assessment of legal aid quality on the basis of the stakeholders' survey

When the quality of a lawyer-attorney's performance is to be evaluated the multiple questions arise, such as Whose feedback should be taken into account? and What criteria should be applied?

Within the survey all participants were asked questions about the quality of legal aid Lawyer-attorney often believe that judges would be in the best position to say how well or.

badly the lawyer-attorney performed, but the objectivity of such evaluations could not be guaranteed.

Assessment of the lawyers-attorneys' performance by the interviewed judges was rather ambiguous. Some judges assume that FSLA lawyer-attorney lack of motivation because of low fees and offered some rather negative remarks thinking about such lawyer-attorney as young, inexperienced and not properly active in defense: "the suspects who have appointed lawyers-attorneys very often confess their guilt prior to the end of the hearing or refuse a full trial – this is because the lawyer-attorney saves his time at the expense of the hearings and the client is happy with a quick trial"…, "when you have a plea bargain with the prosecutor – and that's it" (a judge from Donetsk).

Other judges were satisfied with the work of FSLA lawyers-attorneys and described them as meticulous: "as for the pre-trial stage, I did not see any difference, but during the trial privately hired lawyers-attorneys perform more actively…, although the privately hired ones lodge less appeals" (a judge from Sumy).

In general there was critique regarding all lawyer-attorney, including privately hired. Some judges think it is necessary to teach lawyer-attorney to fully exercise their powers to collect the evidence and, specifically, to file a motion for investigative actions.

Most of the interviewed police officers and prosecutors say that there is no difference in the quality of services of privately paid and FSLA lawyers-attorneys.

According to the interviewed prosecutors, FLA lawyers-attorneys are quite professional and committed to their work ("they used all means of defense, were active in court, upheld the position of the defendant"), but to prosecutors opinion, in some rare occasions those lawyers-attorneys who are paid by their clients perform in a more diligent manner.

The vast majority of surveyed investigators positively assessed the work of legal aid lawyers-attorneys and described them as "qualified", "most knowledgeable", "thorough and abiding by the rules of professional ethics", "performing with assiduity and defending their clients", "who are always present during interrogations, reenactments and other procedures". According to the interviewed investigators, the detained individuals were happy with the granted opportunities to have access to justice ("those who received legal aid were never unhappy", "detainees get better explanation of their rights and laws, they feel more protected"). At the same time some investigators assumed that "private lawyers-attorneys are more motivated and that is why act more effectively and actively, "they can even get in the way of investigation and, for example, say something during interrogation or lead their client to give a prepared answer".

Some interviewed lawyers-attorneys (who are not involved in the FLA) when asked about their peers who provide legal aid replied that most complaints about their performance come not from clients but from the police who often do not like their thorough performance of duties.

The attention should be given to the expressed by several interviewed police officers opinion about such "negative" consequences of FLA introduction as "a decline in crime detection indicators", "reduction of solved cases because of a smaller number of confessions" and impression about the work of a lawyer-attorney as one who "can help the suspect to by-

pass the law". The surveyed investigators also assessed as "negative" "greater control over the police activities", "the necessity of timely notification about legal aid to the detainee/ suspect" and "inability to pressure the suspect during interrogation".

Within the survey a pilot interviews with FSLA clients (who received LA in 2013) were conducted,

During the discussion of the possibility of taking into consideration the clients' opinion the lawyers-attorneys emphasized that *a survey of their clients* could not be a source of their performance evaluation, because complaints of clients or their relatives with regard to their lawyers-attorneys could well be explained by the personalities of such individuals.

Some lawyers-attorneys not engaged in FSLA have noted the importance of paying attention to the level of satisfaction of the client and refer to the *complaints mechanism*. They said that clients are different, and their attitudes and expectations may also differ. One of the lawyers-attorneys who occasionally cooperates with the legal aid system mentioned that "sometimes defendants get more impudent with legal aid layers. If a client signed a contract with you, he fears to lose you, which is not the case when legal aid is granted — he knows that if one lawyer-attorney quit another one will turn up".

Of course, any poll shows subjective assessments, but anyhow a **client survey** is the common mechanism to obtain information about clients' impressions, on their interaction with their lawyers-attorneys, maintainance of communication between them and the conditions of services provision.

A pilot survey of legal aid clients revealed a number of problems with how to conduct it: there is no data bank of FLA recipients' contacts and they are not asked yet to give consent to the use of their personal data (phone numbers) for a survey on assessment of the work of lawyers-attorneys. These conditions considerably hurdle any possibilities to get the feedback from the clients.

According to the data of the pilot survey of clients, almost all (94%) are satisfied with their cooperation with the defender provided by the state (of which 88% are fully satisfied and 6% — rather satisfied than not). In their assessment of the FLA lawyers-attorneys' performance 94% of the respondents believe there were no real deficiencies in such performance, but 6% claimed that their lawyer-attorney had not been present whenever needed or behaved with indifference and detachment. When asked about the quality of communication with a lawyer-attorney:

- about 60% of the respondents said that their first meeting with the legal aid lawyer-attorney lasted less than an hour;
- 29% reported a first meeting of up to 2 hours;
- 5% said they did not remember or that such meeting had lasted about 6 hours.

Speaking about frequency of contacts:

- 12% of the respondents said they had been in contact with the legal aid lawyer-attorney just once;
- about 18% had from 2 to 4 meetings with the lawyer-attorney;

about a quarter of the respondents stated they had met with the lawyer-attorney 5 times;

- 30% – 7 to 10 times,
- and the remaining 25% said that the total number of meetings amounted to anything from 10 to 30.

All respondents indicated that the lawyer-attorney was keeping them informed about the progress of the case; the vast majority (91%) think that they were informed continuously and systematically, and 9% – that this happened from time to time.

The behavior of the lawyer-attorney in court was assessed as active by 92% of the respondents – their defenders were present in court, file necessary motions and perform other actions.

With regard to the results of their lawyers-attorneys' performance 91% of the respondents indicated that their lawyers-attorneys managed to achieve some improvements in their cases, (while 9% of all respondents claim that their FSLA lawyer-attorney could not accomplish anything for them). As of the main results of FSLA lawyers-attorneys services, 39% mentioned a change or annulment of the measure of restraint; 33% – review or withdrawal of charges; 24% – conduct of expertise, calling of witnesses or a lenient punishment and 15% of the respondents were helped by their lawyers-attorneys to get a reconciliation with the other party.

Existing mechanisms for assessment of lawyers-attorneys' performance

Clients of the FLA system have the possibility to challenge an action or inaction of legal aid providers. Under the Law "*On the Bar and lawyers-attorneys activities*" any person aware of a lawyer-attorney's behavior that may serve as grounds for disciplinary liability has the right to file an application (complaint) with the Qualification and Disciplinary Commission of the Bar.

Quality, completeness and timely provision of legal aid is also assessed if applied for by an institution authorized by the law to provide FSLA, by a commission established for this purpose by a regional Bar Council (Article 25.2). The Bar Council of Ukraine by its decision of December 17,2012 (No. 35) approved the *Regulation-statute of the Commission for assessment of quality,completeness of LA and its timely provision*. This regulation, inter alia, provides that in accordance with the results of such assessment the Commission is entitled to attach to its opinion

- recommendations to the assessed lawyer-attorney regarding improvement of quality and ensuring of complete and timely FLA provision;
- proposals to relevant FLAC on signing or refusing to sign the service acceptance act provided under the contract or contract-agreement, on termination of such contract (agreement) with the lawyer-attorney and/or on his/her exclusion from the register of FLA lawyers-attorneys;
- an application (complaint) to the Qualification and Disciplinary Commission of the Bar with regard to the lawyer-attorney's behavior that may serve as grounds for disciplinary liability.

The effectiveness of this mechanism is hard to assess in view of the lack of information on the operation of such commissions.

According to the interviewed participants of the FLA process there is always a theoretical possibility to lodge a complaint about a FLA lawyer-attorney and in this context it is noteworthy that there are almost no complaints concerning FLA lawyers-attorneys' performance. In the opinion of the lawyers-attorneys working in the FLA system the very presence or absence of such complaints and, specifically, their number may serve as one of the criteria of the quality of their work. These lawyers-attorneys think that absence of complaints could be somehow linked to their incentives. At the same time it was mentioned that "given the fact that in the field of lawyers-attorneys activities there is a stable quantity of clients who file complaints on them exist; the small number of complaints can be explained by recent introduction of the FSLA system and by a relatively high effectiveness of lawyers-attorneys' performance". However, the respondents have also pointed out that a complaint per se is no proof of poor performance of the lawyer-attorney and that each complaint should be deeply examined as to its nature and its reasons. The interviewed lawyers-attorneys also mentioned that complaints are not affecting their compensation.

Nevertheless, it should be noted that the lack of complaints may also point at a lack of clear procedures for their submission. In fact, legal aid clients have little or no contact with the FLA center, they deal only with the lawyers-attorneys; thus, the clients do not consider the FSLACs as entities providing services and do not think of complaining or sending any own feedback to the centers.

The majority of interviewed lawyers-attorneys (not engaged in FLA) admitted they never heard anything about complaints filed against legal aid lawyers-attorneys, but some of such respondents noted than they had heard informal grievances about formalistic attitudes, lack of focus or passivity of legal aid defenders. The lawyers-attorneys think that "the people are not going to complain about lawyers-attorneys formally and often do not even know where to complain and how to do it. However, it all depends on how one understands the work of the lawyer-attorney and how one trusts him/ her". The respondents have noted that in any event each complaint is subjective and should be examined separately, without any assessment of the FLA system as a whole.

Pilot peer review

The peer review pilot as a method of lawyers-attorneys' performance assessment was conducted in the summer of 2013[20]. It is worth mentioning that this method is about communication, sharing experience, peer advise and learning of best practices but not a formal evaluation or control as it might be perceived. When planning this pilot the lawyers-attorneys had certain reservations as to the purpose and process of evaluation but as the final report shows, most participating lawyers-attorneys recognized the benefit of such review, especially for professional development of lawyers-attorneys.

20. Pilot peer review in FSLA was conducted from June 11 through July 5, 2013, in the framework of UHHRU legal aid monitoring project, with the financial support from MATRA.

The pilot peer review envisaged examination of case files, interviews with lawyers-attorneys[21] and interviews with directors of FSLACs[22]. The experience of Public Defender Offices that, with the support of International Renaissance Foundation, operated in 2006 – 2012 in Kharkiv, Khmelnytsky and Bila Tserkva, was taken into consideration in determining the methods and tools for peer review and assessment of the quality of legal aid in criminal proceedings.

Peer review (quality assessment) was performed by six lawyers-attorneys from different regions of Ukraine, with good experience in the sphere of criminal justice and who are credible among their peers. 94 lawyers-attorneys from 12 regions of Ukraine (Autonomous Republic of Crimea, Volhyn, Zhytomyr, Luhansk, Mykolayiv, Odessa, Poltava, Rivne, Kherson, Khmelnytsky, Chernivtsy and Chernihiv Regions) volunteered to take part in the peer review. At this initial stage of the pilot no selection criteria were applied: lawyers-attorneys were just asked if they agreed to participate. The peer review was conducted in the atmosphere of mutual understanding between the reviewing lawyers-attorneys and their reviewed peers.

The performance of the vast majority of lawyers-attorneys was assessed as "satisfactory" and "good" (the third option was "unsatisfactory").

This pilot peer review was supposed to encourage lawyers-attorneys to keep own files on each case (proceedings). Overall, the reviewers analyzed the materials in 255 cases, with proper safeguards of confidentiality: the reviewers had access only to general data, with no personal details about the client or lawyer-attorney. Most of the materials presented for assessment were incomplete, which can be explained by the absence of any obligation of the lawyers-attorneys to keep such records and of any prescribed requirements as to their form. During interviews only a few lawyers-attorneys denied the need for keeping files, while the vast majority of respondents considered them an objective necessity. The peer review confirmed the impossibility of evaluating the quality of legal aid in criminal matters without a thorough study of lawyers-attorneys' files, which should be complete and comprehensible. Formal requirements to such files should be clearly defined, and the lawyers-attorneys should make use of approved standard forms.

During the working meetings with the reviewers it was decided to do the assessment by using both formal and substantive criteria, particularly those relating to:

- communication with the client,
- defense strategies at the pre-trial and trial stages, and
- protection of the other relevant rights of the client.

The specific content of these criteria remains a matter for further discussion and requires further elaboration. The same pertains to the specific share of each indicator in the general scoring/ evaluation – as well as to the methods of assessment as a whole.

21. The process showed that lawyers-attorneys tend more to rely on peer interviews, which may be caused by the incompleteness of information in the provided lawyers-attorneys' files.

22. Observing at trials, although suggested in the ToR, was not used as a method of assessment because, in the reviewers' opinion, it would have consumed too much time and provided only fragmentary data.

The peer review confirmed the possibility of evaluating the quality of legal aid and did not reveal any systemic problems that could adversely affect the quality of legal aid today. However, without the development and implementation of clear and understandable legal aid quality standards any such assessment will be merely theoretical and will have no legal significance.

On the issue of quality standards

The importance of quality standards quickly became evident to all lawyers-attorneys and managers of the FLA system as "the recipient (client) and the provider (lawyer-attorney) sign no contract and, therefore, do not negotiate its substance. What they have is only the law and the scope of lawyer-attorney's powers specified therein. Thus, there must be a standard for implementation, one for all and known to all. The client needs to know what can be expected and what he is entitled to require from the defender provided by the state".[23]

In 2013 the CCLAP began its work on the development of quality standards for FSLA. The need for this was identified during expert discussions and analysis of practices.

The survey of lawyers-attorneys conducted prior to the development of quality standards, the pilot peer review and the discussions at public events with the participation of lawyers-attorneys of the FLA system and those not involved in the provision of legal aid demonstrated the sensitive nature of the quality issue. Many among lawyers-attorneys consider their profession as a "free" one, not to be standardized or assessed, and many oppose any assessment mechanisms and refer to the privilege of their activities and documents.

According to the survey, those lawyers-attorneys who think that assessment of the legal aid quality is possible, still do not have a shared view on *quality criteria*. As of criteria they often referred to lawyers-attorneys' specialization and experience in criminal, civil or administrative proceedings, the ability to maintain cooperation with clients, the number of cases, punctuality, knowledge of law. The other suggested criteria included the result achieved by the lawyer-attorney, the absence/presence of complaints, the number of submitted requests, the number of meetings with the client and the number of hours of work.

The majority of interviewed lawyers-attorneys (from those who do not engaged in FSLA) believe that the main criterion is the result achieved by the lawyer-attorney – "that what is good for the client". "Good" was often interpreted as a change of restraint measure, an acquittal or a more lenient sentence. . At the same time these respondents made a caveat that such criteria may not always indicate the quality of the lawyer-attorney's work, because of the widespread practice of applying the maximum restraint just "to have the defendant at hand" ("for this very reason we have so many suspects in pre-trial detention centers and suspects are hardly ever released on bail or against surety or put under house arrest", "an acquittal can't be a criterion for unambiguous assessment of lawyers-attorneys' work, because the person can be really guilty"…). Some believe that the best criterion for assessing the lawyer-attorney's performance is lenient sentence, but at the same time many respondents suggest that "the key outcome of work is whether the lawyer-attorney and the client reached the aim that they had set when working on the case. The client, however, may think that

23. http://legalaid.gov.ua/ua/holovna/veresen-2013/sohodni-derzhava-investuie-v-obydvi-storony-protsesu-a-ne-tilky-v-storonu-derzhobvynuvachennia-andrii-vyshnevskyi.

his/her problem could be solved in a way, which is not possible in terms of the law. The duty of a defender is not only to build the strategy of defense but also to explain to the defendant what result to expect, which aims to set and how to move on. Accordingly, the shortcomings in the performance should also be assessed in terms of the set aim which should always be specific".

In addition, some lawyers-attorneys suggested quantitative criteria: a) the number of motions filed ("writing a motion is no easy task, to do it you have to know very well what is in the case file and be acquainted with relevant legislation"), although on condition such motions were not to protract the proceedings ("it matters if one really tries and goes by the law and not just mass-produces the motions for their own sake"), and b) the number of meetings with the client (which shows how actively the lawyer-attorney performed during pre-trial investigation, in court and at the stage of appeal).

However, according to some lawyers-attorneys who are not involved in FLA it does not matter how long and how often the lawyer-attorney talk to his client and how much time s/he spend at the law enforcement authority, since each case requires a specific approach and the interventions do not always have to be many and do not always have to be long. Moreover, as noted by the respondents, the more experienced a lawyer-attorney is, the less time s/he needs for a case. "It is a common mistake to believe that if a lawyer-attorney came to visit the detainee 20 times s/he worked well, and if s/he came 3 times s/he underperformed. It rather depends on the aim that is pursued and achieved. After all, we all know that a lawyer-attorney who works well can sit quietly in court but his client will be released in the end."

FLA lawyers-attorneys also believe that the amount of contributed time should not serve as the criterion of their performance evaluation because it leads to a paradoxical situation: "The sooner the lawyer-attorney settles the case, the better s/he works, but thus s/he works fewer hours and therefore receives less money. So, it turns out that s/he is interested in protractions …".

The managers of the FSLACs make a point that sometimes the work hours reported by lawyers-attorneys may signal or prove their insufficient activity or lack of commitment to consider alternative strategies.

Lawyers-attorneys (not from the FLA system) mentioned some other criteria that are rather related to the general competency requirements for a defender (than the assessment of performance in an individual case) – the ability to communicate, proficiency in law, respect for the client, punctuality, erudition and so on. The quoted indicators of effective performance also included absence/presence of complaints (for more information see below).

The draft of the *Quality Standards* was developed by a working group headed by the lawyers-attorney Oleksandra Yanovska, PhD, professor with the division of Justice of Taras Shevchenko Kyiv National University. The working group included representatives of lawyers-attorneys' self-government bodies, academics and FSLA lawyers-attorneys. The draft was initially approved by the decision of the Bar Council of Ukraine of December 17, 2013, No. 267, and made public on December 26, 2013.

The Order of the Ministry of Justice of Ukraine of February 25, 2014, № 386/5, approved *the Standards of quality of the provision of free secondary legal aid in criminal proceedings*, which will become effective as of July 1, 2014. The standards represent a set of basic characteristics of the performance of the defender, who "is independent in choosing the strategy and tactics of defense in criminal proceedings for the purpose of active and reasonable protection of the rights, freedoms and legitimate interests of the client by all means not prohibited by law." They are mandatory for lawyers-attorneys of the legal aid system, which does not exclude the possibility of their voluntary application by other lawyers-attorneys. It is expected that the quality standards will allow to compare how well different professionals perform and, inter alia, to identify and get rid of the so-called "pocket" lawyers-attorneys who work not in the interests of a client but in the interests of an investigator.

The Quality Standards of the provision of FSLA in criminal proceedings include not only a list of standards but also the main sources of law on which the relevant standards are based (references to Article 6 of ECHR, articles from CPC and of the Law "On Free Legal Aid") as well as the key sources of information for verification of compliance with the standard (for example, the records of the first meeting with the client, requests, data from registers of visitors of police authorities, temporary detention facilities, pre-trail custody and penitentiary institutions, complaints, other procedural documents). This document is primarily a reference material, especially for young lawyers-attorneys, which will prove useful for development of defense strategies.

The Standards include:
1. the general standards of FSLA provision in criminal proceedings;
2. the standards of FSLA provision at the pre-trial investigation stage;
3. the standards of FSLA provision during court proceedings;
4. the standards of FSLA provision during specific / individual procedural actions.

For example, with regard to p. 4 above the Standard provides that in the event of appointment of a defender for a specific procedural action he/ she is to ascertain if the earlier involved defender/ defenders was/ were really notified of the conduct of such procedural action, in advance and in a proper manner, and whether the procedural action is really urgent. In the event of identified incompliance with these requirements the lawyer-attorney should make a motion to the investigator, prosecutor, investigative judge or court on postponement of the action on the grounds of any circumstances for its urgency, and in the event of compliance with the said requirements or of a refusal to the said request the lawyer-attorney should coordinate his/ her legal position with the earlier involved defender/ defenders.

The Standards have the following attachments:
- sample minutes of the first meeting with the client;
- sample minutes to register Client's complaint of torture and other cruel, inhuman or degrading treatment;
- a tentative list of the materials for a lawyer-attorney's file in criminal proceedings.

In the words of the Director of CCLAP, "the legal aid quality standards do not in any way clash with or overlap the Rules of lawyers-attorneys' ethics as they are not the standards of the profession – they are, rather, something like a set of specifications of a certain purchased product, or a description of what the state buys from lawyers-attorneys as providers of legal aid". "Therefore, if the services of different quality are paid equally, this will amount not only to inefficient spending of the taxpayers' money but will also be unfair to hard-working lawyers-attorneys".[24] Therefore, the standards are expected to affect the level of remuneration, although this will require the development of appropriate recommendations on establishment of certain coefficients that may be taken into account for increasing the remuneration of legal aid lawyers-attorneys.

According to p. 4 of the *Standards*, assessment of the quality of FSLA provision in criminal proceedings will be conducted in accordance with this Standards by commissions formed for this purpose by the regional Bar Councils, on requests of FSLACs submitted under the established procedure. Monitoring of the quality of provision of FSLA in criminal proceedings will be conducted, in accordance with the Standards, by the CCLAP, under the established procedure.

Waivers of defense

Another factor that may indicate the quality of provided legal aid is the rate of waivers of defense/refusal to get services of FSLA lawyers-attorneys. A key FSLA system innovation is that a client can waive a lawyer-attorney only in his/her presence. This is an extremely important condition, absence of which was often used by law enforcement officials in order to get rid of defenders in the proceedings.

In 2013 detained criminal suspects refused to get legal aid in 1,552 instances (6.9 % of all cases).[25] The number of such waivers within one month ranged from 125 in the first month of the operation of legal aid system to 185 in April[26], while in the last three months of the year this number drastically fell to, respectively, 64, 60 and 33. Such a considerable decrease may signal any or all of the following: greater public awareness, greater trust in the lawyers-attorneys, perseverance on the part of the lawyers-attorneys and changes in the performance of the detaining authorities.

Interestingly, the surveyed police officers think that as of the beginning of the operation of the FLA system the number of legal aid waivers has not anyhow changed.

In 2013 the share of waivers by administrative detainees constituted 42.8% (10,551) of the total number of notifications. The relevant numbers ranged from 195 in the first month of the operation of the legal aid system to the maximum of 1,266 in April, with, again, a noticeable decrease in the last quarter of the year (917, 843 and 292, respectively).

24. http://legalaid.gov.ua/ua/holovna/veresen-2013/sohodni-derzhava-investuie-v-obydvi-storony-protsesu-a-ne-tilky-v-storonu-derzhobvynuvachennia-andrii-vyshnevskyi.

25. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf.

26. http://www.coe.kiev.ua/news/2013/11/doc13/bpd.pdf.

The number of defendant' refusals to get a FSLA lawyer-attorney

Instances of detention:	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
On suspicion of a crime	125	178	177	185	148	132	154	138	158	64	60	33	1,552
In % of the quantity of issued assignments	*7,16*	*8,80*	*8,39*	*8 86*	*8,11*	*6,66*	*7,89*	*7,46*	*8,47*	*3,34*	*3,65*	2,45	6,95
Administrative	195	543	1,162	1,266	930	1,158	1,094	1,107	1,044	917	843	292	10,551
% of the registered notifications about detentions from authorized bodies	*12,7*	*22,8*	*47,5*	*50,7*	*47*	*50,3*	*44,2*	*47,6*	*54,9*	*47,3*	*44,9*	*29*	*42,8*

During the survey of people in 5 oblasts (2013) some of the respondents (2.9 %)[27]dealt during that year with the police, and a quite a number (48.5 %) of them said that being in police they refused to get a lawyers-attorneys and did so without lawyers-attorneys' presence. Only 3% said that they had waived the lawyers-attorneys' services on his/her arrival. A significant number of the respondents (31.8%) chose to defend themselves, and 12.1% called lawyers-attorneys of own choice. Overall, only 3% of the respondents of this category said that they had used the services of the lawyers-attorneys from FSLACs.[28]

Lawyers-attorneys not engaged in FSLA system allege that the society has not yet have the needed level of confidence in FLA lawyers-attorneys; people are cautious about any lawyer-attorney invited by the investigator and often immediately waive his services, certain that a lawyer-attorney paid by the state and the investigator will always be in some agreement.

The surveyed FSLA lawyers-attorneys refer to the deep-rooted stereotype that a "free" lawyer-attorney is a bad lawyer-attorney. That is why people refuse provided by state lawyers-attorneys and hire other private lawyers-attorneys. At the same time there are already some evidence shared that those who earlier were the clients of FSLA lawyers-attorneys now opt only for their services.

As per the mentioned earlier survey of people more than one half (51.9%) of the respondents do not trust lawyers-attorneys who provide FLA (including 33% rather distrust them than trust and 18.9% do not trust them at all). Only a third (29.2%) rather trust them than not and 7.4 % of the respondents fully trust the lawyers-attorneys provided by the state, One out of nine is undecided (11.5%). The level of trust for FSLA lawyers-attorneys varies by region.

The survey results show that the level of trust for FLA lawyers-attorneys directly depends on the awareness of how the legal aid system operate. For example, among those who know what legal aid is and when it can be obtained, 49.4% trust legal aid lawyers-attorneys (13.7% – "fully" and 35.7% – "rather than not"), while among those who "heard something about it but have no idea when one can get it" the level of trust is 38.3% (6.4% trust fully and 31.9% "rather trust than not"). Among the respondents who did not hear

27. 37.2 % of them stated they were in need of receiving free legal aid.

28. It is noteworthy that practically a half of them (47.3 %) were never informed about their rights; to less than one third (31.1 %) the rights were explained verbally and 14.9 % were given a letter of rights and the time to look it through.

anything at all about the possibility to obtain FLA the level of trust for the FSLA system is the lowest – 33% (6.5% fully trust and 26.5% rather trust than distrust it).

FSLA lawyers-attorneys named several reasons for which detainees usually refuse to get legal aid:

- the detained person believes that the lawyer-attorney granted by the state first and foremost cares about the interests of the state. This opinion is now and again shored up by some unscrupulous lawyers-attorneys who conspire with police officers and also deliberately formed by some investigators who say to the detainees that there is a private lawyer-attorney available, as well as "lawyer-attorney from the state";
- lack of any legal knowledge on the part of detainees; they do not understand the importance of legal aid at the police, are indifferent to their fate or just happen to be irresponsible persons;
- personal negative experience with lawyers-attorneys advised by the police, the so-called "pocket" lawyers-attorneys;
- pressure from the police, who use a whole arsenal of methods, from promises and persuasion to direct threats, to get a suspect waive his right to legal aid;
- some people are not interested in receiving legal aid, for this or that reason, - e.g. those who confess their guilt and want to get a sentence as soon as possible, or those sure of getting no more than a conditional prison term;
- repeat offenders with multiple past convictions refuse to get FSLA; such persons are well aware of their rights and of the procedures and do not have any misgivings or illusions. Moreover, persons with a criminal past often have their own lawyers-attorneys;
- possibility to afford hiring of a private lawyer-attorney.

Similar views were expressed by other respondents as well, but at the same time they offered different considerations.

Thus, according to the interviewed investigators and duty police staff the reasons for legal aid waiving are the following:

- engagement of a hired private lawyer-attorney of own choice ("the detainee waive legal aid when they have enough money or an own trusted attorney");
- confession of guilt (mostly by "those who know they will not need a lawyer-attorney at any stage because they admit their guilt", "when a person knows he is in for a sentence and that no lawyer-attorney would help, whether he is there or not does not matter at all");
- the detained person wants to receive a sentence as soon as possible (usually "those people who really want to go to an institution – from habit, or because they have nowhere to live through winter. They commit crimes in order to get a "home" in prison. And if they are not convicted they go and offend again and get what they're after").

The interviewed prosecutors also emphasized similar reasons for waivers of a defender:

- the possibility to hire and pay to a lawyer-attorney and to select a lawyer-attorney of own choice according to his/her specialization;
- recognition of own guilt ("detainees waive lawyers-attorneys when they understand their guilt of the offense, raise no objections to the circumstances of the offense and motion for a plea agreement. Refusal also come from those who committed crimes of medium gravity or grave crimes and cooperate with the investigation");
- distrust of lawyers-attorneys in general, when some people "think they will be able to protect their rights on their own" or wish to conduct their own defense.

The interviewed judges also quoted several reasons for waivers, although their opinion were not always related only to the FLA system. According to the judges, legal aid is waived by wealthy citizens, those with a certain social status, or "those who know what they did but to delay the process they often refute defenders and often change them "and" those who have lost all faith in life". Another reason is alleged lack of attention to clients on the part of lawyers-attorneys ("In my view the very first reason is that defenders appointed to suspects or criminal defendants do not give enough attention to them, devote small time to the case and have no interest in a positive outcome; that is why detained/suspects refuse legal aid"). The judges have remarked that there are cases when a citizen refuses the services of a particular lawyer-attorney but not legal aid in general. The judges relate such situations to possible prejudices of the lawyer-attorney or a potential client's impression that such lawyer-attorney has some own agenda, which alert the client and does not prop up his trust. In addition, the interviewed judges do not exclude that some legal aid waivers are explained by the emotional and psychological state of the suspect or that criminal defendants themselves may want the proceedings to drag on and for this reason refuse and replace their defenders. In addition, many judges point out that in the recent years the number of refusals of legal aid has increased, mostly for the reason of lack of trust in the young FSLA lawyers-attorneys. However, available statistical data does not prove this, which is rather suggestive of the judges' perceptions that might affect the judicial practice.

It should be noted that waivers of legal aid do not directly point at the quality of FLA lawyers-attorneys' performance. This prompts the importance of a breakdown of waivers by various stages of criminal defense – because, as the survey participants observed, "an immediate waiver of defender may mean full distrust of FLA as a whole, but if a person refuses legal services at a later stage it is a red flag for raising the requirements to lawyers-attorneys providing state-granted aid". It is crucial to collect data on so-called primary (immediately after the first conversation) and secondary (in the process of work) refuses to get a FSLA lawyer-attorney – this will allow a better understanding of the causes and factors that affect FLA waiver.

* * *

Thus, proper application of different quality assessment methods provides information for further analysis, influences the development of the system and the progress of the involved lawyers-attorneys, facilitates networking and establishment of best practices of criminal defense and enables to obtain a picture of external impressions of the level of defense granted to citizens at taxpayers' expense. The combination of all these factors certainly affects both the level of trust in the system and its effectiveness.

RECOMMENDATIONS

1. CCLAP should develop, with participation of all stakeholders, a program of implementation of the Quality Standards, including dissemination of information on such standards among stakeholders and training of lawyers-attorneys taking into consideration perceptions and attitudes revealed in the survey, and define, in accordance with the standards, the procedure and methodology of monitoring. Engage stakeholders to its development
2. CCLAP should launch internal mechanisms for ongoing monitoring of contracted lawyers-attorneys' compliance with the quality standards and explain the advantages of peer review as an effective mechanism of learning based on sharing experience.
3. CCLAP should create a mechanism for obtaining feedback from the clients of the FSLA system.
4. CCLAP should take measures to study the reasons for waivers of FSLA lawyers-attorneys; it is crucial to register and collect data on the so-called primary (immediately after the first conversation) and secondary (in the process of work) refuse to get a defender – this will allow a better understanding of the causes and factors that affect FSLA waiver.
5. CCLAP should develop some mechanisms for monitoring of the level of active performance of FSLA lawyers-attorneys and create a system of motivating coefficients, and, specifically:
   - introduce the practice of filling in of the lawyers-attorneys' files and set the requirements with regard to its maintenance;
   - conduct periodic analysis of the quality of legal aid and, on its basis, to decide on further contractual relations with each lawyer-attorney; to conduct awareness and information campaigns on the quality standards among all participants of the FSLA and to pilot the mechanisms of application of such standards for assessment purposes;
   - review the system of remuneration of FSLA lawyers-attorneys in order to make them more active in upholding the rights of detainees.
6. To integrate the topic of ensuring proper conditions for defense into awareness and training activities for law enforcement agencies and judges.

2.2. FSLA LAWYER-ATTORNEY: SELECTION, ENGAGEMENT AND PROFESSIONAL DEVELOPMENT

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide that the States should put in place mechanisms to ensure that all legal aid providers possess education, training, knowledge of ethical rules, skills and experience that are commensurate with the nature of their work. Global experience shows that control over the quality of legal services may be vested by the national government with the Ministry of Justice, government agencies (commissions, bureaus, centers) that administer the legal aid system, professional associations of lawyers-attorneys or civil society institutions.

By September 30, 2013 free legal aid centers (established in the Autonomous Republic of Crimea, all regions, Kyiv and Sevastopol) signed 1,989 contracts and 217 agreements with lawyers-attorneys on provision of legal aid services on a regular or, respectively, temporary basis.[29]

Under Article 15 of the Law "*On Free Legal Aid*" such aid is provided by lawyers-attorneys included into the Register of lawyers-attorneys, on a regular basis under relevant contracts and on ad hoc basis in accordance with relevant contract-agreements.

Lawyers-attorneys are selected on competitive basis (according to *the Procedure and Conditions of the competitions for selection of lawyers-attorneys for provision of free secondary legal aid)*. Eligible candidates are to meet the following requirements: availability of the certificate of the right to act as a lawyer-attorney; knowledge of laws and legislation in the sphere of human rights; knowledge of procedural and substantive law; knowledge of and compliance with the rules of professional ethics; ability to draft procedural motions, complaints and other legal documents; ability to work with legal databases; command of the state language (knowledge of English and/ or of the languages of national minorities in the respective administrative-territorial units where they represent a significant portion of the population is an advantage); experience(an advantage).

Each applicant is assessed by the Selection Commission as per the following criteria: professional experience as a lawyer-attorney; specialization; presence or absence of petitions (complaints) about professional behavior and any disciplinary sanctions imposed over the last three years; results of test knowledge (the level of completeness), motivations to provide FLA; communication/ interpersonal skills; emotional stability; presentation skills[30].

Only the applicants thus selected and with a scoring no less than the minimum, set during the competition, will be included into the register and later in will sign contracts or contract-agreements to provide legal aid. The minimum final score sufficient for inclusion into the register is gradually increasing. For example, if at the second competition held in November

29. Four competitions conducted by MJ in 2012 – 2013 selected a total of 3,619 lawyers-attorneys for free secondary legal aid services (see http://legalaid.gov.ua/ua/holovna/lystopad-2013/603-advokaty-uspishno-proishly-chetvertyi-konkurs-z-vidboru-advokativ-iaki-nadaiut-bvpd)

30. Candidates are suppose to have an ability to present previous examples of FLA provision and it should be accompanied with the relevant copies of court decisions and recommendations,

2012 the minimum score for the applicant was 3 points, at the third and fourth competitions it was 3.5 and 3.6 points[31] respectively.

The criteria for the fourth competition held to involve lawyers-attorneys for representation in civil and administrative proceedings were reviewed, and at present the system may involve lawyers-attorneys without earlier experience on condition that they show high results under all other criteria, including anonymous testing[32].

The lawyers-attorneys, not engaged in FSLA provision, believe that the main factor for selection of lawyers-attorneys is the professionalism of lawyers-attorneys determined by the Commission after testing and interviews, but some respondents have indicated that experience is not a decisive criterion, as the system has a lot of young professionals. Some lawyers-attorneys mentioned other criteria, such as - the importance of evaluating each candidate in terms of moral and psychological readiness to work with different categories of clients, ability to respond to legal aid requests at any time, knowing how to work with numbers and write reports, etc. Some attorneys emphasized only the importance of the candidate's reputation — and not just his/her standing among clients who might recommend this lawyer-attorney to other people but also the repute with the law enforcement officials and whether they view the lawyer-attorney as a true professional.

Among the reasons (motives) for work with FSLACs the lawyers-attorneys most often refer to the opportunities to develop professionally, to gain experience in criminal cases, to consult with peers and to create a clients' base (for those without it). There is a significant proportion of lawyers-attorneys who used to provide free services in the past via charity centers or provided legal assistance for free; now they are glad that their work is somehow paid for. Although financial considerations were never mentioned as a motivation for work with FSLACs it seems that the financial aspect of FLA often causes dissatisfaction on the part of lawyers-attorneys, because of the low level and delays in compensation.

* * *

The Law of Ukraine "*On Free Legal Aid*" in Article 21 provides that assignment of lawyers-attorneys for FSLA legal aid on regular basis under a contract is done in view of their specialization, experience, workload and complexity of cases in which they participate.

However, in real practice these circumstances are not always taken into consideration when a lawyer-attorney is assigned to a particular case (e.g., of a felony committed by an organized group or criminal organization, or an offense of a very specific nature). This is currently impossible because of the insufficient number of FSLA lawyers-attorneys and their lack of proper specialization by the nature and gravity of crimes. At the same time some FSLACs take into account, for example, that there are lawyers-attorneys who work with certain categories of people. Therefore, distribution of cases by complexity or their particular features does not occur.

FLA lawyers-attorneys provide legal services around the clock. The intensity of work is growing, also because of the gradual establishment of good communication between all

31. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf.

32. http://legalaid.gov.ua/ua/holovna/veresen-2013/sohodni-derzhava-investuie-v-obydvi-storony-protsesu-a-ne-tilky-v-storonu-derzhobvynuvachennia-andrii-vyshnevskyi.

participants of the criminal and administrative processes.[33] According to some lawyers-attorneys there are problems with caseloads – "four cases a month is the best option" but occasionally this number is bigger.

It is presently obvious that the caseload of lawyers-attorneys varies. In 2013 the total number of lawyers-attorneys' mission to meet with those detained on suspicion of crime was 22,360, while the number of duty lawyers-attorneys' refusals to go for a mission amounted to 1,869, or 8.4%. In the same year the total number of assignments/ missions to provide FSLA in administrative detention was 9,949, and the number of duty lawyers-attorneys' refusals to meet with such clients – 1,146, i.e. 11.5%.[34]

Lawyers-attorneys on duty refused to go for a mission to provide FSLA to detainees on suspicion of crime in 1,869 cases. The breakdown of such occurrences by month shows wide variance: it started with 99 refusal in January; having a maximum in March (685 refusal) to 72 – in September; while in the last quarter of the year this indicator dropped to, respectively, 36, 37 and 29.

The total number of duty lawyers-attorneys' refusals to respond to administrative detention cases amounted to 1,146, with the minimum of 39 in August and the maximum of 258 in February.

The number of duty lawyers-attorneys' refusals to respond

Instances of detention:	Jan	Feb	March	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
On suspicion of a crime	99	204	**685**	246	127	91	131	72	112	36	37	29	1,869
% of the number of assignments	*5,67*	*10,1*	*32,5*	*11,8*	*6,96*	*4,59*	*6,7*	*3,89*	*6*	*1,88*	*2,25*	*2,15*	8,36
Administrative	51	**258**	200	183	44	52	114	39	46	72	42	45	1,146
% of the number of assignments	*6*	*27*	*21*	*21,6*	*5,80*	*6,18*	*11,2*	*4,02*	*6,78*	*8,59*	*5,48*	*8,41*	*11,5*

Reasons for refusal vary. Despite the fact that every month FSLACs make duty schedules in view of the lawyers-attorneys' preferences such schedules do not work for a number of reasons. According to the FSLACs staff, there are objective reasons, like vacations, sick leaves, etc., or all kinds of contingencies, but sometimes the lawyer-attorney "can't be reached" or "won't answer the phone call" and/ or just say "I don't fell up to it". The problem is deepened by the absence of any liability of a lawyer-attorney for absenteeism on the day of duty, not answering calls or refusing to go for an assignment. Some lawyers-attorneys do not want to travel at night or to cover several dozens kilometers by bus or train, as travel by car is not reimbursed and the schedules of public transport in the suburbs may

33. http://legalaid.gov.ua/ua/operatyvna-info/formuvannia-systemy.

34. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf. Refusal of a lowyer- attorney to go for a mission to provide FSLA automatically reauire FSLACs to find and assign another lawyer-attorney to provide FSLA.

be not very convenient and preclude arrival as required, in the morning or in the evening. Some directors of FSLACs say they do not intend to extend contracts with 10 % (in most regions) to 50% of their lawyers-attorneys for another year. This is also confirmed by V. Vyshnevsky, CCLAP Director: "I reckon new contracts as of January 1, 2014 will not be signed with at least a half of the lawyers-attorneys who we work with now. The pool of those who do active defense is formed, we know them all and will continue our cooperation and give them more opportunities to make some money, to gain experience, to foster a reputation and to get more clients".[35]

At the same time each FSLA center has its own team of active lawyers-attorneys "very much committed to the calling of advocacy". This was emphasized by the surveyed directors and duty officers of FSLACs, who also observed that most of the lawyers-attorneys work with much dedication, many are keen to travel wherever needed, including very remote areas, "always on the run, be it night or snowfall" and "queuing up to get their cases".

According to the CCLAP Director V. Vyshnevsky, "the young lawyers-attorneys are the vanguard and the driving force of the system. Many of them have but a year or only some months of experience but they are more motivated, they are newly taught and, putting it frankly, better know the new CPC and the *Convention for the protection of human rights and fundamental freedoms*. They are those who use the Convention as a source of law, unlike older lawyers-attorneys. Moreover, they are willing to jump up and cover 50 or even 100 km at night to meet with the detainee. Why so? The answer is clear — for them the legal aid system is a good and quick chance to amass experience and earn a good reputation."[36]

Lawyers-attorneys' training and exchange of experience

Establishment of a mechanism of continuous training and, specifically, of professional development and improvement of the lawyers-attorneys and staff of FSLACs constitutes one of the objectives of *the State Targeted Program for establishment of the FLA system for 2013 — 2017*, approved by the Regulation of the Cabinet of Ministers of Ukraine on February 13, 2013 (No. 394).

This Program, inter alia, envisages the following:

- the Ministry of Justice will participate in the training and advanced training in the specialties of "Law" and "Law enforcement" at educational institutions, in particular by providing recommendations as to curricula and learning modules for universities that train professionals in the said specialties, by improving the qualifications of and conducting trainings for legal aid lawyers-attorneys and FSLACs staff. Training on management are supposed to be arranged for all FSLACs` directors in 2013 — 2017;
- development of recommendations for studying the principles of the operation of the FLA system and their inclusion into curricula and learning modules for universities

35. http://legalaid.gov.ua/ua/holovna/veresen-2013/sohodni-derzhava-investuie-v-obydvi-storony-protsesu-a-ne-tilky-v-storonu-derzhobvynuvachennia-andrii-vyshnevskyi.

36. http://legalaid.gov.ua/ua/holovna/veresen-2013/sohodni-derzhava-investuie-v-obydvi-storony-protsesu-a-ne-tilky-v-storonu-derzhobvynuvachennia-andrii-vyshnevskyi

that train specialists in the "Law" and "Law enforcement" specialties, which will ensure quality training of personnel for the system and will strengthen it in the long term perspective;

- topical seminars for lawyers-attorneys who provide FSLA, which will enable methodological and consultative assistance for improvement of the implementation of the procedures established in the Law and the *Criminal Procedure Code of Ukraine* as regards the system of FLA and be conducive to identification of the challenges to FLA development and elaboration of relevant solutions.

In the *Memorandum of Cooperation between the National Bar Association of Ukraine and the Ministry of Justice of Ukraine in the sphere of legal aid* (of November 19, 2013) the Parties agreed on the following (2.6, on advanced training of lawyers-attorneys):

1. that the lawyers-attorneys and other professionals proposed by the Coordination Center have the preferential right of access to organization and/or conduct of advanced trainings for lawyers-attorneys, for the purposes of improvement of qualifications (certification), when the relevant matter is considered by the Expert Council with the National Bar Association of Ukraine;
2. that one of the ways of qualification upgrade of lawyers-attorneys is their participation in conferences, seminars, round table discussions, workshops and other events organized or conducted by the CCLAP or other centers that are recognized under this memorandum as legal entities authorized to organize and/or conduct advanced training activities for lawyers-attorneys (certified by the Expert Council of the Ukrainian National Bar Association);
3. to entitle each other with the right to use (publish at own cost and distribute, free of any charge) the methodological recommendations/ guidelines and other materials for lawyers-attorneys separately developed and/or published by one of the parties, with obligatory display of the logo and name of the other party and protection of the copyright of third parties;
4. to contribute to the joint organization of learning events within qualification upgrade by members of the UNBA and relative centers.

The Memorandum also provides that the parties will jointly organize learning and sharing experience events and pilot legal aid quality assessment activities for members of the respective commissions.

As of the very introduction of the free legal aid system CCLAP has been giving due attention to training and professional development of the FSLA lawyers-attorneys. Since no relevant funding was allocated from the state budget, most of such activities were carried out with the support of donor organizations.

At present the FSLA lawyers-attorneys regularly attend various MJ/CCLAP` training events, seminars and workshops supported by various donors and held in cooperation with non-governmental organizations (ULAF, IRF, CoE, ABA and EU).

