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ODIHR Report on the Regional Expert Roundtable on Legal Aid in Criminal Proceedings in Central Asia



Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights

In co-operation with

OSCE Centres in Astana, Bishkek, and Ashgabat

OSCE Office in Tajikistan

OSCE Project Co-ordinator in Uzbekistan

United Nations High Commissioner Office for Human Rights, Regional Office for Central Asia

Introduction and Outlook

All Central Asia countries envisage in their national legislation the provision of legal aid which is understood as legal assistance provided free of charge or at a lesser cost. Legal aid is provided in specific situations when the law foresees the mandatory defence of certain individuals and/or to specific groups, usually to the most vulnerable and indigent individuals as determined by a “financial test”. Kyrgyzstan passed its Law on State-guaranteed Legal Aid in 2009, whereas the Republics of Kazakhstan,¹ Tajikistan and Turkmenistan are in the process of preparing and adopting pieces of legislation dedicated to legal aid provision and the Republic of Uzbekistan has started discussions on a draft law on legal aid.

It was therefore timely that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) organized on 15-16 May 2013 a Regional Expert Roundtable on Legal Aid in Criminal Proceedings in Central Asia, in Bishkek, Kyrgyzstan, as a follow-up to the Fourth Expert Forum on Criminal Justice Reform for Central Asia in Almaty, 29-31 October 2012. A total of 35 representatives of all five Central Asian countries - including 18 women - from ministries of justice, working groups responsible for drafting the legal aid laws and the judiciary, as well as members of Bar associations, international organizations and civil society organizations attended the Expert Roundtable. ODIHR organized the event in co-operation with OSCE field operations in Central Asia and the Office of the United Nations High Commissioner for Human Rights (OHCHR), Regional Office for Central Asia.

The objective of the Expert Roundtable was to offer participants an opportunity to familiarize themselves with existing criminal legal aid models and to exchange experiences, on an equal footing, in developing legal aid mechanisms compliant with international standards and OSCE commitments. In particular, the Roundtable addressed several issues at the core of criminal legal aid questions: the nature and scope of legal aid in criminal proceedings, legal aid beneficiaries, procedural aspects of legal aid application, the organization of legal aid provision, legal aid providers and legal aid system administrators, and financing of the legal aid system. The Roundtable benefited from a wide range of expertise. Ms. Miri Sharon, from the United Nations Office on Drugs and Crime (UNODC) presented the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems² (hereinafter UNPG) which constitute a reference point for international standards on legal aid in criminal proceedings and incorporate best practices. Ms. Olga Shepeleva from the NGO Global Network for Public Interest Law (PILnet) - Moscow Office shared the experience of the Russian Federation in developing a system of mandatory

1 The draft law on State guaranteed legal aid of the Republic of Kazakhstan was approved on 13 June 2013 by the Parliament. At the time of the preparation of this Report, the law was awaiting approval by the President of the Republic. Hence, the conclusions reached here are based on the system enforced at the time of discussion, not on the draft law.

2 See UN Assembly General Resolution A/RES/67/187, 20 December 2012, Annex 1.

legal assistance, whereas Mr. Arkadiy Buschenko, Lawyer and Executive Director of the NGO Ukrainian Helsinki Human Rights Union, provided detailed insights on the establishment of an operational system of criminal legal aid in Ukraine since the adoption of the 2010 law on legal aid.³

Although it strives to be as comprehensive as possible, the present Report does not provide an exhaustive account of all discussions. Instead, it aims to provide an overview of the discussions which took place at the Roundtable and to extract, from the constructive and detailed exchanges, the key points and conclusions as agreed by the majority of participants.

The Expert Roundtable also constituted an opportunity for participants to voice particular requests for support. These include, among other things, comparative analysis of legislation and practices on the provision of legal aid, expert support regarding institutional development of legal aid mechanisms and educational programs. The ODIHR will use the opportunity of the publication of the Report to follow-up on these requests for assistance.

Finally, ODIHR would like to express its gratitude to the Kyrgyz authorities who hosted the Roundtable and to all ODIHR's counterparts in the region, in particular OSCE Field Operations and the UN Office of the High Commissioner for Human Rights.

The Regional Expert Roundtable on Legal Aid in Criminal Proceedings in Central Asia was organized by ODIHR in the framework of its programmatic activities on criminal justice reform in Central Asia.

3 For more information on the experts, see their biographies in Annex 1.

Executive summary

During the Regional Expert Roundtable on Legal Aid in Criminal Proceedings in Central Asia on 15-16 May 2013, in Bishkek, Kyrgyzstan, participants discussed various aspects of legal aid provision and adopted the following conclusions:

- As there exists no ideal or unique system of legal aid, each country can adopt the legal aid model that suits it best and periodically adopt changes for improvement. Yet, when embracing legislative reforms on the question, states' international obligations related to fair trial rights should not be overlooked.
- The provision of legal aid services free of charge or at a lesser cost should be considered the duty and responsibility of the state.⁴
- Legal aid should be provided throughout the entire criminal process, starting from the moment of police interrogation (or detention) to the post-conviction stage.
- Early access to a lawyer⁵ is a fundamental element for the realization of the right to a fair trial.
- The scope of legal aid beneficiaries varies from country to country but the two main systems used in the Central Asia region are: a) provision of free legal aid in mandatory defence cases (as in Kazakhstan, Tajikistan and Turkmenistan) and b) provision of free legal aid upon financial status determination or a so called "means test", with the exception of certain vulnerable groups for whom the means test is not applied (as in Kyrgyzstan and Uzbekistan).
- "Means tests" need to be applied with caution. Financial status determination, which may be a lengthy and burdensome procedure, should never hinder a person's immediate access to legal aid.
- Outreach and awareness-raising about the availability of legal aid is crucial to ensure that all individuals are informed on their right to free legal assistance.
- The appointment of a legal aid counsel is not merely a procedural formality.⁶ The appointed legal counsel should provide effective legal assistance and not simply stand by his/her client during important procedural stages. The practice of "pocket lawyers" (closely linked with the investigating authority) should therefore be thwarted through the solutions discussed during the Roundtable in order to ensure quality of representation and independence of the legal aid counsel.

4 See UNPG, Principle 2.

5 In this Report, for readability purposes, the terms "lawyer", "attorney" and "legal counsel" will be used interchangeably to designate a qualified lawyer who can prepare and submit court submissions on behalf of his/her client and who is admitted to plead before the courts of the country where he/she received his/her qualification.

6 In Central Asia, the act of "appointing" a lawyer in a legal aid case is similar to the act of "selecting" a lawyer as the authority or coordination body appointing the lawyer usually selects him/her before he/she is officially appointed.

- Creating a register of competent duty lawyers who will be appointed in a non-arbitrary manner is one way to ensure that investigators, prosecutors or judges cannot influence which lawyer is assigned to a particular case.
- Countries across the Central Asia region have adopted various models for the administration and coordination of legal aid provision, including through specialised national and/or regional legal aid agencies or directly through the authority leading the relevant procedural stage (e.g.: the investigator or judge). The model to be chosen depends on the specific situation in the country but it must, in any case, ensure that legal aid is effectively provided to those entitled to it.
- Monitoring the system and guaranteeing high quality legal aid services is a key part of an effective and functioning legal aid system. Ensuring accountability of the legal aid provider, especially of lawyers, as well as high-level legal education and continuous professional training of lawyers are possible ways to ensure high quality of legal aid services.
- It is important that legal aid providers are able to perform their functions free from external influence and control. This is particularly important in the case of attorneys involved in legal aid cases as legal aid providers. In addition, monitoring and evaluating the quality of legal aid should not be used as an excuse to control lawyers or restrict their independence.
- The state has an obligation not only to appoint a lawyer to provide legal aid, but also to create an enabling environment for the free and effective exercise of their functions. This means unhindered access to the client (especially in detention) and to case materials, the right to confidential communication with a lawyer, adequate time to prepare the case, etc.
- States should adopt clear and transparent guidelines regulating the procedure of legal aid requests⁷ and legal aid provision, especially concerning the selection and reimbursement of legal aid providers.
- Motivating and timely payment as well as appropriate reimbursement of legal aid providers calculated on the basis of objective criteria - including administrative and travel costs - are necessary to ensure the quality of legal aid.
- Guaranteeing free and effective legal aid is necessary but not sufficient for ensuring the realization of the right to a fair trial; a comprehensive reform of the entire criminal justice sector is needed.

