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**A. V. Borovyk, N. Z. Derevianko**

**IMPLEMENTATION OF THE RIGHT  
TO RECEIVE PROFESSIONAL LEGAL  
ASSISTANCE IN UKRAINE  
(ADMINISTRATIVE AND LEGAL  
PRINCIPLES)**

Monograph

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**Reviewers:**

**Demianchuk Vatalii** – Doctor of Juridical Science, professor (Ukraine);

**Kopotun Ihor** – Doctor of Juridical Science, professor (Czech Republic);

**Drozd Oleksii** – Doctor of Juridical Science, professor (Ukraine);

**Nechyporuk Janush** – Doctor of Juridical Science, professor (Poland).

**Borovyk A. V.**

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The monograph is devoted to the disclosure of the content and essence of the administrative and legal basis for the implementation of the right to receive professional legal assistance in Ukraine by providing a description and generalization of the current state of its implementation, a description of legislative and practical gaps of its administrative and legal support by the state, as well as formulation of specific directions and proposals to dispose the identified problems.

The monograph considers the administrative and legal status of the subjects of the implementation of the right to receive professional legal assistance through the set of rights defined in administrative and legal norms, responsibilities, purpose of creation and tasks of their activity, powers, as well as responsibility for non-performance of the functions assigned to them by the state, or violation of established norms.

The monograph is designed for scientists, lecturers, postgraduates, students, legal practitioners, and anyone interested in the subject.

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## Introduction

In terms of material perception, the Constitution of Ukraine meets the criteria according to which the country can be called a sovereign and independent, democratic, social, legal state. Its norms have three fundamental characteristic properties – the consolidation of the foundations of the territorial structure, the basis for the division and implementation of power, as well as the protection of natural inviolable rights, individual freedoms and legal possibilities of man and citizen.

The Fundamental Law of Ukraine recognizes its citizens as the highest value and guarantees that the state is obliged to ensure their security by recognizing the inalienable rights of man and citizen and their protection within all types of public and private legal relations; to create mechanisms to prevent the violation of such rights by all available tools of power and service influence; to ensure their proper implementation by each member of the community.

Since the need to focus public policies on human-centeredness was proclaimed at the highest legislative level, the vector and limits of understanding rights, as a purely political and legal phenomenon, and its transformation into an economic, social and humanistic phenomenon with a focus on sustainable and inclusive human development, were changed. In this discourse, the right to receive professional legal assistance in Ukraine has acquired a qualitatively new meaning. Today it is an integral part of the legal

status of the individual, as an independent constitutional guarantee that embodies the state's task of protecting and safeguarding its citizens in problematic life situations.

Unfortunately, the level of legal culture of Ukrainians, legal nihilism and systemic institutional problems of normal functioning of the state have led to such a state of Ukrainian citizens, when they are unable to solve standard life situations, constantly need outside help of a lawyer to activate or run public and private law relations, where they are direct participants. In addition, recent legislative changes in the status of legal assistance providers have led to debate among scholars and practitioners on the issue whether they will be useful for law enforcement or, conversely, the quality of protection will be low.

However, today the state of implementation of the right to receive professional legal assistance in Ukraine is extremely low, because of the lack of specialized legislation on legal assistance, the presence of bureaucratic procedures, inadequate level of digital support and the complexity of stages and steps of obtaining it testify against the state. This is confirmed by the results of their own opinion poll of citizens on assessing the state of their right to receive professional legal assistance in Ukraine, where most respondents noted the need to introduce specialized departments at centers for administrative services that will consult or provide other types of legal assistance to citizens (76 % respondents). This is due to the fact that Ukrainians are little aware of the

procedures and methods of implementation this right (67 % of respondents). Due to lack of financial resources they are forced to accept the violation of their rights, freedoms or interests by the state and individuals, because they do not have the opportunity to apply for professional legal assistance (83 % of respondents) and generally believe that the informative system of professional legal assistance in Ukraine is not developed. Many Ukrainians do not know the location of specialized centers for the provision of legal assistance and do not understand its purpose in general (69 % of respondents).

## **Section 1**

### **General Characteristics of the Administrative and Legal Assistance for the Implementation of the Right to Receive Professional Legal Assistance**

#### **1.1. The Right to Receive Professional Legal Assistance and its Place in the Legal Status of a Citizen of Ukraine**

The changes in Ukraine over the last twenty years suggest that the preconditions for the formation of a mature civil society are being created in our country. Success in this direction depends not only on economic development, effective legislation and modernization of social and legal relations, but also on the state's readiness to streamline them, provide everyone with constitutional guarantees and necessary protection, the most important of which is a guarantee of qualified legal assistance<sup>1</sup>.

Art. 59 of the Constitution of Ukraine stipulates that everyone has the right to professional legal

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

assistance<sup>1</sup>. But it should be noted that a characteristic feature and the main peculiarity of the constitutional right to professional law is that it is used to implement and protect other rights and freedoms of man and citizen. None of the rights enshrined in the Constitution of Ukraine can be effectively implemented without the right to receive qualified legal assistance, which in the science of constitutional law is considered as a legal guarantee of all human and civil rights and freedoms<sup>2</sup>.

The importance of professional legal assistance as an independent guarantee of ensuring the rights, freedoms, legitimate interests of the individual, necessitates scientific research of this phenomenon. At the same time, professional legal assistance, being the subject of scientific study in the branch of legal sciences (constitutional, criminal procedure, administrative, civil procedure, civil law, etc.), academic disciplines (“Law Enforcement”, “Advocacy”, etc.)<sup>3</sup>, effectively requires to be researched at various levels, both theoretical and practical.

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<sup>1</sup> Konstytutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>2</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

<sup>3</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.



Therefore, it is clear that we will turn our scientific research to the general theory of law, which will allow us to use a wider range of cognitive capabilities and develop a holistic vision of the legal phenomenon, which should be the starting point for solving private and industry problems related to professional legal assistance<sup>1</sup>.

First, we will examine the legal status of a citizen of Ukraine and its main components.

The legal status of a citizen is classically perceived through a set of rights, among which the main attention is paid to political ones<sup>2</sup>. The relationship between the state and the individual must be clearly regulated and ordered. After all, the legal status of an individual depends on whether he acts as a citizen, foreigner or stateless person<sup>3</sup>.

In general, the concept of “status” is used by various sciences, and the general theory of law developed the concept of “legal status” on its basis. Analysis of a significant amount of literature on the theory of state and law, constitutional law shows that the term “legal status” is used mainly in relation

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Yuskiv N. V. Hromadyanstvo u systemi pravovoho statusu nepovolnitnikh. 2014. URL: <http://science.lpnu.ua/sites/default/files/journal-paper/2017/may/2271/vnulpurn201480737.pdf>

<sup>3</sup> Systema prav i svobod lyudyny i hromadyanyna. 3. Pravovyi status lyudyny i hromadyanyna: Rozdil kursu DO. uapravo.com., 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id\\_book=4212&id\\_parent=4212&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id_book=4212&id_parent=4212&id_vid_res=17)

to such categories as: “person”, “citizen”, “foreigner”, “stateless person”, “civil servant”, i. e. indicates the status (position) of an individual. The term “competence” is used for legal entities (in particular, public authorities), which in meaning is identical to the term “legal status”<sup>1</sup>.

Investigating this issue, A. Prykhodko<sup>2</sup> in his own work found out that status in the general sense (from the Latin “*status*” – position, condition) means the legal status (set of rights and responsibilities) of a natural or legal person. It is an abstract ambiguous term; it means a set of stable values of the parameters of the object or subject in the general sense<sup>3</sup>.

Thus, depending on the types of subjects, the legal status can have a wide range of legal characteristics. We are interested in the legal characteristics that define the status of a citizen of Ukraine.

Citizenship is a stable political and legal relationship of a person with the state, expressed in mutual rights and responsibilities, in turn, a citizen of Ukraine – a person who has acquired Ukrainian citizenship in the manner prescribed by the laws of Ukraine

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<sup>1</sup> Armash N. O. Kerivnyk orhanu vykonavchoi vlady: administratyvno-pravovyy status. Zaporizhzhya: HU “ZIDMU”, 2006. 172 s.; Hutsul V. V. Administratyvno-pravovyi status Ministerstva yustytсии Ukrainy u sferi pravovoyi osvity naselennia. *Aktualni problemy pravoznavstva*. 2019. Vyp. 1. S. 49–53; Teoriya hosudarstva i prava/pod red. V. M. Korelskoho, V. D. Perevalova. Moskva: Izd. hruppa INFRA M NORMA, 1997. 570 s.

<sup>2</sup> Prykhodko A. A. Administratyvno-pravove zabezpechennya zapobihannya ta protydii koruptsii v Ukraini za umov yevrointehratsii: dys. ... d-ra yuryd. nauk. Dnipro, 2020. 485 s.

<sup>3</sup> Ibid.

and international treaties of Ukraine<sup>1</sup>. The procedure for obtaining Ukrainian citizenship, as well as the set of rights and responsibilities of a citizen of Ukraine are defined in the Constitution of Ukraine and the Law of Ukraine of 18.01.2001 № 2235-III “On Citizenship of Ukraine”, as well as a number of international legal acts, such as European Convention on Nationality (Strasbourg, 6 November 1997)<sup>2</sup>, which was ratified with a reservation and declaration by the Law of Ukraine of 20 September 2006 № 163-V (163-16) “On Ratification of the European Convention on Nationality”<sup>3</sup>.

The majority of the population of the state considers the fact of citizenship as a condition for the possession of rights and obligations, as well as a legal basis for the enjoyment of rights and freedoms and the fulfillment of obligations established by law<sup>4</sup>. So, the basis for the existence of the institution of citizenship in Ukraine is Art. 4 of the Constitution of Ukraine, which determines a single citizenship in Ukraine, and the grounds for the acquisition and

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<sup>1</sup> Pro hromadyanstvo Ukrainy: Zakon Ukrainy № 2235-III vid 18.01.2001. URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>

<sup>2</sup> Yevropeyska konventsija pro hromadyanstvo. Strasburh, 6 lystopada 1997 roku. URL: [https://zakon.rada.gov.ua/laws/show/994\\_004#Text](https://zakon.rada.gov.ua/laws/show/994_004#Text)

<sup>3</sup> Pro ratyfikatsiyu Yevropeyskoi konventsii pro hromadyanstvo: Zakon Ukrainy vid 20.09.2006 r. № 163-V. URL: <https://zakon.rada.gov.ua/laws/show/163-16#Text>

<sup>4</sup> Systema prav i svobod lyudyny i hromadyanyna. 3. Pravovyi status lyudyny i hromadyanyna: Rozdil kursu DO. uapravo.com., 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id\\_book=4212&id\\_parent=4212&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id_book=4212&id_parent=4212&id_vid_res=17)

termination of Ukrainian citizenship are determined by law<sup>1</sup>.

It should be noted that many countries of the world have dual citizenship. Thus, apart from Ukraine, a single citizenship exists only in 51 countries, including China, Azerbaijan, Japan, Slovakia, the UAE, Monaco, Uzbekistan, Thailand, Nepal, Cuba, Qatar, India, Kazakhstan, Belarus and other countries. Another 29 countries allow dual citizenship, but under certain conditions. For example, in Georgia, the president may allow dual citizenship, if it is relevant to the country's national interests (similar conditions in Austria and South Korea). Dual citizenship in Liechtenstein, Namibia, El Salvador, Estonia, Nigeria and Slovenia is granted to those who received a national passport at birth. In Afghanistan, foreign citizens or Afghans, who fled the country due to war or political instability, have the right to dual citizenship<sup>2</sup>.

Recently, the question about the possibility of giving citizens the right to be in legal relations with two states at the same time has been raised in Ukraine. Thus, the President of Ukraine Volodymyr Zelensky in his media interviews repeatedly spoke about the need to legalize dual citizenship and instructed the Foreign Ministry to prepare the necessary pro-

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<sup>1</sup> Konstytutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>2</sup> Podviyne hromadyanstvo: 86 krain svitu dozvoluyayut, u 51 – zabroneno. *Slovo i Dilo*. 2019. URL: <https://www.slovoidilo.ua/2019/10/28/infografika/polityka/podvijne-hromadyanstvo-86-krayin-svitu-dozvoluyayut-51-zaboroneno#:~:text>

jects. One of the bills has already been submitted to the Verkhovna Rada. The purpose of dual citizenship is the need for influx of citizens into Ukraine and repatriation of so-called “economic” emigrants, while maintaining the rule of “single citizenship”, which means that the government will accept people as citizens of Ukraine only, despite the possible passport of another state. “The change will be that we will not require renunciation of another citizenship to obtain a Ukrainian passport”, said the head of the State Migration Service of Ukraine<sup>1</sup>.

Avoiding discussion about dual citizenship, it must be noted that the rights and responsibilities in a state governed by the rule of law fix a complex system of relations between the state and the individual, based on democratic principles<sup>2</sup>. Thus, researching the legal status of a citizen of Ukraine, it is impossible to avoid the question on the basic principles of this status.

The principles of citizenship of Ukraine are defined in the Law of Ukraine “On Citizenship”, so Art. 2 stipulates that the legislation of Ukraine on citizenship relies on the following principles:

– single citizenship, namely Ukrainian citizenship, ruling out the possibility of citizenship of political subdivisions of the territory of Ukraine; if a

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<sup>1</sup> Ukraina razreshit dvoynoye grazhdanstvo. *DW*. 2019. URL: <https://www.dw.com/ru>

<sup>2</sup> Systema prav i svobod lyudyny i hromadyanyna. 3. Pravovyi status lyudyny i hromadyanyna: Rozdil kursu DO. [uapravo.com](http://www.uapravo.com), 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id\\_book=4212&id\\_parent=4212&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4215&id_book=4212&id_parent=4212&id_vid_res=17)

citizen of Ukraine becomes a citizen of any other country or countries, the Ukrainian law shall recognise that citizens only as a Ukrainian subject; if a foreign citizen receives Ukrainian citizen, the Ukrainian law shall recognise that citizen as a Ukrainian subject;

- prevention of statelessness;
- impossibility of Ukrainian citizens being deprived of Ukrainian citizenship;
- recognition of the Ukrainian citizen’s right to change citizenship;
- impossibility of a foreign subject or stateless person automatically becoming a citizen of Ukraine after marrying a Ukrainian citizen or of a Ukrainian citizen’s wife (husband) becoming a Ukrainian citizen, or either of the spouses being a Ukrainian citizen automatically losing Ukrainian citizenship after divorce or if the other spouse terminates his/her Ukrainian citizenship;
- equality of Ukrainian citizens before the law, regardless of why, how or when they became citizens of Ukraine;
- retention of Ukrainian citizenship regardless of the place of residence<sup>1</sup>.

In addition to these principles, the set of legal features that determine the legal status of a citizen of Ukraine includes the following categories, which are also defined in the Law of Ukraine “On Citizenship”: the grounds on which Ukrainian citizenship is

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<sup>1</sup>Pro hromadyanstvo Ukrainy: Zakon Ukrainy № 2235-III vid 18.01.2001.  
URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>

obtained (Art. 6); cases when a person is not accepted as a citizen of Ukraine (Art. 9); the procedure for renewing of Ukrainian citizenship (Art. 10); termination of Ukrainian citizenship and annulment of decisions on granting Ukrainian citizenship (Section III).

Thus, the legal status of a citizen of Ukraine is a set of legal and international norms established by the legal basis of its relationship with the state (establish the order of possession and use of their rights and responsibilities).

Formation and development of the status of the citizen is closely connected with the status of the person, combining two basic components: biological and social.

If turn to the demographic definition, then “human” is a social being, the distinguishing feature of which is the consciousness formed on the basis of social and labor activities<sup>1</sup>, a similar definition is given in the Great Explanatory Dictionary of the Ukrainian language<sup>2</sup>. According to the concept of “citizen”, it is a person who belongs to the permanent population of a state, enjoys its rights and performs the duties established by the laws of that state<sup>3</sup>.

The history of the development of the doctrine of the legal status of the citizen is also characterized by

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<sup>1</sup> Demograficheskii, entsyklopedicheskii slovar. Moskva, 1985. S. 520.

<sup>2</sup> Velykyi tumachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

<sup>3</sup> Velykyi tumachnyi slovnyk suchasnoi ukrainskoi movy...; Borodin I. L. Administratyvno-pravovi sposoby zakhystu prav ta svobod lyudyny i hromadyanyna: dys. ... d-ra yuryd. nauk: 12.00.07 “Teoriya upravlinnya; administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nats. un-t vnutr. sprav. Kharkiv, 2004.

an important circumstance – the scientific understanding and affirmation in society of the idea of equality in the legal aspect of human and the state. To ensure the principle of equality, it is necessary to create real opportunities to ensure the protection of human rights and freedoms. Human rights actually determines the level of civilization of society, because it includes the relationship between the individual and the state, between individuals, i. e. it is a whole set of political, economic, social, personal, cultural rights and freedoms<sup>1</sup>.

There are various concepts of human rights at the doctrinal level: natural law, positivist, socialist, theological and universal concept of interstate cooperation in the field of human rights. Today, human rights are often seen as rights that are inherent in every person because he is a human. Despite the fact that the concept of human rights is often perceived as one that reflects some ideals to which one must strive, or in general as utopian in nature, its essence lies in the fact that human rights establish the necessary minimum that is needed to provide a person with a “human” existence<sup>2</sup>.

Modern science demonstrates a wide range of approaches to the systematization of human rights and freedoms. Thus, the concepts of “civil rights”

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<sup>1</sup> Vilchuk T. B. Advokatura yak instytut realizatsii prava na pravovu dopomohu: porivnyalno-pravovyi analiz zakonodavstva krain Yevropeyskoho Soyuzu ta Ukrainy: dys. ... d-ra yuryd. nauk: 12.00.10 “Sudoustriy; prokuratura ta advokatura”. Kharkiv, 2016.

<sup>2</sup> Shumylo I. A. Mizhnarodna systema zakhystu prav lyudyny. Kyiv, 2018. 168 s. URL: <https://nlu.edu.ua/wp-content/uploads/2019/08/.pdf>



and “human rights” are not identical. What is the difference? It follows directly from the distinction between civil society and the state, overcomes the one-sided consideration of man in his relationship only with the state, and expands the scope of its self-determination. Man is endowed with an autonomous field of activity, where the driving forces are his individual interests. The realization of such interests is carried out in civil society, which is based on private property, family, all forms of personal life, and is based on the natural human rights that belong to it from birth. The state, refraining from interfering in these relations, is called to protect them not only from its own, but also from anyone’s interference.

Thus, in civil society, conditions are created on the basis of human rights for self-determination of the individual, ensuring his autonomy and independence from any illegal interference<sup>1</sup>.

Thus, the research of the status of a citizen of Ukraine must take into account the so-called triad – “man-person-citizen”, where the legal status of man is paramount and fundamental.

The formation of the legal status of man-person-citizen originates from the idea of universal equality of people, which arose in ancient times and was not implemented immediately. Its practical reflection in legal acts was limited and constituted a formal consolidation of social rights and freedoms. At the same

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<sup>1</sup> Horbal V. M. Prava lyudyny u pravoviy dumtsi naddnipryanskoi Ukrainy kintsya XVIII – pochatku XX stolittya (indyvidualistychni kontseptsii): dys. ... kand. yuryd. nauk: 12.00.01 “Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh vchen”. Kharkiv, 2001.

time, today we can say that it was a promising direction that influenced the formation of those legal systems for human rights and freedoms, which are associated with modern ideas about his rights<sup>1</sup>.

A clear example of this is the formation of international legislation in the field of human rights protection: the Grand Charter of Freedoms (1215), the Petition on Rights (1789–1791), the Universal Declaration of Human Rights (1948). Although these documents are of a recommendatory nature, but documents that are mandatory for UN member states were adopted on the their basis: the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

Doctor of Law, Professor I. Borodin said that these documents can help to trace the path and logic of legal structures in the field of rights and freedoms of citizens: approval of norms initially in a socially limited version, consistent development, enrichment of content, gradual spread to other groups of legal norms, and then the recognition of the achievements of developed, civilized countries in the field of civil rights by other countries<sup>2</sup>.