Trainings for lawyers-attorneys occur in a variety of formats. Initially such trainings were held on ad hoc basis in selected oblasts (for example, there was a training on the application

of new CPC in the light of the case law of the European Court of Human Rights[37]). Later there came the understanding of the need of a comprehensive approach that would allow to embrace all FSLA lawyers-attorneys and promote wide-ranging sharing experience. This gave a start to a network of FSLA lawyers-attorneys – trainers (about 60 persons, including 26 women) who attended in 2013 a 58-hour ToT program[38] in Kyiv and later held further "cascade trainings" throughout Ukraine. For instance, 73 cascade trainings (in September – October 2013) on defense in instances of detention on suspicion of a crime and on defenders' actions regarding selection, extension, annulment or review of the measure of restraint, were held nearly in all regions (and sometimes two or three times in one region)[39] and assembled 1,685 attendants out of 1,989 legal aid providers; 1,160 of those who provide legal services on regular basis received relevant certificates.[40]

According to CCLAP data, there were evaluation questionnaires used during the cascade trainings to get the feedback from the participants. Such feedback showed that most of the lawyers-attorneys were satisfied with the level of the trainings, quality of training materials and highly evaluated the performance of attorneys-trainers and would appreciate such trainings on a more frequent basis – once in one or two months on average.[41]

The schedule and the materials of the trainings are posted on the CCLAP WEB site.[42] The cascade trainings are conducted on ongoing basis and will be held further on to ensure learning and development of lawyers-attorneys and sharing experience.[43]

It should also be noted that these trainings allowed to discuss guidelines for lawyers-attorneys the number of which were initiated by CCLAP jointly with ULAF, with support from IRF. The lawyers-attorneys have been stressing the need for their continuous methodological support and for development and distribution of various information materials.

At local level FSLACs also organize ongoing local dialogue and sharing of experience among lawyers-attorneys. For example, in Kharkiv region several lawyers-attorneys who had undergone advanced training and ToT took the lead in making regular e-mailings to all their peers in the regional register, with the materials necessary, interesting or useful for legal aid,

37. 8 trainings held in April and May of 2013 jointly with ABA ROLI (Rule of Law Initiative) Project were attended by 270 lawyers-attorneys contracted by Kherson, Poltava, Sumy, Vinnytsya and Volyn FSLACs. The focus was on ECtHR case law as regards application of the fundamental principles of criminal proceedings, defense as a party to criminal proceedings, new rules of evidence law, securing of criminal proceedings, appeal against decisions, actions or inaction of investigator, prosecutor or investigative judge, and the particular features of specific detective (including covert) and judicial actions.

38. In May -2013 the Coordination Center on the basis of a questionnaires formed a group of lawyers-attorneys who as future trainers attended trainings on "The new CCP of Ukraine: Study and application through the prism of the European standards", "Methodologies of training: Planning and conduct of trainings on application of the new CCP", "Defense at the initial stages of pre-trial investigation: A discussion of the future guidebook for providers of free secondary legal aid" and "The psychology of interrogation" organized by the "Support of Criminal Justice in Ukraine" Project of the Council of Europe.

39. The materials of these cascade trainings and of the ToT "The new CCP of Ukraine: Study and application through the prism of the European standards" are posted on the CCLAP web-sitehttp://legalaid.gov.ua/ua/merezha-obminu-dosvidom/materialy-treninhiv.

40. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf; http://legalaid.gov.ua/ua/holovna/lystopad-2013/rezultatom-provedennia-kaskadnykh-treninhiv-stalo-pidvyshchennia-kvalifikatsii-maizhe-1200-advokativ-iaki-nadaiut-bvpd

41. http://legalaid.gov.ua/ua/merezha-obminu-dosvidom. http://legalaid.gov.ua/ua/holovna/lystopad-2013/rezultatom-provedennia-kaskadnykh-treninhiv-stalo-pidvyshchennia-kvalifikatsii-maizhe-1200-advokativ-iaki-nadaiut-bvpd

42. http://legalaid.gov.ua/ua/merezha-obminu-dosvidom/materialy-kaskadnykh-treninhiv-veresen-lystopad-2013-roku.

43. For instance, a training on "Defense in judicial proceedings" is scheduled for March – April 2014, and the trainings on "Defense in instances of detention on suspicion of a crime" and on "Defenders' actions regarding selection, extension, annulment or review of the measure of restraint" are expected in October – November of the same year – http://legalaid.gov.ua/ua/merezha-obminu-dosvidom/hrafik-provedennia-kaskadnykh-treninhiv.

ECtHR judgments, medical cases, references to procedural matters, and so on.

In addition, the FSLA directors (especially those who are lawyers-attorneys themselves) also organize training for "their" lawyers-attorneys and share their experience. Data from focus groups with FSLACs directors has shown that centers work with their lawyers-attorneys in different ways- some are more active, some – less. Some are keen to initiate joint activities and trainings for lawyers-attorneys, some limit themselves to individual consulting and communication with groups of lawyers-attorneys who daily appear at FSLAC, discuss the requirements for reporting and reply to lawyers-attorneys' questions. Anyhow, all FSLACs` directors communicate with their lawyers-attorneys and encourage them to consider different strategies. The majority of surveyed directors emphasized "we – the centers – serve as the linkage for lawyers-attorneys, there is no other way to get them together than by a joint training. It is also crucial that the lawyers-attorneys feel the support from the centers". At the same time FSLACs do not have enough resources to distribute printed materials or to provide their lawyers-attorneys with stationery, and not all centers have the premises and capacity to bring their lawyers-attorneys together.

According to the FSLA lawyers-attorneys, their knowledge and influence grow due to the trainings and sharing experience organized by CCLAP and due to their new experience obtained in the status of legal aid providers: "the system is in development, so we all learn and try to figure out the common model of defense" and "the lawyers-attorneys learn faster that other actors of the system". The lawyers-attorneys have emphasized the importance of the legal community of mutual professional support that enables joint discussion of issues, exchange of opinions, advices and cooperation.

Due to the FSLA system introduction the network of a new generation/ cohort of lawyers-attorneys was created – these lawyers-attorneys are keen to raise their qualifications, are interested in professional development. They are open to learning, share their knowledge and eagerly attend trainings and other activities. This network is developing both at the oblast level as well as national.

Practically oriented training and sharing of experience support professional development of young lawyers-attorneys, allowing them to feel more confident and act more effectively. Some lawyers-attorneys said that work in the FSLA system entails significant growth of competences even for quite experienced lawyers-attorneys as they have a chance to participate in various seminars and trainings where there have opportunities to share their experience, identify proper behaviors in certain situations involving detainees, their relatives and employees of law enforcement agencies.

RECOMMENDATIONS

On the basis of the discourse above we can suggest the following conclusions and recommendations:

1. Within the competition to continue gradual increase of the minimum final score of qualified candidates to be included into the register of legal aid providers.
2. As soon as the number of FSLA lawyers-attorneys becomes sufficient for introducing their specialization by the nature and gravity of criminal offenses, to consider such specialization in the assignment of lawyers-attorneys to specific cases and to strongly encourage the lawyers-attorneys to pursue such specialization.
3. To consider the possibility of an introduction at the FSLACs, of an "analytical system" that would allow to organize the work of lawyers-attorneys in a proper manner, to promote better coordination of lawyers-attorneys' engagement and their compliance with the duty schedules, in view of lawyers-attorneys' preferences, caseload, specialization, qualifications, vacations, sick leaves, availability at night, possible conflict of interests or the rules which would guarantee privacy /protection of confidentiality information, etc.
4. CCLAP jointly with the bodies of lawyers-attorneys' self-government and the Qualification and Disciplinary Commission of the Bar should ensure inevitability of disciplinary liability for ungrounded refusal to pursue defense or participate in a procedural action.
5. To provide opportunities for exploring the views of the clients on provision of legal aid and arrange the "single mailbox" at oblast level for collection of feedbacks and complaints for further analysis and development of measures to improve lawyers-attorneys' performance.
6. To continue the practice of training of trainers who are lawyers-attorneys for future cascade trainings for their peers, according to the needs identified. To promote joint meetings with judges, prosecutors and investigators, for discussion of issues with the exercise of the right to defense and search for possible solutions.
7. To consider employment in FSLACs' of lawyers-attorneys who, in the capacity of quality assurance managers, would monitor the quality of LA services provided and support training and development of FSLA lawyers-attorneys.

2.3. BARRIERS TO EFFECTIVE DEFENSE

Confidentiality of communication with a lawyer-attorney

> The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems state that legal aid providers should be able "to consult and meet with their clients freely and in full confidentiality".

According to the Criminal Procedure Code of Ukraine

- a suspect or accused is entitled to have a lawyer-attorney at first request and to meet with him/her prior to the first interrogation, in the conditions that ensure confidentiality of communication, and after the first examination – to have such meetings without any limitation of their number and duration (Article 42); such meetings can take place under visual supervision of an authorized official but under conditions that preclude the possibility of listening or eavesdropping (Article 46);
- both prior to a procedural action and after the defender has the right to meet with the suspect/accused for preparation to such action or for discussion of its outcomes (Article 53).

One of the key problems in the defense lawyers-attorneys' practice has been the impossibility of confidential communication with clients because of the lack of designated premises at police units.

Confidentiality concerns are usually resolved exclusively by some informal agreement between the lawyer-attorney and the investigator. Most often lawyers-attorneys have to walk out of the investigator's office and talk to the client in the hallway, where other people (including police officers) may be or pass by. Otherwise, the investigator leaves his office, together with his colleagues, if they agree. However, even in the rooms where lawyers-attorneys are allowed to privately meet with their clients, the issue of confidentiality remains open.

According to the interviewed persons that were detained their communication with the lawyer-attorney was not always in the proper conditions; private meetings with counsel occurred only in 62% of all cases, and in the other 38% of instances such meetings allegedly took place in the presence of other people.

So far there is only one example of ensuring the relevant conditions of confidentiality, which is in Kharkiv region, where due to the activity of FSLAC and its lawyers-attorneys the district police bodies have designated separate premises for lawyers-attorneys to meet with their clients. However, this is rather an exception from the general situation.

The surveyed investigators, in their turn, denied the absence of conditions for private communication or any limitation of the time of meetings of lawyer-attorney with client. This shows that investigators do not understand the notion of confidential/ private communication.

According to a survey of the Coordination Center (May 2013) 28,44% of the lawyers-attorneys confirmed that in their practice they had instances of violations of the right of the defense to a confidential meeting, including:

- failure to provide a separate room for a confidential meeting – 24.59%;
- presence of other individuals during supposedly confidential meetings with defenders (guards, detectives, investigators, etc.) – 24.04%;
- limitation of the time of a private meeting – 14.86%.[44]

Lack of confidentiality safeguards generates the risk of pressure on detainees and makes it impossible to monitor the real reasons of refusal to get FSLA lawyer-attorney services (waiver the right to FLA).

Continuity of defense

Article 24 of *the Law "On Free Legal Aid"* specifies the grounds and procedure of replacement of FLA provider. Under this Article a lawyer-attorney who provides legal aid may be replaced in cases of:

- lawyer-attorney's illness;
- improper performance of contractual obligations;
- failure to comply with the procedures for provision of free secondary legal aid;
- exclusion of a FSLA lawyer-attorney from the Registry of lawyers-attorneys who provide FSLA on a regular basis according to a contract or from the Registry of lawyers-attorneys who provide FSLA on ad hoc basis according to a contract-agreement.

The same Article envisages that replacement of a lawyer-attorney the continuity of FLA is to be ensured and the new lawyer-attorney is to take actions to address the deficiencies in the provision of FSLA that existed prior to his/her appointment.

With regard to the duration of defense Article 23 of the Law establishes the grounds and procedure for termination of legal aid, on a relevant decision of the FLAC, if:

1. the circumstances or reasons based upon which the person was included into a category of individuals referred to in Article 14, part one, of this Law cease to exist;
2. it is established that the person was found eligible for, and was receiving FSLA on the basis of untrue information or submitted forged documents;
3. the person uses the services of another defender (other defenders) in the case for which such person was assigned a defender in accordance with the FLA Law, and
4. the person has used all available domestic remedies in the case.

Thus, one can conclude that defense of person by a FSLA lawyer-attorney is to last until the emergence of one of the circumstances listed above.

The procedure of involvement of the defender in a single (separate) procedural action is established in *CPC*, article 53. This article envisages that the investigator, prosecutor, investigative judge or court involves a defender into a single (separate) procedural action exclusively in urgent cases and only if the following conditions are met: a) there is a need for an urgent procedural action with participation of the defender; b) the defender who was notified in advance can not appear or ensure the participation of another defender. A defender is also engaged in a single (separate) procedural action if a suspect/ accused

44. http://legalaid.gov.ua/images/Actual/Results_research.pdf.

wishes, but has yet failed to engage a defender, or if the chosen defender can not arrive.

A suspect/accused also has the right to invite by his/her own defender to participate in a single (separate) procedural action.

If there is no need for urgent procedural actions with participation of a defender and if the arrival of the defender chosen by the suspect/accused is impossible within 24 hours the investigator, prosecutor, investigative judge or court has the right to propose to the suspect/accused to engage another defender.

Defense of a client during a single (separate) procedural action does not obligate the lawyer-attorney to defend the same client throughout or at any specific stage of the criminal proceedings.

Continuity of defense per se is a mandatory condition, except those instances under the CPC when a person refuse to have a defender and such waiver is admissible. For this reason FSLACs have to uphold the principle of continuity of defense in their work.

The survey of the FSLA lawyers-attorneys and FSLACs` staff has shown that many centers give due attention to the continuity of defense. Lawyers-attorneys emphasize that such attention on the part of the centers is a signal of overall greater effectiveness of the protection of clients' rights. The centers became particularly attentive to continuity of defense issues when they noticed the attempts of some law enforcement authorities to use replacement of lawyers-attorneys to their own advantage. There have been cases when investigators who want to get rid of particular lawyers-attorneys learn from them when they would be busy and plan urgent procedural actions for those very dates. This is done in order to weaken the defense or to get a lawyer-attorney replaced by another one who is not familiar with the case of the client.

At the same time, the police officers who took part in the survey emphasized the importance of continuity of each suspect's defense by the same defender from the very beginning to the very end, they said that this was the usual occurrence and alleged that defenders were replaced only when refuted by defendants.

The law enforcement officials also claim that if a suspect is not willing to use the services of his first defender they request the FSLA center to appoint a different (new) provider.

However, what happens in practice is that the FSLACs receives a standard document for assignment of a lawyer-attorney, where there no "history" mentioned (any information about previous defenders or waiver). The FSLACs' personnel have noted that when they get requests for engagement of a lawyer-attorney in single (separate) procedural actions they always check who was involved in the case before, who participated when the person was and try to assign the same lawyer-attorney.

The judges, in their turn, emphasize that defense should be provided continuously, as a flaw in the defense of a case may create a situation where the suspect/ detainee admits his guilt under the pressure of the investigation or prosecution. In addition, according to the judges continuity of defense is psychologically important for the client. Judges believe that real continuity of defense should serve as a safeguard of the right to defense. However, in reality there are instances when after the contact with a FSLA lawyer-attorney during preliminary investigation the client gets a privately hired lawyer-attorney for the trial stage and hopes for

better defense performance on his part. On the one hand, such replacement means that the new lawyer-attorney will have to study the case and get into its nuances, which will inevitably extend the proceedings; on the other hand, the new lawyer-attorney has a chance to draw attention to those details of the case which his/her predecessor failed to address and use for the client's defense.

Some judges think that the principle of continuity is not observed because at present FLA lawyers-attorneys receive two separate assignments – for the pre-trial investigation stage and for the stage of judicial investigation, while in the past the same lawyer-attorney could serve as a defender, representative of the defendant at both stages. As a result of the current procedure it frequently happens that one lawyer-attorney works during pre-trial investigation and a different one during judicial investigation, which is detrimental to the defender's good knowledge of the circumstances in criminal case.

The interviewed prosecutors stated that continuity of defense is important for timely conduct of investigative actions and consideration of the case in the court. They refer to the need of a same defender to be involved in the case throughout the proceedings, because any replacement of a lawyers-attorneys would require "a newcomer" to spend more time for familiarization with the case file. This may lead to loss of time, loss of some evidence and even omission of certain facts. Prosecutors think that the new system of FLA has had a positive impact on the continuity of defense because legal aid providers usually do defense from the very start and to the end of the case.

* * *

Independence of defense

In *the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* independence of lawyers-attorneys is guaranteed by non-interference of the state with their activities.

The States should consider the provision of legal aid as their duty and responsibility should not interfere with the independence of legal aid provider (15)

The State should not interfere with the organization of the defense of the beneficiary of legal aid or with the independence of his or her legal aid provider. (Principle 2 (16).

Principle 12 of this document safeguards independence and protection of legal aid providers. States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

The Law "On the Bar and lawyers-attorney's activities" states that:

- Activities of lawyer-attorney means "independent professional activities of a lawyer-attorney in the domain of provision of legal defense, representation and other types of legal aid to a client" (Article 1) and it shall be based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflict of interest" (Article 4);
- the bar of Ukraine shall be independent of the governmental bodies, bodies of local self-government, their officials and officers (Article 5);
- one of the objectives of bar' self-government is "ensuring the lawyers-attorneys' independence, protection against interference with the practice of law" (Article 44).

The Criminal Code of Ukraine establishes liability for such actions with regard to lawyers-attorneys:

- creation of any of obstacles to the lawful activities of the defender for provision of legal aid, or violation of the safeguards of professional activity and privilege as laid down in the law (Article 397);
- threat of murder, violence, destruction or damage to property with regard to a defender or close relatives thereof in connection with activities related to provision of legal aid (Article 398);
- intentional destruction or damage of property belonging to a defender or close relatives thereof in connection with activities related to provision of legal aid (Article 398);
- murder or attempted murder of a defender or close relatives thereof in connection with activities related to provision of legal aid (Article 400).

FLA lawyers-attorneys report practically no interference or obstruction on the part of prosecutors or courts. Most judges do not put barriers to involvement of a defender. However, sometimes they observe some corporate bonds in the "police – prosecutor – court triangle" and discern the interest of the law enforcement in conviction. There were cases where the judge initiated a conflict with the lawyer-attorney if s/he felt s/he would not be able to convict a person because of the diligent performance of the defense.

In the opinion of the surveyed lawyers-attorneys and FSLACs` staff the independence of lawyers-attorneys is first and foremost ensured by the new mechanism of assignment of defenders by new independent institutions (FSLACs) and the detaining authorities now have no chance to call their so-called "pocket lawyers-attorneys".

RECOMMENDATIONS

1. In order to ensure confidentiality of detainees' communication with lawyers-attorneys the Ministry of Internal Affairs of Ukraine (MIA), the Security Service of Ukraine and the CCLAP should issue a joint order on mandatory designation of special premises at the district subdivisions of the said agencies for confidential meetings of lawyers-attorneys with clients.
2. To amend subparagraph 3.1.9 *of Internal procedures for pre-trail custody*, approved by the Order of MIA No. 638 on December 2, by establishing that a confidential meeting with a lawyer-attorney constitutes an emergency allowing for interruption of the nighttime sleep.
3. CCLAP should take measures to inform the citizens about the benefits of continued use of the services of one lawyer-attorney throughout the duration of legal aid; FSLACs should further monitor the instances of violations of the principle of continuity, identify, if possible, the causes of such violations, analyze and eliminate them and, in cases of replacement of a defender, require the new lawyer-attorney to take measures to address the deficiencies in the provision of legal aid that occurred prior to his/ her appointment.
4. FSLACs should monitor the reasons of a) refusals of the first appointed lawyers-attorneys to participate in urgent investigative actions; b) replacement of FSLA lawyer-attorney by privately hired one at the stage of pre-trial investigation and during judicial proceedings.
5. To amend Article 53 of the CPC of Ukraine by prohibiting engagement of a different defender for a single (separate) procedural action if an individual already uses the services of a chosen lawyer-attorney and does not want his/ her replacement.
6. In order to preclude lawyers-attorneys' dependence on certain persons or public authorities and ensure their independence and freedom in defense, it is recommended that

    a. lawyers-attorneys and relevant regional Bar Councils should officially report crimes, and investigators should initiate criminal proceedings in each instance of interference with the activities of the defender, threat or violence against a defender, intentional destruction or damage of the property or the defender or his/ her close relatives, or attempted murder, which are crimes pursuant to Articles 397 - 400 of CPC;

в. in each case of official informing of a lawyer-attorney of a suspicion of crime or application of a measure of restraint to a lawyer-attorney the relevant regional Bar Council should resort to all measures established in the Law *"On the Bar and lawyers-attorneys activities"* in order to ascertain that such actions do not constitute attempts at interference with such lawyer-attorney's independence.

7. The state should make sure that any hindrance of a defender's lawful activities for provision of legal aid gives rise and in all instances leads to liability of the culpable persons. This can only be achieved if criminal proceedings under Article 397 of CPC are conducted not by the same pre-trial investigation bodies (that are actually responsible for the hindrances) and if lawyers-attorneys officially report such crimes and investigators initiate criminal proceedings on each fact of such hindrance.

III. MANAGEMENT OF THE FREE LEGAL AID SYSTEM AND INTERACTION WITH OTHER ACTORS OF CRIMINAL JUSTICE

3.1. ORGANIZATIONAL ASPECTS OF THE FREE LEGAL AID SYSTEM AND ITS OPERATION

According to *the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, management of, and cooperation within, the FLA system should occur on the following basis:

– the states should ensure that a comprehensive legal aid system is in place, that is accessible, effective, sustainable and credible and receives the necessary human and financial resources (Principle 5, paragraph 15);

– the states should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services). Such a body should:

(a) be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and should not be subject to the direction or control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;

(b) have the necessary powers to provide legal aid, including but not limited to the appointment of personnel; the designation of legal aid services to individuals; the setting of criteria and accreditation of legal aid providers, including training requirements; the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them; and the assessment of legal aid needs nationwide; and the power to develop its own budget;

(c) develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

(d) report periodically to the responsible authority (Guideline 11, paragraph 59).

The matters of management, cooperation and organization of free legal aid provision in Ukraine are regulated by the Law of Ukraine "*On Free Legal Aid*", the *State Targeted Program of establishment of the free legal aid system for 2013 – 2017* (approved by Regulation of the Cabinet of Ministers of Ukraine # 394 on February 13, 2013) Regulation of the Cabinet of Ministers Ukraine of June 6, 2012, № 504 "*On establishment of the Coordination Center for Legal Aid Provision and liquidation of the Center for Legal Reform and Legislative Drafting under the Ministry of Justice*" and MJ Order of July 2, 2012 (No. 967/5) "*On approval of regulation-statute on the Free Secondary Legal Aid Centers*".

As a whole, the system of free legal aid management in Ukraine meets the international standards described above.

Key actors

Overall management of the Ukrainian FLA system is done by the Cabinet of Ministers and the Ministry of Justice (Articles 27 and 28 of the Law of Ukraine "*On Free Legal Aid*").