⁷ Currently, all Central Asian states provide legal aid in mandatory defence cases for individuals in especially vulnerable situations (for instance, suspects in detention), with the exception of Kyrgyzstan who applies a means test before providing legal aid to those in a vulnerable situation. Hence, the terms “legal aid request” or “application” refer to an individual seeking legal assistance free of charge or at a lesser cost through mandatory defence or because of his/her financial situation.

- The budget for legal aid is a crucial issue which directly impacts the availability and quality of legal aid. The state should develop criteria to assess the needs for legal aid in the country, and criteria to evaluate the adequacy of the budget allocated to legal aid. Ideally, a specific budget line should be created for legal aid.
- Budget questions are key when assessing which type of legal aid system could be best put in place in a particular country. However, there exist efficient solutions for an improved system of legal aid which do not necessarily carry high financial costs.

Session One: Nature and scope of legal aid in criminal proceedings

Main conclusions of the session:

- As there exists no ideal or unique system of legal aid, each country can adopt the legal aid model that suits it best and periodically adopt changes for improvement. Yet, when embracing legislative reforms on the question, states' international obligations related to fair trial rights should not be overlooked.
- The provision of legal aid services free of charge or at a lesser cost should be considered the duty and responsibility of the state.⁸
- Legal aid should be provided throughout the entire criminal process, starting from the moment of police interrogation (or detention) to the post-conviction stage.
- Early access to a lawyer is a fundamental element for the realization of the right to a fair trial.

Summary of discussions:

- **Legal aid includes various types of services, *inter alia*, advice, assistance and representation.** The legislation should ensure that if one particular legal service performed by an attorney is remunerated as a general rule, such legal service should also be remunerated when performed by a legal aid lawyer. For example, this should include payment for preparation of complaints and motions when prepared by a legal aid lawyer. Otherwise, this unequal treatment between legal aid lawyers and other defence lawyers carries the risk of affecting the quality of the legal aid service provided.⁹
- **Legal aid should be available at every stage of the criminal proceeding,** starting from the moment of police interrogation (or detention) until the post-conviction stage. In the Russian Federation, legal assistance free of charge is available from the preliminary inquiry until cassation proceedings. In Ukraine, legal aid is provided at first instance, during appeal and cassation proceedings.
- **Early access to a lawyer is crucial, especially for persons in detention.** Detainees are especially vulnerable in the early stage of the proceedings and are under increased risk of ill-treatment or other abuse for the purposes of obtaining confessions and other evidence. A good example can be found in the Russian legislation which allows access

8 See UNPG, Principle 2.

9 As it is the case in the Russian Federation, for example.

to a lawyer from the moment of factual detention, but also specifies that a charged person must receive legal counsel even when he/she is not subject to pre-trial detention.¹⁰

- **One way to ensure early access is to make a testimony obtained in the absence of a lawyer inadmissible.** This is the legal solution chosen by the Russian Federation where law enforcement authorities are encouraged to involve lawyers as early as possible in the criminal process.¹¹
- **Ensuring early access requires a certain infrastructure to be put in place, not only legal provisions.** It is of critical importance to establish a system – e.g. a roster of lawyers on duty- which will ensure that legal counsel is in fact provided promptly. It is also important that early access is not delayed or hindered due to procedural requirements, such as special permission by the investigator.

10 Investigating authorities are obliged to appoint a lawyer to a suspect or a defendant if during 24 hours since the moment of detention or arrest, the detainee or his/her relatives or friends have not invited a lawyer at their own expense. If a person is not detained/arrested, the investigator may appoint a lawyer to him/her if during 5 days he/she has not done so at his/her own choosing and expense.

11 However, a possible negative consequence of such practice would be the promotion of “pocket lawyers.” For additional discussions on “pocket lawyers”, see Sessions 3, 4 and 5.

Session Two: Legal aid beneficiaries in criminal proceedings

Main conclusions of the session:

- The scope of legal aid beneficiaries varies from country to country but the two main systems used in the Central Asia region are: a) provision of free legal aid in mandatory defence cases (as in Kazakhstan, Tajikistan, and Turkmenistan) and b) provision of free legal aid upon financial status determination or so called “means test”, with the exception of certain vulnerable groups for whom the means test is not applied (as in Kyrgyzstan and Uzbekistan).
- “Means tests” need to be applied with caution. Financial status determination, which may be a lengthy and burdensome procedure, should never hinder a person’s immediate access to legal aid.
- Outreach and awareness-raising about the availability of legal aid is crucial to ensure that all individuals are informed on their right to free legal assistance.

Summary of discussions:

- To ensure that all beneficiaries in need of assistance are eligible, some newly established legal aid systems, as in Ukraine, decided to progressively widen the scope of eligibility of legal aid beneficiaries over time. Yet, **it remains of key importance that all individuals eligible for legal aid services can exercise their right to effective legal assistance.**
- According to the UNPG, free legal aid is to be provided to **a person who cannot afford legal assistance on his/her own or when the interest of justice so requires.**¹² These criteria should be applied depending on the specific situation on the ground.¹³
- Although the UNPG provide a **broad list of beneficiaries**, including suspects, accused persons charged with an offence, detainees and prisoners, as well as victims and witnesses, national practices on legal aid beneficiaries often vary. In some countries,

¹² The UNPG introduce a liberal test to identify beneficiaries, in comparison with UN Human Rights Committee and the European Court of Human Rights (ECtHR). The International Covenant on Civil and Political Rights (ICCPR) uses a two-prong test – interest of justice and means test. The ECtHR applies the same test. When determining whether the interest of justice is at stake, the ECtHR looks at three factors: the seriousness of the offence, the severity of the potential sentence, and the social as well as personal situation of the defendant. In some cases the Court also pays attention to other criteria, e.g., nature of the proceedings, and the capacity of the unrepresented defendant to present a particularly reasonable argument before the court.

¹³ The UNODC expert noted that in some countries, the vast majority of the population which comes into contact with the criminal justice system has very low income and therefore needs free legal aid. In such cases, it would be redundant to establish any test for assessing eligibility as all applicants to legal aid are very likely not to have the financial means for private legal assistance.

such as Uzbekistan or Kyrgyzstan¹⁴, only suspects, defendants and convicts in criminal cases are entitled to legal aid, excluding individuals under administrative detention. In Ukraine, on the contrary, those subject to administrative detention are also entitled to legal aid. Interestingly, if a narrow interpretation of the newly adopted Ukrainian law is retained, a defendant who would be entitled to legal aid as part of an initial proceeding might not be entitled to the same assistance to initiate a complaint related to ill-treatment suffered during a detention measure imposed as a result of the initial proceeding. Other countries provide legal aid to non-citizens and refugees, victims and witnesses of crimes, as in Kazakhstan or Turkmenistan.