So, having studied the legal status of a citizen of Ukraine, finding out its dependence on the legal status of a person and highlighting its main legal

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<sup>1</sup> Borodin I. L. Administratyvno-pravovi sposoby zakhystu prav ta svobod lyudyny i hromadyanyna: dys. ... d-ra yuryd. nauk: 12.00.07 "Teoriya upravlinnya; administratyvne pravo i protses; finansove pravo; informatsiyne pravo". Nats. un-t vnutr. sprav. Kharkiv, 2004.

<sup>2</sup> Ibid.

characteristics, it is possible to turn to the analysis of the right to receive professional legal assistance.

Professional legal assistance is inextricably linked with the institution of representation, which dates back to ancient times, but was most developed during the formation of Roman law. The complication of the legal process in turn gave rise to a situation where the average person becomes unable to defend himself due to lack of legal knowledge. Therefore, in Roman law, the so-called legal representation is formed, when the representative received a mandate and registered, i. e. the representation was gaining signs of proceduralism. The functions of defense began to be performed by lawyers, orators, legal advisers during this period. That is, human rights activities become professional, which is initially manifested as charitable, because its implementation is possible without the invitation of the defendant. The next stage in the development of the institution of protection was formed in Roman law – the institution of patronage. At this stage, it is necessary to talk about the legal institution, as the relationship between the client and the patron (defender) is no longer limited to family relations, but is based on mutual services and their payment<sup>1</sup>.

Professional legal assistance in Ukraine, at the present stage of its development, methodologically consists of “legal assistance”. According to the current legislation (Art. 15 of the Civil Procedure Code

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<sup>1</sup> Pravo osoby na bezplatnu pravovu dopomohu/Yu. O. Danylevska, L. V. Pavlyk, Z. Z. Petrovych, U. O. Tsmots. Lviv: LvDUVS, 2018. 136 s. URL: [http://nbuviap.gov.ua/images/dorobku\\_partneriv/Pravo%20osoby%20na%20bezplatnu%20pravovu%20dopomohu.pdf](http://nbuviap.gov.ua/images/dorobku_partneriv/Pravo%20osoby%20na%20bezplatnu%20pravovu%20dopomohu.pdf)

of Ukraine, Art. 16 of the Commercial Procedural Code of Ukraine) “legal aid” can be of several types: professional legal assistance and other types of legal assistance; paid legal aid and free legal aid<sup>1</sup>.

Thus, the content of Art. 15 of the Civil Procedure Code of Ukraine and Art. 16 of the Commercial Procedure Code of Ukraine forms the imagination and indirectly determines that “free legal aid” and “professional legal assistance” are varieties and components of a more general complex concept of “legal aid”<sup>2</sup>.

The term “legal aid” entered the Ukrainian legislation with the adoption of the Law of Ukraine of 02.06.2016 “On Amendments to the Constitution of Ukraine (Regarding Justice)”<sup>3</sup>. The specified law in Art. 59 of the Constitution of Ukraine was amended, and the word “legal” was replaced by the words “professional legal”. Thus, Art. 59 of the Constitution of Ukraine has the following form: “everyone has the right to professional legal assistance. In cases provided by law, this assistance is provided free of charge. Everyone is free to choose a defender of their rights”<sup>4</sup>.

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<sup>1</sup> Pro vnesennya zmin do Hospodarskoho protsesualnoho kodeksu Ukrainy, Tsyvilnoho protsesualnoho kodeksu Ukrainy, Kodeksu administratyvnoho sudochynstva Ukrainy ta inshykh zakonodavchykh aktiv: Zakon Ukrainy vid 03.10.2017 r. № 2147-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2147%D0%B0-19#Text>

<sup>2</sup> Ananiyev Ye. Yurydychna dopomoha. Pravnycha chy pravova? *Pravova hrupa “Yusta”*. 2018. URL: <http://justa.com.ua/blog/yuridichna-dopomoga-pravnycha-chi-pravova>

<sup>3</sup> Pro vnesennya zmin do Konstytutsii Ukrainy (shchodo pravosuddya): zakon Ukrainy vid 02.06.2016 r. № 1401. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>

<sup>4</sup> Konstytutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

The replacement of the term “law aid” (pravova) with “legal aid” (pravnycha) is due to the standards of the Ukrainian language, which stipulate that the adjective used to denote the relevant type of assistance comes from the noun denoting the profession of the person providing such assistance. The noun that denotes a person who provides services in the field of law (in the legal field) is the word “lawyer”. Thus, it is the persons belonging to the legal profession – provide professional legal assistance. Moreover, the terms legal – law – juridical are generic synonyms<sup>1</sup>.

It is clear that the amendments to the Fundamental Law of Ukraine caused a whole discussion, primarily among lawyers, because the Constitution was changed, and regulations, especially the Law of Ukraine “On Advocacy and Advocacy Activity,” did not lead to constitutional norms, where the previous term – “law aid” was used. In this regard, some members of the legal community believe that if they “want” to prevent a lawyer from participating in a particular process, law enforcement officials will look for a straw to catch hold of<sup>2</sup>, and a terminological inconsistency can become such a straw.

Moreover, some civilians believe that the introduction of amendments to the Constitution, the Civil Procedure Code of Ukraine, the Commercial Proce-

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<sup>1</sup> Proekt Zakonu pro vnesennya zmin do Konstytutsii Ukrainy (shcho do pravosuddya) vid 25.11.2015 r. № 3524. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57209](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57209); Yermakov M. V. Pravova dopomoha abo profesiyna pravnycha? *Yurydychnyi portal Protokol*. 2018. URL: [https://protocol.ua/ua/pravova\\_dopomoga\\_abo\\_profesiyna\\_pravnycha](https://protocol.ua/ua/pravova_dopomoga_abo_profesiyna_pravnycha)

<sup>2</sup> Yermakov M. V. Pravova dopomoha abo profesiyna pravnycha?..

Code of Ukraine, as well as the Code of Ukraine on Administrative Procedure, the concept (and legal term that defines it) of “legal aid:”

- started the circulation and existence of another newly created term without a precise legal definition of its content;

- created an ambiguous and contradictory situation regarding the understanding of the coexistence in the legislation of the concepts “law aid” and “legal aid” without explaining the delimitation of their content, determining their exact and logical place among other legal phenomena;

- formed an imbalance between the guarantees provided by the relevant provisions of the procedural codes and the fundamental guarantees declared in the Constitution of Ukraine (Part 1 of Art. 15 of the Civil Procedure Code of Ukraine and Part 1 of Art. 16 of the Commercial Procedure Code of Ukraine contain guarantees on the rights of litigants to use “legal aid” and Part 1 of Art. 59 of the Constitution of Ukraine contains guarantees exclusively regarding the right of a person to “professional legal assistance”);

- confused the permanent system of relationships between the relevant concepts of the relevant laws (the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, Law of Ukraine “On Free Legal Aid”, Law of Ukraine “On Advocacy and Advocacy Activity”, etc.);

- caused uncertainty about the legality of the legal existence of the institution of “free legal aid”, Part 1 of Art. 59 of the Constitution of Ukraine guarantees “free professional legal assistance”, and Part 3

of Art. 15 of the Civil Procedure Code of Ukraine establishes the only legal option for the existence of “free legal aid”. There are no clarifications on the content, definitions and mechanisms for the implementation of these concepts in the current legislation of Ukraine. However, “free legal aid” is not even mentioned in these current regulations;

– formed a new range of problematic issues in the field of law enforcement and made it difficult for practicing lawyers to understand the relevant definitions<sup>1</sup>.

We believe that these changes legislators tried to expand the right to receive professional legal assistance, to create a truly professional legal society, the main purpose of which will be to defend the legitimate rights and interests of man and citizen<sup>2</sup>.

Therefore, in this paper we will use the terms “law aid” and “legal aid” as equivalent.

After all, the Constitutional Court of Ukraine in its Decision on the case of the constitutional appeal of citizen Soldatov Hennadii Ivanovych on the official interpretation of Art. 59 of the Constitution of Ukraine, Art. 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses (case on the right to free choice of lawyer) of 16 November 2000 № 13-rp/2000 indica-

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<sup>1</sup> Ananiyev Ye. Yurydychna dopomoha. Pravnycha chy pravova? *Pravova hrupa “Yusta”*. 2018. URL: <http://justa.com.ua/blog/yuridichna-dopomoga-pravnycha-chi-pravova>

<sup>2</sup> Yermakov M. V. Pravova dopomoha abo profesiyna pravnycha? *Yurydychnyi portal Protokol*. 2018. URL: [https://protocol.ua/ua/pravova\\_dopomoga\\_abo\\_profesiyna\\_pravnycha/](https://protocol.ua/ua/pravova_dopomoga_abo_profesiyna_pravnycha/)

ted that: “law assistance is multifaceted, different in content, scope and forms and may include consultations, clarifications, filing of claims and appeals, certificates, statements, complaints, representation, in particular in courts and other state bodies, protection against prosecution, etc.

The choice of the form and subject of such assistance depends on the will of the person who wishes to receive it. At the same time, in cases provided by law, in particular for the protection of the rights and freedoms of children, minor parents and for protection against prosecution, the relevant state bodies, their officials in the exercise of their powers are obliged to provide the necessary legal aid.

The right to legal assistance is a state-guaranteed opportunity for every person to receive such assistance in the amount and forms determined by him, regardless of the nature of the person’s legal relationship with other legal entities”<sup>1</sup>.

Thus, the analyzed Decision of the Constitutional Court of Ukraine shows that legal assistance can be in the following forms: information, consultations, clarifications, preparation of claims and appeals, certificates, applications, complaints, representation, in particular in courts and other state bodies, defense

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<sup>1</sup> Rishennya Konstytutsiynoho Sudu Ukrainy u spravi za konstytutsiynym zvernennyam hromadyanyna Soldatova Hennadiya Ivanovycha shchodo ofitsiynoho tlumachennya polozhen statti 59 Konstytutsii Ukrainy, statti 44 Kryminalno-protseusualnoho kodeksu Ukrainy, statei 268, 271 Kodeksu Ukrainy pro administratyvni pravoporushennya (sprava pro pravo vilnoho vyboru zakhysnyka) vid 16 lystopada 2000 roku № 13-rp/2000. URL: <http://ccu.gov.ua/storinka-knygy/4310-pravo-na-pravovu-dopomogu>



against prosecution. The choice of legal assistance entity and the amount of assistance is determined by the person who needs it.

The website of the Ministry of Justice of Ukraine provides an answer to what is free legal aid, which is divided into primary free legal aid and secondary. Accordingly, Free primary legal aid, to which all persons under the jurisdiction of Ukraine are subject, is entitled to the following types of legal services:

- providing legal information;
- providing consultations and clarifications on legal issues;
- preparation of applications, complaints and other legal documents (except for procedural documents);
- providing consultations, explanations and preparation of draft land use agreements (lease, sub-lease, land easement, emphyteusis, superficies) for the rural population – land owners;
- providing assistance in ensuring a person’s access to secondary legal assistance and mediation<sup>1</sup>.

Free secondary legal aid is a type of state guarantee, which states to create equal opportunities for access to justice, and includes such types of legal services as: – assistance in ensuring access to secondary legal aid and mediation through: a) protection; b) representation of persons’ interests in courts, other state bodies, local self-government bodies, in front of other persons; c) preparation of procedural documents<sup>2</sup>.

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<sup>1</sup> Bezoplatna pravova dopomoha. *Ofitsiynyi sayt Ministerstva yustytzii Ukrainy*. 2020. URL: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid)

<sup>2</sup> *Ibid.*

These forms can be grouped into the following types: legal information, legal consulting, drafting legal documents, drafting procedural documents, professional legal representation<sup>1</sup>.

Thus, it can be argued that professional legal assistance is always targeted assistance, which is provided at the request of a person in the case of any life situation. And as a phenomenon of objective reality, it has certain features: the presence of two parties (the person who provides assistance and the entity that provides it); existence of two actions (granting and receiving); professionalism (the assisting entity is a qualified specialist in the field of law, as evidenced by his education and experience); availability of the object of help (problematic life situation); and a special purpose (meeting the interests of the person in need).

The content of professional legal assistance includes actions using two groups of legal means: a) the actual legal means (establishment and action), the possibility of using which is recognized by law as a person and as a subject of law, and b) means that form the readiness of the subject to obtain the opportunity to independently use these legal means-establishments and legal means-actions<sup>2</sup>.

In addition, professional legal assistance is not limited to any other guarantees for the realization of

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Ibid.

human and civil rights and freedoms (justice, control, supervision, etc.). The fact is that it is a professional legal support for the legal activities of a particular person to implement his rights, freedoms, legitimate interests in the form of its full or partial replacement or preparation for it<sup>1</sup>. The right to receive professional legal assistance is classified as a human right to participate in legal proceedings and is defined as a constitutional human right to receive state-guaranteed qualified legal assistance, including free of charge, in exercising its legal status as a participant in legal proceedings. This right provides as a duty of the state to create appropriate conditions for a person to receive qualified assistance in the realization of his rights and responsibilities<sup>2</sup>.

Professional legal assistance is one of the means of ensuring human and civil rights and freedoms. The Constitution of Ukraine states that all activities of public authorities and other subjects of law must ensure the rights and freedoms of the individual, promote (in a broad sense) their implementation. Unlike other conditions and means of ensuring the rights of citizens (state control, supervision, disclo-

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Shramko Yu. T. Konstytutsiyne pravo na pravovu dopomohu v Ukraini: aktualni pytannya zakonodavchoho rehuliuuvannya: avtoref. dys. ... kand. yuryd. nauk: 12.00.02 "Konstytutsiyne pravo; munitsypalne pravo. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, Kyiv, 2016. URL: <http://idpnan.org.ua/files/shramko-yu.t.-konstytutsiyne-pravo-na-pravovu-dopomogu-v-ukrayini-aktualni-pitannya-zakonodavchogo-regulyuvannya.pdf>

sure of offenses, etc.), legal aid provides the very legal activity of a particular person to exercise his rights, freedoms, legitimate interests, is his “internal ensuring”, while other means of ensuring rights and freedoms are “external” conditions and means of ensuring in relation to legal activity. Allocation of the right to receive professional legal assistance in an independent constitutional right, which is not reduced in content to any other rights-guarantees (the right to state protection of human and civil rights and freedoms, the right to protect their rights and freedoms in all ways not prohibited by law, law for judicial protection and others) and facilitates the implementation of other guarantees of human and civil rights and freedoms is stipulated by the need for professional legal support, supplementation or replacement of legal activities of a person to exercise his rights, freedoms, legitimate interests<sup>1</sup>.

Revealing the content of the constitutional norm of Art. 59, it is necessary to detail it through such a characteristic feature of its assistance as “professionalism”, where the degree and level of professional training for any type of work, profession or speciality<sup>2</sup>, is considered as a certain level of qualification.

This feature of legal assistance, as a qualification, characterizes its quality, i. e. compliance with

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

the appropriate level of professionalism and degree of suitability. We found that the Constitution of Ukraine does not contain instructions on any criteria, compliance with which indicates the appropriate level of qualification of persons providing legal aid, including in the field of various types of justice, implementation and protection of other constitutional rights and freedoms of man and citizen<sup>1</sup>.

Thus, professional legal assistance is the activity of the subject of providing such assistance, who, using various legal means and methods, provides personalized professional and organized assistance in resolving a problematic life situation in order to satisfy the rights, freedoms and legitimate interests of man and citizen.

Thus, examining the existing theoretical developments in the field of human and civil rights, as well as current and retrospective domestic and international legislation governing their legal status, made it possible to identify the concepts and features of the right to professional legal assistance and clarify its place in legal status of a citizen of Ukraine. According to all the above, we can state that:

1) the right to receive legal professional aid is the same guarantee of ensuring and realization of all other rights, freedoms and legitimate interests of man and citizen;

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

2) the legal status of a citizen of Ukraine is a set of legal bases of his relations with the state established by national and international norms (establish the procedure for possession and use of a citizen's rights, as well as performance of his duties);

3) formation and development of the status of the citizen is closely connected with the status of the person, combining two main components: biological and social. Therefore, studying the status of the citizen of Ukraine we have to consider the specified status so-called triad – “man-person-citizen”, where the legal status of a man is paramount and fundamental;

4) professional legal assistance is the activity of the subject of providing such assistance, who, using various legal means and methods, provides personalized professional and organized assistance in resolving a problematic life situation in order to satisfy the rights, freedoms and legitimate interests of man and citizen;

5) legal aid aid may take the following forms: information, consultations, clarifications, lawsuits and appeals, certificates, applications, complaints, representation, in particular in courts and other state bodies, protection against prosecution, where the choice of legal aid entity and the amount of assistance is determined by the person who needs it.

Thus, the right to receive professional legal assistance is an independent component of the structure of the legal status of a citizen of Ukraine. It is one of the main means of ensuring the constitutional rights of citizens, because it is a professional legal support of a particular person in exercising his rights, freedoms, legitimate interests and responsibilities to the

state in various forms. Professional legal assistance is always personalized assistance, which is carried out at the request of a person in case of any life situation and which has the following characteristics: the presence of several parties (the person to whom assistance is provided and the person (persons) who provides it); existence of two actions (granting and receiving); professionalism (the person providing assistance is a qualified specialist, confirmed by state requirements for his education and experience); availability of the object of assistance (problematic life situation); and the presence of a special purpose (legal support in solving a problematic life situation and meeting the interests of a person in need of assistance).

## **1.2. The Current State of Regulatory Support for the Implementation of the Right to Receive Professional Legal Assistance in Ukraine**

We have already defined that professional legal assistance is one of the important legal means, a necessary element of the mechanism for ensuring human and civil rights and freedoms. The objective difficulties of the average citizen, who does not have special legal knowledge and skills to effectively use legal means to realize and protect their interests, create the need for help from a professional lawyer<sup>1</sup>.

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.

The special importance of professional legal assistance in modern conditions is caused by both positive and negative factors, including: a) the growing role of law in public relations, legal mechanisms of satisfaction of various economic, political, spiritual and other interests; b) insufficient level of development of legal consciousness and legal culture of citizens that often does not allow them to use even elementary legal means in different life situations with a purpose to realize the rights, freedoms and lawful interests; c) insufficiently effective work of the law enforcement, including the judicial system, when citizens can not defend their rights, freedoms and legitimate interests, protect themselves from arbitrariness by law enforcement agencies without professional legal assistance. In addition, there are problems in the legal aid system, which is far from the level required by the rule of law.

Therefore, it is necessary to increase the level of availability of legal assistance for the population, by improving its quality, through the adoption of regulations of the appropriate level<sup>1</sup>.

It is clear that it is not possible for citizens to exercise right without regulatory support for the implementation of the right to receive professional legal assistance in Ukraine. After all, it is possible to build a democratic civil society only by establishing

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.



clear “rules of the game”, which are based on world standards of human and civil rights.

Before disclosing the current state of regulatory support for the implementation of the right to receive professional legal assistance in Ukraine, it should be noted that the legal consolidation of this right in the relevant rules has taken a very long time. V. Horbal rightly noted that rights differ not only in terms of spheres of life, but also in time of origin. There is the emergence of the concept of “generation of human rights”<sup>1</sup>. According to his research, there are three generations of human rights.

The founder of the theory of the division of human rights into three generations was the French jurist of Czech origin, Karel Vasak. In 1969 he became the first secretary general at the International Institute of Human Rights in Strasbourg, and in 1979 he proposed his theory of “generations of human rights”, which was consistent with the three provisions of the French Revolution: freedom, equality and fraternity<sup>2</sup>.

The first generation of human rights recognizes those traditional liberal values that were formulated in the process of bourgeois revolutions, and then concretized and embodied in the practice and legislation of democracies<sup>3</sup>. The “pioneer” in this field was

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<sup>1</sup> Horbal V. M. Prava liudyny u pravovii dumtsi naddniprianskoi Ukrainy kintsia XVIII – pochatku XX stolittia (indyvidualistychni kontseptsii): dys. ... kand. yuryd.nauk: 12.00.01 “Teoriia ta istoriia derzhavy i prava; istoriia politychnykh i pravovykh vchen”. Kharkiv, 2001.