The Cabinet of Ministers of Ukraine approves the procedure and conditions of competitions and the requirements to the professional level of lawyers-attorneys involved in the provision of legal aid, establishes the procedure and terms of the contracts and contracts-agreements with lawyers-attorneys, sets the procedure for information provision to FSLACs of the instances of detention and decides on the amount and procedure of providers' remuneration.

With regard to FLA, the Ministry of Justice cooperates with other central executive government bodies, ensures coordination of activities, provides methodology support, approves quality standards and regulation-statute on FSLAC, establishes FSLA centers, sets the procedure for maintaining of registers of FSLA lawyers-attorneys, ensures conduct of competitions and so forth.

The Coordination Center for Legal Aid Provision was established under the Order of the President of Ukraine "On amendment and annulment of certain orders of the President of Ukraine", № 374/2012 of June 1, 2012. It ensures administration and proper operation of FLA system, coordination of activities of FSLACs.

The main tasks of CCLAP are:

- organizational, expert, analytical, informational, material and technical support of the MoJ powers in the sphere of legal aid provision;
- analysis of the practice of law on FLA implementation;
- submission to the Ministry of Justice, for its consideration, of policy proposals in the field, etc. (p. 12 of the *Regulation-statute of the Coordination Center for provision of legal aid*, of June 6, 2012, No. 504).

The system of FLA management as laid down in the law provides for establishment of a network of free secondary legal aid centers (FSLACs) These centers are the territorial subdivisions of CCLAP.

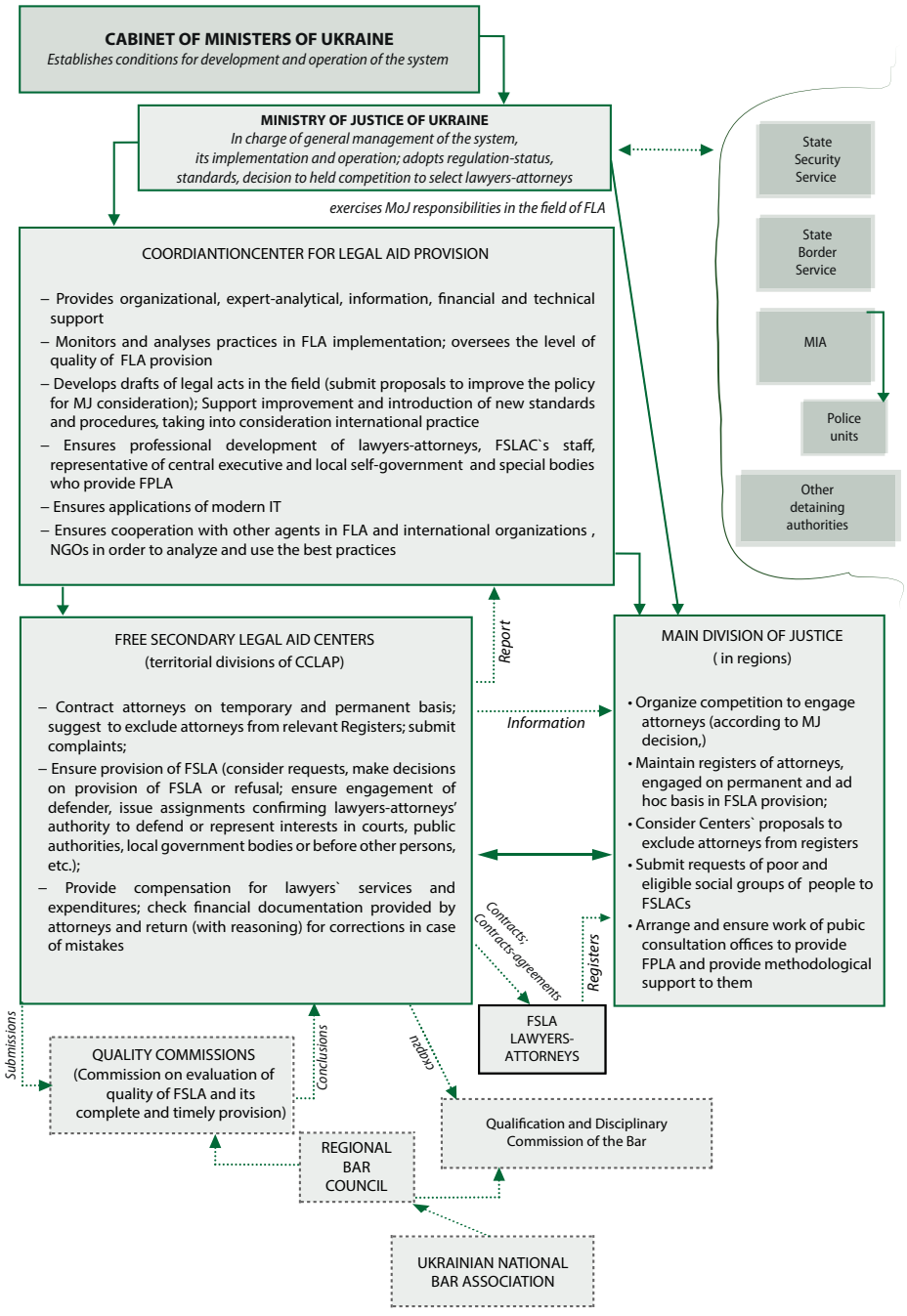
FSLACs ensure provision of legal aid and, specifically,

- Contract lawyers-attorneys on temporary and permanent basis; suggest to exclude attorneys from relevant Registers; submit complaints;
- Ensure provision of FSLA (consider requests, make decisions on provision of FSLA or refusal; ensure engagement of defender, issue assignments confirming lawyers-attorneys' authority to defend or represent interests in courts, public authorities, local government bodies or before other persons, etc.);
- Provide compensation for lawyers-attorneys` services and expenditures; check financial documentation provided by lawyers-attorneys and return (with explanation of reasons) for corrections in case of mistakes
- Ensure regular needs assessment and level of satisfaction of those, who applied for FSLA

- Cooperate with courts, bodies of prosecution and other enforcement agencies, executive and self-government bodies, etc.

Figure 1.

Key FSLA system actors



The network of FSLACs

At the end of 2013 Ukraine had 27 free secondary legal aid centers located in each administrative division.

As of January 1, 2015 in accordance with the Law of Ukraine "*On Free Legal Aid*" FSLA is also to be provided in civil and administrative cases. For this reason it is planned to separate the functions of the regional and local FSLACs. In particular, the 27 regional centers will manage the contracts with lawyers-attorneys, provide legal aid in criminal proceedings and undertake overall financial management, while the inter-district centers will handle citizens' direct requests, check potential recipients' eligibility and ensure representation of the interests of persons in civil and administrative proceedings.

The State Program envisages establishment of as dense network of FSLACs as required by the needs of prompt access to SFLA by the residents of remote areas.

The FSLACs` staff is anxiously awaiting the new changes in the system because, in their opinion, such changes call for some serious preparation for their implementation – a hasty launch of services in civil and administrative proceedings may negate the already available achievements of the current system.

The FLA system and procedures are build in a way securing impartiality of the system and independence of defense.

This, in particular, is due to the fact that the police, courts, politicians or public authorities are unable to intervene in the decision-making process of a FSLAC whether to grant or refuse secondary aid, or interfere with the process of appointment of the lawyer-attorney and his/her assignment to act as defender or represent a person's interests in courts, public authorities, bodies of local self-government or before other persons, etc. This will allow to preclude unlawful "requests" or avoid other external influences at the stage of lawyers-attorney selection for an assignment and cease the use of the so called "pocket lawyers-attorneys". Moreover, the centers provide compensation to lawyers-attorneys in accordance with their reports and standardized formulas, which will also prevent interference with the defense.

The surveyed FSLACs` employees emphasized the independent status of their centers that interact with other bodies within the system and thus ensure the process effectiveness and justice.

Duty schedules of FSLA lawyers-attorneys

Each FSLAC drafts a *duty schedule for lawyers-attorneys* at the end of the month, and 5-10 days before the beginning of a new month a director or a head of a unit e-mails the draft to FSLA lawyers-attorneys for feedback. Such a schedule is a basis for work but the extent of adherence to it varies by region – from 80 to 20 per cent. As already noted above, such schedules, according to focus group participants, do not work for a number of reasons: the lawyer-attorney supposedly on duty is unreachable, or "some can't and some just won't", or some may be far away; sometimes when" there is only one or no lawyer-attorney for a whole area ("uncovered" districts), that is why there are some lawyers-attorneys who are always "on duty". Moreover, it may happen that several lawyers-attorneys are needed on one day.

> *"The salary of lawyers-attorneys should be increased, so that the center can send more lawyers-attorneys over. Problems emerge when, for example, in our rayon we have two lawyers-attorneys who work every day and they all the time away on mission in other cases where they were privately hired and get proper fees. It happens that the center assigns a lawyer-attorney but this lawyer-attorney is nowhere around"* (an investigator from Zhytomyr Region).

As a rule, on getting a message from the police the duty-officer calls the duty lawyer-attorney. Sometimes it takes many tries to reach him/ her, especially when he/ she is at work on a case ("once there were 14, and another time – even 30 calls made"). When there a lot of requests for a defense duty-officers call those lawyers-attorneys who will not refuse, who has positive reputation and ready to go for an assignment at any time, even not at their duty day.

In those oblasts with high caseloads (where there is a lack of lawyers-attorneys, in the opinion of the FSLACs` staff) duty officers calls to all lawyers-attorneys without exception, even to those who refused to go for a mission in the past. Sometimes in order to motivate the lawyer-attorney such calls are made by the director of the center in person. As it was emphasized, if in big cities there is a possibility to work with enthusiastic lawyers-attorneys, one could chose someone from among the pool, but in smaller towns and rural areas FSLACs have to include into the duty schedules even those lawyers-attorneys who previously did not agree to go for a mission at night or was out of touch when required.

Some FSLACs duty officers make records ("formally" and "by purpose") of all instances of lawyers-attorneys' refusals to go for an assignment and report them at the end of the day to the director; at other centers the staff keep their own notes just to know "those easy to work with". Only a few centers do not record such data. Currently the directors of FSLACs in different regions have on their "blacklists" from 10 % (as a rule) to 50% of the lawyers-attorneys and do not plan to prolong their contracts for another year.

Sometimes investigators indicate in their requests the name of the lawyer-attorney to be assigned – this may be due to the fact that this attorney at that time is already at the police station. The duty-officers always call this lawyer-attorney to check on the situation.

To ensure continuity of defense when the FSLACs` duty officers receive requests to provide a defender for "later" stages of the criminal process they always check who provided FSLA to this individual when s/he was detained.

Interaction of criminal justice actors in assigning of a FSLA lawyer-attorney in case of detention

According to Article 19 of the Law of Ukraine "*On Free Legal Aid*" if legal aid is requested by a person detained on a suspicion of crime and when receiving information about detainees in cases specified by law the FSLAC is to decide on provision of free secondary legal aid as of the moment of detention.

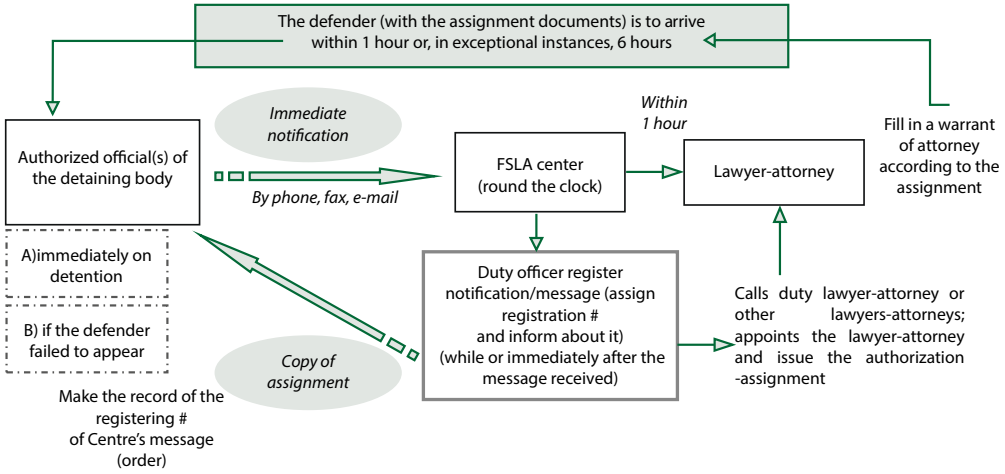
In accordance to the Article 27 of the FLA Law the Cabinet of Ministers of Ukraine adopted Regulation #1363on December 28, 2011, which approved *the Procedure for informing of the FSLACs about instances of detention* (hereinafter – the Procedure).

This document sets out the general requirements and the mechanism of informing FSLACs about instances of detention; such notifications are made either by the detaining and pre-trial investigation authorities (so called "Subjects of information provision") or, directly, by the detained, his/her family members and close relative.

If the FSLAC is informed about a detention by those eligible to detain, the procedure is as follows:

Scheme 2.

Information provision to FSLACs about detentions



Authorized officer that impose a detention immediately after the actual detention have to inform the respective FSLAC about the given detention[45]. The official of the agency providing information on detention and responsible for keeping a detained person in custody is obliged to check compliance with the Procedure and, if notification was not made, to make it oneself. Incoming notifications (requests) are immediately recorded (in CIAS and/or relevant Register) and assigned a registration number by the FSLAC's duty officer. The registration number is communicated to the detention authority (by telephone, fax, e-mail or via the information exchange system).

"The police units have appointed senior officials for control over compliance with the Procedure. FSLACs are directly informed by designated investigators, relevant amendments were made in their job descriptions. MIA investigation units maintain unified register of provided information to FSLACs . Investigators are obligated to inform FSLACs directly and register their notifications in a special registry; when necessary (when investigator is away, etc.) the information is provided by the duty unit".[46]

45. The following data should be included: the family name, given name, patronymic and date of birth of the detainee (if known), the time and grounds of detention, precise address of the place of confidential meeting with the lawyer-attorney, the name of the notifying entity, its address, telephone numbers and e-mail addresses, the family name, given name, patronymic and position of the person who provided the information to FSLAC.

46. http://www.minjust.gov.ua/44693.

The Law mentions the possibility of the use of a comprehensive informational and analytical system (CIAS). Such a system is developed and operating in limited functionality; it is mostly used for registering information/ requests, processing assignments for lawyers-attorneys. By now it cannot allow to share information between different institution outside FSLA system (particularly with detaining authorities).

According to the surveyed FSLACs' duty officers, they have gradually established cooperation with district police units. In the beginning there was a lot of confusion when data on detentions was coming in: the police could fail to inform about the investigator's contacts, the date and time, article of the law – the incriminated offense ("they are not used to refer to specific articles of the Code", "we often have to assist in identification of relevant article to refer to and how to write the minutes", "duty officers from rayon police units have started to call us more often, they ask what clause of the law to indicate" – "that is important for the documentation and for checking/ collation of statistics, especially when data is provided by duty police officers and not by investigators"). There could be misspellings of the names, which complicated data processing and necessitated editing of assignments the system.

For these reasons the FSLACs (according to the CCLAP guidance) have been conducting explanatory work with the police from the initial stages of FSLA. According to the FSLACs` directors, all centers at the beginning of the year carried out awareness campaigns about FLA for the authorities having the right to impose criminal and administrative detention (police authorities, investigators, military, border guards, etc.) by holding joint events and discussions of FLA, circulating memo sheets. In one region relevant information was officially provided to the police bodies by official means.

All interviewed police officers said that the law obligated them to inform detainees/ suspects of the right to legal aid and the call to get FSLA, as well as their right to remain silent until a lawyer-attorney's arrival. Many interviewed investigators and police duty officers recalled seminars on FLA held prior to the launch of the system. Some received information electronically ("MJ Orders were provided via email"). They positively assessed the use of video materials "that on specific examples visually explain what to do in this or that situation."

However, some law enforcement officers stated that "no seminars or briefings were held for them, although they might be needed as changes in legislation occur all the time and it is so easy to miss something. Sometimes questions arise but you could not expect the answer from the letter".

Many investigators believe that they have sufficient knowledge about the new FSLA system and that additional explanatory or awareness activities are not currently needed for them. Others complain about the lack of time for further familiarization with the peculiarities of the new FLA system. Some investigators have wished to learn more about the rules of the new system, they would like to know *how the system works in other regions* and to take part in more practically oriented events which could clarify the mechanisms of FSLA system.

> *"I would like to get some wider and clear information,some additional trainings,not to get all explanations only from our seniors. It would be good if some people from the Ministry of Justice or from some other institution come over and conduct trainings,tell us and show us what is relevant. If you are armed with information – you are shielded." "There are some issues about which it would be nice to have a talk with the lawyers-attorneys – with regard to their work – how to do everything in the right way. I would like to know their point of view on a number of matters"* (interviewed police officer).

Many respondents (FSLACs` employees and lawyers-attorneys, judges) spoke about the need for informing/training of law enforcement agencies and *lack of* their *awareness on FLA* which is amplified by a high personnel turnover rate and the ongoing internal reform in law enforcement system (lack of professional staff and increased workload of investigators); many mentioned ineffectiveness of the training system.[47]

According to the FSLACS` directors, there is a need to "remind" the law enforcement bodies of their responsibilities ("we may be getting many calls from the same police unit with just one question – how do you appoint a lawyer-attorney?"). Investigators, when asked about why they failed to notify about a detention, reply "I didn't know" or "What is it that I didn't do?", or "I was just checking the data" or "So what?". Some FSLACs` duty officers say that the police often need additional explanations as to what the centers do and that investigators need practical recommendations, sample forms and checklists "hanging on the wall, right in their sight". All such visuals should be approved by internal or joint orders as the law enforcement "would rather go by their internal rules".

In the opinion of the FSLACs` personnel, as a result of the lack of proper awareness of police officers on FLA they often request a lawyer-attorney when he does not have to be provided according to the law, they do it just to be on the safe side and "not to be later told that we in the police failed to grant the right to legal aid". Sometimes the police inform about a planned detention and request presence of a lawyer-attorney although such presence is not always necessary.

As emphasized by the respondents, much depends on the chiefs of regional police. There are regions where the chief commanded "to get a lawyer-attorney in any case" and the police do their best to obey the order. "Sometimes we have to complain to the police chief or the regional prosecutor – and it really helps".

Normally the police inform FSLACs about detentions by telephone. The centers ask the police not only to call, but also to send e-mails as this allows to see the issues (inaccuracies, errors, etc.). Otherwise the staff of the centers have to wait until the lawyer-attorney returns

47. FSLACs duty officers think that there are no effective training provided to the police with regard to the new CPC. However, MIA Main Investigative Department together with higher educational institutions (established within the MIA system) have reportedly development of a didactic material with a comprehensive course of lectures for advanced professional training of detectives and investigators in the context of the new CPC. The National Academy of Internal Affairs has launched the Education Portal of MIA, where the self-registered users get access to learning materials. This resource offers the text of the CPC, series of lectures on its provisions, tests and so forth. Within six months of 2013 the portal attracted more than 800 users from law enforcement authorities. The web site of the Main Investigative Department has developed and launched its own site (as per Internal Order No. 56 of September 4, 2012, *"On approval of regulation on the web site of the Main Investigative Department of the Ministry of Internal Affairs of Ukraine")* where one could see the CPC text, forms and samples of procedural documents, descriptions of the required steps/ sequences of actions, internal regulations, lectures and articles on a number of topics (see http://www.minjust.gov.ua/44693). The effects of such training and awareness activities could be a focus of further research.

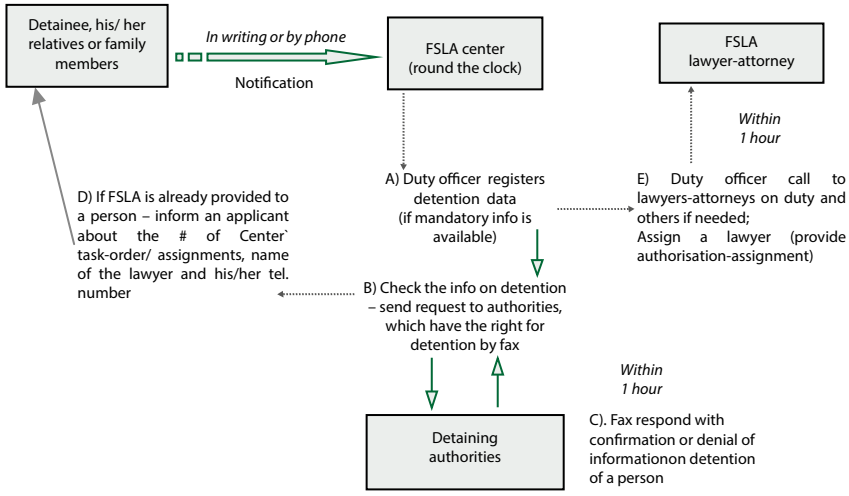
with all the documents and only then address all technical errors; before that they do not even know on what matter the lawyer-attorney was invited. "What we need is a official data on detention for example, by e-mail– not just an oral message on the phone."[48]

In general, there is a clear *need for direct telephone lines and electronic communications* in all regions, for proper liaison of the FSLACs with the law enforcement authorities and, specifically, with district bodies of the police. However, complexity of communication is also partly caused by insufficient technical support of the district police (no easy access to faxes or e-mail, etc.). District police units often have no official e-mail to communicate with FSLACs, that is why investigators frequently use private e-mails. According to the FSLACs duty-officers, "MIA does not really care about each duty unit" – "their technical support is atrocious", "investigators often buy their own computers", there are only Intranet functioning and it is not for all, there are no scanners of faxes (or they are available for accountants, and investigators do not have prompt access to them). When asked about why some documents did not come in the classical reply of the police is – there was no paper for the fax or the power was shut out – which is, in the opinion of the FSLACs` staff, may be true or could just serve as an excuse.

It should be noted that information provision to FSLACs by the detained or his/her family members or close relatives also requires proper communication with the detaining authorities and prompt exchange of correct and accurate information, in order to be able to meet the one hour time limits for an exchange by fax to confirm or deny the fact of detention[49].

Scheme 3.

Information provision to FSLACs about detentions by relatives and family members



48. Data on detained individuals comes in by phone, and the lawyer-attorney sees the "protocol"/ decision on engagement of a defender only at the police station. In case of an engagement of a lawyer-attorney to defend on assignment the copies of the documents are faxed, which makes it possible to check the original.

49. Order No. 35 of the Coordination Center of August 30, 2013 approved the Provisional procedures for the duty staff of free secondary legal aid centers in case of incoming telephone or written notifications on detention from persons eligible to free secondary legal aid, their family members or close relatives. Applicants can contact the centers by phone or in writing; their applications are registered in the computer system and/ or in the relevant register. Within one hour as of the moment of registration the employee on duty checks the information and assigns a lawyer-attorney.