- States have the duty to ensure equal access to legal aid and to **accommodate special needs of different groups**, e.g., women, children¹⁵ or foreign citizens.¹⁶ For instance, the Republics of Tajikistan and Turkmenistan provide free legal aid services to foreign citizens and individuals who do not speak the official language.
- Under Central Asian national laws, **mandatory defence** is often envisaged for vulnerable groups such as women, children, mentally and physically disabled people, and those facing life sentences (e.g. Uzbekistan and the Russian Federation). In such cases, a defendant will have to be provided legal counsel, even when he/she has the means to pay for these legal services. The Russian Federation constitutes a particular model as legal counsel is provided, as a general principle, to all defendants by the investigator at the state's expense even if the defendant waives his/her right to counsel. However, they will be asked to reimburse the state for these services except in special cases.¹⁷
- Additionally, in case of mandatory defence, international standards recognize a waiver of counsel only if the person in question waives his/her right voluntarily and if his/her decision is properly documented in writing. A good way to ensure the voluntariness of such a waiver, as is the case in Ukraine, is to oblige the authorities to enable the defendant to hold a confidential consultation with a lawyer prior to signing any waiver. The impossibility to waive counsel in death penalty cases, as in Tajikistan, was considered a reinforced guarantee for the defendant. However, the impossibility to

14 The Ministry of Justice representative noted that during the awareness-raising campaign they conducted on availability of legal aid, many stakeholders suggested to introduce specific criteria for accessing legal aid, not only for civil cases and criminal cases, but for those who are currently excluded from legal aid scheme such as: non-nationals, internally displaced persons, victims, and witnesses.

15 The UNPG make a reference to the state's obligation to take special measures to ensure that these special needs are met (Principle 10).

16 See UNPG Guideline 11. Additionally, in the case of foreign citizens, legal aid should be provided due to the fact that they might not speak the state language but also because of the particularly vulnerable situation in which their rights can be best safeguarded through the assistance of a lawyer. Also, the right to interpretation of proceedings and documents is a key element of the right to a fair trial.

17 For instance, when the defendant is acquitted, or convicted but is entitled to mandatory defence (juveniles and disabled people), is unable to work due to his health condition or if a defence lawyer was appointed by the judge or an investigator despite the defendant waiving his/her right to counsel.

change a legal aid lawyer who was appointed was assessed negatively as this hinders the right for a person to freely choose his/her legal counsel.¹⁸

- If a country decides to apply a *means test*, it should do so with caution so that **its use does not undermine the defendant's right to a fair trial**. Two countries in the Central Asia region use a means test: Kyrgyzstan¹⁹ and Uzbekistan²⁰. Some **good practices** have been acknowledged, such as using the household income as the basis for calculation for the means test. However, the system needs to be flexible enough to allow for the calculation on the basis of the individual's income he/she is in a particularly vulnerable situation with no equal access to family income or is in conflict with the rest of the family, and if the calculation based on the family income is not to their advantage.²¹ Additionally, **the application of the means test should not prevent a person from receiving urgent legal aid**, e.g. when he/she is arrested and brought to the police station.²² This good practice is in place in Ukraine²³ and Kyrgyzstan.²⁴ In other countries, the means test procedure can be cumbersome and can require that a defence lawyer or a family member provide the necessary documentation proving the defendant's lack of financial means.²⁵ Participants have expressed concerns about this practice as it risks causing delays in providing legal aid services. Finally, a right to appeal a decision of ineligibility for legal aid, based on a means test, should be guaranteed.²⁶
- **Criteria for applying the means test should be widely publicized**, as provided in the UNPG. For instance, an example of good practice would be to organize awareness raising campaigns about the functioning of legal aid systems, the services provided and eligibility conditions, as was the case in Kyrgyzstan.

18 As an example, the European Court of Human Rights found, as a violation of article 6 of the European Convention on Human Rights, the impossibility for a defendant to recuse the attorney appointed ex-officio in order to hire the lawyer retained by his mother. The Court considered that this prohibition, decided by the investigator, impacted on the defendant's right to receive effective legal assistance. See Pavlenko v. Russia, no. 42371/02, ECHR 4 October 2010.

19 As noted by a participant from Kyrgyzstan, there is a possibility that the means test will be abolished for being unpractical. But for now, if the legal aid applicant earns an income of more than 12 times the minimal wage (340 KGS), he/she is not eligible. If a person is registered as unemployed, then he/she is eligible for free legal aid.

20 In Uzbekistan, in order to be eligible for legal aid under the means test, the maximum income per person in the family should not exceed 45 USD a month.

21 See UNPG, Guideline 1.

22 See UNPG, Guideline 1.

23 When drafting the law, experts devoted particular attention to detainees and their vulnerability. This is why the Ukrainian legal aid system has been designed to assign a defence lawyer to a detainee almost automatically. The defendant does not even need to consent to the appointment of a lawyer. The defendant has a right to urgent access to legal aid (during detention) irrespective of his financial status (no one enquires about this at an early stage). This means that the urgent need is given priority over financial status determination.

24 In Kyrgyzstan, the Criminal Procedure Code provides that a defence lawyer is to assist a suspect from the moment of detention. Usually, the legal aid regional coordinator verifies the financial situation of an applicant in 13 days and advises the state about his/her eligibility.

25 This is the case in Uzbekistan.

26 See UNPG, Guideline 1.

Session Three: Procedural aspects of legal aid application in criminal proceedings

Main conclusions of the session:

- The appointment of a legal aid counsel is not merely a procedural formality.²⁷ The appointed legal counsel should provide effective legal assistance and not simply stand by his/her client during important procedural stages. The practice of “pocket lawyers” (closely linked with the investigating authority) should be thwarted through the solutions discussed during the Roundtable in order to ensure quality of representation and independence of the legal aid counsel.
- Creating a register of competent duty lawyers who will be appointed in a non-arbitrary manner is one way to ensure that investigators, prosecutors or judges cannot influence which lawyer is assigned to a particular case.

Summary of discussions:

- As highlighted during the session, in many Central Asian countries, similarly to the Russian Federation²⁸ and Ukraine, there is no application system for legal aid, but rather, a system of appointment of lawyers by relevant authorities in situations prescribed by law. A system of arbitrary appointment of lawyers by investigative or judicial authorities could create certain problems, such as the phenomena of the so-called *pocket lawyers*, i.e. lawyers who are close to the investigator and who provide perfunctory legal assistance, an uneven distribution of work among lawyers, a lack of quality assurance of services, low pay for lawyers involved in the legal aid scheme, and the tendency to assign less experienced lawyers.
- **It is important that legislation provides fast procedures to examine requests for legal assistance.** The eligibility determination procedure should not be excessively complex or expensive. One positive practice can be seen in Uzbekistan where an investigator can accept to receive the application and necessary documents later if they are not available when the lawyer is called. However, the excessive number of

27 In Central Asia, the act of “appointing” a lawyer in a legal aid case is similar to the act of “selecting” a lawyer as the authority or coordination body appointing the lawyer usually selects him/her before he/she is officially appointed.

28 The Criminal Procedure Code obliges investigators and judges to ensure the right to legal assistance. If a suspect/accused or another person acting in his/her interests has not invited a lawyer to defend him/her, the investigator or judge must appoint a lawyer. If the suspect/accused is detained, the investigator or judge appoints a lawyer within 24 hours. When a suspect/accused is not in detention, he/she has 5 days to invite an attorney. If an attorney does not show up within 5 days, the investigator or judge must appoint a lawyer. The investigator or judge has an obligation to appoint a lawyer automatically, even when there is no request for it from the defendant or when the latter waives his/her right to legal counsel. Consequently, there are no specific procedures to apply for legal aid.

documents required to apply for legal aid (contract between applicant and legal aid provider and the court's order appointing a specific lawyer, c.g.) results in delays.