<sup>2</sup> Three Generations of Human Rights. *The Levin Institute*. 2017. URL: <https://www.globalization101.org/three-generations-of-rights/>

<sup>3</sup> Horbal V. M. Prava liudyny u pravoviy dumtsi...

England, which issued a Petition for law (1628), the Habeas Corpus Act (1679), and the Bill of Rights (1689) during the formation of the bourgeois system. Further development of the ideals of freedom and human rights was embodied in major historical documents of the United States: the Declaration of Independence (1776), the US Constitution (1787), the Bill of Rights (1791). During the bourgeois revolution in France, the Declaration of the Rights of Man and of the Citizen (1789) was adopted, every article of which still sounds modern and relevant. The Preamble states: “...ignorance, neglect or disregard for human rights is the only cause of social disaster and corruption of governments”<sup>1</sup>.

The second generation of human rights was formed in the process of the struggle of peoples to improve their economic situation, increase cultural status (the so-called “positive rights”). The realization of this category of rights is possible only if a high level of organizational, planning and other forms of state activity to ensure these rights is achieved<sup>2</sup>. L. Gluhareva rightly points out: “the state’s positing of the rights and freedoms of the ‘first generation’ based on the liberal concept is extremely important, as it contributed to the collapse of traditional society and created favorable conditions for civil society,

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<sup>1</sup> Prava cheloveka. *Bolshaya rossiysskaya entsiklopediya*. 2020. URL: <https://bigenc.ru/law/text/3164669>

<sup>2</sup> Horbal V. M. Prava lyudyny u pravoviy dumtsi naddnipryanskoï Ukrainy kintsya XVIII – pochatku XX stolittya (indyvidualistychni kontseptsii): dys. ... kand. yuryd. nauk: 12.00.01 “Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh vchen”. Kharkiv, 2001.

under which state power was forced to take the path of regulating their relations with citizens on a legal basis”<sup>1</sup>. A striking example of the normative consolidation of positive rights is the German Kaiser’s Manifesto (1881), which introduced a single social security system in the country (the so-called Bismarck social policy)<sup>2</sup>, which later formed the basis of many constitutions of different countries.

The “civil and political” rights of the first generation of human rights were legitimized and gained status in international law in the middle of the twentieth century in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (1966).

Thus, the “social and economic” human rights of the second generation guarantee equal conditions and the regime of their observance. They are not rights that are directly owned by individuals, but are positive responsibilities of the government to respect and implement them.

The third generation of human rights was formed in the period after the Second World War by the scientist K. Vasak. He refers to the third generation only collective rights based on solidarity, the so-called “rights of solidarity” – the right to development, peaceful coexistence, a healthy environment, the

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<sup>1</sup> Hlukhareva L. Teoriya prav cheloveka: predmet, metodologiya, etapy razvitiya. *Pravo i zhyzn*. 2004. № 67 (3). URL: <http://www.law-n-life.ru/arch/n67.aspx>; Zahoruy L. M., Zahoruy I. S. Do pytannya pro klasychne, neklasychne i postneklasychne rozuminnya prav lyudyny. *Visn. Luhansk. derzh. un-tu vnutr. sprav im. E. O. Didorenka*. 2015. № 4. S. 16–24.

<sup>2</sup> Zahoruy L. M., Zahoruy I. S. Do pytannya pro klasychne...

common heritage of mankind, as well as the right to communication, related to the concept of a new international information order<sup>1</sup>.

Human rights in relation to “collective development” are consistent with the third principle of the division of human rights into three generations – “brotherhood”. They constitute a wide range of rights that have been recognized in international treaties and agreements, but are more controversial than previous groups. They are largely reflected in documents that refer to so-called “soft law” in international law, such as the Declaration on the Environment and its Development (1992) and the Draft Declaration on the Rights of Indigenous Peoples (1994).

Thus, the theory of three generations is very valuable in understanding the formation of normative provision of human rights, but contains a number of key positions that lead to discussions about the nature of rights. It also encourages us to take a critical look at our own assumptions about rights as we begin to think about some of the real problems with human rights. So today there is a lot of discussion about the transition to the fourth generation of rights.

We can say that today scientific research in the field of human rights is reopening due to the development of science, technology and production. However, scientific and technological progress has its

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<sup>1</sup> Horbal V. M. Prava lyudyny u pravoviy dumtsi naddnipryanskoi Ukrainy kintsya XVIII – pochatku XX stolittya (indyvidualistychni kontseptsii); dys. ... kand. yuryd. nauk: 12.00.01 “Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh vchen”. Kharkiv, 2001.

positive and negative features. On the one hand, the development of science and technology has brought improvements in living standards, new jobs, but on the other hand, the achievements of medicine, genetics, biology and chemistry have put society in a qualitatively different state<sup>1</sup>. Humanity is at a new stage of development, and there is a need to work out a new – fourth generation of rights, which will be the challenge of the XXI century, when it comes to “the survival of mankind as a species, the preservation of civilization, the cosmic socialization of mankind”<sup>2</sup> and the cosmization of law<sup>3</sup>.

Thus, we agree with the opinion of those authors, who claims that the “generation of human rights” has entered its fourth period, where the idea of rights, freedoms and responsibilities of man and citizen is inherent in the worldview of economic and social humanism. Figuratively speaking, the “personalism” of human rights is embedded in the context of a socialized and collectivized society; the idea of a constitutional state as a legal and social state is accompanied by the principles of socially oriented market

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<sup>1</sup> Abashidze A. A., Solntsev A. M. Novoye pokoleniye prav cheloveka: somaticheskiye prava. *Mosk. zhurn. mezhdunar. prava*. 2009. № 1. S. 69–82.

<sup>2</sup> Tyrina M. Pokolinnya prav lyudyny: problemy suchasnoi klasyfikatsii. *Derzhava i pravo*. 2011. № 52. S. 728–732; Nesynova S. V., Knyazyeva Yu. S. Nove pokolinnya prav lyudyny: suchasni problemy klasyfikatsii. *Visn. Dnipropetr. un-tu im. Alfreda Nobelya. Seriya “Yurydychni nauky”*. 2015. № 2 (7). S. 36–42.

<sup>3</sup> Soroka L. V. Administratyvno-pravovyi mekhanizm realizatsii kosmichnoi doktryny Ukrainy: teoriya i praktyka. Kyiv: FOP Chalchynska N. V., 2020. 366 s.

economy, social solidarity, combination of rights and responsibilities, responsibility of the state to man. This, in fact, is the scientific picture of the worldview of economic and social humanism – “new” humanism, new philosophical and worldview basic of human rights in the XXI century. A characteristic feature of this philosophy of human rights is going beyond the purely legal context of understanding human rights. In our opinion, this characterizes the vector of modern theory of human rights as a moral and legal phenomenon (and not only political and legal, as it is typical for the classical or social phenomenon of human rights in the non-classical sense)<sup>1</sup>.

Thus, the normative provision of human rights has passed conditionally three “generations of rights” and moved to the fourth period, which is characterized by a new worldview – anthropocentrism, as well as a vector to go beyond understanding rights as a purely political and legal phenomenon and transform it into an economical and social phenomenon with a focus on sustainable and inclusive human development.

Doctor of Law O. Polyakov noted that “human rights do not exist in themselves, but are related to legal obligations, legal norms and legal texts of the

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<sup>1</sup> Nesynova S. V., Knyazyeva Yu. S. Nove pokolinnyya prav lyudyny: suchasni problemy klasyfikatsii. *Visn. Dnipropetr. un-tu im. Alfreda Nobelya. Seriya “Yurydychni nauky”*. 2015. № 2 (7). S. 36–42; Zahoruy L. M., Zahoruy I. S. Do pytannya pro klasychne, neklasychne i postneklasychne rozuminnyya prav lyudyny. *Visn. Luhansk. derzh. un-tu vnutr. sprav im. E. O. Didorenka*, 2015. № 4. S. 16–24; Hlukhareva L. Teoriya prav cheloveka: predmet, metodologiya, etapy razvitiya. *Pravo i zhyzn*. 2004. № 67 (3). URL: <http://www.law-n-life.ru/arch/n67.aspx>

state within the recursive system of legal communications”<sup>1</sup>.

Therefore, we need to analyze how the right to receive professional legal assistance in Ukraine is implemented today and what legal norms ensure the implementation of this right.

The famous philosopher J. Locke, the author of the idea of a social contract, believed that “Despite all kinds of false interpretations – the purpose of the law is not the destruction or restriction, but the preservation and expansion of freedom. ...Where there are no laws, no freedom”<sup>2</sup>. He pointed to the need for an internal connection between freedom and law. According to Locke, recognition, protection and realization of inalienable human rights and freedoms in civil status are possible only under certain conditions and guarantees. These conditions include also the legal quality of the law (expression and protection in law of the rights and freedoms of individuals), and the proper structure of statehood itself (through the separation of powers)<sup>3</sup>.

As we noted at the previous stage of our study, the concept of law reflects a legal phenomenon characterized by universality: the right to professional legal assistance along with other human rights is a part of the legal status of the individual, has a constitutional basis, concretized and developed in secto-

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<sup>1</sup> Polyakov A. V. *Kommunikativnyi podkhod v obshchey teorii prava. Problemy filosofii prava*. 2006–2007. T. IV–V. S. 60–67.

<sup>2</sup> Locke J. *Dva traktata o pravlenii. Reformatskiy vzglyad*. 2020. URL: <https://www.reformed.org.ua/2/86/Locke>

<sup>3</sup> *Ibid.*

ral legislation, especially procedural. The first concept associated with the right to receive professional legal assistance is law. The existence of legal norms, the legal sphere of society has made it possible to identify the studied type of professional legal assistance, the value of which as an inalienable right of the individual, the most important guarantee of other rights and freedoms of the individual is fully manifested in anthropocentrism understanding of rights based on the recognition of man, his rights and freedoms as the highest value<sup>1</sup>.

The normative consolidation of the right to receive qualified legal assistance was enshrined in the Basic Law of Ukraine. The first version of the Constitution of Ukraine of June 28, 1996 (Art. 59) established that “Everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights. In Ukraine, the advocacy acts to ensure the right to a defence against accusation and to provide legal assistance in deciding cases in courts and other state bodies”<sup>2</sup>.

The Constitutional Court of Ukraine (hereinafter CCU) on November 16, 2000, after four years after the adoption of the Basic Law of Ukraine, decided to

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Konstytutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>



declare the provisions of Part 1 of Art. 44 of the Criminal Procedure Code of Ukraine (hereinafter CPC) as unconstitutional, which restricts the right of the suspect, accused and defendant to freely choose a defender of his rights, except for a lawyer, another specialist in the field of law, who has the right to provide legal assistance in person or on behalf of a legal entity<sup>1</sup>.

The CCU also determined in the analyzed decision that “the provision of Part 1 of Art. 59 of the Constitution of Ukraine guarantees everyone the right to freely choose a defender of his rights. There is no definition of the term “defender” in the current legislation of Ukraine. This concept in the Constitution of Ukraine is also used in part four of Art. 29, the provisions of which guarantee every arrested or detained person the opportunity to use the legal assistance of a lawyer.

As for the right to defense, it applies not only to the suspect, accused or defendant, but also to other individuals who are guaranteed the right to freely

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<sup>1</sup> Sprava pro pravo vilnoho vyboru zakhysnyka: rishennya Konstytutsiynoho Sudu Ukrainy u spravi za konstytutsiynym zvernennym hromadyanyna Soldatova Hennadiya Ivanovycha shchodo ofitsiynoho tlumachenia polozhen statti 59 Konstytutsii Ukrainy, statti 44 Kryminalno-protsesualnoho kodeksu Ukrainy, statei 268, 271 Kodeksu Ukrainy pro administratyvni pravoporushennya. URL: <http://zakon1.rada.gov.ua/laws/show/v013p710-00/ed20120419>; Skryabin O. M. Zakhysnyk u kryminalnomu protsesi: normatyvno-pravove doslidzhennya: dys. ... d-ra yuryd. nauk: 12.00.09 “Kryminalnyi protses ta kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diyalnist”. Klasych. pryvat. un-t. Zaporizhzhya, 2017. URL: [http://virtuni.education.zp.ua/info\\_cpu/sites/default/files/diss%20Skryabin\\_1.pdf](http://virtuni.education.zp.ua/info_cpu/sites/default/files/diss%20Skryabin_1.pdf)

choose a lawyer in order to protect their rights and legitimate interests arising from criminal, civil, labor, family, administrative and other legal relations. In addition, the right to defense, together with the above right to legal assistance, can be exercised by a person in civil, arbitration, administrative and criminal proceedings<sup>1</sup>.

Based on the above decision of the CCU, the legislator on June 29, 2001 changed the Art. 44 of the CPC. The new edition of Part 1 of Art. 44 states that a defense counsel is a person who, in the manner prescribed by law, is authorized to protect the rights and legitimate interests of a suspect, accused, defendant, convicted, acquitted and provide them with the necessary legal assistance in criminal proceedings<sup>2</sup>. Part 2 of Art. 44 of the CPC defined a list of subjects who were entitled to be admitted as defenders.

Persons who had a certificate of the right to practice law in Ukraine and other specialists in the field of law, who had the right to provide legal assistance by law, personally or on behalf of a legal entity, were recognized as defenders. A characteristic provision

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<sup>1</sup> Sprava pro pravo vilnoho vyboru zakhysnyka: rishennya Konstytutsiynoho Sudu Ukrainy u spravi za konstytutsiynym zvernennyam hromadyanyyna Soldatova Hennadiya Ivanovycha shchodo ofitsiynoho tlumachennya polozhen statti 59 Konstytutsii Ukrainy, statti 44 Kryminalno-protseusualnoho kodeksu Ukrainy, statei 268, 271 Kodeksu Ukrainy pro administratyvni pravoporushennya. URL: <http://zakon1.rada.gov.ua/laws/show/v013p710-00/ed20120419>

<sup>2</sup> Pro vnesennya zmin do Kryminalno-protseusualnoho kodeksu Ukrainy: Zakon Ukrainy vid 21.06.2001 r. № 2533-III. URL: [https://zakon.rada.gov.ua/laws/show/2533-14?find=1&text=%D1%81%D1%82%D0%B0%D1%82%D1%82%D1%8F+44#w2\\_1](https://zakon.rada.gov.ua/laws/show/2533-14?find=1&text=%D1%81%D1%82%D0%B0%D1%82%D1%82%D1%8F+44#w2_1)

of the new version of Art. 44 of the CPC was that the defense counsel was allowed to participate in criminal proceedings at any stage of the criminal process.

Close relatives of the accused, defendant, convicted and acquitted person, his guardians or trustees were admitted as defenders from the moment the accused was presented to the materials of the pre-trial investigation<sup>1</sup>.

These changes, of course, caused a debate among scholars and practitioners. Some argued that they would be useful for law enforcement, while others, on the contrary, believed that the quality of protection would be low.

Thus, the Plenum of the Supreme Court of Ukraine in the Resolution of 24.10.2003 № 8 “On the application of legislation that provides the right to defense in criminal proceedings” noted that it is also necessary to find out which law gives experts in the field of law the right to participate in criminal proceedings as defenders; it is necessary to recognize the correct practice of those courts which, in the absence of a special law, do not allow such specialists to exercise protection in criminal cases. In addition, the courts must be aware that, according to Part 4 of Art. 44 of the CPC, in cases where the participation

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<sup>1</sup> Skryabin O. M. Zakhysnyk u kryriminalnomu protsesi: normatyvno-pravove doslidzhennya: dys. ... d-ra yuryd. nauk. 12.00.09 “Kryriminalnyi protses ta kryriminalistyka; sudova ekspertyza; operatyvno-rozshukova diyalnist”. Klasych. pryvat. un-t. Zaporizhzhya, 2017. URL: [http://virtuni.education.zp.ua/info\\_cpu/sites/default/files/diss%20Skryabin\\_1.pdf](http://virtuni.education.zp.ua/info_cpu/sites/default/files/diss%20Skryabin_1.pdf); Smyrnov Ye. V. Ponyattya ta sutnist zakhystu u kryriminalnomu provadzhenni. *Pravo ta derzhavne upravlinnya*. 2015. № 3. S. 77–83.

of defense counsel is mandatory (in accordance with the requirements of Art. 45 of this Code), close relatives of the accused, defendant, convicted, acquitted, his guardians or trustees may participate in the case as defense counsel only simultaneously with the defense lawyer or other legal professional<sup>1</sup>.

E. Smirnov rightly noted, “the CCU, in deciding the case, proceeded from a logical and systematic interpretation of the provisions of the Constitution and legislation of Ukraine. The court pointed out that the provisions of Part 1 of Art. 59 of the Constitution of Ukraine in the aspect of the constitutional appeal of the citizen Soldatov H. I., should be understood as the constitutional right of the suspect, accused and defendant in defense from prosecution and the person brought to administrative responsibility, to choose the person who is the expert in the field of law and by law has the right to provide legal assistance in person or on behalf of a legal entity”<sup>2</sup>.

The next legislative act, which regulated the issue of ensuring the exercise of the right to receive one of the types of qualified legal assistance – free legal aid, was adopted by the Verkhovna Rada of Ukraine on June 2, 2011. The Law of Ukraine “On Free Legal Aid” № 3460-VI defined the content of the right to

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<sup>1</sup> Pro zastosuvannya zakonodavstva, yake zabezpechuye pravo na zakhyst u kryminalnomu sudochynstvi: postanova Plenumu Verkhovnoho Sudu Ukrainy vid 24 zhovtnya 2003 r. № 8. URL: <http://zakon2.rada.gov.ua/laws/show/v0008700-03>; Smyrnov Ye. V. Poniattya ta sutnist zakhystu u kryminalnomu provadzhenni. *Pravo ta derzhavne upravlinnya*. 2015. № 3. S. 77–83.

<sup>2</sup> Smyrnov Ye. V. Poniattya ta sutnist zakhystu...

free legal assistance, the procedure for exercising this right, the grounds and procedure for providing free legal assistance, state guarantees for the provision of free legal aid<sup>1</sup>.

Legal aid was defined through the provision of legal services aimed at ensuring the realization of human and civil rights and freedoms, protection of these rights and freedoms, their restoration in case of violation. In turn, legal services are the provision of legal information, consultation and clarification on legal issues; preparation of applications, complaints, procedural and other legal documents; representation of interests of the person in courts, other state bodies, local governments; ensuring the defense of a person from prosecution; assisting a person in ensuring a person's access to secondary legal assistance and mediation<sup>2</sup>.

Thus, the concept of "free legal aid" at the legislative level was defined and detailed, and the procedure for providing this type of assistance was established, i. e. the procedure for providing legal assistance on a free basis was defined.

According to the Law of Ukraine "On Free Legal Aid", the main principles of its provision guaranteed by the state are accessibility (Part 3 of Art. 5) and ensuring the quality of free legal assistance (Part 4 of Art. 5). Decisive point in this aspect is that this law provides for certain types of free legal assistance –

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<sup>1</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>2</sup> Ibid.

primary and secondary. Thus, the legislator differentiates the concepts of “access to law” (French: *accès au droit*) and “access to justice” (French: *accès au justice*) as legal categories that are different in its form, content and method of implementation<sup>1</sup>. Free primary aid is considered to be a type of state guarantee, which informs a person about his rights and freedoms, the procedure for their implementation, restoration in case of violation and the procedure for appealing decisions, actions or inaction of public authorities, local governments, and officials. Free secondary legal aid (FSLA) is a type of state guarantee, which creates various opportunities for individuals to access justice. Thus, free primary legal assistance is essentially covered by the obligation of public authorities and local governments to provide public administration services, and secondary – is provided for vulnerable groups and is provided by lawyers and legal professionals<sup>2</sup>.