FSLACs receive requests round the clock. To ensure prompt information provision to FSLACs about detention, engagement of a lawyer-attorney in defense on assignment and their participation in separate (single) procedural actions the FSLA telephone number 0–800–213–103 is operating. Landline calls within Ukraine are free of charge. Calls are answered at the FSLAC that is on duty. The surveyed FSLA duty officers were rather critical about the practice of shifting by FSLACs as the center being on duty for the whole Ukraine and there is one phone number for all – they stated that it does not allow to solve the problems but considerably complicate the work of the center on duty as it is getting too many calls from all over the country and "could not do their job for their region". The main problem is that transferring/forwarding of calls is not functioning properly. The number of incoming calls ranges from 200 up to 800; they all are answered by just one duty officer who cannot identify the region from which the call comes. "It may be 5 calls in one minute, from all across Ukraine"; "you forward the call and get disconnected, or the line is busy there and the person calls again". Today the CCLAP is considering the feasibility of launching a single call-center that would facilitate and streamline applications by telephone.

* * *

After the first month of the system operation the discrepancies in the data on detainees of the police and FSLACs was revealed (in one of the centers the difference amounted to 14 cases). That`s why after the discussion of the problem at the national level (initiated by CCLAP with the engagement of MIA) the decision was made to conduct regular *data collation*. This procedure implies regular comparison of the quantity of detentions (number of notifications provided by the police units at oblast level and registered[50] by FSLACs.

At the request of CCLAP such data comparison is to happen every quarter of a year, but in practice it happens more frequently: some centers do it monthly, other – every five days and quite a number of FSLACs – on daily basis.

The initiative of such daily checks belongs to different parties – it may come from the FSLAC but often the police call first (they say that "it's easier to check the data with you than with our staff).

However, according to the FSLACs directors and the majority of their duty officers, such comparison of data do little – because each institution has their own approach to data collection, data categories/groups are not the same ("they have their own data collection/registration rules-instructions", "they keep a special logger") – different systems collects different data. For instance, the police do not have data on detainees with the indication of groups according to different law articles (clauses).

According to some FSLAC`s duty officers, data collation is worth to continue because now and again it allows to find out about the case which centers were not informed about; there could be gaps.

Many differences exist with regard to data on administrative detentions and especially when in case of administrative detention the person refused to get FSLA.. One reason of that is that detentions are conducted not only by the police but also by the railroad authorities,

50. The detaining authorities quarterly submit (before the fifth day of the month following the reporting period) to the FSLACs the data on the number of detentions and numbers of cases when the lawyer-attorney didn`t arrive or came not on time.

prosecutor's offices, Security Service and other agencies.

FSLACs also track information on detainees by monitoring of the media (mostly of the WEB pages of the police/ MIA and when possible – local newspapers[51]). The results of this monitoring are reported to CCLAP twice a month. There were times when the media presented information on detention but relevant authorities didn't inform FSLACs about this cases of detention. In such instances the FSLACs directly called to the relevant detaining authorities and inquire why the relevant documents were not sent. Duty officers write about these cases and inquiries in their daily reports. There are different opinions about the practice of media monitoring: some duty officers say it "does not achieve much", "works out (effective) very seldom", as information in the media may be late or not precise and hardly allows to figure out "the status of the client". At the same time, according to CCLAP's data only between July 1 and September 1 2013 media monitoring revealed 143 cases of police failure to inform or inappropriately informing FSLACs about detentions.[52]

According to the duty officers, it would be more effective if the centers were receiving from the police the excerpts from their (internal for MIA system) daily reporting documents which every district (rayon) police unit drafts for its regional division. Such documents are more informative in terms of the content, case details, etc.

In general the staff of FSLACs think that many issues are handled due to developed good informal/ personal contacts between employees of FSLACs and law enforcement bodies.

However, they point out that there is a need for more joint activities with the law enforcement, police, judges and lawyers-attorneys, both at the national level and regionally.

* * *

In the opinion of the FSLACs` duty officers, *investigative judges* could be more aware about the legal aid system: after all, they decide on the measure of restraint, and a lawyer-attorney's presence at this stage of the proceedings is critical. "In this country if you are arrested it's nearly a 100% chance that you will be imprisoned"; such decisions are usually based on the evidence provided by investigator, in the presence of prosecutor, and defender could play a very major role. The CPC requires mandatory presence of a lawyer-attorney but in reality they are not engaged at this stage but "assigned only when the court decision is made", thus a lawyer-attorney can only appeal the decision.

Duty officers say it is not clear whether courts inform people about their right to legal aid. There were also cases when *either judges or prosecutors* send people to FSLACs, who actually were not eligible to legal aid. In a number of instances the referrals were made from the level of primary legal aid (e.g. from city councils).

In addition, there are some difficulties in the interaction with the court, because as the duty officers mentioned, the courts do not always observe strict deadlines when submitting documents for involvement of FSLA lawyers-attorneys and may even invite one "to the hearing underway at the present moment". Sending such documents with the judges decisions by registered mail (as required for the originals) creates the risk that the documents will

51. Not all FSLACs can afford subscriptions; the center in Crimea is one example.

52. http://issuu.com/93307/docs/vers3.pptx.

arrive later than needed. In some oblasts "courts do not call and inform us (FSLAC) orally, although it would help us to plan ahead, – and that despite the fact that the decision is made one month before the hearing. As lawyers-attorneys do not appear, the hearings are put off and the cases consideration are delaying". The documents that come to FSLACs frequently contain mistakes, especially misspellings of names – "these documents are drafted not by judges but by their assistants and it would be really better if they rather called" because "assistants to judges yet have to learn about the legal aid system".

However, the FSLACs` duty officers believe that they have less issues with the courts than with other actors – "telephone calls to courts are regular and e-mail exchange is quite usual".

According to the FSLACs` staff, prosecutors sometimes also engage lawyers-attorneys, but often in these cases "there are "serious people", "people of a high profile" and they have their own privately hired lawyers-attorneys. Another field of interaction with the prosecutor's offices is the prosecutorial oversight (*see the next section*).

* * *

According to subparagraph d of paragraph 55 of UN Guideline 11, it is important "to establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process".

One of the key partners of the Coordination Center is *the Ukrainian National Bar Association (UNBA)* – an All-Ukrainian non-commercial non-profit professional organization that unites all lawyers-attorneys of Ukraine. The *Memorandum of Cooperation between UNBA and MJ in the sphere of legal aid* was signed on November 19, 2013 and approved by the Decision of the Bar Council of Ukraine No. 230 of September 27, 2013, and by Order of the Ministry of Justice of Ukraine No. 2424/5 of November 15, 2013.[53] The FSLA Quality Standards in criminal proceedings were developed in the framework of this Memorandum. It also envisages exchange of information, compliance with the safeguards of advocacy and protection of lawyers-attorneys' professional rights, monitoring and assessment of the quality of provided legal aid services and advanced training of lawyers-attorneys.

* * *

In order to prevent violations of human rights and freedoms and, in particular, of the right to legal aid, on December 10, 2013 the Ukrainian Parliamentary Commissioner for Human Rights (Ombudsmen) and the Coordination Center for Legal Aid Provision signed a *Memorandum of Cooperation*.[54] The Memorandum aims at consolidation of the efforts of the two human rights public institutions for ensuring the right to equal and free access to the free secondary legal aid in criminal proceedings. In the framework of the Memorandum its parties established a permanent exchange of information on detainees and initiated several urgent monitoring visits by the representatives of the Ombudsmen to district police stations in the City of Kyiv. The Ombudsman helped to convince the Ministry of Internal Affairs

53. http://www.minjust.gov.ua/45354.

54. See http://zakon4.rada.gov.ua/laws/show/n0001715-13; http://www.legalspace.org/index.php/ru/poleznye-resursy/biblioteka/item/837-valeriia-lutkovska-upovnovazhenyi-ne-ie-sohodni-aktyvnym-hravtsem-na-poli-kryminalnoi-iustytsii.

of the need to "speed up" provision of information to FSLACs on detention, instances of keeping of people at police stations without determination of their procedural status, and so on.

Partners' feedback on the FLA system and interaction with the centers

FLA lawyers-attorneys

The lawyers-attorneys engaged in legal aid provision consider the procedures at FSLACs as clear and properly arranged, appreciated their flexibility in work with lawyers-attorneys and readiness to consider their preferences as to certain aspects of their work. Coordination with lawyers-attorneys occurs in several areas. Informing about new cases, calling to lawyers-attorneys for duty are handled by the duty officers at the center, while advise on reporting may be provided by other personnel and, in case of a serious legal matter, by the FSLAC` director.

Police officers

The interviewed police officers (investigators) are satisfied with cooperation with the FSLACs; the majority of them positively assess implementation of the free secondary legal aid system and interaction with the centers. Most investigators consider it "well-organized", "effective and without glitches", "without any conflicts" or with "very rare conflicts" (such conflicts "are not anything major, just something organizational, and usually there is always a compromise"). The surveyed investigators and police duty officers stated that they usually had no issues with informing of centers about the needs for FSLA. They mentioned "joint seminars on clarification of those provisions under which the police and FSLACs cooperate, with explanations of the instances when to involve a lawyer-attorney from the center" and joint "awareness activities, like a radio program on legal aid with guests from the centers and the police" (in Sumy). One of the investigators referred to "some joint orders of MIA and MoJ on the launch of the system".

Interviewed police employees referred to such positive outcomes of the FSLA system launch as institutionalization of free legal aid to detainees, clear procedures and accessibility of lawyers-attorneys for defendants regardless of their financial and social status, improved cooperation of the police and lawyers-attorneys in court proceedings. The investigators are glad that now they do not have to waste time by looking for lawyers-attorneys and this allow to speed up the investigative actions ("if in the past I requested a lawyer-attorney from a rayon attorney office I could wait for that "free" lawyer-attorney for two weeks"; in the past "it was impossible to find a lawyer-attorney for a detainee in the evening as lawyers-attorneys worked only until 6 PM").

Some investigators and police duty officers noted that implementation of the new FSLA system affected their activity by "making it harder for those who are used to unlawful methods". For example, thy stated that "police officers activities have become more in compliance to the law"; "there are less scandals related to the facts that police beat someone or illegally detained, etc"; "lawyers-attorneys help us to avoid legal mistakes in our work", "now there will be less violations when doing arrest or interrogation" and "the attitude of the

law enforcement authorities (in particular, police) to detainees has changed dramatically".

What several interviewed policemen think to be the negative effects of the new FSLA system is very revealing as they have an opinion that lawyers-attorneys "may help detainees to bypass the law and worsen our indicators of crime detection"; "lawyers-attorneys assistance sometimes postpones the confession even when all solid and sound evidence is in place", "the number of detected cases goes down because of less frequent confessions"; "it became more difficult to solve crimes", "it is not possible now to pressure the suspect during interrogation". Police officers also think it negative that "there is more control of what the police do", "now it is necessary for the police to inform the suspect or detainee about legal aid in a timely manner". Other feedbacks were as follows: "the new Code and the FLA law gave more rights to criminals and made the police and victims toothless; there is a need to change the way we act before". They also complain about a greater number of documents they have to handle (specifically, the register of calls to FSLACs).These statements clearly reveal the need for appropriate training and complex efforts to change the inherent punitive/ repressive and close organizational culture of the police.

The vast majority of investigators positively assess own cooperation with lawyers-attorneys involved in FLA provision and their performance; most police officers see no difference in the quality of services provided by privately hired defenders and FSLA lawyers-attorneys, but some assume that privately "paid lawyers-attorneys" are more motivated and therefore perform more effectively.

Other respondents also mentioned the improvement of cooperation between the police units and FSLA lawyers-attorneys. According to the FSLACs` directors, at present one can see a very different attitude of the police to lawyers-attorneys ("when a lawyer-attorney arrive to the police units/he is perceived a new way" as an eligible representative of an authority) and police have started to call for lawyers-attorneys to attend "sanction" procedures more often.

Judges

Some interviewed judges (especially those from Kharkiv, Mykolayiv, Zhytomyr and Sumy) emphasized that the launch of the new FSLA system had a positive influence on the courts because now the defendants in criminal cases almost always have defenders, regardless of their financial and social status. This, in the judges' opinion, makes it easier to work with the defendants because they better understand the court procedures and are aware of their defense rights. The system of legal aid has become more streamlined, it is now known what centers to contact for appointment of FSLA defender. It was stressed, that it is important that "*lawyers-attorneys have no personal interest because they are appointed by the center*".

> *As one judge noted,"implementation of the system only helped the courts. Now the suspect always has a defender,which greatly simplifies and shortens the hearing. The state is ever trying to ensure the right to defense. We can say that Ukraine is getting closer to the EU member states".*

However, according to other judges, courts of the 1st instances often get cases in which lawyers-attorneys took no part whatsoever. The share of such cases is estimated in the range from 30 to 50 per cent, or at least a third of all incoming criminal cases ("it happens quite often, and at the preliminary hearing we learn that most defendants don't even know they

had a chance to get a defender"). In another big share of criminal cases lawyers-attorneys stepped in only a day or two before the hearing; the main reason is replacement of defender, especially of legal aid provider with a privately hired one on whom greater hopes are laid in terms of resolving the case.

Awareness events on the new FLA system were held in rare cases and only in some courts, for example, in Sumy and Kyiv, and were of a rather general nature as at that time no problems were revealed worth of a discussion in the judicial community. The majority of interviewed judges said they had not taken part in such events but agreed they could be useful. In general the opinions on the need for such learning events divided into two groups: some judges think awareness activities are necessary while others claim they are not needed and that the judges would just not be interested, but at the same time believe that the law enforcement and especially the public would really benefit from such raising of their awareness.

As the judges said, the lawyer-attorney can get involved at any stage, but it is better when s/he appears before the first interrogation ("*it would be correct if lawyers-attorneys were engaged at the detention stage but I am not aware how it is done*"). The interviewed judges had no clear idea of the mechanism of assignment and reassignment of FSLA lawyers-attorneys by a FSLAC; a few judges described this process; also there was an opinion that "prosecutors and investigators check that the assigned lawyer-attorney is inclosed in the relevant register".

When addressing barriers to lawyers-attorneys' access to clients some judges referred to the rules of the old CPC although under the new Code many of such rules are different.

The judges mentioned procedural constraints related to compliance with the requirements of the CPC (72 hours to figure everything out about the suspect without participation of a lawyer-attorney; availability of certificate of a lawyer-attorney and prove that a lawyer-attorney represent the interests of a particular person).

Most judges believe that introduction of free secondary legal aid has not significantly influenced the work of courts and "everything remains unchanged". Some judges say that their work has become somewhat more complicated, because "in the past the investigator engaged a free of charge/public lawyer-attorney and s/he did the defense till the very end", and at present the court is required to issue at the trial period an additional decision on engagement of defender from the FLA center". Judges noted as a shortcoming of the new system that in the past the same lawyer-attorney could defend or represent the client both at the pre-trial and trial stages, while at present a lawyer-attorney appointed by a FSLAC has two separate assignments – for the pre-trial investigation and for the judicial proceedings, which, according to the judges, is not good. They say that as a result the defendant has one defender or representative at the pre-trial stage and a different one in trial, which is not conducive to good knowledge of the criminal case details by the defender. Other judges emphasized that "the new system has a positive effect on the continuity of defense. We were explained that it is the same lawyer-attorney who gets the assignment to defense the client at both the pre-trial stage and in court".

Some judges assume lack of motivation on the part of legal aid lawyers-attorneys because of their low pay, which certainly affects their performance. Some judges spoke rather negatively about FSLA lawyers as young and inexperienced, who do not pursue active defense of their

clients: "suspects who have FSLA defenders often admit their guilt before the end of the trial and refuse a full hearing. The reason is that in such cases lawyers-attorneys save time on the hearing, and the clients are satisfied with a plea bargaining with prosecutor – and that`s it" (judge from Donetsk). Some judges note that sometimes free legal aid lawyers-attorneys do not come to the hearings on time and thus slow down the process.

Other judges were satisfied with the performance of FSLA lawyers-attorneys and described them as diligent, acknowledging that several of them also have private practice ("At the pre-trial stage I did not observe any difference… Yet I would admit that during the trial privately hired lawyers-attorneys perform more actively… However, the privately hired ones lodge less complaints" – a judge from Sumy).

In general the judges were abundantly critical of the lawyers-attorneys, both public and private. Some judges think it necessary to educate the lawyers-attorneys to make full use of their powers for collection of evidence and recommend to conduct trainings for lawyers-attorneys on filing motions for investigative actions.

Prosecutors

The vast majority of interviewed prosecutors see their role in oversight over compliance with the law during pre-trial investigation and of provision of FSLA whenever the grounds for such aid exist; prosecutor's offices also have to react on citizens' complaints about refusal of services by FSLACs.

> *"The main function of the prosecutor in such instance is oversight and control: oversight in general and control in the specific criminal proceedings". "The role of the prosecutor is to make sure there are no violations of the right to be informed about the right to legal aid and of the exercise of such right. Therefore,our function was and still is to oversee".*
>
> *"As for priorities – we the prosecutors do not give priority to any single area,all areas are our priorities,and legal aid laws are applied just as the new CPC").*

Almost all interviewed prosecutors believe that the system of free secondary legal aid is effective and positively assess the launch of the new system ("as another safeguard of compliance to the law and respect of human rights"). Most prosecutors think that the new system positively impacted the speed of a defender appointment and of trials, and stressed that the people who cannot afford privately hired lawyers-attorneys received the opportunities of defense. The surveyed prosecutors emphasized availability of legal aid to the detained ("each detainee now has the opportunity to obtain legal aid in a timely manner, regardless of own financial status") and wished that the circle of those eligible could be widened. The FLA system "had a positive influence on the law enforcement activities in general": this is proved by the "timely and easier conduction of investigative activities"; decrease in the number of offenses against detainees and defendants ("the mere presence of a lawyer-attorney protects the police and prosecutors from allegations and complaints). Most prosecutors believe that the new system of free legal aid is better than the earlier one.

The prosecutors give special importance to such procedural guarantees of access to legal aid (and think that they have to be oversighted) as: timely informing of persons about FSLA opportunities, timely provision of lawyer-attorney's services and quality of services. They also referred to the importance of granting a) prompt access to legal aid, especially at the

detention stage, b) of a confidential meeting of the lawyer-attorney with the client prior to the first interrogation ("if the condition of meeting in private of the lawyers-attorneys met this allow a defendant to be more outspoken and a lawyer-attorney to choose the right defense strategy") and c) of continuity of defense, which enables to speed up investigative actions and court hearing, better quality of the defense and greater confidence. According to prosecutors, the new system of legal aid has positively influenced the continuity of defense, since FSLA lawyers-attorneys defend their clients from the very beginning to the very end of the proceedings and become familiar with all materials in the case file.

According to the interviewed prosecutors, there is no difference between privately hired and FSLA lawyers-attorneys in terms of the quality of their services; FLA lawyers-attorneys are quite professional and committed to their work, although there are rare cases where the privately paid lawyers-attorneys perform with more dedication ("use all means of defense and uphold the case of the defendant").

The majority of interviewed prosecutors said that they attended explanatory thematic seminars and meetings that addressed the new legislation, amendments to the CPC regarding free legal aid implementation and operation of FSLACs. At some prosecutor's offices questions about FSLA were included into the oral exam ("we studied, discussed, talked about possible challenges that could arise in practice"), and *almost all* respondents agreed on the need for regular conduct of awareness events and exchange of experience, since each region has its own practices and particularities.

The surveyed prosecutors emphasized low public awareness of human rights and the importance of relevant explanations of the right to a person by an investigator ("a lot depends on how he will explain a right to a person and what that right implies and how it can be exercised").

The vast majority of prosecutors are satisfied with cooperation with FSLA centers ("No problems at all. They always promptly respond to our requests"; "Any moment you can easily reach the center and get the result promptly. Interaction and cooperation are maintained"; "all misunderstandings are resolved quickly in the working process").

The prosecutors are also generally positive about how law enforcement bodies work with FSLACs and call their interaction well-established and proper ("understanding is on both sides, there were no problems with meeting the requirements. Some compromise is always found, I think it is not an issue", "these institutions interrelate continuously").

RECOMMENDATIONS

1. In order to ensure accessibility of free secondary legal aid, to create a wider network of FSLACs, including centers in districts (rayons), inter-district centers, city (town) centers, inter-city (town) centers, rayon and inter-rayon centers in (big) cities.
2. To provide duty units of all district police and Security Service units/ departments with dedicated reliable (constantly operating) telephone and electronic lines connected with FSLACs.
3. To expand awareness activities for judges, prosecutors and police officers with regard to the right to defense and the procedure of appointment of FSLA lawyers-attorneys.