- **Creating a list of competent lawyers on duty can speed up the process of selecting and appointing a lawyer**, as is the case in Tajikistan, Kyrgyzstan and Uzbekistan. In Kyrgyzstan, lawyers are selected and appointed by legal aid coordinators and fill in the necessary documentation which they receive well ahead of time. Their work is strictly regulated by explanatory guidelines. However, the duty system can also have some downsides if it is not transparent and if there are no appropriate monitoring measures in place. A transparent and non-arbitrary system of selection and appointment would ensure that different lawyers are appointed for legal aid cases and would help avoid the appointment of “pocket lawyers.” Furthermore, it was reported that the lack of monitoring measures on the appointment process of lawyers led to abuses whereby investigators - who in certain countries bear the obligation to appoint a lawyer within 24 hours after the detention of a suspect - sometimes called the lawyer on duty the day after the arrest, knowing that he/she would be more lenient to the investigator's cause.

Session Four: The organization of legal aid provision

Main conclusions of the session:

- Countries across the Central Asia region have adopted various models for the administration and coordination of legal aid provision, including through specialised national and/or regional legal aid agencies or directly through the authority leading the relevant procedural stage (e.g.: the investigator or judge). The model to be chosen depends on the specific situation in the country but it must, in any case, ensure that legal aid is effectively provided to those entitled to it.
- Monitoring the system and guaranteeing high quality legal aid services is a key part of an effective and functioning legal aid system. Ensuring accountability of the legal aid provider, especially of lawyers, as well as high-level legal education and continuous professional training of lawyers are possible ways to ensure high quality of legal aid services.

Summary of discussions:

- **As it is primarily the duty of the state to ensure effective implementation of a nationwide legal aid system,**²⁹ states should consider establishing a legal aid body to provide, administer, coordinate and monitor legal aid services.³⁰ This body should be free and independent from external influence (political or judicial) and have the authority to set strict guidelines regarding the manner in which legal aid will be provided.³¹ Kyrgyzstan is the only country in Central Asia which has established regional legal aid coordination centres.
- An important aspect of organizing a nationwide legal aid scheme is to ensure that the service is **available throughout the entire territory**. This objective can prove to be challenging as lawyers can be concentrated in bigger cities, leaving less populated areas at risk of receiving less and lower quality assistance. In Kyrgyzstan, the government plans on establishing a legal aid coordination centre in each region of the country, as foreseen

29 See UNPG, Principle 2.

30 Such coordination bodies could coordinate the provision of legal aid by individually contracted lawyers and full-time lawyers, as well as ex-officio appointed lawyers (for instance in South-Africa and in Lithuania). In Israel, a public defender's office has been set up where internal lawyers and externally contracted lawyers are assigned to take up legal aid cases. The public defender system carries other advantages including lower administrative costs, a more easily manageable system and the creation of unique expertise in the area of criminal defence. In Georgia, the legal aid coordinating body was first established under the Ministry of Justice, and then moved under the Ministry of Correction and Penitentiary system. Yet, there are discussions about making this body fully independent by transforming it into an autonomous body outside the control of any ministry.

31 See UNPG, Guideline 11.

by the 2009 Legal Aid Law. In Ukraine, the Ministry of Justice has established an autonomous national coordination centre providing free legal aid, mostly composed of lawyers. Legal aid services are delivered by 27 regional centres whereas the coordination centre decides upon the general legal aid policy and facilitates the work of the regional centres.

- **The state also has the duty to ensure availability and accessibility of information on legal aid services and about an individual's rights during the criminal justice process.** These rights include the right to a remedy in case access to legal aid is undermined, delayed or denied or if a person has not been adequately informed of his/her right to legal aid.³²
- **The quality of legal aid services provided needs to be ensured and monitored.** Several solutions can be used in that regard such as the setting of criteria for admission as a duty lawyer (for instance in the Russian Federation) or the provision of special training to legal aid lawyers. Younger lawyers can also benefit from mentoring programs whereby they observe and learn from more experienced lawyers. It is also recommended that in developing reforms and new legislation and policy, the legislator and/or the Bar associations should develop a clear set of criteria to assess the quality of legal aid services provided. In addition, if a body is established to monitor the quality of legal aid services, this body should remain independent and protected from external pressures. Yet, ensuring that legal aid lawyers are given proper working conditions and fair financial compensation still remain the strongest way to guarantee serious commitment from a lawyer in his/her work.
- **In an attempt to get rid of “pocket lawyers”,** a few Russian regional chambers of the Bar Association adopted a number of measures, including the introduction of duty lawyer schemes, processing counsel appointment requests directly as opposed to letting the investigator appoint a counsel, and imposition of disciplinary sanctions for attorneys acting in violation of professional rules. One good example comes from the Samara regional bar chamber where a random electronic selection and appointment system has been set up.

32 See UNPG, Principle 9.

Session Five: Legal aid providers and legal aid system administrators

Main conclusions of the session:

- It is important that legal aid providers are able to perform their functions free from external influence and control. This is particularly important in the case of attorneys involved in legal aid cases as legal aid providers. In addition, monitoring and evaluating the quality of legal aid should not be used as an excuse to control lawyers or restrict their independence.
- The state has an obligation not only to appoint a lawyer to provide legal aid, but also to create an enabling environment for the free and effective exercise of their functions. This means ensuring unhindered access to the client (especially in detention) and to case materials, the right to confidential communication with a lawyer, adequate time to prepare the case, etc.
- States should adopt clear and transparent guidelines regulating the procedure of legal aid requests³³ and legal aid provision, especially concerning the appointment and reimbursement of legal aid providers.
- Motivating and timely payment as well as appropriate reimbursement of legal aid providers calculated on the basis of objective criteria - including administrative and travel costs - are necessary to ensure the quality of legal aid.
- Guaranteeing free and effective legal aid is necessary but not sufficient for ensuring the realization of the right to a fair trial; a comprehensive reform of the entire criminal justice sector is needed.

Summary of discussions:

- Participants discussed the **need to ensure that legal aid providers are independent and protected from undue influence**, as enshrined in the UNPG.³⁴ These guarantees will allow legal aid providers to perform their tasks professionally and in the best interest for the legal aid beneficiary. Currently in the region, some attorneys are concerned about the loss of independence if they take part in legal aid schemes which are usually

³³ Currently, all Central Asian states provide legal aid in mandatory defence cases for individuals in especially vulnerable situations (for instance suspects in detention), with the exception of Kyrgyzstan who applies a means test before providing legal aid to those in a vulnerable situation. Hence, the terms “legal aid request” or “application” refer to an individual seeking legal assistance free of charge or at a lesser cost through mandatory defence, or because of his/her financial situation.

³⁴ See UNPG, Principle 12.

administered by the State. This view has resulted in a shortage of legal aid attorneys in certain areas of Kyrgyzstan.