The next logical step in the implementation of judicial reform was the adoption of the Law of Ukraine dated 14.10.2014 № 1697-VII “On the Prosecutor’s Office”, which significantly narrowed the powers of the prosecutor to represent the interests of citizens in court. As a result of the next stage of

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<sup>1</sup> Закон України “Про безоплатну правову допомогу”: основні положення та підходи до впровадження: роз’яснення Міністерства юстиції України від 9 квітня 2012 року. URL: <http://zakon5.rada.gov.ua/laws/show/n0008323-12>

<sup>2</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyviv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov_govoruha.pdf)

reform, related to the adoption of the Law of Ukraine of June 2, 2016 № 1401-VIII “On Amendments to the Constitution of Ukraine (concerning justice)”<sup>1</sup>, the prosecutor’s office was deprived of powers to represent the interests of citizens.

Thus, according to the Law of Ukraine “On Free Legal Aid”, the provision of free legal aid to the low income population is a duty for executive authorities and local governments, which could provide services with the help of: individuals and legal entities of private law; specialized institutions; free secondary legal aid centers.

The next stage of judicial reform began with the adoption of the Sustainable Development Strategy “Ukraine – 2020”, which was approved by the Decree of the President of Ukraine of January 12, 2015 № 5. Strategy for Reforming the Judiciary, Legal Proceedings and Related Legal Institutions for 2015–2020, approved by the Decree of the President of Ukraine of May 20, 2015 № 276, stipulates that judicial reform will include both updating legislation and adopting amendments to the Constitution of Ukraine.

Thus, the Law of Ukraine of June 2, 2016 № 1401-VIII “On Amendments to the Constitution of Ukraine (Regarding Justice)”<sup>2</sup> amended the Constitution of Ukraine, namely Art. 59, replacing the concept of “legal assistance” with “professional legal

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<sup>1</sup> Pro vnesennya zmin do Konstytutsii Ukrainy (shchodo pravosudnya): zakon Ukrainy vid 02.06.2016 r. № 1401. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>

<sup>2</sup> Ibid.

assistance”, thus provoking a discussion again about who can provide such assistance and in what form.

The Explanatory Note to the Draft Law of Ukraine “On Amendments to the Constitution of Ukraine (Regarding Justice)” stated that the right to professional legal assistance is a person guaranteed by the Basic Law of the state to receive high-quality legal services that can be provided only by a professional lawyer, who has undergone special training, not any other person.

At the same time, the proposed formula does not deny the right to legal aid in general, including free, which can be provided not only by professional lawyers, but other specialists. However, the emphasis is on the fact that the person is guaranteed to receive professional assistance<sup>1</sup>.

Thus, the whole array of regulations that ensure the implementation of the right to receive professional legal aid in Ukraine can be divided into two groups: general and special. The general normative legal acts include the provisions of the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine and other codes, which guarantee the observance of the right to receive legal assistance; Laws of Ukraine “On Advocacy and Advocacy Activity”, “On the Prosecutor’s Office”, “On Social Services”.

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<sup>1</sup> Proekt Zakonu pro vnesennya zmin do Konstytutsii Ukrainy (shchodo pravosuddya) vid 25.11.2015 r. № 3524. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57209](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57209)



Special acts include acts aimed at resolving a separate, specialized issue, directly related to the right to receive legal assistance, as well as the activities of entities designed to ensure the exercise of this right. These include the following: Decisions of the Constitutional Court of Ukraine: in the case of the constitutional appeal of citizen Soldatov Hennadii Ivanovych regarding the official interpretation of the provisions of Art. 59 of the Constitution of Ukraine, Art. 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses (case on the right to freely choose a lawyer); Opinion of the Constitutional Court of Ukraine dated 31.10.2019 № 4-v/2019 “Opinion of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on issuing an opinion on the compliance of the draft law on amendments to the Constitution of Ukraine (concerning the abolition of the lawyer’s monopoly) (Reg. № 1013) to the requirements of Articles 157 and 158 of the Constitution of Ukraine”; Laws of Ukraine: dated 21.06.2001 № 2533-III “On Amendments to the Criminal Procedure Code of Ukraine”; dated 03.10.2017 № 2147-VIII “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts”; dated 02.06.2011 № 3460-VI “On Free Legal Aid”; Resolution of the Verkhovna Rada of Ukraine of January 14, 2020 № 434-IX “On Preliminary Approval of the Bill on Amendments to the Constitution of Ukraine (concerning the abolition of the lawyer’s monopoly)”; Resolution of the Cabinet of Ministers of Ukraine of 06.06.2012 № 504 “On the

Establishment of the Coordination Center for Legal Aid Provision and the liquidation of the Center for Legal Reform and Bill Work under the Ministry of Justice”; Order of the Ministry of Justice of Ukraine dated August 14, 2019 № 2551/5 “On Approval of the Regulations on the Supervisory Board of the Coordination Center for Legal Aid Provision”; Resolution of the Plenum of the Supreme Court of Ukraine of October 24, 2003 № 8 “On the Application of Legislation that Provides the Right to Protection in Criminal Proceedings”, etc.

In addition to these documents, there are a number of separate opinions of judges of the Constitutional Court of Ukraine<sup>1</sup>, as well as administrative acts, i. e. those that have a separate indication of the use of a particular entity tool to exercise a particular power, as well as explanatory acts that have a recommendation, methodological or informational nature<sup>2</sup>.

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<sup>1</sup> Okrema dumka suddi Konstytutsiynoho Sudu Ukrainy Pervomayskoho O. O. stosovno Vysnovku Konstytutsiynoho Sudu Ukrainy u spravi za konstytutsiynym zvernenniam Verkhovnoi Rady Ukrainy pro nadannya vysnovku shchodo vidpovidnosti zakonoproektu pro vnesennya zmin do Konstytutsii Ukrainy (shchodo skasuvannya advokatskoi monopolii) (reyestr. № 1013) vymoham statei 157 i 158 Konstytutsii Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/nl04d710-19#Text>; Okrema dumka suddi Konstytutsiynoho Sudu Ukrainy Lytvynova O. M. stosovno Vysnovku Konstytutsiynoho Sudu Ukrainy u spravi za konstytutsiynym zvernenniam Verkhovnoi Rady Ukrainy pro nadannya vysnovku shchodo vidpovidnosti zakonoproektu pro vnesennya zmin do Konstytutsii Ukrainy (shchodo skasuvannya advokatskoi monopolii) (reyestr. № 1013) vymoham statei 157 i 158 Konstytutsii Ukrainy, vid 31.10.2019 r. URL: <https://zakon.rada.gov.ua/laws/show/nk04d710-19#Text>

<sup>2</sup> Zamryha A. V. Osoblyvosti formy zovnishnyoho vyrazhennya diyiv publichnoi administratsii u sferi administratyvno-pravovoho zabezpechenya hospodarskoi diyalnosti v Ukraini. *Yuryd. nauk. elektr. zhurn.* 2019. № 5.

We agree with the opinion of Yu. Shramko, who pointed out that the concept of “professional legal aid” used in Art. 59 of the Constitution of Ukraine at the legislative level has not yet found its normative consolidation. Legislative regulation of the right to legal assistance in Ukraine is not based on a single concept or basic legislative act. The content of Art. 59 of the Constitution of Ukraine is insufficient for the constitutional and legal definition of the legal aid system, as well as the legislative regulation of the constitutional right to legal assistance. There is no basic law which could establish the basic parameters of legal regulation of this sphere of public relations and which would normatively establish the general concept of legal assistance, its types, forms, etc. Instead, the provisions governing legal assistance relations are contained in many different acts of legislation. Therefore, this creates the conditions for numerous conflicts of law and necessitates significant changes to existing legislation<sup>1</sup>.

We agree with this position and believe that it is necessary to adopt a separate special Law of Ukraine “On Legal Aid in Ukraine” which defines the terminology, principles of such assistance, types of legal assistance and procedures for obtaining them, the powers of providers of professional legal assistance.

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<sup>1</sup> Shramko Yu. T. Konstytutsiyne pravo na pravovu dopomohu v Ukraini: aktualni pytannya zakonodavchoho rehuluvannya: avtoref. dys. ... kand. yuryd. nauk: spets. 12.00.02 “Konstytutsiyne pravo; munitsypalne pravo”. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, Kyiv, 2016. URL: [http://idpnan.org.ua/files/shramko-yu.t.-konstitutsiyne-pravo-na-pravovu-dopomogu-v-ukrayini-\\_aktualni-pitannya-zakonodavchogo-regulyuvannya\\_.pdf](http://idpnan.org.ua/files/shramko-yu.t.-konstitutsiyne-pravo-na-pravovu-dopomogu-v-ukrayini-_aktualni-pitannya-zakonodavchogo-regulyuvannya_.pdf)

Thus, the analysis of the normative provision of the right to receive professional legal assistance in Ukraine allowed to find out the current state of this provision and to reach the following conclusions:

1) the objective difficulties of the average citizen, who does not have special legal knowledge and skills to effectively use legal means to realize and protect their interests, give rise to the need for assistance from a professional lawyer. Therefore, it is necessary to increase the level of access to legal assistance for the population by improving its quality through the adoption of regulations at the appropriate level, because a democratic civil society can be built only with the help of clear “rules of the game” based on global standards of human and civil rights;

2) normative support for the implementation of human rights has passed conditionally three “generations of rights” and moved to the fourth period, which is characterized by a new worldview – anthropocentrism, as well as a vector to go beyond understanding rights as a purely political and legal phenomenon and transform it into an economical and social humanist phenomenon with focus on sustainable and inclusive human development;

3) the right to receive professional legal assistance in Ukraine has a constitutional basis (Art. 59 of the Constitution of Ukraine), but there is no detailed regulation of this right in other legislative acts;

4) the following terms are used simultaneously in different acts: “professional legal aid” (Constitution of Ukraine), “legal aid” (Civil Procedure Code of Ukraine, Commercial Procedure Code of Ukraine),

“law aid” (Law of Ukraine “On Free Legal Aid”), which creates legal conflicts and difficulties in ensuring the realization of the right to receive professional legal assistance. Only the concept of “free legal aid” at the legislative level is defined and detailed, as well as the procedure for providing this type of assistance is established, i. e. the procedure for providing legal assistance on a free basis has been defined;

5) according to the Law of Ukraine “On Free Legal Aid”, the provision of free legal aid to the low income population is a duty for executive authorities and local governments, which could provide services with the help of: individuals and legal entities of private law; specialized institutions; free secondary legal assistance centers;

6) the whole array of regulations that ensure the implementation of the right to receive professional legal aid in Ukraine can be divided into two groups: general and special;

7) the general normative legal acts include the provisions of the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine and other codes, which guarantee the observance of the right to receive legal assistance; Laws of Ukraine “On Advocacy and Advocacy Activity”, “On the Prosecutor’s Office”, “On Social Services”;

8) special acts include acts aimed at resolving a separate, specialized issue, directly related to the right to receive legal assistance, as well as the activities of entities designed to ensure the exercise of this right. These include the following: Decisions of the Consti-

tutional Court of Ukraine: in the case of the constitutional appeal of citizen Soldatov Hennadii Ivanovich regarding the official interpretation of the provisions of Art. 59 of the Constitution of Ukraine, Art. 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses (case on the right to freely choose a lawyer); Opinion of the Constitutional Court of Ukraine dated 31.10.2019 № 4-v/2019 “Opinion of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on issuing an opinion on the compliance of the draft law on amendments to the Constitution of Ukraine (concerning the abolition of the lawyer’s monopoly) (Reg. № 1013) to the requirements of Articles 157 and 158 of the Constitution of Ukraine”; Laws of Ukraine: dated 21.06.2001 № 2533-III “On Amendments to the Criminal Procedure Code of Ukraine”; dated 03.10.2017 № 2147-VIII “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts”; dated 02.06.2011 № 3460-VI “On Free Legal Aid”; Resolution of the Verkhovna Rada of Ukraine of January 14, 2020 № 434-IX “On Preliminary Approval of the Bill on Amendments to the Constitution of Ukraine (concerning the abolition of the lawyer’s monopoly)”; Resolution of the Cabinet of Ministers of Ukraine of 06.06.2012 № 504 “On the Establishment of the Coordination Center for Legal Assistance Provision and the liquidation of the Center for Legal Reform and Bill Work under the Ministry of Justice”;

Order of the Ministry of Justice of Ukraine dated August 14, 2019 № 2551/5 “On Approval of the Regulations on the Supervisory Board of the Coordination Center for Legal Assistance Provision”; Resolution of the Plenum of the Supreme Court of Ukraine of October 24, 2003 № 8 “On the Application of Legislation that Provides the Right to Protection in Criminal Proceedings”, etc.

Therefore, in order to unify and standardize the legal requirements for the implementation of the constitutional right to receive professional legal aid, it is proposed to adopt a separate special Law of Ukraine “On Legal Aid in Ukraine” which defines the terminology, principles of such assistance, types of legal assistance and procedures powers of the subjects of providing professional legal aid. Also, the need to develop and implement the State Social Program for free legal aid for the period up to 2035, which should enshrine a nationwide approach to addressing issues of such assistance.

### **1.3. Foreign Experience of Administrative and Legal Support of the Right to Receive Professional Legal Assistance**

The United Nations were created after World War II, which goal was to save humanity from the scourge of war, to affirm faith in fundamental human rights, in the dignity and worth of the human person. Then the next documents were adopted: Declaration of Human Rights (1948), International Covenant on

Economic, Social and Cultural rights (1966), the International Covenant on Civil and Political Rights (1966) and other important legal acts on human and civil rights, which were universal in nature. Universal international legal acts have set a bar that does not allow states to restrict rights and freedoms, referring to civilizational, national, regional, religious and other features of states. They were recognized by the international community.

However, according to the differences of world civilizations, regional acts on human and civil rights were adopted. Their aim was to combine the universality of human rights with civilizational values and traditions: European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights (1969), the African Charter on Human and Peoples' Rights (1981), the Islamic Declaration of Human Rights (1990), the CIS Convention on Human Rights and Fundamental Freedoms (1995)<sup>1</sup>.

The legal aid system exists in all Member States of the European Union (hereinafter the EU) in both civil and criminal proceedings. If a dispute arises with a company, public figure, employer or other person in the country of residence, and the person does not have sufficient financial resources to sue, he or she can apply for legal assistance in accordance with existing national rules. The right to legal assistance allows those who do not have sufficient finan-

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<sup>1</sup> Prava cheloveka. *Bolshaya rossiyskaya entsiklopediya*. 2020. URL: <https://bigenc.ru/law/text/3164669>



cial resources to cover the costs of litigation or legal representation. The right to legal assistance is enshrined in:

- European Convention on Human Rights (ECHR, 1950) – Art. 6 (3) (c) guarantees the right to legal aid if the defendant does not have sufficient funds to pay for legal assistance and to receive free legal assistance when the interests of justice demand it<sup>1</sup>;

- Charter of Fundamental Rights of the European Union (2016) – Art. 47 which provides that legal assistance is provided to those who do not have sufficient resources<sup>2</sup>.

In order to facilitate access to legal aid in civil and commercial matters, the Directive on Legal Aid in Cross-Border Issues (2003)<sup>3</sup> was adopted. It covers pre-trial consultations in order to achieve a settlement of pre-trial proceedings; legal assistance in bringing a matter into court, representation of a lawyer in court and assistance or exemption from court costs. It is necessary to fill in the appropriate legal assistance application form to receive legal aid in cross-border matters. The Directive provides two forms: one for submitting applications for legal aid and one

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<sup>1</sup> Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950. URL: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>2</sup> Charter of Fundamental Rights, 2016. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33501>

<sup>3</sup> Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0008>

for referring applications for legal aid. They are available in all EU languages<sup>1</sup>.

Regarding the legal aid in criminal proceedings, Member States have their own legislation which establishes the means of providing legal assistance in criminal proceedings under their jurisdiction<sup>2</sup>. But their legal aid system is built on the basis of United Nations (UN) legislation. Thus, the UN General Assembly adopted the world's first international document on legal assistance – “UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems” (2012)<sup>3</sup>.

They introduce global standards on legal assistance and recommend States to take and strengthen measures to ensure the effective provision of legal aid in the whole world: “Recognizing that legal aid is an important element of a functioning criminal justice system based on the rule of law, including the enjoyment of other rights, the right to a fair trial, and an important safeguard that ensures fundamental justice and public confidence in the criminal justice process, states must guarantee the right to legal aid in their national legal systems at the highest possible level, including, where possible, the constitution”<sup>4</sup>.

Taking into account the importance of administrative and legal enforcement of the right to pro-

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<sup>1</sup> Legal Aid. 2020. URL: [https://e-justice.europa.eu/content\\_legal\\_aid-37141-en.do#:~:text=The%20right%20to%20legal%20aid%20is%20enshrined%20by%3A,interest%20of%20justice%20so%20requires](https://e-justice.europa.eu/content_legal_aid-37141-en.do#:~:text=The%20right%20to%20legal%20aid%20is%20enshrined%20by%3A,interest%20of%20justice%20so%20requires)

<sup>2</sup> Criminal Legal Aid. Citizens information, 2020.

<sup>3</sup> The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 3 October 2012, UN Doc. A/C.3/67/L.6. URL: [http://www.uanet.org/sites/default/files/RES\\_GA\\_UN\\_121003\\_EN.pdf](http://www.uanet.org/sites/default/files/RES_GA_UN_121003_EN.pdf)

<sup>4</sup> Ibid.

fessional legal aid, the Research Institute of the Ministry of Justice and Security of the Netherlands (WODC) has commissioned a comparative study on legal assistance in nine countries: France, Germany, Belgium, England and Wales, Scotland, Ireland, Poland, the Netherlands and Finland. This report includes two issues: 1) How are state-funded legal aid systems organized in these countries? 2) What are the minimum requirements for state-funded legal aid and do they meet the requirements set out in the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR)? Thus, according to this study, England and Wales, Scotland, Ireland, Finland and the Netherlands have centralized legal assistance systems. France, Germany, Belgium and Poland have more decentralized systems. There are independent legal aid councils in Scotland, Ireland and the Netherlands. Legal aid councils in France and Belgium are located in the courts and make decisions on legal assistance issues. In Germany and Poland, courts decide whether or not to provide assistance. Legal aid systems are borne by a central government body, with the exception of Germany, where 16 federal states are responsible for the costs themselves<sup>1</sup>.

Legal assistance is usually available, but for certain categories of people. All countries apply financial, importance and complexity criteria to obtain

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<sup>1</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

legal aid. As a rule, there is a wide range of state-subsidized services for providing information and advice<sup>1</sup>. All the analyzed countries have many other sources of legal information and advice that are not part of the state legal assistance system. As a rule, (subsidized) services of lawyers and intermediaries (with low payment) are usually offered for negotiations and interaction with the other party. Procedural assistance to a lawyer during trials in courts and tribunals is also available everywhere. In France, Germany, the United Kingdom, Scotland and Finland, it is essential to use other means of aid before obtaining legal assistance. Litigation insurance is best known in Germany, followed by the Netherlands, Belgium, France, Finland and Poland<sup>2</sup>.

The analysis showed that legal aid is only one way to guarantee access to justice. The ECHR is open to various alternatives, such as simplification of legal assistance procedures, e-court, mediation, etc. In addition, the right to free legal aid differs in the amount of its provision depending on the type of proceedings. Thus, the right to legal aid in civil proceedings is not absolute and may be subject to legal and proportionate restrictions. The determining factors are the interests of the individual, the complexity of the procedures and the importance of the problems, as well as the difficult financial situation of the applicant.

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<sup>1</sup> Criminal Legal Aid. Citizens information, 2020.

<sup>2</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

In France, Germany, England and Wales, Scotland and Finland, other sources of legal assistance must first be used to qualify for free legal aid. Poland and the Netherlands have no such obligations. The most common other sources of legal assistance listed in the regulations governing free legal aid are the first (for example, legal costs insurance or union membership)<sup>1</sup>.

As we have already mentioned, there has been a long-standing discussion in Ukraine about the so-called “lawyer’s monopoly” on the provision of professional legal aid, so we decided to analyze the experience of foreign countries in resolving this issue.