3.2. SUPPORT AND DEVELOPMENT OF THE FREE LEGAL AID SYSTEM

Human Resources Management in the FLA system

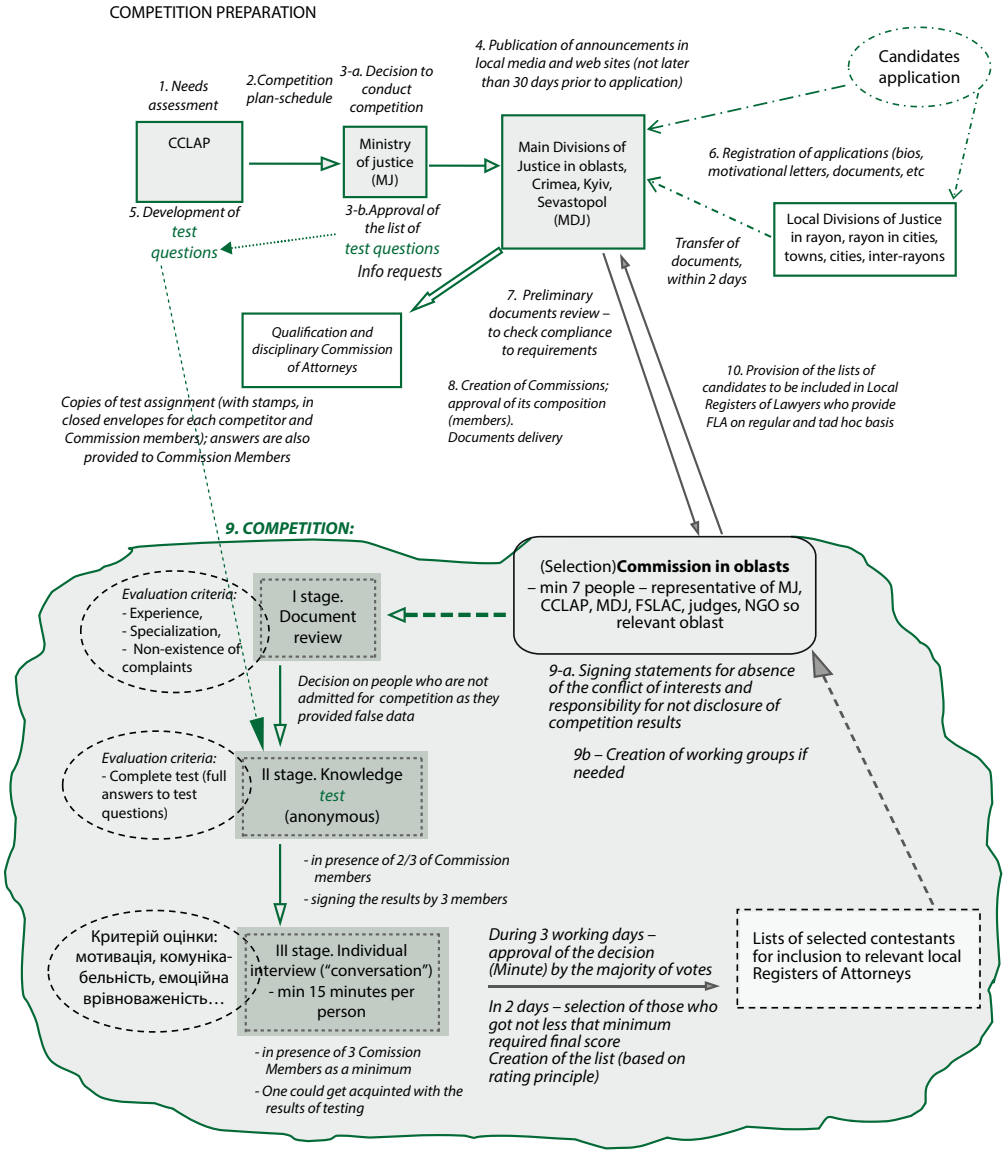
Selection of lawyers-attorneys

As noted above, the Cabinet of Ministers of Ukraine approves the procedure and conditions of the competitions and the requirements to the professional level of lawyers-attorneys involved in provision of legal aid. It also establishes the procedure for, and terms of the contracts and agreements with FSLA lawyers-attorneys., The Cabinet of Ministers of Ukraine approved the *Procedure and conditions of competitions for selection of lawyers-attorneys involved in the provision of free secondary legal aid* (CMU Regulation No. 1362 on December 28, 2011). Ministry of Justice (MJ) ensure conduction of competitions and set the rules for maintaining the registers.

A decision on conducting a competition is made by MJ on address from CCLAP. CCLAP develops the schedule of each competition, which is approved by MJ, where all organizational, informational and methodological support measures indicated. According to the Procedure, the competitions are conducted by commissions established by Main Divisions of Justice (MDJ) in the autonomous republic of Crimea, regions and the cities of Kyiv and Sevastopol, which select candidates for inclusion into the Registers of lawyers-attorneys providing free secondary legal aid on regular basis in accordance with contracts and on ad hoc basis in accordance with contract-agreements. Local registers are formed/ supplemented within one week after receiving of the lists of lawyers-attorneys selected by Commissions and sent CCLAP for creation of the aggregated registers. Announcements on competitions are posted on the web sites of CCLAP (the FLA portal), relevant MDJ and FSLACs, as well as in the local printed media at least 30 days prior to the deadline for candidates' applications (*see Scheme 4*).

Scheme 4.

Competition for selection of FSLA lawyers-attorneys



Only lawyers-attorneys (with relevant licenses) take part in the competition; previous lawyers-attorney experience is an advantage.

The Procedure implies a number of criteria for assessment by the commission on a 5-score scale. The Order of the Ministry of Justice *On approval of forms of the documents used during competitions for selection of lawyers-attorneys involved in the provision of free secondary legal aid*(of October 15, 2012, No 1727/22039) specifies the stage at

which each criterion should be assessed. This Order also defines the methodology for such assessments. The criteria are as follows:

- 1 – document review – experience of lawyers-attorneys, specialization, presence or absence of complaints about the behavior of a defender and any disciplinary sanctions imposed over the last three years;
- 2 – knowledge test – the completeness of fulfillment of the test;
- 3 – interview – motivations to provide free legal aid, communication skills, emotional stability; the ability to present the cases of personally provided legal aid.

However, the criterion of "knowledge of and compliance with the rules of lawyers-attorneys' ethics" has got lost in the MJ forms. Of course, knowledge should be checked during tests, and (absence of) complaints can, to an extent, indicate ethical compliance, but aspects of ethical behavior could also be taken into account during interviews – with a possible widening of the emotional balance (stability) criterion.

It is good that during competitions it is supposed to assess not only the knowledge[55] but also the competences, particularly the extent of emotional stability and communication skills. Yet, the competences should rather be assessed by appropriate techniques of structured interviews (based on behavioral questions) or simulation tasks, with obligatory clear definition of such competences (description of what is meant behind the title of competition for common understanding of the criteria by all commission members). Instead, the methodology mentioned in the Order is just an approval of the score on consensual basis. The ability of the applicant to give examples of previous LA provision is important, but hardly a separate criterion; in fact it should rather relate to such criteria as experience and communication/ presentation skills. In addition, the Order states that a score above 2 points can be given only if the applicant to provide its experience in defense would provide copies of relevant court decision; the commission can also consider as an advantage any recommendations of the candidate from other lawyers-attorneys, bar associations or clients. Such documentary substantiation is not any part of the interview but rather an element of document review. Instead, the interview better to be a discussion of the applicant's experience without any examination of his/her papers.

It is not clear why knowledge of English and/or minority languages should be taken into account in the assessment of communication skills and not as a separate criteria.

It should be first and foremost noted that assessment by a 5-score scale at all stages is not always feasible. The count of testing scores is somewhat cumbersome as it implies conversion of a 10-point scale to a 5-score format.[56]

55. Professional level requirements include knowledge of laws and regulations in the sphere of human rights; knowledge of procedural and substantive law; knowledge of and compliance with the rules of professional ethics; ability to draft procedural applications, complaints and other legal documents; ability to work with legal databases; command of the state language (knowledge of English and/ or of the languages of national minorities in the respective administrative-territorial units where they represent a significant portion of the population is an advantage); previous experience (an advantage).

56. "The fulfillment of the test by a candidate is assessed by the Commission as per a 10-point scale by establishing an average score based on the answers to all questions". The average scores are as follows: less than 2 points – 0 score; from 2 to 3 points – 0.5 scores; from 3 to 4 points – 1 score; 4 to 5 points – 1.5 scores; 5 to 6 points – 2 scores; 6 to 7 points – 2.5 scores; 7 to 8 points – 3 scores, 8 to 8,5 points – 3.5 scores; 8,5 to 9,0 points – 4 scores; 9 to 9,5 points – 4,5 scores; from 9,5 to 10 points – 5 scores.

The use of 5-point scale for assessment of advocacy experience appears somewhat controversial (where 1 point is given for the experience of one year, 1.5 points – if it is from one to two years, 2 points – two to three years, 2.5 points – from three to five years, 3 points – five to seven years, 3.5 points – seven to ten years, 4 points – ten to fifteen years, 4.5 points – from fifteen to twenty years and 5 points - more than 20 years). In fact, the number of years at work and the experience are not identical notions, and the value of 20 years of a not very successful performance is doubtful. How accurate is assessment of specialization on a 5-point scale[57] is also questionable, as the types are not clearly differentiated. The 5-point scale assessment of the fact of presence or absence of any petitions/complaints about the behavior of the lawyer-attorney or of the facts of his/her being subjected to disciplinary measures[58] also raises the question, as well as the reasons why existence of complaints is limited to the last three years and why the scores are broken down in this particular way as petitions/complaints may be of different nature, which makes the difference between 3, 4 and 5 points very hazy.

The following requirements of the Order seems unsubstantiated: a) the presence of at least 2/3 of the commission, as even 1 or 2 people would be enough to monitor the course of testing, and b) assessment of a candidate at the end of the second stage of the competition by those members of the commission who did not participate in the assessment of such candidate's during the test, unless the commission conducts assessment in its full composition.

The focus-groups with FSLA lawyers-attorneys reveals that they are not very much familiar with the criteria for selection of lawyers-attorneys to work in the system and believe that knowledge of the legislation is the most important criterion. They assess the existing selection procedure as transparent and effective in the present conditions, as it gives equal opportunities to all. The members of the selection commissions for the second competition said that the proportion of young and experienced candidates was about the same.[59]

The minimal final score sufficient for inclusion of a candidate into the register is gradually growing. For example, if at the second competition held in November 2012 this minimum was a score of 3, at the third and fourth competitions it was 3.5 and 3.6, respectively. It is worth to note, that initially the primary task was to inform the lawyers-attorneys about the new system and to encourage them to apply, and only later major attention was given to strengthening the requirements for competitive selection.

The site of CCLAP carries the results of all competitions, by regions and by stages, and the lists of the commissions' members, to show representation of different stakeholders (representative of MDJ, Qualification and Disciplinary Commissions and Bar Councils,

57. 1 point is given for available experience of drafting applications, complaints, procedural and other legal documents without conducting defense and representation, 2 points – for available experience of one of the specified kinds of legal aid, 3 points – for experience in two types of legal aid, 4 points – three types of LA and 5 points – for earlier experience in all specified types of LA.

58. This scale is the following: 5 points – no petitions/ complaints about lawyer-attorney's behavior that may serve as grounds for disciplinary liability and the lawyer-attorney was not held disciplinarily liable;
4 points – such petitions/ complaints were lodged but disciplinary cases were not initiated and the lawyer-attorney was not held disciplinarily liable;
3 points – disciplinary proceedings were commenced but closed and the lawyer-attorney was not held disciplinarily liable;
2 points – if the lawyer-attorney was disciplinarily sanctioned by official warning;
1 point – if the lawyer-attorney was sanctioned by suspension of license for a term less than one year.

59. http://legalaid.gov.ua/ua/konkurs-advokativ/druhgi-konkurs-advokativ.

lawyers-attorneys, judges, NGOs from the relevant oblasts) by regions and in percentage.[60] The site also gives access to the anonymous test for lawyers-attorneys; it is posted after the competition to facilitate self-preparation for future candidates.

In 2012-2013 the Ministry of Justice conducted four competitions for selection of lawyers-attorneys for provision of FSLA. The competitions were preceded by informational efforts, especially strengthened during the second contest[61], which affected the dynamics of the submission of applications. The numbers of applications varied by regions and also differed depending on the competition.

Table. Competitions for selection of FSLA lawyers-attorneys

Competitions	Time of conduct	Number of applicants	Number of lawyers-attorneys included into the registers (successful at all three stages of the competition)	The % of successful candidates to the number of applicants
No. 1	23.04 – 22.05 2012	1,190	950	79,8%
No. 2	19.11 – 03.12 2012	1,770	1,594	90%
No. 3	11.03 – 25.03 2013	489	434	88.7%
No. 4[1]	14.10 – 28.10 2013	711	603	84.8%
Total		4,160	3,581	

In the future it might be reasonable to conduct local competitions in the areas where there are not enough lawyers-attorneys.

FSLACs' work with lawyers-attorneys

The Free Secondary Legal Aid Centers primarily maintain coordination activities with their lawyers-attorneys, such as the making of contracts (for regular provision of legal aid) and contracts-agreements (for provision of such services on ad hoc basis) with lawyers-attorneys from the relevant registers; submission of addresses (motions) on exclusion of lawyers-attorneys from local registers; they issue assignments to lawyers-attorneys confirming the authority to defend or represent the interests of a person in courts, public authorities, bodies of local government or before other persons, and make decisions on replacement of a defender in cases stipulated by the Law of Ukraine "*On Free Legal Aid*".

On the daily basis FSLACs work with their lawyers-attorneys in accordance with the duty schedules (see 3.1) and the existing needs. In addition, lawyers-attorneys are constantly coming to the centers to hand in their reports. FSLACs pay for the lawyers-attorneys'

60. http://legalaid.gov.ua/images/competition/2nd_results/Ref2_Commissions_diag.pdf andhttp://issuu.com/93307/docs/03-10-2012_presentation_vasyliaka. As a rule, 42% of the commission members are from division of justice, 29% – representatives of all-Ukrainian Bar associations and lawyers, and 14.5 % each – judges and representatives of Qualification and Disciplinary Commissions.

61. In July - October 2012 MDJs in all regions of Ukraine jointly with the senior staff of the CCLAP held 61 round table discussions attended by a total of 2,649 participants, specifically: lawyers-attorneys – 1,519; representatives of MIA authorities – 251; employees of Prosecutor's Offices – 132; judges – 151; border guards – 33; personnel of the Security Service of Ukraine – 40; representatives of the Penitentiary Service – 78; representatives of local administrations – 192; local self-government officials – 185; representatives of NGOs – 240; representatives of the bodies of the Ministry of Justice - 827. In addition, there were 146 mass media people. The dynamics of candidates' application for participation in the second competition was drastically different from the previous competition – just during the first week after announcement of competition 375 candidates sent their applications (while during the first competition only 27 applications were filed). (http://legalaid.gov.ua/ua/konkurs-advokativ/druhgi-konkurs-advokativ)

services and reimburse their expenditures; they check lawyers-attorneys' reports with calculations and attached documents and in case of an error return them for resubmission, with relevant explanations.

Reporting and, specifically, its financial component was unusual for lawyers-attorneys and demanded all due attention. That is why in the beginning of the year and later on FSLACs (in the words of their directors) focused main attention on consulting the lawyers-attorneys about how to fill the reports out. The directors check all reports, may ask why lawyers-attorneys resorted to certain actions ("activities of attorneys are clearly seen from the documents"), advise on how to report the time spent and the services provided during such time; they also remind them that lawyers-attorneys should not provide only consultation advices for the clients but perform other types of relevant activities.

As mentioned in Section 2, in general FSLACs somewhat differently work with their lawyers-attorneys: some centers are more actively initiating joint activities and trainings for lawyers-attorneys (e.g. in the beginning they were guiding the lawyers-attorneys, psychologically prepared them for their work, played out possible scenarios, etc.), constantly communicate with lawyers-attorneys, promote sharing of experience and encourage consideration of various strategies, while other centers limit their work to individual consulting and communication with groups of lawyers-attorneys who come to the center every day in order to discuss the requirements for reporting and answer the lawyers-attorneys' questions. One focus group with the directors featured a lively debate as to that the centers "are not required to train lawyers-attorneys, that is for other organizations" but the participants anyhow recognized the need for trainings for FSLA lawyers-attorneys, for sharing experience and elaboration of common approaches. The majority of directors emphasized that "we – the centers – are the common juncture for lawyers-attorneys, there is no other way to bring them together but to hold joint trainings") and the importance of the lawyers-attorneys' feeling of the support coming from the centers ("we always say to the lawyers-attorneys – we are the institutions that will always back you and protect you"). CCLAP carries out systemic work to support training and sharing experience among lawyers-attorneys.

At the same time the FSLACs have no budget for personnel training or even feel lack of resources for copying of needed materials; not all centers have the opportunity to invite all lawyers-attorneys together (for example, to explain how to fill out the reports for remuneration) or to invite some experts. The centers cannot afford stationery for their lawyers-attorneys (although they should be able to provide it).

Remuneration of lawyers-attorneys

Providing legal aid to citizens in cases specified by law is a challenging task for the state. It is the state that should provide sufficient funding for FLA institutions, remuneration of lawyers-attorneys and relevant information/ awareness activities as well as cover the additional costs of the lawyers-attorneys (travel expenses, copying services, etc.).

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in paragraph 15 proclaim that the states should allocate the necessary human and financial resources to the legal aid system. As per Guideline 12 the states should, where appropriate, make adequate and specific budget provisions for legal aid services that *are commensurate with their needs,including by providing dedicated and sustainable funding mechanisms for the*

national legal aid system. One of these mechanisms is to identify **incentives for lawyers-attorneys to work in economically and socially disadvantaged areas** (subparagraph b of paragraph 56, Guideline 11).

The UN document stresses that the budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. *Adequate special funding should be dedicated to defense expenses such as copying relevant files and documents, collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses* (Guideline 12).

In Ukraine funding of legal aid is regulated by the Law "*On Free Legal Aid*", the *State Targeted Program of establishment of the free legal aid system* for 2013-2017, Regulation of the Cabinet of Ministers of Ukraine "*On remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid*" of April 18, 2012. No. 305, as amended, and "*On approval of the Procedure for the use of funds allotted in the state budget for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid*" of March 4, 2013, No. 130, and by the *Methodology for calculation of the remuneration of lawyers-attorneys providing free secondary legal aid in criminal proceedings*.

In order to improve the mechanism of remuneration of FSLA lawyers-attorneys the new draft regulation of the Cabinet of Ministers of Ukraine is expected to amend the Regulation "*On remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid*" of April 18, 2012. No. 305. Relevant views and recommendations of the Ministry of Social Policies of Ukraine, Ministry of Economic Development and Trade of Ukraine and the Ministry of Finance of Ukraine are currently under consideration. In order to ensure full payment for the services of FSLA lawyers-attorneys another draft regulation is to make amendments in the *Procedure for the use of funds allocated in the state budget for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid*. This draft was sent for consideration and agreement to relevant executive authorities (Ministry of Finance and Ministry of Economy) for proper coordination.[62]

The situation with remuneration of FSLA lawyers-attorneys was discussed at the meeting of the Bar Council of Ukraine on July 27, 2013, which as a whole endorsed the concept of changes proposed by CCLAP. This is reflected in the explanatory note to the draft resolution[63] that contains a list of problematic issues with compensation of lawyers-attorneys and relevant recommendations. These challenges have also been proved by the conducted surveys/ interviews.

According to the *Procedure for the use of funds allotted in the state budget for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal* aid (hereinafter – Procedure), FSLA lawyers-attorneys' services are paid once a month, not later than on the last working day of the month, on the basis of the per hour fee. Such per hour fee amounts to 2.5 % of the minimum monthly wage as prescribed by law at

62. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf.

63. http://legalaid.gov.ua/images/legislation/draft_legislation/305/02_Poyasn_zapyska.pdf.

the time of provision of the service. The pay is doubled for FSLA services (except defense by appointment) and work at night, on holidays and days off (p.4 of the Procedure). Moreover, the Procedure establishes the mechanisms that encourage lawyers-attorneys to perform diligently; for example, if a lawyer-attorney for no sound reason visits a detainee later than established by law the pay for the services to such person will decrease twofold.

Many respondents believe that the reimbursement of lawyers-attorneys' related costs (associated expenditures) are insufficiently regulated as the Procedure provides only for reimbursement of the costs of travel by public transport (except aviation) and for fuel and lubricants, in accordance with the standards for budgetary institutions, in instances of the use of own vehicle for objective impossibility (nighttime, no public transport) to arrive by public transport at a certain time to the place of the confidential meeting with the detained person. In each such case the lawyers-attorney is to present the documents that prove the expenses. During the interviews FSLA lawyers-attorneys repeatedly stated that it was difficult, especially because "the standards for budgetary institutions"(as per the Order of the Ministry of Transport of Ukraine of February 10, 1998, No. 43 "*On approval of the standards of fuel and lubricant consumption for motor vehicles*") simply do not mention many of the car models that the lawyers-attorneys use. Compensation of other related expenses, such as copying of the materials of the proceedings and other documents, in not mentioned in the Procedure. FSLACs also have not enough resources to support lawyers-attorneys with coping of necessary materials.

In its *Information Letter* of July 23, 2013, No. 25-597 the Coordination Center indicates that analysis of the practical application of the *Procedure for the use of funds allotted in the state budget for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid* and of the *Methodology for calculation of the remuneration of lawyers-attorneys providing free secondary legal aid in criminal proceedings* reveal a number of problems the solution to which requires amendments to the said regulations. Specifically,

1) the Procedure fails to take into account the factors of complexity of criminal proceedings and contains no incentives for lawyers-attorneys to conduct active defense at the initial stage;

2) the Methodology bears a risk of de-motivating a lawyer-attorney from work to the advantage of the defendant. In particular, in the instance when a court considers the prosecutor's request/ motion on application of the custodial restraint to the suspect/ accused and dismisses such motion as a result of the lawyer-attorney's actions in this case such lawyer-attorney gets a smaller remuneration than in case when a court would satisfy the prosecutor's motion;

3) lack of the possibility of reimbursement of the expenses of travel by own car in the daytime in case of an urgent need to go to a remote or rural area or back for participation in procedural actions makes lawyers-attorneys pay for the fuel at own cost or refuse assignments from FSLACs;

4) there is no possibility to refund the value of the means of individual protection of the respiratory organs and skin in cases of provision of FSLA to persons with infectious diseases, including such transmitted by air (lice, tuberculosis, scabies, hepatitis, etc.);

5) the Procedure carries an indirect reference to the Order of the Ministry of Transport of Ukraine of February 10, 1998, No. 43 "*On approval of the standards of fuel and lubricant consumption for motor vehicles*" but the list therein is outdated and does not specify the

standards for a large number of the presently used car models, making it impossible to refund a large part of the lawyers-attorneys' relevant costs.

In addition, CCLAP and FSLACs jointly revealed isolated cases of misapplication of the Procedure and the Methodology by FSLA service providers, specifically:

1. *Improper application of the coefficient of complexity of criminal proceedings*. Even if in the proceedings the factors that determine their degree of complexity diminish, the lawyer-attorney's pay is to be calculated at the initial value of the coefficient, i.e. its value for the highest degree of the gravity of crime, the maximum number of episodes of criminal activity, the maximum number of suspects/ accused in the criminal proceedings as well application of the strictest measure of restraint (if applied) at each separate stage of criminal proceedings.

2. *Groundless application of the speedy proceedings coefficient*. There are no legal grounds for application of such coefficient in the calculation of lawyers-attorneys' remuneration as the new CPC does not define the notion of "speedy proceedings in the court of first instance" and its rules in Section IV "*Judicial proceedings at the court of the first instance*" do not contain such notion.

3. *Incorrect determination of the factual time spent on work t for calculation of the lawyers-attorneys' remuneration*. The factual worked time includes the time spent on provision of FSLA per se and the time used for travel in both directions. In accordance with the *Procedure for informing of the free secondary legal aid centers about instances of detention*, approved by Regulation of the Cabinet of Ministers of Ukraine of December 28, 2011, No. 1363, the time of travel to be included into the calculation begins from the moment of appointment, i.e. as of the time indicated in the FSLA center's assignment.

The FSLACs` directors were unanimous about problems with the payments guarantees to their lawyers-attorneys. In fact, the lawyers-attorneys' compensation is often delayed, which could be avoided if the relevant line items of the State Budget were secured as salary payments and the Treasury had no chance to defer such payments (the issue with delayed payments was raised in June and after intervention the situation was improved but there is no certainty as to the future). Almost all surveyed FSLA lawyers-attorneys also noted the problem of significant delays with compensation. They see the main reason for that in the operation of the Treasury which fails to make the payments.