- **In that regard, strong and independent Bar associations can play a positive role in fostering an effective legal aid system.** Restrictions on the access to the legal profession and the Bar association were also highlighted as one of the issues that can potentially negatively impact on the legal aid system. Ensuring independence of Central Asian Bar associations was recognized by participants as an important goal. It is worth noting that this discussion took place at a moment when several countries in the region were about to adopt laws on Bar associations (for instance in Kyrgyzstan and Tajikistan).
- To guarantee that arbitrariness is excluded from the selection of a legal aid lawyer, **law enforcement authorities should not be in a position to influence the selection process.** In Ukraine, **a good practice** has emerged whereby only the relevant regional centre for free legal aid can select and appoint a lawyer (via a hotline which operates 24/7). This way, no party or procedural actor can influence the selection process. The Criminal Procedure Code expressly prohibits the judge or investigator to select and appoint a lawyer.
- **As competence and accountability of legal aid providers constitute key factors in ensuring high quality legal aid services, the state should create incentives for lawyers to get involved in legal aid schemes,** including adequate financial compensation and adequate working conditions. Many of the participants noted that because the pay is so low, lawyers do not feel accountable to clients to deliver quality legal aid service. Similarly, the low payment of legal aid cases deters many experienced lawyers from taking up such cases.³⁵
- Of equal importance is the system for calculating the compensation of legal aid providers. As discussed previously, in certain countries of Central Asia, attorneys' fees are calculated by the authority appointing the lawyer, i.e. the investigator or prosecutor. This in turn renders the attorney dependent upon the appointing authority and encourages the practice of "pocket lawyers". The compensation system should also foresee the appropriate reimbursement of certain costs incurred such as travel or telephone costs.
- During the session, three payment systems were assessed against their ability to ensure fair and timely payment, free from external influence:
 1. *A system based on the complexity of the case:* the case's complexity is assessed upon the gravity of charges, the number of co-defendants, whether provisional

35 One participant presented a more nuanced view as legal aid cases also represent an interesting opportunity for junior lawyers to build some experience. Yet, he added, they should not constitute the main group of lawyers providing legal aid as this would have an impact on the quality of the services provided.

detention was ordered or not, etc. This is the system adopted in Ukraine where an appointed lawyer fills in an application form and submits supporting documents (indictment, judgment, etc.) to the Ministry of Justice which will calculate the payment due based on this information. For assistance provided at the police station, the fee is calculated on an hourly basis. Yet, this system works on the assumption that the party determining the complexity of a case is objective and acts free from personal interest.

2. *A system based on the number of hours or days worked on a case:* this system of billable hours could be used to determine the fair compensation of legal aid lawyers although it could create some problems in practice. For instance, the authority validating the amount of time worked by the lawyer should not be the prosecutor or investigator to avoid any possible undue influence on the lawyer. In addition, there should be general understanding on what constitutes a day of work, i.e. that it is comprised of a certain number of hours worked, as it could be unfair to award a lawyer the remuneration for one full day of work when he/she performed only a procedural action which necessitated only an hour or two of work.
- Even though the UNPG provide that a wide range of actors can act as legal aid providers,³⁶ some countries restrict this possibility to certified lawyers only.³⁷ Yet, diversifying the categories of legal aid providers can facilitate effectiveness of legal aid provision and reduce the burden of legal aid provision from attorneys. Other possible providers, mainly for primary legal aid which mostly focus on providing legal information and advice without being engaged in assistance or representation in court,³⁸ could be well-trained paralegals, NGOs, community leaders or students volunteering in legal clinics.
 - Legal aid should be seen in the global context of the criminal justice system as all elements of the criminal process are interlinked. For instance, the level of repressiveness of a country's criminal justice policy, the widespread use of torture, the existence of true equality of arms between the parties, the enforcement of procedural safeguards against forced confessions, or the establishment of an independent judiciary, constitute crucial elements ensuring that a legal aid system is properly functioning and effective in pursuing its ultimate goal to support individuals in exercising their right to fair trial. At the same time, the defence bar plays a role in safeguarding the system and ensuring the right to a fair trial is respected throughout the process.

36 See UNPG, Introduction, Para. 9. These actors can be: non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional associations and associations, scientific and educational institutions, state-provided lawyers, private lawyers, contracted lawyers, associations of lawyers, paralegals, students, etc.

37 E.g. the Russian Federation and Ukraine

38 In some countries, court representation/assistance can be performed by non-attorneys with legal training or specific expertise in specific proceedings, e.g. related to labor law or family law cases.

Session Six: Financing the legal aid system

Main conclusions of the session:

- Budgeting legal aid is a crucial issue which directly impacts the availability and quality of the legal aid. The state should develop criteria to assess the needs for legal aid in the country and criteria to evaluate the adequacy of the budget allocated to legal aid. Ideally, a specific budget line should be created for legal aid.
- Budget questions are key when assessing which type of legal aid system could be best put in place in a particular country. However, there exist efficient solutions for an improved system of legal aid which do not necessarily carry high financial costs.

Summary of discussions:

- **There can be various ways to fund legal aid system.** The UNPG provide several suggestions for states on how to fund their legal aid systems. For example, they could establish a legal aid fund to support legal aid provision, identify fiscal mechanisms for channelling funds to legal aid from the criminal justice budget or through funds recovered from criminal activities, create incentives for lawyers to work in rural areas and economically and socially disadvantaged areas or ensure fair and proportional distribution of funds between prosecution and legal aid agencies.³⁹
- **Sufficient funds need to be allocated for legal aid in the state budget to avoid underfinancing.**⁴⁰ When estimating such a budget, various factors need to be taken into consideration, such as the general economic situation in the country (for instance, rapid increase of poverty) which will impact on the number of eligible beneficiaries, the budget used the past year as a basis for estimation,⁴¹ the evolution of the inflation rate,⁴² the adoption of new criminal offences or decriminalization of certain acts in legislation, etc. As a result, **tools and evaluation criteria to assess the adequate financing of**

39 UNPG, Guideline 12.

40 For instance, in Ukraine, the budget for legal aid keeps on increasing since the entry into force of the 2010 Law amounting to an estimated 46 million euros this year. Despite the progressive increase, the budget remains relatively low for a total population of 48 million. Another consequence of underfinancing could be that the establishment of relevant infrastructures foreseen under the law is temporarily delayed. For instance, financial constraints prevented the Kyrgyz Ministry of Justice from creating a specialized department for legal aid within the Ministry as envisioned under the 2009 Law on legal aid. This department was supposed to coordinate the work of the regional centres but this role is taken up by the Bar Association for now.

41 Although it could form the basis for calculating the following year's budget, the past year's budget should not be automatically renewed.

42 Some countries have adopted an automatic indexation system to calculate the legal aid annual budget: this system automatically takes into consideration the evolution of the inflation rate in a country and adjusts the payment for legal aid providers appropriately. Automatic indexation can help avoid problems when, due to a surge of the inflation rate, the pay for lawyers becomes meaningless and they refuse to work until the state agrees to raise their fees, as it happened in the Russian Federation in 2012.

legal aid should be devised to ensure that the system is properly funded.

- Ideally, there should be a separate budget line for legal aid in the state budget, as well as regional budgets, if the regional authorities are in charge of remunerating legal aid providers.
- As discussed above, **awareness-raising among the population about the availability of legal aid services** is crucial and can have an impact on the proper use of the legal aid budget.⁴³
- Although financial questions are key in ensuring an efficient and functioning system of legal aid, **lack of ample resources is not an excuse for not trying to enhance legal aid provision in any country, as improvements to the system can be made without incurring high expenses.** UNODC compiled good practices to enhance legal aid around the world at a minimal cost.⁴⁴ To cite an example, access to legal aid in Malawi was improved for children (as offenders or as victims) by producing child-friendly messages and posters about their right to legal aid. Also in Malawi, special training was developed for legal aid providers with volunteer university students and paralegals.
- Lively discussions took place about **universal provision of legal aid.** Most participants agreed that as the majority of individuals who come in contact with the criminal justice system are usually the most financially disadvantaged ones, it may be simpler to provide legal aid to all suspects, defendants and convicted persons. Most importantly, states are bound by their human rights commitments to guarantee the right to a fair trial for all individuals.

⁴³ Yet, in Kyrgyzstan, in spite of the conduct of an awareness raising campaign on legal aid, part of the funds allocated to legal aid remained unspent in 2012. In total, 1888 citizens applied for legal aid in Kyrgyzstan in 2012.

⁴⁴ See UNODC Handbook on Improving Access to Legal Aid in Africa (some of the examples are relevant world-wide).