The analysis of regulations governing the procedure for granting the legal path of EU member states made it possible to come to the following: in fact, Austria, Cyprus, the Czech Republic, Germany, and Hungary have a complete monopoly; another large group of countries have a monopoly only on representation in courts (Belgium, Lithuania, Norway, Portugal), and only Finland and Sweden do not have lawyers’ monopoly. At the same time, the market for legal services is being liberalized, but not in the sense of abolishing monopolies. In fact, 17 EU countries have a monopoly on the provision of legal assistance, as well as representation in court. At the same time, there is no noticeable correlation with the average level of income of conditional consumers of services,

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<sup>1</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

but there is a lack of sufficient data to confirm the growth of the quality of judicial representation after its monopolization only by lawyers<sup>1</sup>.

We will try to identify the main trends and aspects of administrative and legal support for the implementation of the right to receive professional legal aid, which may be relevant for Ukraine on the example of the experience of individual countries.

The UK has a clear division between legal services and legal assistance. Official free legal advice in this country is called “judicial aid” (according to the Legal Aid and Advice Act of 1949)<sup>2</sup>, and “legal service” is the plane of the business industry. There are also so-called state legal services, which are provided to public entities by special lawyers – employees of the state legal profession. The legislation of the country stipulates that only individuals and legal entities authorized by the regulatory body, or those who are exempt from the requirement to be authorized, have the right to carry out legal activities. As soon as individuals and legal entities receive a permit to conduct activities in the field of law from the public administration, they become subject to regulation.

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<sup>1</sup> Vlasyuk V. Chesnyi analiz arhumentiv “za” i “proty” advokatskoi monopolii. *Rada advokativ Kyivskoi oblasti*. URL: <https://radako.com.ua/news/chesniy-analiz-argumentiv-za-i-proti-advokatskoyi-monopoliiy>; Ryabets O. M. Publichne administruvannya diyalnosti yurydychnykh kompaniy v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administrativne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020. 222 s.

<sup>2</sup> Community legal services. *Contactlaw*. URL: <https://www.contactlaw.co.uk/community-legal-services.html>

Such subjects are:

- legal advisers, who make up the majority of the legal profession and often have direct contact with their clients, providing legal advice and aid on a number of issues. They personally represent clients in lower courts (magistrates' courts, district courts and tribunals). They can also represent clients in higher courts (Royal Court, High Court, Court of Appeal and Supreme Court). The regulatory body for them is the Solicitors Regulation Authority (SRA);

- advocacy, which is the second largest part of the legal profession. Lawyers are authorized to conduct reserved legal activities as legal advisers and directly to lawyers in the courtroom. They are regulated by the Bar Standards Board (BSB);

- legal entities, i. e. legal practitioners, whose work is similar to the work of a lawyer. The regulatory body for them is CILEX;

- professional lawyers dealing with real estate transactions, who must have a license issued by a special Council (Council for Licensed Conveyancers);

- patent attorneys – specialists in patents and intellectual property. The regulatory body for them is the Council for Regulation of Intellectual Property;

- persons entitled to provide services in the field of trademarks and design. The regulatory body for them is the Council for Regulation of Intellectual Property;

- financial lawyers who represent clients in court when there is a problem of resolving cost issues. The regulatory body for them is the Advocacy Standards Board;

– notaries – lawyers appointed by the Archbishop of Canterbury. They certify signatures and documents. The regulatory body for them is the master of faculties;

– certified public accountants. The title “Certified Public Accountant” indicates that a person has completed at least three years of in-depth training, passed a series of exams in financial management, auditing, business strategy and taxation, and decided to pursue professional development to maintain and further develop their skills. They are regulated by the Institute of Chartered Accountants in the United Kingdom (ICAEW)<sup>1</sup>.

But, despite a number of positive developments in the UK, legal aid reform (launched by the LASPO Act of 2012<sup>2</sup>) is still ongoing. The creation of new legislation on legal assistance was a politically complex process. After all, the Government has decided to save budget resources, and thus imposed far-reaching restrictions, arguing that the cost of legal assistance is too high. It is clear that such restrictions will affect both legal assistance recipients and the scope. They no longer receive legal aid for many problems unless

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<sup>1</sup> Rab S. Regulation of the legal profession in the UK (England and Wales): overview. *Practicallaw*. URL: [https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=\(sc.Default\) &firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=(sc.Default) &firstPage=true&bhcp=1); Ryabets O. M. Publichne administruvannya diyalnosti yurydychnykh kompaniy v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020. 222 s.

<sup>2</sup> Guidance Parole and the LASPO Act 2012. *GOV.UK*, 2014. URL: <https://www.gov.uk/government/publications/parole-and-the-laspo-act-2012>



they have very serious financial problems. The reform came into force in April 2013 and is expected to increase the number of self-represented litigants. There were fears that this increase would lead to inefficient, slower and more expensive processes. NGOs are also concerned about the scope, as they will have to deny many applicants access to their services. Legal assistance lawyers in France, Belgium and the Netherlands oppose the proposed reduction in their fees<sup>1</sup>.

Legal services have been set up to address this issue. It is a unique type of professional legal services and advice available in communities across the UK. Legal services are available to anyone, but are primarily targeted at low income population or people who have benefits. There are various structures that provide public legal services, for example, the Citizens Advice Bureau is a charitable organization funded by donations from individuals and companies, as well as from the budget of the Legal Services Commission and the National Lottery<sup>2</sup>.

The Community Legal Service is another government-funded entity that offers free legal services to community members. Community legal services are provided in a variety of ways, including telephone lines and the Internet. The purpose of such services is to provide proper professional legal advice to all<sup>3</sup>.

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<sup>1</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

<sup>2</sup> Community legal services. *Contactlaw*. URL: <https://www.contactlaw.co.uk/community-legal-services.html>

<sup>3</sup> *Ibid.*

After all, access to legal aid in the UK is an important feature of public policy, and obtaining quality legal advice is a right that should be available to all, not just to those who can afford it.

The next country with an effective legal aid system is Finland. The origins of the Finnish legal aid system date back to the 1950s. In 1956, a law on free legal aid came into force in Finland, the purpose of which was to provide legal assistance to citizens, in the form of representation of their interests in court by private lawyers, but at public expense<sup>1</sup>. Finland's next law on the right to free trial and the first municipal legal assistance law came into force in 1973, expanded the scope of the free procedure and established municipal legal aid bureaus<sup>2</sup>. This reform created an existing mixed model, in which legal assistance was provided by public legal aid lawyers (Public Legal Aid (PLA)), as well as private lawyers whose services in this area were paid by state. The main reason for the establishment of municipal legal aid offices was the provision of free legal aid throughout the country.

The Finnish Legal Aid Act was revised in the late 1980s, and its amendments expanded the right to free legal aid to cover many out-of-court civil cases, especially including cases of divorce and child custody, as well as preliminary investigations of criminal cases.

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<sup>1</sup> Jokela A. Oikeudenkäyntikulut ja maksuton oikeusapu. Helsinki: Lakimiesliiton kustannus, 1995.

<sup>2</sup> Rosti H., Niemi J., Lasola M. Legal Aid and Legal Services in Finland. *Research report 237*. Helsinki: National Research Institute of Legal Policy, 2008.

State legal assistance in Finland is regulated by a number of regulations, in addition to the Legal Aid Act by the Law on State Legal Aid Bodies and three government regulations: on legal aid, on legal aid payment criteria and on state legal aid bureaus<sup>1</sup>. Legal aid is implemented by the Ministry of Justice and is provided mainly through state legal aid bodies or court decisions. Both public and private lawyers work in legal aid services in Finland.

Lawyers employed in state legal aid departments are called state legal aid lawyers. The requirements for participation in the position of a lawyer for state legal aid are a master's degree in law and good experience in advocacy or litigation. Most state legal aid lawyers have the title of deputy judge (of *varatuomari*), which means that they have completed an internship in a district court and qualified as a judge. State legal aid lawyers are appointed by a leading state legal aid lawyer. Leading state attorneys for legal aid are appointed by the Minister of Justice<sup>2</sup>.

State legal aid offices operate in the same way, regardless of their geographical location, and their main task is to provide a wide range of legal services, from legal advice to judicial representation. According to the legal aid system, state legal aid lawyers, who work in state legal aid offices, provide all types of legal assistance, from representation in courts to out-of-court procedures such as drafting documents and legal advice. At the same time private lawyers

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<sup>1</sup> Ministry of Justice Finnish. 2020. URL: <https://oikeusministerio.fi/en/search?q=legal%20aid>

<sup>2</sup> Public Legal Aid Attorney. *Ministry of Justice*. 2013. URL: <https://oikeus.fi/oikeusapu/en/index/oikeusavustaja/publiclegalaidattorney.html>

can represent clients in the framework of legal assistance only during the trial.

The provision of legal assistance by private lawyers must first be approved by a decision on the provision of legal aid by the State Legal Aid Office, after which they are paid from public funds. Legal aid is provided mainly in all cases where there is a need for legal assistance, except cases of minor importance, such as indisputable divorces, or criminal cases where only a fine is provided. Legal aid is either free or partially subsidized by the state and is not available to companies or corporations<sup>1</sup>.

The legal aid system in Finland is currently undergoing major structural changes. This is partly due to increased migration from rural to urban areas, and partly due to the desire to make the system even more efficient. Despite the fact that the number of legal aid services has decreased in recent years, most of them have not been liquidated, but reorganized into branches of other services. However, such a reform has its drawbacks. One legal aid service can represent only one party of the dispute. It may be difficult for another legal assistance recipient to find another office or private professional to deal with the case. Rural areas are not attractive places for young lawyers, so rural legal aid associations are beginning to suffer from a shortage of young professionals<sup>2</sup>.

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<sup>1</sup> Rissanen A. Legal Aid in Finland. *Outsourcing Legal Aid in the Nordic Welfare States*/R. O. Halvorsen, O. Hammerslev (eds). Cham: Palgrave Macmillan, 2018. URL: [https://doi.org/10.1007/978-3-319-46684-2\\_4](https://doi.org/10.1007/978-3-319-46684-2_4)

<sup>2</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

Thus, one of the Finnish problems is how to provide legal assistance in more remote rural areas.

In addition, supplementary restrictions were imposed on legal activities in Finland on January 1, 2014. Private lawyers, who are not members of bar associations, will have to obtain a special permit to provide legal assistance. It is clear that such restrictions have negatively affected the process of legal aid. There are long queues in state legal assistance services, and although they have a de facto monopoly on out-of-court counseling and assistance, the number of cases considered by legal assistance services is declining<sup>1</sup>.

The range of legal aid initiatives in Finland is narrow. There are no legal clinics or paralegals offering assistance in resolving applicants' legal problems. However, many unions offer legal aid services to their members, including the cost of membership fees. Trade unions provide legal assistance to their members if disputes arise between employees and employers. The role of trade unions in labor law cases can be quite significant, as about three out of four Finns of working age belong to trade unions<sup>2</sup>. In Finland, various ombudsmen provide legal assistance. These include the Parliamentary Ombudsman, the

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<sup>1</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/ M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

<sup>2</sup> Johnsen J. T. How do the private professions in Finland and Norway impact on legal aid delivery? *The landscape of legal professions in Europe and the USA: Continuity and change*/ A. Uzelac, C. H. van Rhee (eds.). Cambridge: Intersentia, 2011.

Ombudsman for Minorities, the Ombudsman for Equality, the Ombudsman for Consumer Protection, the Ombudsman for Data Protection, the Ombudsman for Patients and the Ombudsman for Social Security. We believe that the institution of an ombudsman for professional legal aid should be introduced in Ukraine, due to its importance and constitutional consolidation.

Thus, legal aid in Finland provides for the possibility of providing individuals with legal assistance in whole or in part at the expense of the state. However, legal aid is generally not provided if the applicant has a legal expenses insurance policy covering the issue in question. In criminal proceedings, the defendant in certain circumstances is provided by a public defender at the expense of the state, regardless of his financial situation. Victims of serious violent or sexual crimes may be provided with judicial protection at the expense of the state, regardless of their financial situation. Legal assistance is not available to companies or corporations – only a person can get it.

In general, the Finnish system differs in its dependence on state legal aid services and liberal eligibility criteria. State legal aid offices are supplemented by lawyers of the judicial system according to a mixed model of legal assistance. The model provides access to legal assistance in a holistic and quasi-universal way. However, the Finnish model also has some problems, such as reduced funding and criticism of the lack of independence.

The Finnish Ministry of Justice is increasingly investing in e-services and remote services to address

these issues. The reform emphasizes that, from the citizen's point of view, the current problem is finding the right service and the possibility to assess its quality and reliability<sup>1</sup>. Particular attention is paid to the timely provision of legal aid services and prevention of escalation of legal problems, which is an important component of the state's efforts to contain costs<sup>2</sup>. The first wave of these non-traditional service models includes the above-mentioned nationwide telephone counseling that was introduced in 2009. The focus is now on video counseling, online booking of callbacks from lawyers of state legal aid offices, assistance to clients through online chats and the launch of an electronic application system<sup>3</sup>.

According to the plans of the Ministry of Justice of Finland, the most of the costs of legal assistance will be covered by client contributions. Although there is no specific plan for this, it would essentially mean an increase in the current legal aid fee (currently € 70 per client) or a change of the areas where legal assistance is provided<sup>4</sup>. The Ministry of Justice of Finland also periodically reviews the criteria for legal aid cases to determine whether certain legal issues may no longer be eligible for legal assistance.

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<sup>1</sup> Oikeusavun kokonaissuunnitelma. *Ministry of Justice*. Finland, 2015. URL: [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76608/omso\\_41\\_2015\\_oik\\_avun\\_kokonaiss\\_66s.pdf](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76608/omso_41_2015_oik_avun_kokonaiss_66s.pdf)

<sup>2</sup> Buck A., Pleasence P., Balmer N. J. Do citizens know how to deal with issues? Some empirical insights. *Journal of Social Policy*. 2008. October. Vol. 37 (4). P. 661–681.

<sup>3</sup> Oikeusavun kokonaissuunnitelma...

<sup>4</sup> Ibid.

Thus, the experience of Finland has shown that the granting of the right to professional legal aid is a dynamic process, where the criteria for granting are constantly revised and harmonized with modern requirements. The practice of involving trade union resources in the pre-trial settlement of disputes, as well as the use of insurance policies for court costs, the existence of the institution of ombudsmen on various issues is interesting for Ukraine. In our opinion, the use of digital technologies and non-traditional service models (for example, video counseling, online calls from lawyers of state legal aid offices, online chats, electronic application system) will improve access to justice in general and considered right in particular.

The next country is Belarus, where the sphere of activity of lawyers and persons providing professional services in the field of law is quite clearly delineated. State regulation, in particular, is carried out through: certification of lawyers who provide legal services; licensing the activities of legal entities and individual entrepreneurs providing legal services; delimitation of spheres of activity of lawyers and attorneys; publication of the Rules of professional ethics of lawyers; registration of prices for legal services provided to local clients<sup>1</sup>.

What are the requirements of the state to persons who may be engaged in the provision of legal services in Belarus? Such requirements include: the presence

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<sup>1</sup> Stepanovskiy A. *Praktika. Yuridicheskiy biznes*. 2020. № 01-2008. URL: <http://www.legal-business.ru/panorama/biznes/612-gosudarstvennoe-regulirovanie-yuridicheskogo-biznesa-v-belarusi>



of a certificate of a lawyer, which is issued only to citizens of the Republic of Belarus; higher legal education; three years of work experience in the specialty. Only lawyers who have a relevant lawyer's certificate can provide services, i. e. represent the interests of clients in commercial courts, give opinions, provide consultations to clients, and conduct legal examination of documents. The legal community welcomes this requirement of the law, because in this way the state effectively influences the professional level of persons providing legal services. In addition, "gray" lawyers who illegally provide services to clients are being pushed out of the market<sup>1</sup>.

Thus, Belarus has created legal conditions for the provision of professional legal aid, as well as effective conditions for state regulation in order to effectively influence the professional level of persons providing legal assistance.

Taking into account the majority of the right to receive professional legal aid is a constitutional provision, we will analyze the constitutions of different countries in order to distinguish common and different characteristics of considered right.

Art. 92 of the Constitution of the Republic of Latvia establishes the right to a fair trial and, within the framework of this provision, guarantees that everyone has the right to the assistance of a lawyer<sup>2</sup>.

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<sup>1</sup> Stepanovskiy A. *Praktika. Yuridicheskiy biznes*. 2020. № 01-2008. URL: <http://www.legal-business.ru/panorama/biznes/612-gosudarstvennoe-regulirovanie-yuridicheskogo-biznesa-v-belarusi>

<sup>2</sup> Konstitutsiya Latviyskoy Respubliki. V redaktsii zakona ot 19 iyunya 2014 g. URL: <https://www.president.lv/ru/latviiskaya-respublika/konstituciya-latvii#gsc.tab=0>

The state is obliged to provide a free lawyer to a vulnerable group of society, as well as to take all necessary measures to ensure that low-income individuals can fully exercise their right to a fair trial. There is a similar provision in the Constitution of the Republic of Lithuania; Art. 31 stipulates that “a person who is suspected of committing a crime, or an accused person, from the moment of their arrest or first interrogation, is guaranteed the right to defense, as well as the right to have a lawyer”<sup>1</sup>.

A slightly different approach to ensuring the right to legal aid exists in the Republic of Belarus. Art. 61 of its Constitution states that “everyone has the right to legal aid for the exercise and protection of rights and freedoms, including the right to use the assistance of lawyers and other representatives in court, other state bodies, local authorities, at enterprises, institutions, organizations, public associations and in relations with officials and citizens. Legal aid is provided at public expense in cases provided by law”<sup>2</sup>.

Art. 61 of the Constitution of the Republic of Azerbaijan guarantees the right to receive legal aid and stipulates that “I. Everyone has the right to qualified legal assistance. II. Legal aid is provided free of charge, at the expense of the state in cases provided by law. III. Everyone has the right to use the assistance of a lawyer from the moment of deten-

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<sup>1</sup> Konstitutsiya Litovskoy Respubliki ot 25 oktyabrya 1992 g. URL: [https://www.lrs.lt/home/Konstitucija/Konstitucija\\_RU.htm](https://www.lrs.lt/home/Konstitucija/Konstitucija_RU.htm)

<sup>2</sup> Konstitutsiya Respubliki Belarus 1994 goda (s izmeneniyami i dopolneniyami, prinyatymi na respublikanskikh referendumakh 24 noyabrya 1996 g. i 17 oktyabrya 2004 g.) URL: <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>

tion, arrest, accusation of committing a crime by the competent state authorities”<sup>1</sup>.

A comparative analysis of the definition of the right to legal assistance in different constitutions leads to the conclusion that the right to legal aid is not limited to the right to legal aid provided by lawyer in criminal proceedings and even to legal aid in court, but is broader in its content. Also, the advocacy cannot be recognized as a form of legal aid, it is a special public institution, the function of which is to provide professional legal aid. In addition to the professional legal assistance provided by lawyers, there is also such a type as non-professional (exclusive) legal aid, which is provided not by professional entities that are obliged to provide legal assistance to other entities, but by other persons – paralegals. At the same time, the analysis of the practice of constituting the right to legal aid in different CIS and Baltic countries shows that this practice was different, even with regard to the use of terminology in relation to the same right to legal assistance. This circumstance is explained, in particular, by the lack of a single constitutional and legal definition of the right to legal aid, its assignment to different categories of human rights<sup>2</sup>.

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<sup>1</sup> Konstitutsiya Azerbaydzhanskoy Respubliki ot 12 noyabrya 1995 g. URL: [https://www.caa.gov.az/index.php?option=com\\_k2&view=item&id=93:constitution-of-the-republic-of-&lang=ru](https://www.caa.gov.az/index.php?option=com_k2&view=item&id=93:constitution-of-the-republic-of-&lang=ru)

<sup>2</sup> Shramko Yu. T. Konstytutsiyne pravo na pravovu dopomohu v Ukraini: aktualni pytannya zakonodavchoho rehuliuвання: avtoref. dys. ... kand. yuryd. nauk: spets. 12.00.02 “Konstytutsiyne pravo; munitsypalne pravo”. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy. Kyiv, 2016. URL: [http://idpnan.org.ua/files/shramko-yu.t.-konstitutsiyne-pravo-na-pravovu-dopomogu-v-ukrayini-\\_aktualni-pitannya-zakonodavchogo-regulyuvannya\\_.pdf.usi](http://idpnan.org.ua/files/shramko-yu.t.-konstitutsiyne-pravo-na-pravovu-dopomogu-v-ukrayini-_aktualni-pitannya-zakonodavchogo-regulyuvannya_.pdf.usi)

Thus, the procedural parameters and the availability of legal services in the market are among those that are constantly changing, which can be influenced by policies to ensure access to justice. Therefore, more sustainable and inclusive systems need to be implemented by improving synergies with other elements of the justice system, making access to justice less costly for citizens and governments and can lead to better overall results.