Budget funding for FSLA lawyers-attorneys in 2013 was 16 times more than in 2012 (before FSLA system creation) .In 2013, 28,891,800 UAH was allocated from the state budget for remuneration and reimbursement of expenditures of FSLA lawyers-attorneys, of which 22,854,059 UAH (79.1 % of the cost estimate for 2013) were paid by December 30, 2013. As of January 1, 2014 the State Treasury of Ukraine had 5,813.1 thousand UAH of registered payables for FSLA lawyers-attorneys' services and reimbursement of their expenses.[64]

In 2014 CCLAP has taken a number of steps to improve the situation with remuneration of lawyers-attorneys by inclusion of this line item of the budget into the list of secured line items. The budget allocated for FSLA lawyers-attorneys increased by 2,3 times (65, 981 UAH).

According to the feedback from FSLACs` directors, the level of remuneration of their

64. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf.

lawyers-attorneys is sufficient, but the 52 % of taxes is a separate issue. Many think it would be good if the lawyers-attorneys of the FLA system enjoyed some tax preferences or benefits or will have a a different mode of taxation. FSLACs' directors think that the lawyers-attorneys who provide defense in case of detentions at night should be paid more (because "sometimes it takes half a night, they go to remote areas but make peanuts" and "they spend 160 or 180 UAH on fuel to earn 80 UAH and ruin their cars on bad roads"). At the same time the directors say that "energetic" lawyers-attorneys "who are not lazy" "have normal earnings" (from 9 to 15 thousand UAH per month).

As CMU regulation envisaged, a lawyers-attorneys have to arrive to the client within one hour after the call. However, to do that by public transport is most often impossible. Not all lawyers-attorneys have their own cars and if a personal car is used the fuel will be refunded only for nighttime travel, when public transport can not be used. The possibility to use taxis is not clear — one is never sure of a refund, and not all taxi drivers agree to go out into deep country. This opinion was expressed both by FSLACs' employees as well as lawyers-attorneys.

The Ukrainian National Bar Association also supported the increase of remuneration of the legal aid lawyers-attorneys.[65]

The surveyed lawyers-attorneys with contracts for provision of FLA on permanent basis mentioned that, on the one hand, cooperation with the center secures a caseload and employment but, on the other hand, low fees do not allow to be engaged only in legal aid work and necessitate private practicing. As a result there is a risk of a situation when the need to perform other duties will not allow to respond to a call from the center.

According to the interviewed investigators and judges, the fees of FSLA lawyers-attorneys should go up to make them more motivated and active.

The opinion was expressed, that unscrupulous lawyers-attorneys may use the deficiencies in the system of fee calculation under the Methodology for their own enrichment. Firstly, they may drag on with the procedure of defense in order to get a higher pay because of more worked hours or more conducted legal aid actions; secondly, there are cases where lawyers-attorneys are not interested even in re-qualification of a crime as a less grave offense because they would lead to the use of a different coefficient and may reduce the due pay.

Other respondents suggest not only higher fees but also *an additional fee or bonus* for an acquittal, closure of proceedings or application of an article (law clause) for a less grave crime. This directly depends on assessment of the quality of a lawyer-attorney's performance (*see Section 2*), which is considered to be quite difficult and controversial.

The number of worked hours, according to the lawyers-attorneys, is not a good criterion, because how long the lawyer-attorney meets with the client and how much time he/she spends at the authorities depends on each particular case and relevant actions which may not always be numerous and lengthy. Moreover, the respondents stress that the more experience a lawyer-attorney has, the less time he/she needs to work on a case.

65. http://comments.ua/money/415055-besplatnie-advokati-trebuyut-bolshe.html?fb_action_ids=1394447844109551&fb_action_types=og.likes&fb_source=other_multiline&action_object_map={%2213944478441095 51%22%3A3614272872941 77}&action_type_map={%2213944478441095 51%22%3A%22og.likes%22}&action_ref_map=[].

It was also mentioned, that some costs are never reimbursed or compensated by the centers (stationery, copying).

The lawyers-attorneys think that the existing problems are attributable to the overly bureaucratized payment procedure and complexities with calculation of fees. According to the lawyers-attorneys, to get their money they have to collect a proper number of supporting documents that indicate the time spent with the client and in court, list of filed motions and more; this consumes a lot of time that is not anyhow paid. The most unpleasant aspect of it is that quite a significant amount of work cannot be anyhow documented. For example, a lawyer-attorney may spend a few days to read all papers in a multi-volume case file, or spend in court more time than taken by the hearing, waiting for the other party or collecting documents (pay is due only for the hours in the courtroom).

The *insufficient social security safeguards for FSLA lawyers-attorneys* also constitute an issue: it is not taken into account that many of their clients are ill with tuberculosis and other infectious diseases.

The possibility of engagement of lawyers-attorneys from other regions is another baffling matter for the lawyers-attorneys and the staff of the FSLACs. Some duty officers say that in some instances it is easier to get to a certain "borderline" area from another, neighboring region but others are firm that "this is impossible, a lawyer-attorney is to be registered in a given region as a FSLA provider, and otherwise there'll be no chance to pay for his work". At the same time, there is an opinion that this can be done under a contract between the lawyer-attorney and the center and lawyers-attorneys are not limited in the number of contracts they can sign with various centers. The Coordination Center should offer explanations as to this issue.

Human resources at FSLACs

The issue of staffing of Free Secondary Legal Aid Centers is vital although hardly ever discussed publicly.

The positive development is that the system, both CCLAP and FSLACs, managed to find and attract the enthusiasts who are eager to do their work and consistently fulfill the fundamental task of the system – respect and exercise the right to defense.

The FSLACs` directors in general positively speak about CCLAP, calling its staff "a European team", "devotees of their cause" and "young enthusiasts" who "in a short spell made the system work", "brought people like them together" and "made a miracle of a team so much driven by pure enthusiasm and doing such a great lot". The directors of the centers also refer to themselves as "enthusiasts" or "a group of 27 professionals who create the system on mere enthusiasm". However, such a situation always hides some risks of not being able to retain qualified staff: legal aid is hard work and employees of the centers often said, "let's endure another year and then we'll see…"

The discussion of whether the director of the center should be a lawyer-attorney has not given any definitive answer, because opinions differed depending on the audience. Available experience shows that this is not necessary. The directors who are lawyers-attorneys think a director should have a degree in law (100%) and have some past record of dealing with criminal cases: "either the director or his deputy should be a licensed lawyer-attorney". The

directors who are not lawyers by education think this is a better arrangement, so that the director is independent and impartial and "doesn't have to give sweet smiles to judges", but anyhow think it is very good to have a lawyer as a deputy or at least on the staff.

All surveyed FSLACs' directors emphasize that it is important to share experience in their milieu. There is a need for more/better communication and more sharing experience events, and not just general get-togethers but meetings on specific topics, with "not mere informing but real debating, for instance, on lawyers-attorneys' remuneration".

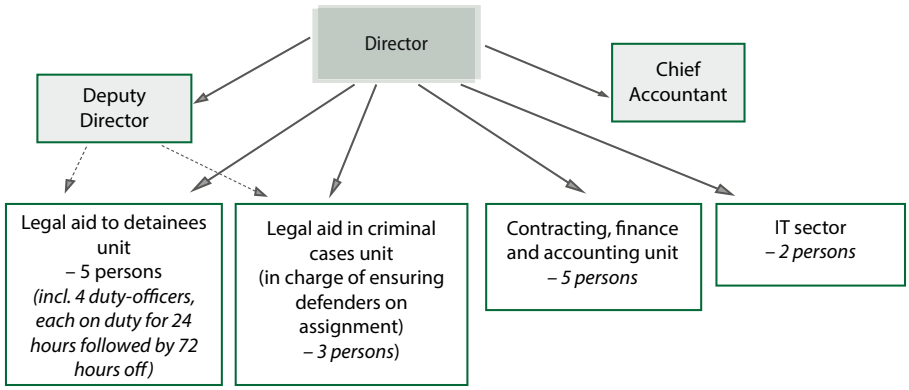
In the opinion of the directors, it is important to develop "common approaches", with information about the already available accomplishments. From CCLAP they expect "more analytical work" – explanations, interpretations, guidelines and, possibly, certain recommendations – and more feedback to the local level. "They collect all information, we know that we all work differently – but we do not know what is the right way"; "the one FSLAC might explore an issue and make a presentation, another center – another issue, and we would get together and discuss".

The majority of FSLACs` duty officers also expressed interest in regular sharing of experience. They even mentioned that enjoyed participation in the focus groups, conducted within the survey, as it helped them to learn about the best practices of others and empowered them with "new ideas about how to improve the activity of their centers". In some centers duty officers are invited to trainings for lawyers-attorneys; their participation is not mandatory, but optional. Some duty officers had the opportunity to familiarize with the training materials for lawyers-attorneys.

CCLAP presented the following organizational structure of the centers providing free secondary care (in the regions and the cities of Kyiv and Sevastopol).[66]

Scheme 5.

FSLAC organizational design (2013)



The staffing is an important and challenging issue, also because of the lack of human resources. One director of the center stated: "We were promised a staff of 24 full-timers, then – of 18 and now we are promised a larger staff we are waiting for." A new discussion

66. http://legalaid.gov.ua/images/Presentataions/Baev_16_04_13_og.pdf.

about the need for an increase of staff in accordance with the new organizational structure began at the end of the year.

The surveyed directors emphasized that at the inception stage all FSLACs were supposed to receive equal funding but in practice their caseloads turned out to be different. Many centers obviously need more staff, especially duty officers. Staffing might take into account the size of the population in the oblast and the statistics of detentions. The surveyed directors said their centers feel lack of such personnel as:

- analysts in charge of statistics;
- operators and/or lawyer responsible for answering citizens' queries;
- security staff;
- IT professionals;
- cleaners.

In some FSLACs the accountant is also act as the HR manager and in charge of other paperwork; relevant units should be strengthened by more staff.

The FSLA lawyers-attorneys indicated that in some FSLACs there are the shortage of staff that would consult the lawyers-attorneys and help them with the making of documents, especially financial reports.

There are regions where FSLACs need more duty officers and their assistants.

According to the duty officers and directors, in the first half of the year many FSLACs faced situations when duty officers could not cope with the workload and resigned; according to the respondents, those who stayed "liked this kind of work" or prefer the work schedule (24 hours on duty, 72 hours off) which leaves "some time for their own", for another job, for taking care of sick parents, etc.).

The duty officers are mostly people right after the university (22-30 years old) or retired people. This work is particularly interesting/ motivating for former law enforcement officers and for law school graduates, but also for others, with different background, even with IT degrees, who, however, initially require more help. The duty officers think that it is easier for ex-police officers and lawyers to work as a FSLACs` duty officer but, in fact, anyone "can learn everything needed in a month or sooner". Several directors stressed that over time and with experience "the professional level of their duty officers has increased".

In general the *duty officers* have very heavy workloads. They work without scheduled technical intervals and sometimes are not able to break even for a moment and have to be replaced at the phone by the directors, peers or lawyers-attorneys who come to the center. According to one of the directors, the number of calls coming in a day is about 60. Most directors said they needed six fully employed duty officers: if they are four and one falls ill, others will have to work more. Substitutions during vacations are provided not in all centers. When a duty officer goes on vacation some FSLACs sign a work contract with another person but in most instances the working load is just re-distributed among those at work, which, in their opinion, is not acceptable and exhausting. Similar risks emerge when duty officers fall ill. It was suggested that at vacation time duty functions could also be performed by other staff (HR staff, etc.). At the end of each day at many centers duty officers make daily reports, for a number of purposes including handover of cases to the next duty officer; this is not difficult to do but often they have to do it after the end of the busy working day.

Duty officers have to use a number of loggers (records journals/registers).Entries are made in longhand, sometimes they have additional not official diaries. Duty officers often make such entries (and their reports) after working hours. In parallel they work with the CIAS system.

Not all FSLACs offer proper working conditions to their duty staff. As a rule FLA centers are not guarded unless located in administrative buildings. In some centers duty officers work in rooms without windows. Typically in a FSLAC there is no room for rest.

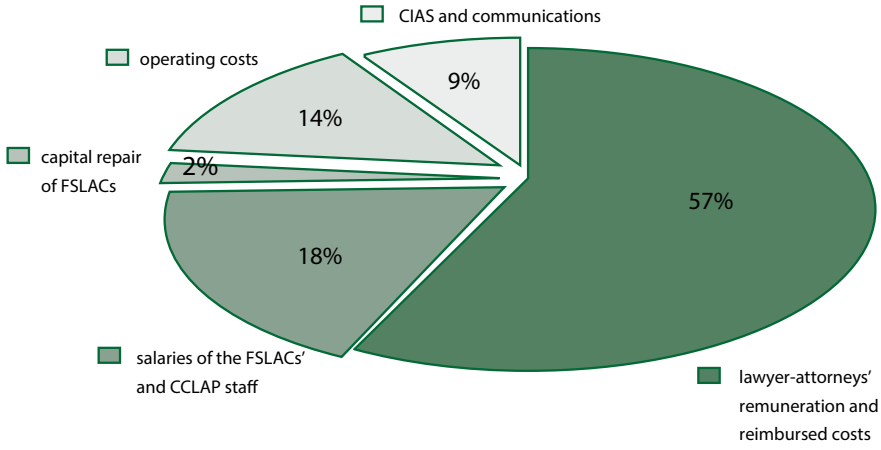
Remuneration of duty officers should increase to an adequate level as, in the opinion of directors, "it is difficult to find a serious person for such a salary" (now – 1,350 UAH per month.) This opinion is shared by duty staff: "FSLAC could work without all other staff but if there were no duty-officers everything would just stop". According to some duty officers, they "are in fact in charge of checking the lawfulness of legal aid assignment" and have to analyze "the grounds of appointment".

Financial, material and technical support of the system

In accordance with CCLAP data in 2013 the total funding of the FLA system constituted 51.1 million UAH. 57% of this amount covered the services and expenses of lawyers-attorneys, 18% – personnel salaries (without charges) and only 15% – the organizational/logistical costs.[67]

Scheme 6.

FSLA system financing in 2013
(51.1 million UAH)



By the end of 2013 the system received only 55% of the assigned funds: lawyers' remuneration and reimbursements were covered to the extent of 80 % of the expected subtotal, current administrative costs – 86%, and development-related expenses – only 4%.

67. http://legalaid.gov.ua/images/news/15_04_13.pdf; http://legalaid.gov.ua/images/Presentataions/14-03-2013_Den_advokatskoi_praktyky.pdf.

According to many respondents, FSLACs get insufficient funding. This implies shortage of funds to remunerate the staff, to bear other personnel costs and to properly support day-to-day operation.

1. The centers do not have enough means to maintain equipment and for consumables, for example printers fail due to excessive use and there is lack of ink for cartridges. There is a need for special software (e.g., for accounting purposes) that should be included into the cost estimates.
2. Computers are available not in the proper numbers. During 2013 the single telephone number for legal aid gradually came into operation; the technical difficulties with receiving calls were eventually resolved by reconfiguration of data transfer networks and the use of fiber optic landlines. At the same time, there is an urgent need to arrange for working places for the lawyers-attorneys so that they get able to use the CIAS system when visiting FSLACs or to draft legal documents within the Centers' assignments.
3. There is a lack of funds for stationery and not enough paper, envelopes, stamps, etc. that the centers are to provide to their lawyers-attorneys under the contracts ("let us not forget that the more requests/assignments come in the more we have to spend on paper").
4. FSLACs lack financial resources for cleaning services and, in spite of their sensitive work, for security, alarm systems, alarm buttons, etc.
5. Since the services are provided on 24/7 basis it would be feasible, according to the directors, to raise the matter of procurement of cars (as done, for example, in Georgia). Own transport would allow unhindered travel to remote areas, especially at night (public transport is usually not available after 10 or 11 PM).
6. FLA do not have the resources for public awareness/information campaigns (to purchase banners, stands, etc.), while, according to the personnel of the centers, they "should reach out into each district".
7. Not all centers have adequate facilities – both in terms of sufficient space and the conditions (heating, air conditioning). Several centers definitely need renovations. Typically, there are no places for rest of the staff or kitchens (fridges are often bought and brought by the staff).

Informational and analytical support

Assessment of the effectiveness of the free secondary legal aid system requires a reliable system for collection, storage, tracking and processing of data. Further development of the FLA system requires identification and testing of effective monitoring and evaluation mechanisms. CCLAP is paying adequate attention to this issue.

According to the existing regulations FSLACs report to CCLAP on quarterly basis and also provide information on specific requests.

One could emphasize several direction and ways of monitoring and evaluation, which were piloted in 2013, such as:

- monitoring based on collection of statistical data according to identified indicators;
- peer review, which displayed the need for adoption of quality standards and

information/awareness activities with regard to this tool of sharing experience and best practices;

- assessment of lawyers-attorneys' learning needs by streamlined feedback with the use of questionnaires, including post-training evaluation forms (*see Section 2*);
- independent external assessment (the product of which is this report) with the engagement of a number of independent experts and with surveys of various stakeholders.

Any survey of police officers, judges (investigative judges) and prosecutors features considerable organizational difficulties associated primarily with the specific closed culture of such authorities, reluctant participation, respondents' reservations, etc. Flat refusals and repeated postponements of meetings were mostly coming from the prosecutors and judges. In one prosecutor's office there was even a sad occurrence when a respondent first refused to speak for the record and then searched the interviewer to make sure that the talk was really not recorded.

The most difficult part, however, is *access to clients – those who received or refused to get FSLA*. On the one hand, neither FSLACs nor CCLAP collect such persons' contact data, which is, in particular, explained by confidentiality of such data, although the Regulation on FSLACs envisages regular assessment of the needs and of the degree of applicants' satisfaction (in part of a directors responsibility). Some data on the clients is available only to lawyers-attorneys. One recommendation for the future is that during the first meeting the lawyer-attorney gets his/her client's written consent on collection of such personal data and possible participation in the assessment efforts.

Monitoring of the system functioning first and foremost requires a clear set of indicators to be collected. These indicators, as stated in CCLAP` memo, should be able to "describe the main parameters of the system at any given time, in a particular area and as compared to the previous periods and the parameters of free legal aid in other countries. In addition, the FLA system indicators should also enable a comparative inter-agency analysis of the data, especially that of the Ministry of Justice and Ministry of Internal Affairs on the number and nature of detentions in Ukraine, involvement of lawyers-attorneys, outcomes of such involvement, etc." It is also important to ensure accuracy and relevance of the data and equally important to ensure realistic and reasonable collection of data in terms of resources used for the collection and processing of data and, above all, availability of human resources for this effort. It is advisable to collect only necessary data that will be used in real work later on. It is also crucial to have an automated system that would enable and facilitate work with the data.

In 2013 CCLAP made a list of about 300 indicators related "both to the specific kinds of legal aid and to the effectiveness of services provided, characteristics of clients and interaction with partners in the provision of legal aid." The respective data collection system was first piloted in a number of regions and will be used in the entire FSLA system as of January 2014. This innovation, although important, has not yet resolved the issues of selection of key data, processing of such data, availability of appropriate IT support and development of relevant analytical products. Availability of human resources for this time-consuming work is also of much importance.

When speaking about reporting the FSLACs` duty officers said that it was "their burden"

and that the data (especially new data) was hard to collect, "not all data is worth collecting" and "the reports contain a lot of redundant stuff": for example, how can a lawyer-attorney be 18 to 21 years old and whether it really matters how to learn whether the client "is married or not". According to some opinions, the share of useful data is 30 to 40%, according to others – from 50 to 55%. Information provided by authorities required assignment of a lawyers-attorneys carries insufficient data required for statistical purposes and this situation may be improved if relevant agencies issue a joint order. "For example, we do not know if compulsory educational measures will be applied or not"; "if it is an administrative detention we do not know what made the client to refuse to get a FSLA; they notify the relatives". Thus, any launch of new reporting forms should be accompanied by discussions with the staff and with relevant explanations, for motivation purposes.

CCLAP presents key statistics on its web page, as information sheets[68]. However, it could be recommended to present statistics as a separate topic, which would facilitate data search by all stakeholders. Moreover, bare numbers may be nearly meaningless and often deserve explanation. Due attention should be given to visual graphs (with no need for charts that no one can read).

It would also be reasonable to hold an expert discussion of the indicators for data collection.

In general, the CCLAP web page carries a lot of important information about the operation of the legal aid system but could do with new rubrics for reports, statistics, queries, complaints, etc.

* * *

The centers for free secondary legal aid provision are connected into a single network due to the Comprehensive Information and Analysis System (CIAS) that was launched under the State Program and "has elements of electronic intelligence and ensures automated registration of notifications of detention and making of lawyers-attorneys' assignments". In the future this software is to computerize other processes of FSLA rendering, enable prompt data exchange between service providers, detaining authorities and those having the right to take into custody, courts, MDJs, , and allow for consolidation and visualization of statistical information with possibilities of its fast processing and analysis.

The users of CIAS differently assess its performance. CCLAP has offered hands-on consultations on its maintenance. The program is supposed to be gradually upgraded and improved in terms of functionality, in view of new inputs about its elements[69], but in 2013 such plans were not funded. It would be feasible to workout a concept for CIAS further development and assess the systems' effectiveness in separate internal reports.

68. http://legalaid.gov.ua/images/Actual/311213_dovidka_BPD_2013.pdf.

69. See the info on planned procurements on pp. 4 and 5 of http://legalaid.gov.ua/images/tenders/2.pdf.

RECOMMENDATIONS

1. In the process of selection of lawyers-attorneys to pay more attention to the matter of competences, to consider the willingness to work in the nighttime and on holidays and the available experience. It is advisable to conduct testing in the electronic form, in order to facilitate/ accelerate calculation of results. To develop methodological guidelines on conducting interviews on the basis of structured behavioral questions. To review the approaches to assessment of specific criteria and to provide definitions of such criteria.
2. The Government should make the allocations for remuneration of FSLA lawyers-attorneys and reimbursement of their related expenses as a secured budget line of the State Budget of Ukraine.
3. To review the criteria of remuneration of legal aid lawyers-attorneys and make relevant amendments in the *Methodology for calculation of the remuneration of lawyers-attorneys providing free secondary legal aid in criminal proceedings*. In particular, it should do away with the criteria that de-motivate lawyers-attorneys from diligent active defense (i.e. the criterion of the length of proceedings) and to provide for a system of bonuses for achievement of a positive outcome (e.g. acquittal of the defendant).
4. To amend the *Procedure for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid* by regulating coverage, at the expense of the State Budget of Ukraine, of the lawyers-attorneys' expenses on initiated forensic and other examinations, copying and other associated costs.
5. To ensure maximum reimbursement by the state of FLA lawyers-attorneys' transport expenses, including relevant amendments to the Order of the Ministry of Transport of Ukraine of February 10, 1998, No. 43 "*On approval of the standards of fuel and lubricant consumption for motor vehicles*".
6. To provide in the legislation for a possibility of compensation of expenses related to the use of own motor vehicles (fuel) by legal aid lawyers-attorneys, especially in rural areas (in order to resolve this issue the Coordination Center drafted a Concept of amendments to the Resolution of the Cabinet of Ministers of Ukraine "*On remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid*" of April 18, 2012. No. 305).
7. To provide for incentives for lawyers-attorneys to work in economically and socially disadvantaged areas and in remote areas, possibly by establishment of a system of social security safeguards (e.g. tax benefits, provision of housing or vehicles, higher remuneration).
8. To provide for mandatory insurance of FSLA lawyers-attorneys, particularly in case of infection with tuberculosis and other contagious diseases, of accident during travel to the venue of investigative actions, and so on.
9. In the budgeting for FSLACs to consider their workloads, actual staffing needs, the population served, the dynamic of detentions and so on. To

ensure gradual increase of the staffing level on the basis of preliminary assessment of needs and analysis of workload.