Annex 1

AGENDA

DAY ONE - 15 May 2013

9:00-9:30

Participant registration

9:30-10:00

Welcome and introductory remarks

H.E. Sergey Kapinos, Head of the OSCE Centre in Bishkek,

Mr. Armen Harutyunyan, Regional Representative for Central Asia, Office of the United Nations High Commissioner for Human Rights (OHCHR),

Mr. Daniyar Terbishaliev, Member of Parliament of the Republic of Kyrgyzstan,

Mr. Benjamin Moreau, Chief of Rule of Law Unit, Office for Democratic Institutions and Human Rights (ODIHR)

10:00-11:15

Tour de table: presentations of national reform on legal aid mechanisms in criminal law and other areas

Moderator:

Benjamin Moreau, ODIHR

Each delegation will present the state of national reforms on legal aid mechanisms in their respective countries as well as the general characteristics of the model put in place.

11:15-11:30

Coffee break

11:30-12:45

Session 1. Nature and scope of legal aid in criminal proceedings

Moderator:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Panellists:

Miri Sharon, United Nations Office on Drugs and Crime (UNODC),

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office

After a presentation of international good practices on existing types of legal aid services provided in criminal proceedings, the session will allow for participants to elaborate on what type of assistance and services legal aid in criminal proceedings offers in their legal system. Whether it is available at the pre-trial stage including when provisional detention has been ordered, the main trial, appeal proceedings and during the execution of the sentence, legal assistance to an indigent defendant is composed of various facets going from oral advice, preparation of submissions to court representation.

12:45-14:00

Lunch break

14:00-15:15

Session 2. Legal aid beneficiaries in criminal proceedings

Moderator:

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office,

Panellists:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Miri Sharon, UNODC

Participants will be given the opportunity to elaborate on the composition of the legal aid beneficiary population within their countries. The participants will also discuss the eligibility criteria which are used to identify legal aid beneficiaries such as monthly incomes, employment, receipt of social benefits, etc. A comparative overview of criteria applicable as well as international good practices will be examined to set the basis for discussions. In addition, the session will allow for participants to discuss other particular groups of individuals where legal assistance is foreseen under the law, for instance in cases of domestic violence or foreign detainees.

15:15-15:30

Coffee break

15:30-16:45

Session 3. Procedural aspects of legal aid application in criminal proceedings

Moderator:

Miri Sharon, UNODC,

Panellists:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office

This session will further examine the procedural aspects of applying for and receiving legal aid. In particular, participants will examine, for instance, what steps need to be taken to lodge a legal aid request (including the list of documents which should be attached to such requests), how the request is

examined by the legal aid administrator, what factors are taken into consideration when granting or refusing such requests, what remedies are available against refusal to provide legal aid, or how long the entire procedure or the individual steps involved usually last.

DAY TWO- 16 May 2013

9:30 – 10:45

Session 4. The organization of legal aid provision

Moderator:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Panellists:

Miri Sharon, UNODC,

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office

Following presentations of comparative models and good practices on models of legal aid systems, participants will discuss the administration of legal aid services, whether it is carried out by the courts, a governmental agency or other institutions.

The audience will also discuss the existence of mechanisms to evaluate the quality of the legal aid services provided as well as existence of collection and analysis of data gathered through the legal aid provision.

Finally, organization of provision of legal aid will also be examined from the standpoint of legal aid availability, especially geographically. As this right is fundamental to equality of arms and fair trial, it must be ensured that legal aid to indigent defendants is available throughout the state's territory.

10:45- 11:00

Coffee break

11:00- 12:45

Session 5: Legal aid providers and legal aid system administrator

Moderator:

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office,

Panellists:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Miri Sharon, UNODC

International good practices regarding selection and organization of legal aid providers, including attorneys or other legal associations, will provide food for thought during the discussions. Questions about criteria for selecting legal aid providers and rules regarding their accountability in performing their legal aid services will be discussed.

Finally, issues related to the hierarchical and organizational ties between legal aid providers and the administrator of the legal aid system will be addressed by the participants. In particular, the question of mechanisms for funding or compensating legal aid providers will be of interest to the participants and will be open for discussion. Finally, the existence of parallel legal aid provisions-implemented outside of the institutional framework established for legal aid- notably by the civil society sector will be examined.

12:45- 14:00

Lunch break

14:00- 15:15

Session 6. Financing the legal aid system

Moderator:

Miri Sharon, UNODC,

Panellists:

Arkadyi Bushchenko, Ukrainian Helsinki Human Rights Union,

Olga Shepeleva, Global Network for Public Interest Law (PILnet), Moscow Office

Even a perfect legal aid system would be meaningless if there is no dedicated state or other budget to ensure its proper functioning. Lack of proper funding of the system will affect the availability of legal aid and its quality. Participants will be invited to discuss the solutions they have adopted to ensure that their legal aid system is viable and sustainable while comparative models and international good practices will be presented. Furthermore, participants will discuss the different media used in reaching out to the community in order to raise awareness on the availability of legal aid services.

15:15- 15:30

Coffee break

15:30- 16: 00

Final remarks

Annex 2

EXPERTS' BIOGRAPHIES

Arkadiy Buschenko (Ukraine)

Mr. Buschenko is a Ukrainian lawyer and the Executive Director of the Ukrainian Helsinki Human Rights Union which is composed of 29 human rights organizations in Ukraine. The Union aims to realize and protect individuals' rights and freedoms by promoting the implementation of the humanitarian articles of the 1975 Helsinki Final Act, and other international human rights obligations of Ukraine. Mr. Buschenko has extensive experience in advising and representing clients in criminal and civil cases before national courts and various state bodies of Ukraine, as well as before the European Court of Human Rights. He also supported other civil society organizations dealing with the prevention of torture and other forms of ill-treatment in Ukraine and served as a legal expert for the Center for Legal Aid to Victims of Ill-Treatment. Mr. Buschenko designed and conducted numerous seminars and trainings for lawyers, judges, law enforcement personnel and NGOs regarding strategic litigation in cases involving torture and violations of fair trial rights, at national and international levels. He authored a number of publications regarding the defense of victims of torture, the right to liberty, the case law of the ECtHR, *inter alia*.

Miri Sharon (United Nations Office against Drug and Crime)

Ms. Sharon holds an L.L.M in Public International Law – International Criminal Law Specialization, from the Leiden University in the Netherlands. She joined the United Nations Office against Drug and Crime (UNODC) as Drug Control and Crime Prevention Officer in July 2006. She is currently working in the Justice Section on normative development and technical assistance in the area of criminal justice reform and crime prevention, focusing on promoting access to legal aid. She previously worked in UNODC's Organized Crime Section, focusing on legal tools in the area of trafficking in persons and smuggling of migrants. Prior to joining the UN, Ms. Sharon was a Legal Advisor in the field of Public International Law within the Israeli Ministry of Justice and focused her work on Human Rights and International Criminal Law. She also contributed to the establishment of a legal clinic on human rights hosted in a law faculty. Ms. Sharon worked for a short period as a criminal prosecutor in Israel after obtaining her licence to practice law.

Olga Shepeleva (Russian Federation)- PILnet, Moscow Office

Ms. Shepeleva is a Senior Legal Officer at the Global Network for Public Interest Law (PILnet), Moscow Office. PILnet is an international NGO in the field of human rights and rule of law which liaises with local partners to develop institutions essential to promote and ensure the

respect of human rights. Within PILnet, Ms. Shepeleva researches on international best practices for organizing and managing free legal aid programs and advocates for the establishment of such programs throughout the Russian Federation. Before joining PILnet, Ms. Shepeleva worked for various Russian civil society organizations on monitoring the work of law enforcement authorities, penitentiary institutions, judiciary, inter alia. She has extensive experience on issues related to freedom from torture as she represented victims of torture before the European Court for Human Rights (ECtHR) and provided advice on litigation strategies to other NGOs. Ms. Shepeleva authored and contributed to a number of publications related to legal aid and fair trial standards.