The analysis of administrative and legal support for the realization of the right to receive a professional legal path in the EU member states, as well as some countries of the post-Soviet camp, allowed clarifying the peculiarities of this right and highlight some positive experiences of the analyzed countries:

1) a comparison of national legal assistance schemes reveals that there are fundamental differences in the philosophy, organization and management of legal assistance systems in the Member States. The common goal in some countries is to make legal services and access to justice publicly available (Britain, Finland, Belarus, Azerbaijan), while legal aid can be available only to the low income population in other countries (Latvia, Lithuania);

2) legal aid in EU countries is just one way to guarantee access to justice. The ECHR is open to various alternatives, such as simplification of legal assistance procedures, e-court, mediation, etc. In addition, the right to free legal aid differs in the amount of its provision depending on the type of proceedings. Thus, the right to legal assistance in civil proceedings is not absolute and may be subject to legal

and proportionate restrictions. The determining factors are the interests of the individual, the complexity of the procedures and the importance of the problems, as well as the difficult financial situation of the applicant.

3) the legal aid in the EU member states has been reformed in the last decade: a) most changes are gradual and cost-oriented for legal aid, so income criteria and the seriousness of the situation is applied in providing assistance, usually legal aid in criminal cases and the activities of public legal services to obtain information and consultations is widely available; b) a wide range of state subsidized information and consulting services is being created, where legal aid is traditionally provided by lawyers, but sometimes by specialists from legal centers, such as Juridische Loketten in the Netherlands and through websites; c) there are fewer or no state-funded advisory services in some countries (Poland), but all countries have many other entities that provide legal information and consultancy outside the state legal assistance system; d) private and public sectors develop innovative ways of providing information and consultancy; e) legal assistance for a lawyer during court proceedings is available in all EU member states, in all countries except Poland, recipients of legal aid are free to choose their own lawyer, who will then receive compensation from the government; f) other sources of legal assistance must first be used to get free legal aid in France, Germany, the United Kingdom, Scotland and Finland; Poland and the Netherlands have no such obligations; g) state legal assistance is repla-

ced by other sources, which are enshrined in regulations governing such assistance and are usually listed first (for example, insurance of court costs or union membership); h) the lawyer's monopoly on legal assistance exists in almost half of the countries (Austria, Cyprus, the Czech Republic, Germany, Hungary), but this monopoly is gradually being abandoned, it does not exist at all in some countries (Finland and Sweden).

4) the experience of Great Britain and Finland is positive for Ukraine, namely: Great Britain, which has created public legal services that provide quality and affordable legal assistance to community members, thus ensuring the realization of the right of every citizen to receive professional legal assistance; Finland has introduced: the institution of the ombudsman in legal services; the practice of involving trade union resources in pre-trial dispute resolution; use of court costs insurance policies; use of digital technologies and non-traditional service models (video counseling, online calls from lawyers of state legal aid offices, online chats, electronic filing system) to improve access to justice in general and considered right in particular.

5) administrative and legal regulation of professional legal aid in the analyzed countries is carried out by: licensing of legal activities; certification of lawyers; fixing prices for the provision of services by lawyers; approval of the Rules of professional ethics of lawyers; development of various procedures for providing a legal assistance. Procedural parameters and the availability of legal services on the market are among those that are constantly changing, which

can be influenced by policies to ensure access to justice. Therefore, more sustainable and inclusive systems need to be implemented by improving synergies with other elements of the justice system, making access to justice less costly for citizens and governments and can lead to better overall results.

Thus, as a result of a comparative analysis of the administrative and legal support for the implementation of the right to receive professional legal aid, the following positive experience of foreign countries has been identified: 1) simplification of procedures for obtaining assistance; 2) further development of specialized procedures for frequent and urgent problems; 3) development of services that integrate legal assistance with other types of assistance; 4) reduction of services that are a lawyer's monopoly; 5) improvement of legal information/consultations through websites; 6) a fixed fee instead of an hourly fee for lawyers for legal assistance; 7) fixed fees on the market of legal services; 8) availability of insurance of court costs; 9) mediation; 10) return of money for legal assistance from applicants, defendants or other sources of funding (for example, from the National Lottery) to the budget.

## **Conclusions to Section 1**

1. It was found that the right to receive legal professional aid is the same guarantee of ensuring and exercising all other rights, freedoms and legitimate interests of man and citizen.

2. It is proved that the legal status of a citizen of Ukraine is a set of legal bases of its relations with the state established by national and international norms (establish the procedure for possession and use of a citizen's rights, as well as performance of duties). The formation and development of which is closely related to the status of man (person), combining two main components: biological and social. Therefore, examining the status of a citizen of Ukraine, we must take into account the so-called triad – “man-person-citizen”, where a person's legal status is paramount and fundamental.

3. It is proposed to consider professional legal aid as the activity of the subject of providing such assistance, who uses various legal means and methods to provide personalized professional and organized assistance in resolving a problematic life situation in order to satisfy human rights and legitimate interests of man and citizen.

4. It was found that professional legal aid can take the following forms: information, consultations, clarifications, preparation of claims and appeals, certificates, applications, complaints, representation, in particular in courts and other state bodies, defense against prosecution. The choice of legal aid entity and the amount of assistance is determined by the person who needs it.

5. It has been proven that the objective difficulties of the average citizen, who does not have special legal knowledge and skills to effectively use legal means to realize and protect their interests, create the need for help from a professional lawyer. There-



fore, it is necessary to increase the level of access to legal aid for the population by improving its quality through the adoption of regulations at the appropriate level, because a democratic civil society can be built only with the help of clear “rules of the game” based on global standards of human and civil rights.

6. It is substantiated that the normative provision of realization of human rights and freedoms has passed conditionally three “generations of rights” and moved to the fourth period, which is characterized by a new worldview – anthropocentrism and a vector to go beyond understanding human rights and freedoms as a purely political and legal phenomenon and transform it into an economical and social phenomenon with a focus on sustainable and inclusive human development.

7. It was found that the right to receive professional legal aid in Ukraine has a constitutional basis (Article 59 of the Constitution of Ukraine), but there is no detailed regulation of this right in other legislative acts. Different acts simultaneously use the following terms: “professional legal aid” (Constitution of Ukraine), “legal aid” (Civil Procedure Code of Ukraine, Commercial Procedure Code of Ukraine), “law aid” (Law of Ukraine “On Free Legal Aid”), which creates legal conflicts and difficulties in ensuring the realization of the right to receive professional legal aid.

8. It is determined that the provision of free legal aid to the low income population, according to the Law of Ukraine “On Free Legal Aid”, is a duty for executive authorities and local governments, which

could provide for the provision of services: individuals and legal entities of private law; specialized institutions; free secondary legal aid centers.

9. The whole array of regulations that ensure the implementation of the right to receive professional legal aid in Ukraine can be divided into two groups: general and special. The general normative legal acts include the provisions of the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine and other codes, which guarantee the observance of the right to receive legal assistance; Laws of Ukraine “On Advocacy and Advocacy Activity”, “On the Prosecutor’s Office”, “On Social Services”. Special acts include acts aimed at resolving a separate, specialized issue, directly related to the right to receive legal assistance, as well as the activities of entities designed to ensure the exercise of this right. These include the following: Decisions of the Constitutional Court of Ukraine: in the case of the constitutional appeal of citizen Soldatov Hennadii Ivanovych regarding the official interpretation of the provisions of Art. 59 of the Constitution of Ukraine, Art. 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses (case on the right to freely choose a lawyer); Opinion of the Constitutional Court of Ukraine dated 31.10.2019 № 4-v/2019 “Opinion of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on issuing an opinion on the compliance of the draft law on amendments to the Constitution of

Ukraine (concerning the abolition of the lawyer’s monopoly) (Reg. № 1013) to the requirements of Articles 157 and 158 of the Constitution of Ukraine”; Laws of Ukraine: dated 21.06.2001 № 2533-III “On Amendments to the Criminal Procedure Code of Ukraine”; dated 03.10.2017 № 2147-VIII “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts”; dated 02.06.2011 № 3460-VI “On Free Legal Assistance”; Resolution of the Verkhovna Rada of Ukraine of January 14, 2020 № 434-IX “On Preliminary Approval of the Bill on Amendments to the Constitution of Ukraine (concerning the abolition of the lawyer’s monopoly)”; Resolution of the Cabinet of Ministers of Ukraine of 06.06.2012 № 504 “On the Establishment of the Coordination Center for Legal Assistance Provision and the liquidation of the Center for Legal Reform and Bill Work under the Ministry of Justice”; Order of the Ministry of Justice of Ukraine dated August 14, 2019 № 2551/5 “On Approval of the Regulations on the Supervisory Board of the Coordination Center for Legal Assistance Provision”; Resolution of the Plenum of the Supreme Court of Ukraine of October 24, 2003 № 8 “On the Application of Legislation that Provides the Right to Protection in Criminal Proceedings”.

10. A comparison of national legal assistance schemes reveals that there are fundamental differences in the philosophy, organization and management of legal assistance systems in the Member States. The common goal in some countries is to make legal ser-

vices and access to justice publicly available (Britain, Finland, Belarus, Azerbaijan), while legal aid can be available only to the low income population in other countries (Latvia, Lithuania). The legal aid in the EU member states has been reformed in the last decade: a) most changes are gradual and cost-oriented for legal aid, so income criteria and the seriousness of the situation is applied in providing assistance, usually legal aid in criminal cases and the activities of public legal services to obtain information and consultations is widely available; b) a wide range of state subsidized information and consulting services is being created, where legal aid is traditionally provided by lawyers, but sometimes by specialists from legal centers, such as Juridische Loketten in the Netherlands and through websites; c) there are fewer or no state-funded advisory services in some countries (Poland), but all countries have many other entities that provide legal information and consultancy outside the state legal assistance system; d) private and public sectors develop innovative ways of providing information and consultancy; e) legal assistance for a lawyer during court proceedings is available in all EU member states, in all countries except Poland, recipients of legal aid are free to choose their own lawyer, who will then receive compensation from the government; f) other sources of legal assistance must first be used to get free legal aid in France, Germany, the United Kingdom, Scotland and Finland; Poland and the Netherlands have no such obligations; g) state legal assistance is replaced by other sources, which are enshrined in regula-

tions governing such assistance and are usually listed first (for example, insurance of court costs or union membership); h) the lawyer's monopoly on legal assistance exists in almost half of the countries (Austria, Cyprus, the Czech Republic, Germany, Hungary), but this monopoly is gradually being abandoned, it does not exist at all in some countries (Finland and Sweden).

11. It has been found that legal aid in the EU is only one way to guarantee access to justice. The ECHR is open to various alternatives, such as simplification of legal assistance procedures, e-court, mediation, etc. In addition, the right to free legal assistance differs in the amount of its provision depending on the type of proceedings. Thus, the right to legal assistance in civil proceedings is not absolute and may be subject to legal and proportionate restrictions. The determining factors are the interests of the individual, the complexity of the procedures and the importance of the problems, as well as the difficult financial situation of the applicant.

12. It is proved that the administrative and legal regulation of professional legal aid in the studied countries is carried out by: licensing of legal activities; certification of lawyers; fixing prices for the provision of services by lawyers; approval of the Rules of professional ethics of lawyers; development of various procedures for providing a legal path. Procedural parameters and the availability of legal services in the market have been found to be among those constantly changing, which can be influenced by policies to ensure access to justice. Therefore, more sustainable and inclusive systems need to be

implemented by improving synergies with other elements of the justice system, making access to justice less costly for citizens and governments and leading to better overall results.

13. It was found that the experience of Great Britain and Finland is positive for Ukraine, namely: Great Britain, which has created public legal services that provide quality and affordable legal assistance to community members, thus ensuring the realization of the right of every citizen to receive professional legal aid; Finland has introduced: the institution of the ombudsman in legal services; the practice of involving trade union resources in pre-trial dispute resolution; use of court costs insurance policies; use of digital technologies and non-traditional service models (video counseling, online calls from lawyers of state legal aid offices, online chats, electronic filing system) to improve access to justice in general and considered right in particular.

## **Section 2**

### **Administrative and Legal Mechanism to Ensure the Implementation of the Right to Receive Professional Legal Assistance**

#### **2.1. Subjects of Ensuring Implementation of the Right to Receive Professional Legal Assistance and their Administrative and Legal Status**

The mechanism of implementation of the state policy of ensuring the right to receive professional legal assistance in Ukraine is a systematic formation of legal means enshrined in the law. A key aspect in ensuring the right to legal aid is the social balance between self-interest and collective welfare, due to laws, which proclaim human rights and freedoms as the highest value, and certain restrictions on human and civil rights and freedoms are justified by the state of security. Achieving such a balance in Ukraine is possible through effective administrative and legal regulation of relations connected with ensuring the right to legal assistance by public authorities, whose subjects need systematization and clear legislative definition of legal status<sup>1</sup>.

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<sup>1</sup> Kobko Ye. V. Systema subyektiv publichnoi administratsii v mekhanizmi realizatsii derzhavnoi polityky zabezpechennya natsionalnoi bezpeky Ukrainy. *Prykarpat. yuryd. visn.* 2018. Vyp. 4 (25). T. 2. S. 84–89. URL: [http://www.pjv.nuoua.od.ua/v4-2\\_2018/20.pdf](http://www.pjv.nuoua.od.ua/v4-2_2018/20.pdf)

Thus, definition of the place and features of the activities of the subjects of ensuring the realization of the right to receive professional legal assistance is possible under the condition of analysis of their legal status.

There is no generally accepted opinion about the essence of legal status and its elements among scholars, including scholars-administrators. The attribution of certain elements to the structure of legal status (legal position, condition) or administrative-legal status gives rise to different interpretations. The concept of “legal status” (Lat. *status* – “position”) is defined in the legal encyclopedia as “a set of rights and responsibilities of individuals and legal entities. In Ukraine, it is determined by the Constitution, laws and other normative legal acts, and international treaties ratified by the Verkhovna Rada of Ukraine. The legal status of an individual is determined primarily by the constitutional rights, freedoms and responsibilities of man and citizen. The legal status of legal entities is determined by their competence, i. e. the rights and obligations of these persons, enshrined in current legislation. The efficiency of their activity depends on the completeness of the legal fixation of the powers of these legal entities”<sup>1</sup>.

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<sup>1</sup> Chumak O. O. Administratyvno-pravovyi status derzhavnoho vykonavtsya. *Publichne pravo*. 2013. № 1. S. 107–113; Shemshuchenko Yu. S. Yurydychna entsyklopediya: v 6 t. Kyiv: Ukr. entsykl., 1998; Ryabets O. M. Publichne administruvannya diyalnosti yurydychnykh kompaniy v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020. 222 s.



Administrative and legal status, as a category of administrative and legal science, is characterized by reference to this area of law. We think the position of those scholars who describe the category of “administrative and legal status” as an abstract concept is very adequate. According to this concept, the representatives of the doctrine of administrative law try to define a set of necessary prerequisites to describe the practical significance of a particular authorized entity in a particular public security process<sup>1</sup>. They emphasize that the administrative and legal status determines the legal status of the subject in a certain hierarchical structure. In fact, the semantic definition of the category “status” in this sense dominates with the addition of a sectoral legal factor – administrative norms, where it is possible to look for the relevant elements that shape its content<sup>2</sup>.

Thus, most of administrative scholars consider the concept of “status” through a set of elements that are part of its structure. These elements are the most controversial, they are unanimous only in one thing – they must be defined in administrative norms.

We consider the administrative and legal status of the subjects through a set of rights, responsibilities

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<sup>1</sup> Prykhodko A. A. Administratyvno-pravove zabezpechennya zapobihannya ta protydii koruptsii v Ukraini za umov yevrointehratsii: dys. ... d-ra yuryd. nauk. Dnipro, 2020. 485 s.

<sup>2</sup> Savytskyi Ya. F. Administratyvno-pravovi status apelyatsiynykh hospodarskykh sudiv v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiynne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2019. 224 s.; Buravlov S. I. Katehoriyno-ponyatiyne rozuminnya administratyvno-pravovoho statusu hospodarskykh sudiv Ukrainy. *Sciences of Europe*. 2020. Vyp. 2. № 55. S. 59–63.

ties, purpose and tasks of their activities, powers, as well as responsibility for failure to perform the functions assigned to them by the state, or violation of the established norms.

Thus, as we have determined, the key link in the mechanism of realization of the right to receive professional legal aid is played by the subjects of ensuring this right within their administrative and legal status.

Art. 59 of the Constitution of Ukraine enshrines the right to receive professional legal aid, but does not contain special rules that would clarify the competence of the entities that must ensure the implementation of this right. Art. 131-2 of the Constitution of Ukraine only indicates that the advocacy operates to provide professional legal aid.

The large explanatory dictionary of the Ukrainian language interprets the concept of “provide” as follows: it is to supply something in sufficient quantities, to satisfy someone or something in some needs, to create reliable conditions for the implementation of something, to guarantee something, to protect, to protect someone or something from danger<sup>1</sup>. In turn, I. Paterilo determined that the subjects of ensuring are those who perform public functions of state or local importance on the basis of national regulations or administrative acts (agreements) on the delegation of powers, and implement their own or delegated powers in the field of management<sup>2</sup>.

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<sup>1</sup> Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

<sup>2</sup> Paterilo I. Administratyvno-pravovi instrumenty diyalnosti publichnoi administratsii Ukrainy: avtoref. dys. ... d-ra yuryd. nauk. Kyiv, 2015. 35 s.

Thus, the subjects of ensuring the realization of the right to receive professional legal aid are public authorities, as well as other non-governmental bodies with delegated powers, which are designed to create reliable conditions for exercising this right, protect and safeguard the constitutional right to receive professional legal aid.

Taking into account that legal assistance in Ukraine is provided by a large number of entities, we can group them into two large groups – government and non-government subjects with a purpose to better understand their status.

Based on current regulations, the first group of entities that ensure the implementation of the right to receive professional legal aid includes: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine; The Commissioner for Human Rights and his staff; Ministry of Justice of Ukraine and its authorized territorial bodies; courts; prosecutor's offices; executive authorities and local governments; Coordination Centre for Legal Aid Provision; The Supervisory Board of the Coordination Center for Legal Aid and the Centers for Free Secondary Legal Aid.

Non-governmental entities include: international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation.

The subjects of ensuring the realization of the right to receive professional legal aid include those whose activities are only partially related to the realization of the right to receive legal aid, such as pub-

lishing houses of legal literature, organizations that distribute legal databases, legal programs in the media<sup>1</sup>.

Now let's briefly analyze the powers and competencies of these entities.

1. The following features are characteristic of public authorities as subjects of ensuring the realization of the right to receive professional legal assistance:

a) ensuring the implementation of the right to receive professional legal aid should be within the competence of a particular body (not the main task). For example, the Constitution of Ukraine provides that the powers of the Verkhovna Rada of Ukraine include the adoption of laws of Ukraine and exclusively the laws of Ukraine determine the rights and freedoms of man and citizen, guarantees of these rights and freedoms; basic responsibilities of a citizen; citizenship, legal personality of citizens, status of foreigners and stateless persons<sup>2</sup>. In addition, parliamentary control over the observance of constitutional rights and freedoms of man and citizen and protection of the rights of everyone in Ukraine and within its jurisdiction is exercised on a permanent basis by the Verkhovna Rada Commissioner for Human Rights<sup>3</sup>.