10. To arrange for full coverage of the FSLACs costs for maintenance of office equipment, purchase of stationery, current renovations, telephone communications and Internet. To give due attention to establishment of proper working conditions, particularly for the duty staff.

11. To equip FSLACs with service vehicles.

12. CCLAP should develop a mechanism for remuneration of lawyers-attorneys engaged from neighboring regions for provision of legal aid services in remote areas. To ensure the possibility of participation of FSLA lawyers-attorneys in provision of services and remuneration of their services regardless of the region in which such lawyers-attorneys are registered in instances when arrival of a lawyer-attorney from a neighboring region takes less time than response of a lawyer-attorney from the region of the detention case.

13. To give due attention to methodological support and propermotivation of the FSLACs' staff, which, in particular, can be achieved by more activities for sharing experience, discussion and identification of the best practices and involvement of the staff in the joint development of documents. To conduct sharing experience events for FSLACs` directors at least every quarter of a year and to discuss the best practices, challenges and relevant opportunities. To conduct sharing experience events for FSLACs` duty officers.

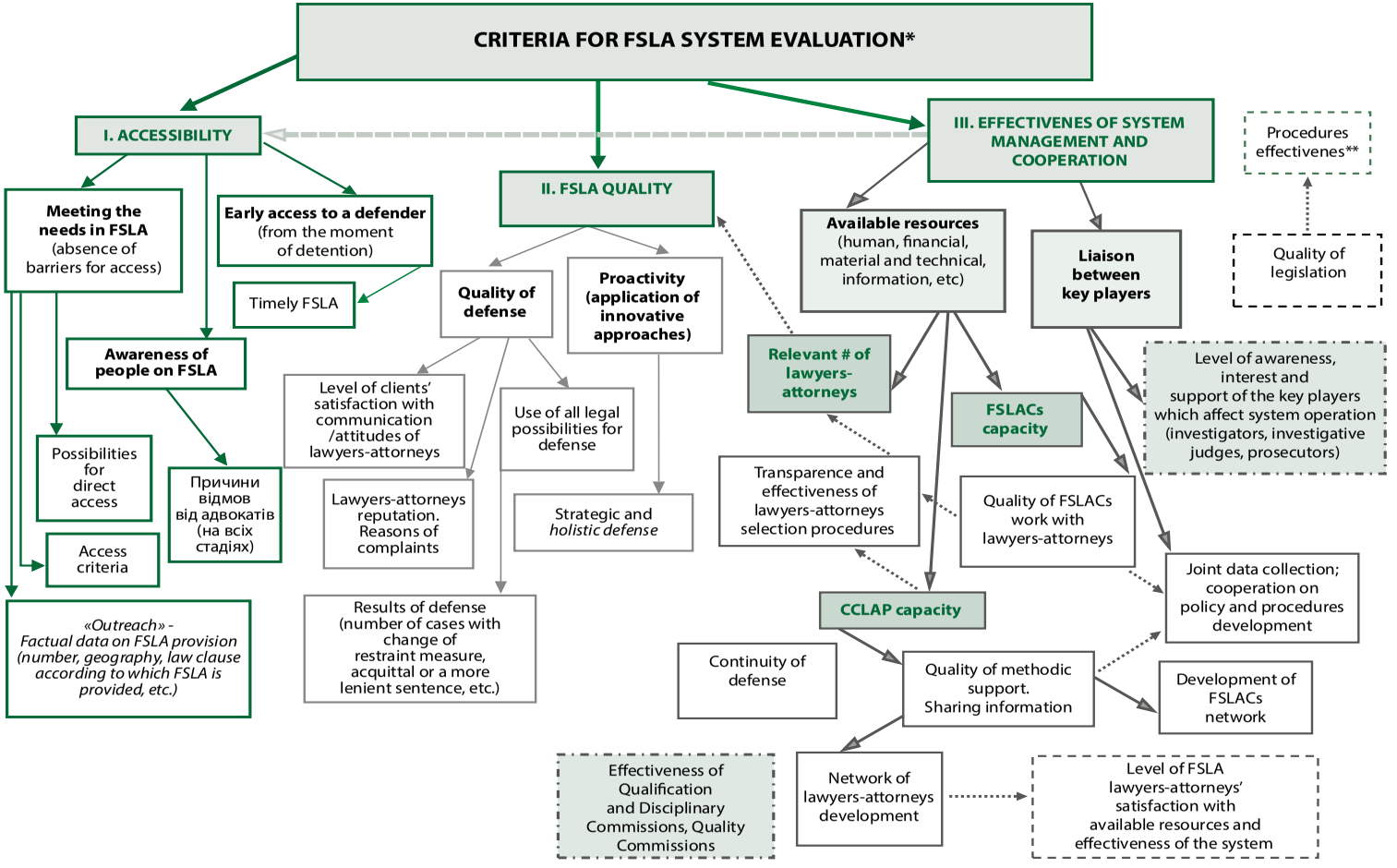
14. To continue collection of statistical data for analysis of the effectiveness of the system. After the pilot stage it is advisable to consider the feasibility of the use of 300 indicators in terms of their practical value and the resources needed for data collection and processing. It is important to develop an appropriate automated system that would facilitate work with the data. At the same time it appears feasible to issue joint orders where to set unified data indicators, specifically as regards detainees, and to consider possibilities of provision to FSLACs the relevant parts of internal daily reports used with MIA system. Attention should be given not only to the collection and publication of statistical data but also to data analysis and explanation of the observed changes.

15. To assess the needs for monitoring of the activities and decisions of the external stakeholders and agencies that affect the operation of the FSLA system.

16. To develop a concept of further development of the CIAS system on the basis of the experience of its operation in 2013, with identification of basic needs, upgrading phases, functionalities and expected costs.

17. To conduct organizational assessment of CCLAP and FSLACs to identify windows for the further development

Scheme 7.



** Evaluation of FSLA - as one of the components which affect fair justice; according to international standards. Only selected indicators are presented in the table.*
*** Procedures effectiveness and the quality of legal support is to be evaluated in each clusters (I – III)*

RECOMMENATIONS BASED ON THE RESULTS OF INDEPENDENT ASSESSMENT

1. Recommendations regarding the necessary changes in the legislation on access to free legal aid in the criminal justice process

1.1. To amend the Law of Ukraine "*On Free Legal Aid*" by providing for a differentiated system of legal aid at the cost of the state budget that envisages partial payment of such aid by its recipients depending on the household income.

1.2. To establish the procedure for recognition of the right to legal aid at the expense of the state in special circumstances when the person has no real access to his/ her nominally owned resources.

1.3. To amend the *Criminal Procedure Code with regard to:*

- mandatory video recording of all procedural actions with detainees and of interrogation of witnesses;
- exclusively judicial procedure of summoning the participants of the proceedings for procedural actions (as the only option);
- prohibiting engagement of another defender for conduct of a separate (single) procedural action if the defendant is already having a defender of own choice and does not want his/her replacement (Article 53);
- by providing for a possibility to appeal against a decision of the investigative judge to disqualify (refute) the defender (Article 309).

1.4. To include into the Law "*On the Judiciary and Status of Judges*" (Article 54) a general duty of judge to control provision of legal aid to the participants of the criminal process.

1.5. To annul the right of pre-trial investigation authorities to call (invite) persons under any procedure other than stipulated in the criminal procedure legislation.

1.6. To adopt, as soon as possible, the *Code of administrative misdemeanors*.

1.7. In order to ensure confidentiality of detainees' communication with lawyers-attorneys the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine and CCLAP should issue a joint order on mandatory designation of special premises at the district subdivisions of the said agencies for confidential lawyer-attorney-client meetings.

1.8. To amend subparagraph 3.1.9 of *Internal procedures for temporary detention facility*

(approved by the Ministry of Internal Affairs of Ukraine on December 2, 2008, Order No. 638) by establishing that a confidential meeting with a lawyer-attorney constitutes an emergency allowing for interruption of the nighttime sleep.

1.9. The Ministry of Justice of Ukraine (MJ) and the Ministry of Internal Affairs of Ukraine (MIA) should draft and approve, by a relevant order, a Memo (information sheet) for detainees with a short list of their rights presented in a user-friendly format and with the FSLA hotline number.

1.10. MJ and MIA should develop a common policy of registration and collection of data on detainees by the MIA and the Coordination Center for Legal Aid Provision (CCLAP).

1.11. The Government should make the allocations for remuneration of FLA lawyers-attorneys and reimbursement of their defense-related expenses a secured budget line of the State Budget of Ukraine.

1.12. CCLAP should advocate for gradual increase of remuneration of the lawyers-attorneys who work in the system of free legal aid.

1.13. CCLAP should review the criteria of remuneration of legal aid lawyers-attorneys and make relevant amendments in the *Methodology for calculation of the remuneration of lawyers-attorneys providing free secondary legal aid in criminal proceedings*. In particular, to get rid of the criteria that de-motivate lawyers-attorneys from diligent active defense (i.e. the criterion of the length of proceedings) and to provide for a system of bonuses for achievement of a positive outcome (e.g. acquittal of the defendant).

1.14. To amend the *Procedure for remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid* by regulating coverage, at the expense of the State Budget of Ukraine, of the lawyers-attorneys' expenses on initiated forensic and other examinations, on evidence collection, copying and other associated costs.

1.15. To ensure maximum reimbursement by the state of FLA lawyers-attorneys' transport expenses, including relevant amendments to the Order of the Ministry of Transport of Ukraine of February 10, 1998, No. 43 "*On approval of the standards of fuel and lubricant consumption for motor vehicles*".

1.16. To consider potential incentives for lawyers-attorneys to work in economically and socially disadvantaged areas and in remote areas, possibly by establishment of a system of social security safeguards (e.g. tax benefits, provision of housing or vehicles, higher remuneration).

1.17. To provide in the legislation for a possibility of compensation of expenses related to the use of own motor vehicles (fuel) by FSLA lawyers-attorneys, especially in rural areas (in order to resolve this issue CCLAP drafted a *Concept of amendments to the Resolution of the Cabinet of Ministers of Ukraine "On remuneration of services and reimbursement of expenses of lawyers-attorneys who provide free secondary legal aid"* of April 18, 2012. No. 305).

1.18. To provide for mandatory insurance of FSLA lawyers-attorneys, particularly in

case of infection with tuberculosis and other contagious diseases and in the event of accident during travel to the venue of investigative actions.

2. Recommendations regarding implementation of the legislation on access to free legal aid

2.1. The Ministry of Justice jointly with the Ministry of Internal affairs should ensure placement and availability of information on rights of detainees and possibility to get FSLA in the premises of duty police units, investigators' offices, rooms for apprehended and detained individuals, police vehicles, including vehicles for transportation of suspects and defendants, the cells at temporary detention facilities and near the entrances to police units, where such information may prove critical for proper awareness of detainees and other persons.

The senior management of pretrial investigation authorities should:

2.2. obligate investigators to engage defenders under paragraph 3 of part 1 of Article 49 of the CPC in all proceedings under the plea bargaining, reconciliation agreement and in speedy proceedings (part 3 of Article 349 of the CPC).

2.3 include into the Memos on procedural rights the provision on mandatory satisfaction by an investigator or prosecutor of a request for video or audio recording of the proceedings (part 1 of Article 107 of the CPC).

2.4 ensure mandatory video recording of the first interrogation, including the moment of notification and explanation of the rights.

The Coordination Center for Legal Aid Provision should:

2.5 Take measures to support the mechanism of direct application of the suspects, accused and their relatives to FSLACs for appointment of defenders, by raising the awareness of such possibility and placement of relevant information in the premises where detainees may be held. To collect relevant statistical data on such requests.

2.6 Continue the activities on informing the public of the right to defense. To develop, with the assistance of independent experts and NGOs, a strategy for information provision (advocacy campaign) with special attention to rural and mountainous areas, and to clearly define the channels of communication with various target audiences, to identify the underlying reasons of mistrust and the existing barriers to awareness and to elimination of stereotypes. Particular attention should be given to dissemination of information on television channels.

2.7 Consider possible allocation of additional/ special funds to FSLACs for awareness and information campaigns at the regional level.

2.8 Draw up a plan of action to support public awareness efforts and to assign a relevant separate budget. Clear separation of informational/ methodological support and public awareness activities, with indication of the sources of their funding, would be conducive to the transparency of the processes and to an understanding of the pres-

ence or lack of resources in these areas.

2.9 Consider the possibilities of lawyers-attorneys duty (shifting) that can shorten the travel time for provision of legal aid.

2.10 Develop, desirably with participation of the representatives of all stakeholders, a program of implementation of the FSLA standards, including dissemination of information on such standards among stakeholders and training of lawyers-attorneys taking into account the perceptions and attitudes revealed in the survey, and define, in accordance with the standards, the procedure and methodology of monitoring.

2.11 Create a mechanism for obtaining feedback from the clients of the free legal aid.

2.12 Take measures to determine the reasons for waivers of FLA; it is crucial to register the so-called primary (immediately after the first conversation) and secondary (in the process of work) refusal of a defender – this will allow a better understanding of the causes and factors that affect FLA waiver.

2.13 Develop the mechanisms for monitoring of FSLA lawyers-attorneys active performance and a system of motivating coefficients:

a) introduce the practice of lawyers-attorneys' files (records) and set the requirements for their maintenance;

b) conduct periodic analysis of the quality of legal aid and, on this basis, to decide on further contractual relations with each lawyer-attorney;

c) review the system of remuneration of FSLA lawyers-attorneys, which should stimulate them to be more active in upholding the rights of detainees.

2.14 CCLAP jointly with the bodies of lawyers-attorneys' self-government and the Qualification and Disciplinary Commission of the Bar should ensure inevitability of disciplinary liability for ungrounded refusal to provide legal aid/ act as a defender or participate in a procedural action.

2.15 To consider employment in FSLACs of lawyers-attorneys who, in the capacity of quality managers, would monitor the quality of provided FSLA, support lawyers-attorneys training and development, maintain ongoing communication with them.

2.16 In the budgeting of FSLACs to consider their workloads, actual staffing needs, the population served, the dynamic of detentions and so on. To ensure gradual increase of the number of employees on the basis of preliminary needs assessment and workload analysis.

2.17 To arrange for full coverage of FSLACs costs for maintenance of office equipment, purchase of stationery, current renovations, telephone communications and Internet. To give due attention to creation of proper working conditions, particularly for the duty staff.

2.18 To equip FSLACs with service vehicles.

2.19 To develop a mechanism for remuneration of lawyers-attorneys engaged from neighboring regions for provision of legal aid services in remote areas. To ensure the possibility of participation of FSLA lawyers-attorneys in provision of services and remuneration of their services regardless of the region in which such lawyers-attorneys

are registered in instances when arrival of a lawyer-attorney from a neighboring region takes less time than of a lawyer-attorney from the region of the detention case.

* * *

2.20 Prosecutors should initiate criminal proceedings regarding each fact of non-admission or late access of the defender or any other brutal violation of the detained person's right to defense, in accordance with Article 374 of the Criminal Code of Ukraine.

2.21 To provide for mandatory presence of a defender in every instance when a person is officially infromed about a suspicion. Further free legal aid at the next stages of the process is possible only for low-income suspects.

2.22 To launch a system of electronic exchange of information between authorities, which have the right to inform and require FLA defender and FSLACs.

2.23 In order to ensure accessibility of FSLA, to create a wider network of FSLACs, including centers in administrative districts (rayon), inter-district (inter-rayon) centers, city centers, city-and-district centers, rayons and interrayon centers in cities.

2.24 To provide all district police` duty units and Security Service units with dedicated reliable constantly operating telephone and electronic connections with FSLACs.

3. Recommendations regarding implementation of the best practices of granting access to free legal aid in the criminal justice process

3.1. FSLACs should develop the practice of on-going monitoring and analysis of decisions with requests to provide a lawyer-attorney, in order to consolidate the data on the existing tendencies and to promote common understanding of the grounds for appointment of FSLA defenders.

3.2. CCLAP, FSLACs and NGOs - to devote particular attention to explanation of the centers' functions and mechanisms of access to legal aid, as well as of the notion of "free of charge aid", in order to defeat the stereotype of poor quality of such legal aid and to raise the general awareness with regard to the possibility to get effective free legal of high quality.

3.3. In every case of not informing or failure to inform properly a person about procedural rights, lawyers-attorneys should file a statement on a criminal or disciplinary offense and a motion on inadmissibility of evidence obtained as a result of such procedural actions.

3.4. Courts should exclude any use of evidence, testimony or other information against defendants if obtained as a result of violation of the right of the detained person to defense or of pressure on such person, his/ her lawyer-attorney or others.

3.5. The senior management of pre-trial investigation authorities and courts should continue training/ awareness efforts with their staff, including assistants to judges, with regard to the rules of providing information to citizens and ensure availability of appropriate information materials, both for the officials and for the public, on the right to legal aid.

3.6. In order to preclude lawyers-attorneys' dependence on certain persons or public authorities and ensure their independence and freedom in defense, it is recommended that

a. lawyers-attorneys and regional bar councils should officially report crimes, and investigators should initiate criminal proceedings in each instance of interference with the activities of the defender, threat or violence against a defender, intentional destruction or damage of the property or the defender or his/ her close relatives, or attempted murder, which are crimes pursuant to Articles 397 - 400 of the Criminal Code of Ukraine;

b. in each case of official notification of a lawyer-attorney of a suspicion of crime or application of a measure of restraint to a lawyer-attorney the relevant regional bar councils should resort to all measures established in the Law "*On the Bar and lawyers-attorneys activities*" in order to ascertain that such actions do not constitute attempts at interference with such lawyer-attorney's independence.

3.7. The state should make sure that any barrier to a defender's lawful activities for provision of legal aid not only address but in all instances leads to liability of the culpable persons. This can only be achieved if criminal proceedings under Article 397 of the *Criminal Code of Ukraine* are conducted not by the same pre-trial investigation bodies that are responsible for the hindrances and if lawyers-attorneys officially report such crimes and investigators initiate criminal proceedings on each fact of such hindrance.

3.8. CCLAP should launch internal mechanisms for ongoing monitoring of contracted lawyers-attorneys' compliance with the quality standards and explain the advantages of peer review as an effective mechanism of learning based on sharing experience.

3.9. To integrate the topic of ensuring proper conditions for defense into awareness and training activities for law enforcement agencies and judges.

3.10. To seek gradual increase of the minimum final score of candidates for inclusion into the registers of legal aid providers.

3.11. As soon as the number of FSLA lawyers-attorneys becomes sufficient for introducing their specialization by the nature and gravity of criminal offenses, to consider such specialization in the assignment of lawyers-attorneys to specific cases and by different means to encourage the lawyers-attorneys to pursue such specialization.

3.12. To consider the possibility of a launch, at the FSLACs, of an "information and analytical system" that would assist in management of work of lawyers-attorneys, promote better coordination of lawyers-attorneys, creation of feasible duty schedules, taking into account lawyers-attorneys' preferences, caseload, specialization, qualifications, vacations, sick leaves, availability at night, possible conflict of interests, confidentiality safeguards, etc.

3.13. To provide opportunities for exploring the views of the clients on provision of legal aid and for the "single mailbox" at oblast level for receiving of feedbacks and complaints for further analysis and development of measures to improve lawyers-attorneys' performance.

3.14. To continue the practice of training of lawyers-attorneys as trainers for future cascade

trainings for their peers, according to the needs identified by lawyers-attorneys. To promote joint meetings with judges, prosecutors and investigators, for discussion of problems undermining the right to defense and search for possible solutions.

3.15. CCLAP should take measures to inform the citizens about the benefits of continued use of the services of one lawyer-attorney throughout the duration of legal aid; FSLACs should further monitor the instances of violations of the principle of continuous defense, analyze, identify, if possible, the causes of such violations, and eliminate them and, in cases of replacement of a defender, require the new lawyer-attorney to take measures to address the deficiencies in the provision of legal aid if they occurred prior to his/ her assignment.

3.16. FSLACs should monitor the reasons of a) refusals of the first appointed lawyers-attorneys to participate in urgent investigative actions; b) replacement of FSLA lawyer-attorney by privately hired defender at the stage of pre-trial investigation and during judicial proceedings.

3.17. CCLAP and CSOs should draw up and carry out a plan of joint activities with the detaining authorities, judges and lawyers-attorneys for a better understanding of the operational mechanisms of the FSLA system and of the existing barriers to FLA defense, as well as for further development of the best practices of granting access to legal aid.

3.18. In the process of selection of lawyers-attorneys to pay more attention to the matter of competences and to consider the willingness to work in the nighttime and on holidays. It is advisable to conduct testing in the electronic form, in order to ease assessment of results. To develop methodological guidelines on conducting interviews on the basis of structured behavioral questions. To review the approaches to assessment against some criteria and to provide definitions of criteria.

3.19. To give due attention to methodological support and proper motivation of the FSLACs' staff, which, in particular, can be achieved by more sharing experience events, discussion and identification of the best practices, joint involvement of the staff in the development of documents, etc. To conduct learning events for FSLACs directors every quarter of a year and to discuss the best practices, challenges and possible solutions. To conduct sharing experience activities for duty staff.

3.20. To continue collection of statistical data for analysis of the effectiveness of the system. After the pilot stage it is advisable to consider the feasibility of the use of 300 indicators in terms of their practical value and the resources needed for data collection and processing. It is important to develop an appropriate automated system that would facilitate work with the data. At the same time it appears feasible to issue joint orders for collection of agreed indicators, specifically as regards detainees, and to consider possibilities of provision of parts of internal reports used in MIA system at oblast level to FSLACs. Attention should be given not only to the collection and publication of statistical data but also to data analysis and explanation of the observed tendencies and changes.

3.21. To conduct organizational assessment of CCLAP and FSLACs and identify possibilities for their further development .