Annex 3

DISCUSSION QUESTIONNAIRE

Below are a set of questions which can help guide the discussions during the Expert Roundtable. These questions are not comprehensive: other issues of interest might arise during the discussions and not all questions below might receive an answer.

Additionally, ODIHR would be interested in collecting the answers to the questionnaire. Feel free to send your answers to Nathalie Tran or contact her for additional information (Nathalie.tran@odihr.pl)

General questions

1. Was the model of criminal legal system in your country adopted or chosen based on other existing models of criminal legal aid system? If yes, which models were first considered?
2. If legislation on legal aid is already adopted, how did the legislation drafting process take place? (an expert working group, public consultations, etc.)
3. If an expert working group was set up to prepare the law, who were the members of the working group (i.e. what were their main profession/function)?
4. If legislation on legal aid is about to be adopted or in process of being developed, will you consider open public consultations prior to adopting the law?

Session 1. Nature and scope of legal aid in criminal proceedings

5. How would you define “legal aid”? On what legal provision is legal aid based in your country?
6. Where can one find more information on legal aid in your country?
7. In the context of criminal proceedings, what types of services are provided in your system?
8. Do the services include primary legal aid (legal information and legal advice)? And secondary legal aid? (Drafting of legal submissions and court representation)?
9. More particularly, for which situations does your legislation prescribe the assistance of a lawyer (or when are the instances of mandatory defence)?
10. Is a suspect entitled to be assisted by a legal counsel during the pre-trial stage?
 - a. If yes, does legal assistance during pre-trial phase include legal assistance provided to a suspect when arrested by the police?

- b. If yes, does legal assistance during pre-trial phase include legal assistance provided to a suspect when pre-trial detention is decided?
 - c. Does it include legal assistance when seeking review of the pre-trial detention decision?
- 11. Is legal aid – i.e. free or partially free legal assistance- in pre-trial phase available? Particularly for the stages described above in question 10?
- 12. What body is in charge of informing the suspect about the availability of legal aid?
- 13. When should the suspect be informed of the availability of legal aid?

Session 2. Legal aid beneficiaries in criminal proceedings

- 14. What are the criteria applied to determine eligibility to legal aid?
- 15. On the basis of what information and factual circumstances were these criteria first determined and calculated?
- 16. If there are criteria related to monthly income, what are the eligibility thresholds in USD?
 - a. Is eligibility calculated on an individual basis or on the basis of household?
 - b. What share of the average monthly income does this threshold constitute?
- 17. Is there a criterion based on the property owned by the applicant- also called a means test?
 - a. What is the eligibility threshold in USD?
 - b. Is eligibility calculated on an individual basis or on the basis of household?
 - c. What share of the average GDP per inhabitant / average monthly income does this threshold constitute?
- 18. What are the other eligibility criteria? For instance related to employment or receipt of social welfare benefits?
- 19. How would you assess the relevance and efficiency of these eligibility criteria? (for instance, too restrictive or too broad, etc.)
- 20. Besides indigent groups, are there additional categories of individuals who are eligible to legal aid on the basis of their status or belonging to a special group under the law? (victims of domestic violence, minors, etc.)

Session 3. Procedural aspects of legal aid application in criminal proceedings

- 21. What are the formal steps to be taken when applying for legal aid?
- 22. What are the documents which need to be gathered by a legal aid applicant?
- 23. What are the enforceable deadlines? Is it clear when they start to run?

24. Is there a deadline for the legal aid administrator to provide a response?
 - a. In practice, what is the average number of days after which an applicant receives a response?
25. Does an applicant receive assistance in preparing his/her legal aid application?
 - a. If yes, who provides such information and assistance?
26. What are the consequences of a delayed decision on admissibility of legal aid application?
 - a. How does the delay in the decision affect the provision of legal assistance?
27. Which authority decides on eligibility for legal aid? Is there a right to appeal the decision?
28. What is the remedy against a decision to reject the application?
29. Who examines such appeal?
30. If appeal is possible, what is the deadline for appeal against the decision of rejection?
31. What is the deadline for the administration to examine the appeal?
32. Is the system in place, with the enforceable deadlines, conducive to provision of legal aid in due time?
33. Is there a procedure in place to allow for “urgent” access to legal aid without checking eligibility? If so, in what situations does it apply?

Session 4. The organization of legal aid provision

34. Who is in charge of administering the legal aid system?
35. Do state-administered legal aid offices also receive public funds?
36. How many state-subsidized legal aid providers are there?
37. If the system is mostly administered by the State or an official body, are there still privately-funded legal aid providers? How many are there?
38. How many legal aid centres (state-administered and private one) are there in your country?
39. How many are there legal aid offices against the number of inhabitants?
40. In case there is a special body/commission set up to administer legal aid, what are the exact functions of such body? Who sits in such body?
41. How do citizens obtain information on their rights in the criminal justice system?
42. Is the administration of legal aid decentralized?
 - a. If yes, are there local offices?
 - b. If yes, on what level (municipal, regional, for instance)?
43. Is legal aid accessible in all areas of your country?
44. Is there a functioning mechanism to monitor and evaluate the quality of legal aid

provided in your country?

- a. If yes, on what basis or criteria is the quality of legal aid monitored and evaluated?
45. Are these results compared to the general statistics on criminal proceedings and cases outcomes? (for instance, broken down into convictions, acquittals, decision of pre-trial detention, decision to use alternative measures to detention, etc.)
46. Is there an established system gathering data and statistics on legal aid provision?
 - a. If yes, how does this function: who provides the information and who processes it?
 - b. If data collection is systematic, how often are data and statistics submitted by the relevant bodies?
 - c. What are these statistics and data collected about?
 - d. Do they concern the number of applications, approvals and rejections of legal aid applications, broken down per year and area?
 - e. Do these data also show the average number and type of legal acts requested?
 - f. Are these data public? If yes, how are they accessible?

Session 5: Legal aid providers and legal aid system administrator

47. Who are the legal aid providers in your country?
48. What is the relation between the legal administrator and each existing category of legal aid provider?
49. Are legal aid providers to receive instructions on the manner how legal aid should be provided (for instance, through policy decisions made by the administrator)?
50. Who exactly chooses the “official” (or state-subsidized) legal aid providers?
51. How are legal aid providers chosen, based on what criteria?
52. What type of training do legal aid providers receive? Who is responsible for providing the training?
53. Is there a remedy should a potential legal aid providers not be approved?
54. What are the mandates and responsibilities of each category of legal aid providers? For instance, NGOs are providing primary legal aid while attorneys provide secondary legal aid?
55. Are there any rules aiming at delimitating the respective and/or competing mandates of legal aid providers intervening in criminal cases?
56. Is there a body in charge of coordinating the various legal aid providers’ work?
57. If yes, which one is it and who is part of it?
58. In the case of attorneys, how are they involved in the provision of legal aid? Under what