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

<sup>2</sup> Konstytutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>3</sup> Pro Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav lyudyny: Zakon Ukrainy vid 23.12.1997 r. № 776/97-VR. URL: <https://zakon.rada.gov.ua/laws/card/776/97-%D0%B2%D1%80>

The Regulation on the Ministry of Justice of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of July 2, 2014 № 228, states that the ministry “carries out general management in the field of free primary legal aid and free secondary legal aid”<sup>1</sup>. Thus, ensuring the implementation of the right to legal aid in public authorities is within their competence, defined in special administrative and legal norms and is implemented only in forms that are defined by law;

b) the activity of public authorities in the field of ensuring the implementation of the right to legal assistance is most often indicated in regulations governing their status. For example, the Law of Ukraine of 21.05.1997 № 280/97-VR “On Local Self-Government in Ukraine” in Art. 26 stipulates that the exclusive competence of village, settlement, city councils includes: “creation of institutions for the provision of free primary legal aid in accordance with the law at the expense of local budget, the appointment and dismissal of the heads of these institutions, the involvement of individuals or legal entities of private law to provide free primary legal aid in the manner prescribed by law”<sup>2</sup>;

c) ensuring of the right to legal aid in the form of professional legal representation is carried out by public authorities on their own behalf, but in the

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<sup>1</sup> Polozhennya pro Ministerstvo yustytzii Ukrainy: postanova Kabinetu Ministriv Ukrainy vid 02.07.2014 r. № 228. URL: <https://zakon.rada.gov.ua/laws/show/228-2014-%D0%BF#Text>

<sup>2</sup> Pro mistseve samovryaduvannya v Ukraini: Zakon Ukrainy vid 21.05.1997 r. № 280/97-VR. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>

interests of a particular person. For example, Part 1 of Art. 53 of the Code of Administrative Procedure of Ukraine stipulates that “the Verkhovna Rada Commissioner for Human Rights, state bodies, local governments, individuals and legal entities may apply to the administrative court in the interests of other persons and participate in cases established by law”<sup>1</sup>;

d) the presence of state powers. It should be noted that ensuring the implementation of the right to professional legal aid cannot be carried out by any activity of public authorities, but only that which is carried out by legal means, the use of which is included in the content of a person’s legal capacity as a subject of law. Public authorities, as the subjects endowed with state powers, exercise their tasks and functions with the help of their powers, make legally binding government decisions in ensuring the implementation of this right<sup>2</sup>. For example, the Ministry of Justice of Ukraine by its Order of 02.07.2012 № 967/5 “On Approval of the Regulations on Centers for Free Secondary Legal Aid” has made an administrative decision that “Centers for free secondary legal aid are formed, reorganized and liquidated by the Ministry of Justice of Ukraine at the proposal of the Coordination Center for Legal Aid Provision, taking into account the needs of the relevant admi-

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<sup>1</sup> Kodeks administratyvnoho sudochynstva Ukrainy: Zakon Ukrainy vid 06.07.2005 r. № 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>

<sup>2</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

nistrative-territorial unit and ensuring access to free legal aid and are territorial branches of the Coordination Center” and determined the administrative and legal status of the Center.

In our work, we will not analyze the administrative and legal status of all public authorities that are directly or indirectly related to the field of legal assistance, but will examine those that ensure the exercise of the right to professional legal aid along with other functions, as well as those, which were created precisely to ensure the implementation of this right.

The first in our list is the Cabinet of Ministers of Ukraine, which has the following powers in the field of ensuring the exercise of the right to legal aid: 1) approves the procedure and conditions of the competition and the requirements for the professional level of lawyers who are involved in the provision of free secondary legal aid; 2) establishes the procedure and conditions for concluding contracts with lawyers who provide free secondary legal aid on a permanent basis; 3) establishes the procedure and conditions for concluding agreements with lawyers who provide free secondary legal aid on a temporary basis; 4) establishes the procedure for informing the centers for the provision of free secondary legal aid about cases of detention of persons; 5) establishes the amount and procedure for payment for the activities of the subjects of free secondary legal aid; 6) approves the regulations on the Coordination Center for Legal Aid Provision<sup>1</sup>.

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<sup>1</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

Thus, the Cabinet of Ministers of Ukraine first of all creates conditions for the implementation of the constitutional right – the right to receive professional legal aid and provides the organizational and legal basis by establishing and approving the procedure for its implementation.

The next state body, which is also the main body in ensuring the implementation of the right to legal aid, is the Ministry of Justice of Ukraine. According to the Law of Ukraine “On Free Legal Aid”, it has the following powers: 1) ensures coordination of the activities of central executive bodies in the implementation of state policy in the field of free legal aid; 2) carries out general management in the field of free primary and free secondary legal aid; 3) is responsible for the implementation and operation of the system of free secondary legal aid; 4) establishes centers for the provision of free secondary legal aid; 5) submits draft laws and other regulations in the field of free legal aid to the Cabinet of Ministers of Ukraine; 6) provides methodological assistance to executive authorities and local self-government bodies on issues related to the provision of free primary legal aid; 7) establishes the procedure for maintaining the Register of Lawyers Providing Free Secondary Legal Aid by the Coordination Center for Legal Aid Provision; 8) ensures the holding of competitions by the main departments of justice in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol to attract lawyers to provide free secondary legal aid; 9) analyzes the practice of application of this Law; 10) approves quality standards for the provision of free legal aid; 11) cooperates with central executive



bodies on the implementation of this Law; 12) approves the Standard Regulations on Institutions for the Provision of Free Primary Legal Aid; 13) approves the procedure and criteria for the involvement of local governments of legal entities of private law in the provision of free primary legal aid; 14) approves the Regulations on centers for the provision of free secondary legal aid; 15) performs other functions in the field of free legal aid, established by laws and international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine<sup>1</sup>.

The Ministry of Justice of Ukraine has established the Coordination Center for Legal Aid Provision to implement the above powers.

The Coordination Center for Legal Aid Provision (hereinafter Coordination Center) was established by the Government on June 6, 2012, the first institution in the free legal aid system. The regional centers for free legal aid, which are responsible for providing free secondary legal aid to suspects and accused in criminal proceedings, detainees, arrested and convicted, began operating on January 1, 2013. Since July 1, 2015, 100 local centers for free secondary legal aid have started operating in all regions of Ukraine and the institutional development of the free legal aid system is being completed with the establishment of more than 400 legal aid offices in district centers and small towns from September 1, 2016<sup>2</sup>.

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<sup>1</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>2</sup> Bezoplatna pravova dopomoha. *Ofitsiynyi sayt Ministerstva yustytzii Ukrainy*. 2020. URL: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid)

In 2019, Ukraine has already established: 23 regional centers and 84 local centers for free secondary legal aid; 428 legal aid offices; 5 legal clubs “Pravokator”; 6,760 lawyers were involved in the provision of free secondary legal aid; about 1,500 full-time lawyers of the free legal aid system; the budget for ensuring the formation and functioning of the free legal aid system in 2019 is UAH 390,5 million; budget for the payment of services and reimbursement of lawyers’ fees for free secondary legal aid is UAH 337,7 million<sup>1</sup>.

The administrative and legal status of the Coordination Center is defined in the “Regulations on the Coordination Center for Legal Aid Provision” (hereinafter the Regulations) approved by the Resolution of the Cabinet of Ministers of June 6, 2012 № 504<sup>2</sup>.

The Coordination Center is a state institution that has the status of a legal entity, with an official name, seal, independent balance sheet, accounts in the Treasury. It was formed by the Ministry of Justice and is involved in its scope. Although the terms of remuneration of the Coordination Center staff are approved by the Cabinet of Ministers, it was created in order to form and ensure the functioning of an effective system of free legal aid in Ukraine, ensuring its availability and quality<sup>3</sup>.

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<sup>1</sup> Bezoplatna pravova dopomoha. Ofitsiynyi sayt Ministerstva yustytсии Ukrainy, 2020. URL: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid)

<sup>2</sup> Polozhennya pro Koordynatsiynyi tseentr z nadannya pravovoi dopomohy: Postanova Kabinetu Ministriv Ukrainy vid 6 chervnya 2012 r. № 504. URL: <https://zakon.rada.gov.ua/laws/show/504-2012-%D0%BF#n17>

<sup>3</sup> Ibid.

It is necessary to dwell on the order of formation of property and receipt of funds to ensure the activities of the Coordination Center. Thus, Article 6 of the analyzed Regulation defines the sources of profit and property of the Coordination Center. Such sources include funds and property received from: the Ministry of Justice; enterprises, institutions and organizations regardless of ownership; state budget; concluded civil law agreements; international technical assistance<sup>1</sup>.

Taking into account that the cost of free legal aid is high, most EU member states have severely limited it, but they have started to use alternative procedures and seek additional sources of funding in order to ensure the implementation of the right to free legal aid.

According to the example of foreign experience, it is necessary to make some changes in Art. 6 of “Regulations on Coordination Center for Legal Aid Provision” approved by the Resolution of the Cabinet of Ministers of Ukraine of June 6, 2012 № 504 and add item 5 to the list of sources, which should state: “the property of the Coordination Center is formed at the expense of the National Lottery”.

The Ukrainian free legal aid system is the largest in Europe and one of the most successful social projects of the Ministry of Justice, the Government and international partners. At the same time, the free legal aid system continues to develop, striving to

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<sup>1</sup> Polozhennya pro Koordynatsiynyi tsentr z nadannya pravovoi dopomohy: Postanova Kabinetu Ministriv Ukrainy vid 6 chervnya 2012 r. № 504. URL: <https://zakon.rada.gov.ua/laws/show/504-2012-%D0%BF#n17>

meet modern challenges. The Supervisory Board of the Coordination Center for Legal Aid Provision was created in order to ensure the independence of free legal aid system management, transparency and effective implementation of state policy in the field of free legal aid (hereinafter the Supervisory Board). The Supervisory Board is a new model of managing the free legal aid system. Its activities are aimed at ensuring equal access to justice so that citizens can exercise their right to protection and legal assistance. This will help to build confidence in the free legal aid system<sup>1</sup>.

The administrative and legal status of the Supervisory Board is enshrined in the “Regulations on the Supervisory Board of the Coordination Center for Legal Aid Provision”, which was approved by the order of the Ministry of Justice of July 14, 2019 № 2551/5. According to this, it consists of nine people who will represent various professional specializations. They will work on a voluntary basis. The term of office is tenable for maximum five years. The members of the Supervisory Board will be elected on a competitive basis by the commission. The tender commission will include representatives of key partners and stakeholders of the free legal aid system. The Supervisory Board has broad powers: it supervises the activities of the free legal aid system, prepares applications for the appointment and dismissal of the head of the Coordination Center, hears the annual report (including financial) on the functioning

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<sup>1</sup> Bezoplatna pravova dopomoha. *Ofitsiynyi sayt Ministerstva yustytzii Ukrainy*. 2020. URL: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid)

of the free legal aid system. In addition, the Supervisory Board will identify and assess political, financial and other risks, and provide recommendations for their prevention or resolution<sup>1</sup>.

The next state body responsible for ensuring the realization of the right to legal aid is the Centers for Free Secondary Legal Aid Provision (hereinafter the Centers). The Regulation on Centers for Free Secondary Legal Aid Provision, approved by the order of the Ministry of Justice of Ukraine of July 02, 2012 № 967/5 (as amended by the order of the Ministry of Justice of Ukraine of May 24, 2016 № 1487/5), explicitly states that they “provide access of persons to free legal aid”<sup>2</sup>.

The Centers operate on the basis of a regulation, which is developed in accordance with specified Regulation and approved by the Coordination Center. The activity of the centers extends to the territory of the relevant administrative and territorial unit (relevant administrative and territorial units). The centers are non-profit organizations, enjoy the rights of a legal entity, have a seal with the image of the State Emblem of Ukraine and their name, their own forms, independent balance sheet, accounts in the Treasury<sup>3</sup>.

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<sup>1</sup> Bezoplatna pravova dopomoha. *Ofitsiynyi sayt Ministerstva yustytzii Ukrainy*. 2020. URL: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid); Polozhennya pro Nahlyadovu radu Koordynatsiynoho tsentru z nadannya pravovoi dopomohy: nakaz Ministerstva yustytzii Ukrainy vid 14.08.2019 № 2551/5. URL: <https://zakon.rada.gov.ua/laws/show/z0932-19#Text>

<sup>2</sup> Pro zatverdzhennya Polozhennya pro tsentry z nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: nakaz Ministerstva yustytzii Ukrainy vid 02.07.2012 r. № 967/5. URL: <https://zakon.rada.gov.ua/laws/show/z1091-12#n15>

<sup>3</sup> Ibid.

K. Strukova, researching the administrative and legal principles of the network of free legal aid centers in the justice system, concludes that alignment of normative legal acts on the definition of subjects of free legal aid requires certain changes: 1) paragraph 7, subparagraph 2 of the Regulations on Centers for Free Secondary Legal Aid Provision should state: “The main tasks of the centers are to organize the provision of free primary legal aid and free secondary legal aid”; 2) the word “provision” in Art. 17 of the Law of Ukraine “On Free Legal Aid” should be replaced with the word “organization”<sup>1</sup>.

We do not agree with this conclusion. We indicated in the previous stages of our study that it is necessary to create reliable conditions for a person to exercise his right to professional legal assistance and ensure that this right is exercised and provided at the appropriate level.

The next group of subjects to ensure the realization of the right to receive professional legal assistance are non-governmental bodies, which are traditionally called “non-governmental organizations” or “public organizations”, and can be in various organizational and legal forms. This group includes international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation. Let’s briefly analyze their administrative and legal status.

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<sup>1</sup> Pstrukova K. Administratyvno-pravovi zasady diyalnosti merezhi tsentriv bezoplatnoi pravovoi dopomohy v systemi yustytsii. *Aktualni problemy pravoznavstva*. 2017. № 1. URL: <http://appj.wunu.edu.ua/index.php/appj/article/view/117>

Relations between two international intergovernmental organizations or between a state and an intergovernmental organization are governed by public law. The regulation of legal relations with the participation of some international non-governmental organizations is distinguished by a certain specificity. International organizations are the main type of international legal entities. The very concept of “international organization” covers both international intergovernmental and international non-governmental organizations. Both the first and the second are special subjects of law, they can participate only in those legal relations that are defined by their goals and objectives, and comply with the statute.

International legal entities are created by concluding an international agreement, namely: an interstate, intergovernmental, interdepartmental agreement, as well as in accordance with the national legislation of one or more states, which is determined by international agreement. The legal status of international intergovernmental organizations is regulated in accordance with the Vienna Conventions on the Representation of States in Their Relations with International Organizations of a Universal Nature (1975), on the Law of Treaties (1986), and the Convention on the Legal Status, Privileges and Immunities of Intergovernmental Organizations, which operate in certain areas of cooperation (1980). In turn, a special international agreement concluded between member states of an international intergovernmental organization is its Charter, which may establish the status

of the organization as a legal entity (Art. 104 of the UN Charter)<sup>1</sup>.

It is worth noting several organizations that carry out significant work directly in Ukraine among the many multilateral universal, regional and sectoral international forums with the participation of the state. The specifics of the statutory tasks of their bodies and the programs managed by them provide a significant purposeful impact on social and political processes in the societies of the participating countries. This is primarily the UN and its specialized agencies, as well as the OSCE, the Council of Europe. Ukraine's own programs and projects are implemented by the EU Delegation, a number of international economic organizations that are associate organizations of the United Nations (members of the World Bank Group and the IMF mission), as well as non-governmental international funds and foreign governmental and non-governmental organizations<sup>2</sup>.

Thus, all of them in one way or another contribute to ensuring the realization of the right to legal assistance and access to justice in Ukraine.

Thus, current advisory and technical assistance is provided to the Secretariat of the Verkhovna Rada Commissioner for Human Rights due to the assistance of UNDP. Significant attention in the current activities of UNDP is paid to raising awareness of

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<sup>1</sup> Chevychalova Zh. V. Mizhnarodni orhanizatsii yak subyekty mizhnarodnoho pryvatnoho prava. *Teoriya i praktyka pravoznavstva*. 2014. Vyp. 2 (6). URL: [http://nbuv.gov.ua/UJRN/tipp\\_2014\\_2\\_52](http://nbuv.gov.ua/UJRN/tipp_2014_2_52)

<sup>2</sup> Tolstov S. Diyalnist mizhnarodnykh orhanizatsiy v Ukraini: zahalni tendentsii ta oriyentyry. *Viche*. 2015. № 4. URL: [www.viche.info](http://www.viche.info)



citizens about their political and property rights and improving the provision of legal aid, which should help to facilitate people's living conditions. UNDP facilitated the training of staff of 742 state legal aid centers, representatives of 55 non-governmental organizations – legal aid providers and 4 “legal clinics” on land and property law and its application in practice. The UNDP in partnership with non-governmental organizations, the Open Society Institute and the International Renaissance Foundation has developed a best practice guide for leading legal aid organizations<sup>1</sup>.

Like UNDP-sponsored projects, OSCE projects in Ukraine are multi-purpose and multifaceted. In recent years, the OSCE Office has organized a number of projects in the field of legal reform and human rights education. The office helps to improve the level of legal education in order to raise Ukrainians' awareness of human rights. Thus, the project “Guaranteeing Human Rights in the Administration of Justice”,<sup>2</sup> was developed with the assistance of the OSCE Project Coordinator in Ukraine. It was implemented in 2014–2015 together with the National School of Judges of Ukraine, the Supreme Court of Ukraine and the Supreme Administrative Court of Ukraine with the financial support of the Government of Canada.

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<sup>1</sup> Tolstov S. Diyalnist mizhnarodnykh orhanizatsiy v Ukraini: zahalni tendentsii ta oriyentyry. *Viche*. 2015. № 4. URL: [www.viche.info](http://www.viche.info)

<sup>2</sup> Fuley T. I. Zastosuvannya praktyky Yevropeyskoho sudu z prav lyudyny pry zdiysnenni pravosuddya. 2-he vyd. vypr., dopov. Kyiv, 2015. 208 s. URL: <https://www.osce.org/files/f/documents/4/7/232716.pdf>; Tolstov S. Diyalnist mizhnarodnykh orhanizatsiy v Ukraini...

According to the analysis of the activities of various international non-governmental organizations, it can be seen that their projects and initiatives in the field of ensuring the implementation of the right to professional legal assistance are mainly educational in nature.

The concept of “public organization” is traditional for Ukrainian scientific literature and practice, while the term “non-governmental organization” is used in foreign legal literature and regulations. Non-governmental organizations (NGOs) are groups of people in an organization, gathered to meet their diverse interests. The initiative to create an NGO belongs to the citizens themselves and is not for profit. Their existence expresses the desire of people to influence their own lives and the environment. NGOs create an opportunity for people to be directly involved in solving the problems that concern them most. The presence of non-governmental organizations that implement various citizens’ initiatives is considered as a sign of a developed civil society<sup>1</sup>.

According to the UN General Assembly Resolution of 23.05.1968 № 1296 (XIV), an international non-governmental organization is any international organization not established on the basis of an inter-governmental agreement. A large number of non-governmental organizations actively cooperate with intergovernmental organizations, the main form of

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<sup>1</sup>Kharysh M. S. Nederzhavni hromadski orhanizatsii yak skladova chastyna subyektiv administratyvnoho prava Ukrainy. *Nauk. zap. Lviv. un-tu biznesu ta prava*. 2013. Vyp. 11. S. 29–31. URL: [http://nbuv.gov.ua/UJRN/Nzlubp\\_2013\\_11\\_9](http://nbuv.gov.ua/UJRN/Nzlubp_2013_11_9)

such cooperation is consultative status. The rules for granting such status are individual in each inter-governmental organization<sup>1</sup>.

There are several criteria that international non-governmental organizations must meet. First, the organization must be non-profit. The UN considers a non-profit as a requirement to fund the organization by members themselves or by voluntary contributions. Second, the organization should not use or promote violent methods. Accordingly, international non-governmental organizations of the liberation movement, belligerent or insurgent parties and other armed groups are not recognized, even if their actions are legitimate under international law. Finally, the organization should not engage in political activities in order to achieve power. This criterion excludes any political parties and their opposition associations from the number of international non-governmental organizations<sup>2</sup>.