- basis (roster of competent ex-officio attorneys, contract with specific law firms, public defender system, etc.)?
59. Who is the main interlocutor when it comes to reaching out to attorneys involved in legal aid schemes?
 60. In case the Bar association is the main interlocutor, how are the relations between the Bar and the administrator regulated?
 61. In case licensed attorneys are providing legal assistance in a legal aid case, how are disciplinary issues resulting from the behaviour of an attorney dealt with?
 - a. Is the bar association involved? If yes, what is its role?
 - b. Who is in charge of examining those disciplinary questions?
 - c. Who is competent to issue a disciplinary sanction?
 62. In case there is a roster of competent ex-officio lawyers:
 - a. How are ex-officio lawyers chosen to enter the roster of competent lawyers and based on what criteria (experience, area of expertise, etc.)?
 - b. Who assigns a particular ex-officio lawyer to a particular case?
 - c. Based on what reasons is a particular lawyer assigned to a certain case? Is the order of assignment dependent on chronological, alphabetical or another order/ rule?
 - d. On what basis are ex-officio lawyers remunerated? (by hour, complexity of case, category of tasks, travels, etc.)
 - e. On average, how much is an ex-officio lawyer remunerated for working on a criminal case, from the first moment legal assistance is required until the issuance of a final judgment?
 - f. According to the relevant legislation, when is payment of the compensation due?
 - g. According to you, are the compensation fees satisfactory to ensure proper and effective legal services?
 - h. If not, could there be alternative solutions to increase motivation of ex-officio lawyers participating in legal aid schemes and therefore increasing the quality of defence under legal aid schemes?
 - i. Is there a system of contingent fees whereby an ex-officio lawyer receives a bonus on his/her remuneration based on the outcome of the proceedings for his/her client? According to you, could this be an interesting solution?
 63. In case there are public defender offices:
 - a. How does the public defender program function in your country?
 - b. Are there local offices of the public defender? If yes, how many?

- c. What are the different professions working in public defender offices? (for instance, licensed attorneys, investigators, social workers, etc.)
 - d. On average, how many employees are there per office?
 - e. How are public defenders funded? Is the funding of public source solely?
 - f. What is the annual budget of a public defender office?
 - g. Is the available funding sufficient to ensure proper functioning of the public defender's office?
 - h. Is there any case backlog within the public defender's office? If yes, what are the additional solutions to tackle this backlog?
64. On NGOs providing legal aid services:
- a. Are there NGOs providing legal aid in the framework of criminal cases?
 - b. If yes, how many NGOs provide legal aid services in your country?
 - c. Is there a registration obligation for such NGOs? If yes, what is the purpose of the registration?
 - d. Are there legal requirements for an NGO to provide legal aid services? (for instance, having a contract with a licensed attorney, minimum number of staff, etc.)
 - e. Can there be private initiatives supporting NGOs to provide legal aid? If yes, how are these initiatives regulated and what role does the State play?
 - f. What services can NGOs provide exactly (for instance, legal information, legal oral consultations, preparing legal acts and court submissions, court representation, etc.)?
 - g. In case of state-subsidised NGOs, how are they compensated? Based on what scale?
 - h. According to you, is the level of compensations appropriate to ensure legal aid services of good quality?
65. If the current legal aid system is not capable of processing all legal aid cases, are there alternative solutions under discussion to support a wider legal aid system?
66. Are there established legal clinics implementing legal aid programs?
- a. If yes, how do they function?
 - b. Are they funded through university budget or do they benefit from other financial sources?
67. Does your system recognise the use of paralegals (non-lawyers) in providing advice or information?
68. Does the existing legal aid scheme allow for the use of private or public expertise?
- a. Is there a budget dedicated for expertise?

- b. If yes, who decides if expertise can be available?
- 69. Is there an insurance scheme set up to cover malpractice claims resulting from legal aid procedures?
 - a. If yes, how is it funded?
 - b. How often has it been used? Generally, what are the main types of malpractice found?
 - c. According to you, is there a need to set up such insurance for legal aid services?

Session 6. Financing the legal aid system

- 70. What is the annual public budget for legal aid services?
- 71. If the data is available, what is the evolution of the public budget for the past 5 years?
- 72. What part of the public expenditures related to justice does legal aid represent?
- 73. According to you, is the budget dedicated to criminal legal aid sufficient to ensure access to legal assistance for indigent groups?
- 74. How is the public budget for legal aid funded?
- 75. Could there be alternative funding solutions?
- 76. For instance, would the use of private insurance against damages, accidents and disasters constitute a possible way to decrease the number of people in need of legal aid, as these insurances would cover fees related to legal representation?
- 77. What are the means used to promote the availability of legal aid?
- 78. Who is in charge of ensuring that information on legal aid reaches the relevant fringes of the population?

Are there any rules on promoting legal aid services which could have the negative and unforeseen impact of restricting access to legal aid?

Annex 4

LIST OF PARTICIPANTS

1. Daniyar Terbishaliev, Member of Parliament, Kyrgyzstan
2. Tagaev Melis Muktarovich, Supreme Court, Kyrgyzstan
3. Maripa Seydalieva, Ministry of Justice, Kyrgyzstan
4. Muhtar Bakhautdinov, Attorney, Kyrgyzstan
5. Bakyt Kachikeeva, “Association of the Centres for the Support of the Civil Society”, Kyrgyzstan
6. Kozhomova Gulniza, Bar Association, Kyrgyzstan
7. Ruslan Khakimov, Soros Foundation – Kyrgyzstan
8. Takhmina Hshuralieva, Soros Foundation – Kyrgyzstan
9. Sergey Kapinos, Head of the OSCE Centre in Bishkek
10. Fabio Piana, OSCE Centre in Bishkek
11. Venera Sydykova, OSCE Centre in Bishkek
12. Vera Tkatchenko, UNODC- Kyrgyzstan
13. Meruyert Muzatova, Ministry of Justice, Kazakhstan
14. Klara Imangaliyeva, Almaty City Court, Kazakhstan
15. Daniyar Kanafin, Attorney, Kazakhstan
16. Tatyana Zinovich, “Legal Policy Research Centre”, Kazakhstan
17. Bahytzhan Medev, Soros Foundation – Kazakhstan
18. Mariya Dissenova, OSCE Center in Astana
19. Nasim Hasanov, Supreme Court, Tajikistan
20. Rajabmo Badridinova, The Office of the Ombudsman, Tajikistan
21. Kayum Yusupov, Attorney, Tajikistan
22. Zulfikor Zamonov, Attorney, Tajikistan
23. Mayagozel Hojamberdyeva, Ministry of Justice, Turkmenistan
24. Bestyr Eyvanova, Bar Association, Turkmenistan
25. Mavlyuda Kulikova, “Legal Problems Research Centre”, Uzbekistan
26. Gulnora Ishankanova, International Commission of Jurists
27. Rashid Khasanov, OSCE Project Co-ordinator in Uzbekistan
28. Armen Harutyunyan, OHCHR Regional Office for Central Asia
29. Natalya Seitmuratova, OHCHR Regional Office for Central Asia

30. Oktam Gaziev, OHCHR Regional Office for Central Asia
31. Arkadiy Buschenko, Expert, Ukrainian Helsinki Human Rights Union
32. Miri Sharon, Expert, UNODC
33. Olga Shepeleva, Expert, PILnet
34. Benjamin Moreau, Chief of Rule of Law Unit, OSCE/ODIHR
35. Nathalie Tran, Rule of Law Officer, OSCE/ODIHR
36. Ana Natsvlishvili, Junior Professional Officer, OSCE/ODIHR
37. Agnieszka Padewska, OSCE/ODIHR

Annex 5

FURTHER READING

1. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187, 20 December 2012, Annex 1
2. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/23/43, 15 March, 2013
3. Fair Trial Standards: International and National Practices, T.G. Morshchakov ed., (Moscow 2012) [unofficial translation of the title, text available in Russian only]
4. Access to Justice: Problems of Legal Aid in the Countries of Central and Eastern Europe (PILI, Interights, Bulgarian Helsinki Committee, The Polish Helsinki Foundation for Human Rights, 2004) [unofficial translation of the title, text available in Russian only]
5. [Effective Criminal Defence in Eastern Europe](#), Ed Cape & Zaza Namoradze (2012)