For example, the Norwegian Refugee Council (NRC) is an international, humanitarian, non-governmental organization that provides assistance, protects the rights and promotes the problems of internally displaced persons and other victims of armed con-

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<sup>1</sup> Chevychalova Zh. V. Mizhnarodni orhanizatsii yak subyekty mizhnarodnoho pryvatnoho prava. *Teoriya i praktyka pravoznavstva*. 2014. Vyp. 2 (6). URL: [http://nbuv.gov.ua/UJRN/tipp\\_2014\\_2\\_52](http://nbuv.gov.ua/UJRN/tipp_2014_2_52)

<sup>2</sup> Kuznetsova Ye. Evolutsiya konsultativnogo statusa mezhdunarodnykh nepravitelstvennykh organizatsiy pri Ekonomicheskomy i Sotsialnomu Sovetu OON. Moskva, 2004; Voysikhovskiy A. V. Mizhnarodni neuryadovi organizatsii u borotbi zi zlochynnisty. 2020. URL: [http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/2249/mizhnarodni\\_neuryadovi\\_organizatsiyi\\_u\\_bo.pdf?sequence=2&isAllowed=y](http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/2249/mizhnarodni_neuryadovi_organizatsiyi_u_bo.pdf?sequence=2&isAllowed=y)

flict. The NRC is one of the largest international non-governmental legal aid providers in eastern Ukraine. The NRC provides free legal aid on the following issues: access to pensions and other social benefits; unpaid wages, problems with employment records, benefits for the employment of IDPs; obtaining a birth or death certificate that occurred in the territory not under the control of the Government of Ukraine; registration and restoration of documents, that are lost or damaged as a result of the conflict in eastern Ukraine; registration of IDPs, receipt and re-issuance of IDP certificates; legal issues of crossing the line of contact; inheritance, privatization, housing subsidies, monthly targeted assistance to IDPs, registration/deregistration of residence<sup>1</sup>.

Thus, both international intergovernmental and non-governmental organizations operate on the territory of Ukraine on the basis of international and national legislation. Their missions are mainly aimed at building civil society and creating reliable mechanisms for the protection of human and civil rights and freedoms. Not least, they also play a role in ensuring the realization of the right to receive professional legal assistance.

The administrative and legal status of domestic non-governmental organizations is enshrined in the Law of Ukraine of March 22, 2012 № 4572-VI “On Associations of Citizens”, which defined that a public association is a voluntary association of individuals

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<sup>1</sup> NRC nadaye bezoplatnu pravovu dopomohu. *Novohrodivska Miska rada. Ofitsiynyi sait*. 2020. URL: <https://novogrodovka-rada.gov.ua/novyny/3942-nrc-nadae-bezoplatnu-pravovu-dopomogu>

and/or legal entities of private law for the exercise and protection of rights and freedoms, the satisfaction of public, including economic, social, cultural, environmental, and other interests. A public association is formed in the organizational and legal form as a public organization or public association. A public organization is a public association, the founders and members of which are individuals. A public union is a public association founded by legal entities of private law, and members (participants) may be legal entities of private law and natural persons. A public association may carry out activities with or without the status of a legal entity. A public association with the status of a legal entity is a non-profit company, the main purpose of which is not to make a profit<sup>1</sup>.

The Ukrainian Helsinki Human Rights Union (hereinafter the Union) is a striking example of the activities of non-governmental organizations that promote the development of a humane society based on respect for human life, dignity and harmonious relations between man, state and nature by creating a platform for cooperation between members and other members of the human rights movement<sup>2</sup>.

The Union carries out the following main areas of activity: protection of human rights and fundamental freedoms in courts, public authorities and local self-government; provides legal assistance to individuals in protect their rights and freedoms; carries

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<sup>1</sup> Pro obyednannya hromadyan: Zakon Ukrainy vid 22.03.2012 r. № 4572-VI. URL: <https://zakon.rada.gov.ua/laws/card/4572-17>

<sup>2</sup> Misiya ta istoriya Spilky. *Ukrainska Helsinska spilka z prav lyudyny*, 2020. Nashi proekty. *Ukrainska Helsinska spilka z prav lyudyny*. 2020. URL: <https://helsinki.org.ua/nashi-proekty/>

out constant monitoring of observance of human rights and fundamental freedoms in Ukraine and informes about the facts of violations of rights and freedoms; conducts research on human rights and fundamental freedoms, including constant monitoring of draft laws and other legal acts, opposition to the adoption of regulations that impair the provision of rights and freedoms, public discussion of draft regulations, preparation of own proposals; human rights education: conducts educational events and campaigns, seminars, trainings, conferences, schools, etc.; develops and supports a network of human rights organizations<sup>1</sup>.

Legal clinics, which are created at the law faculties of higher educational institutions of III–IV levels of accreditation – are the subject of a non-governmental system of free legal aid. They operate on the basis of the Regulations and the Charter of the higher educational institution approved by its head.

The Legal clinic is not a legal entity, as it is a structural unit of a higher education institution that trains specialists in the field of “Law” and is created as a basis for practical training and internships for senior students. As a structural unit, it can have appropriate stamps and official forms with their own name<sup>2</sup>.

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<sup>1</sup> Misiya ta istoriya Spilky. Ukrainska Helsinska spilka z prav lyudyny, 2020. Nashi proekty. *Ukrainska Helsinska spilka z prav lyudyny*. 2020. URL: <https://helsinki.org.ua/nashi-proekty/>

<sup>2</sup> Typove polozhennya pro yurydychnu kliniku vyshchoho navchalnoho zakladu Ukrainy: nakaz Ministerstva osvity i nauky Ukrainy vid 03.08.2006 r. № 592. URL: <https://zakon.rada.gov.ua/laws/show/z0956-06#Text>

The general management of the legal clinic of higher education is carried out by its head – the rector (president), the chief, the director, etc. The head of the legal clinic is appointed by the decision of the head of the higher educational institution, which trains specialists in the field of “Law,” at the request of the head of the faculty, institute, branch, etc. The structure and number of employees of the legal clinic is determined by the head of the higher education institution. The consultants of the legal clinic are senior students studying in the field of “Law” and provide legal assistance under the guidance of teachers-curators. The procedure and term of their participation in the work of the legal clinic, the number of student consultants is determined by the relevant Regulations on the legal clinic of higher education<sup>1</sup>.

The higher education institution (where the legal clinic is established and operates) is obliged to create and provide appropriate conditions for its work. A legal clinic has a separate room with free access for clients on the territory of the institution; information about the work of the legal clinic is posted on the official website of the institution, as well as working hours.

Legal aid is usually provided directly in the process of considering an application. If there is no possibility to resolve the issue immediately and if it is

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<sup>1</sup> Типове положення про зурядчню клініку вишчого навчального закладу України: наказ Міністерства освіти і науки України від 03.08.2006 р. № 592. URL: <https://zakon.rada.gov.ua/laws/show/z0956-06#Text>

necessary to study this issue, the employees of the legal clinic may establish a different deadline and procedure for considering the citizen's appeal. The client must also be given the opportunity to make feedback on the quality of legal assistance provided to him to the head of the legal clinic<sup>1</sup>.

Legal clinics are a unique element in the extensive system of free legal aid, which on the one hand are designed to provide professional legal assistance to vulnerable groups, and on the other hand are a basis for obtaining professional skills and abilities by law students.

Thus, the legislative consolidation of the rights and responsibilities of the subjects of the right to receive legal aid indicates the presence of their administrative and legal status, which, it seems, is not just the ability to have rights and responsibilities, but a complex of real certain rights and responsibilities of the subject of administrative law in the field of public administration, provided by specific rules of administrative law. Therefore, each subject of administrative law, the rights and obligations are provided by administrative law and has its own version of its inherent administrative status. This fully applies to these entities. These norms determine the administrative and legal status of the subjects of ensuring the realization of the right to receive legal assistance as subjects of relations that have admini-

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<sup>1</sup> Typove polozhennya pro yurydychnu kliniku vyshchoho navchalnoho zakladu Ukrainy: nakaz Ministerstva osvity i nauky Ukrainy vid 03.08.2006 r. № 592. URL: <https://zakon.rada.gov.ua/laws/show/z0956-06#Text>



strative and legal content. Their activities, by their nature and purpose, are aimed at protecting the rights, freedoms and legitimate interests of citizens and providing quality professional legal aid in the exercise of their rights and legitimate interests<sup>1</sup>.

After analyzing the administrative and legal status of the subjects of the right to receive professional legal aid, the following conclusions can be drawn:

1) the most of administrative scholars consider the concept of “status” through a set of elements that are part of its structure. These elements are the most controversial, they are unanimous only in one thing – they must be defined in administrative norms;

2) we consider the administrative and legal status of subjects through a set of rights, responsibilities, purposes of creation and tasks of their activity, powers, and also responsibility for non-performance of the functions assigned to them by the state, or violation of the established norms;

3) the Constitution of Ukraine enshrines the right to receive professional legal aid, but does not establish special rules that would clarify the competence of the entities that must ensure the implementation of this right;

4) it is proved that public authorities as subjects of ensuring the right to receive professional legal

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<sup>1</sup> Kharysh M. S. Nederzhavni hromadski orhanizatsii yak skladova chastyna subyektiv administratyvnoho prava Ukrainy. *Nauk. zap. Lviv. un-tu biznesu ta prava*. 2013. Vyp. 11. S. 29–31. URL: [http://nbuv.gov.ua/UJRN/Nzlubp\\_2013\\_11\\_9](http://nbuv.gov.ua/UJRN/Nzlubp_2013_11_9); Ts’vok M. S. Informatsiyno-pravove zabezpechennya diyalnosti nederzhavnykh hromadskykh orhanizatsiy v Ukraini: dys. ... kand. yuryd. nauk. Lviv, 2016.

assistance are characterized by the following features: a) ensuring the implementation of the right to receive professional legal assistance should be within the competence of a particular body (may not be its main task); b) the activity of public authorities in the field of ensuring the implementation of the right to legal assistance is most often indicated in regulations governing their status; c) the ensuring of the right to legal assistance in the form of professional legal representation is carried out by public authorities on their own behalf, but in the interests of a particular person; d) the presence of state powers. In turn, non-governmental organizations that ensure the exercise of the right to professional legal assistance are voluntary associations of citizens who are not empowered, non-profit, do not use violent methods and are apolitical, which operate on the basis of the statute and are created to protect human and civil rights and freedoms;

5) the Cabinet of Ministers of Ukraine as a leading entity in the system of state bodies that ensure the exercise of the right to receive professional legal aid primarily creates conditions for the implementation of this constitutional right by establishing and approving the procedure and conditions for its implementation;

6) the cost of free legal aid is high, most EU member states have severely restricted it, but they have started to use alternative procedures and seek additional sources of funding in order to ensure the implementation of the right to free legal aid;

7) according to the example of foreign experience, it is necessary to make some changes in Art. 6 of “Regulations on Coordination Center for Legal Aid Provision” approved by the Resolution of the Cabinet of Ministers of Ukraine of June 6, 2012 № 504 and add item 5 to the list of sources, which should state: “the property of the Coordination Center is formed at the expense of the National Lottery”;

8) the group of subjects of ensuring the realization of the right to receive professional legal assistance includes non-governmental bodies, which are traditionally called “non-governmental organizations” or “public organizations”. This group includes: international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation;

9) various international non-governmental organizations operate on the territory of Ukraine on the basis of international and national legislation. Their missions are mainly aimed at building civil society and creating reliable mechanisms for the protection of human and civil rights and freedoms. They also play a role in ensuring the realization of the right to receive professional legal assistance, but their projects and initiatives in this field are mainly educational;

10) legal clinics, which are created at the law faculties of higher educational institutions of III–IV levels of accreditation – are the subject of a non-governmental system of free legal assistance. They operate on the basis of the Regulations and the Charter of the higher education institution approved by its

head. Legal clinics are a unique element in the extensive system of free legal assistance, which on the one hand are designed to provide professional legal assistance to vulnerable groups, and on the other hand to be a basis for obtaining professional skills and abilities of law students.

Thus, the subjects of ensuring the realization of the right to receive professional legal aid are public authorities, as well as other non-governmental bodies with delegated powers, designed to create reliable conditions for exercising this right, protect and safeguard the constitutional right to receive professional legal assistance. The first group of entities that ensure the exercise of the right to receive professional legal assistance includes: The President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine; The Commissioner for Human Rights and his staff; Ministry of Justice of Ukraine and its authorized territorial bodies; courts; prosecutor's offices; executive authorities and local governments; Legal Aid Coordination Center for Legal Aid Provision; The Supervisory Board of the Coordination Center for Legal Aid Provision and the Centers for Free Secondary Legal Aid. Non-governmental entities include: international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation. Their administrative and legal status is established in regulations that enshrine a set of their administrative rights and responsibilities and inherent in each of them methods and forms of their activities in the field of ensuring the right to receive professional legal assistance.

## **2.2. Administrative Procedures as an Element of the Mechanism to Ensure the Implementation of the Right to Professional Legal Assistance**

In the previous stages of our study, we pointed out that international standards in the field of protection of human and civil rights and freedoms laid the foundations for the realization of the right to professional legal aid, which must be complied by nation states.

In addition, the relevant norms adopted by nation states must correspond to modern ideas about the rule of law and human rights, ways of interaction of lawyers with those who need their help, ways of state participation in training qualified legal personnel, providing legal aid to the low income population. Moreover, international treaties and other legal acts refer not only to free legal aid in criminal cases, but also to the fact that no one can be deprived of the possibility to exercise or protect their rights due to economic obstacles in any courts that have the right to make decisions<sup>1</sup>.

Thus, international legal acts are not only standards that must be met, but they are aimed at implementing an effective procedure, as one of the elements in the mechanism of ensuring the right to professional legal assistance to anyone who needs it, regardless of financial capabilities and problems.

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

It is necessary to carry out a logical and methodological analysis of the definition of “administrative procedure” before considering administrative procedures as an element of the mechanism for ensuring the realization of the right to professional legal assistance.

The term “procedure” is used in many sciences. It has its roots in Latin – *procedo* – advance, pass<sup>1</sup>. The large explanatory dictionary of the modern Ukrainian language gives the following definition of “procedure” – it is an officially established or the usual order of doing something<sup>2</sup>, or “procedure” is generally defined as “any long, consistent case, procedure, rite”<sup>3</sup>.

“Procedure” in legal science is a procedure regulated by a legal norm for taking actions or making decisions in the field of law enforcement. The key thing in this definition is the category of “order”, which means a set of consistent actions and decisions, logically combined and aimed at achieving a certain result<sup>4</sup>. This thesis is confirmed by other

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<sup>1</sup> Perekladayemo slovo protsedura. 2020. URL: <https://slovotvir.org.ua/words/protsedura>

<sup>2</sup> Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

<sup>3</sup> Dal V. I. Tolkovy slovar velikoruskogo yazyyka: v 4 t. Moskva: Rus. yaz., 1980. T. 3. 555 s.; Zhelinskyi V. M. Administratyvno-pravovi zasady reyestratsiynoi diyalnosti Ministerstva yustytzii Ukrainy: avtoref. dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020.

<sup>4</sup> Boyko I. V., Zyma O. T., Solovyova O. M. Administratyvna protsedura. *Pravo*. 2017. 132 s. URL: <https://pravo-izdat.com.ua/image/data/Files/292/1-19.pdf>; Zhelinskyi V. M. Administratyvno-pravovi zasady...

scientists, so N. V. Galitsyna defines that all these definitions, despite the terminological tautology, have a number of common essential features: 1) it is a series of successive actions; 2) they are all aimed at achieving a certain result<sup>1</sup>.

V. Zhelinskyi considered the procedures in the registration activities of the Ministry of Justice of Ukraine and pointed out that the concept of “procedure” has such characteristic features: 1) orderliness (actions established by someone, authorized); 2) sequence (actions are performed one after another); 3) the presence of the ultimate goal (to perform a rite, do or perform something on the basis of established rules)<sup>2</sup>.

As for the juridical (legal) procedure, it has the above features and must be governed by legal norms, and is a means of implementing legal requirements.

Many scholars point out the fact that the role of legal procedure in the modern state is growing significantly, because the legal regime in the state should be determined primarily by the technology of implementation of legal requirements. The most important thing is to decide not what to do, but how to do it. The answer to this question should be provided by the construction of a legal process that combines various

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<sup>1</sup> Halitsyna N. V. Administratyvna protsedura yak instytut administratyvnoho protsesu. *Forum prava*. 2010. № 4. S. 163–177.

<sup>2</sup> Zhelinskyi V. M. Administratyvno-pravovi zasady reyestratsiynoi diyalnosti Ministerstva yustytzii Ukrainy: avtoref. dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020.

legal procedures and litigation<sup>1</sup>. One of the most important purposes of the procedural order in law is to ensure and protect human rights, freedoms and legitimate interests, to ensure the avoidance of unjustified arbitrariness of state authorities. That is why the definition of clear criteria of “belonging” of the legal procedure is extremely important for the practical implementation of regulations<sup>2</sup>.

Administrative procedure in the theory of administrative law and process still does not have an unambiguous definition, which creates difficulties in law enforcement practice and therefore needs clarification, both at the theoretical level and at the legislative level. After all, at the beginning of October 2020, Ukraine still has not adopted the Law “On Administrative Procedures,” which began to be developed in the early 20th century. Thus, the Verkhovna Rada of Ukraine adopted the Resolution of 02.09.2020 № 842-IX “On the Adoption of the Draft Law of Ukraine on Administrative Procedure,” developed by the Ministry of Justice of Ukraine<sup>3</sup>. This bill was submitted for public discussion in 2014, even its name and structure were different, the previous title of this legal act was “Administrative

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<sup>1</sup> Nykolyna K. Nalezna yurydychna protsedura: teoretychni aspekty vyznachennya. *Visn. Kyiv. nats. un-tu im. Tarasa Shevchenka. Yuryd. nauky*. 2012. № 94. S. 44–46; Zaytsev Y. M. *Pravovyve protsedury i sudebnyye protsessy. Teoriya hosudarstva i prava/pod red. N. Y. Matuzova, A. V. Malko*. 2-ye izd., pererab. i dop. Moskva: Yurist, 2001. 776 s.

<sup>2</sup> Nykolyna K. Nalezna yurydychna protsedura...

<sup>3</sup> Pro pryinyattya za osnovu proektu Zakonu Ukrainy pro administratyvnu protseduru: postanova Verkhovnoi Rady Ukrainy vid 02.09.2020 r. № 842-IX. URL: <https://zakon.rada.gov.ua/laws/show/842-20#Text>



Procedure Code of Ukraine”<sup>1</sup>, but later its name was changed<sup>2</sup>.

According to the specified project of the Law of Ukraine “On Administrative Procedure”, administrative procedure means the order of implementation of administrative proceedings defined by the legislation<sup>3</sup>. That is, the legislator must determine the procedure for implementation administrative proceedings.

Some scholars, considering the concepts of “administrative procedure” and “administrative proceedings”, consider the concepts of “procedure” and “proceedings” as identical<sup>4</sup>. Others believe that administrative procedures permeate all activities of public administration with a “red thread” and provide a broader interpretation, without linking the administrative procedure only to the process and proceedings.

Thus, the author’s team of the textbook “Administrative Law of Ukraine. Full Course” understands administrative procedures as the procedure establi-

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<sup>1</sup> Pro administratyvnu protseduru: zvit pro oprylyudnennya proektu zakonu Ukrainy. 30.01.2015. *Ministerstvo yustytzii Ukrainy*. 2016. URL: <https://minjust.gov.ua/m/30012015-zvit-pro-oprylyudnennya-proektu-zakonu-ukraini-pro-administrativnu-protseduru>

<sup>2</sup> Malyuska D. Zakonoprojekt “Pro administratyvnu protseduru” vrehulovuye vidnosyny derzhavy z fizychnymy ta yurydychnymy osobamy. *Ministerstvo yustytzii Ukrainy*. 2020. URL: <https://minjust.gov.ua/news/ministry/denis-malyuska-zakonoproekt-pro-administrativnu-protseduru-vregulovuye-vidnosini-derzavi-z-fizychnymi-ta-yurydychnymi-osobami>

<sup>3</sup> Proekt Zakonu pro administratyvnu protseduru: vid 14.05.2020 r. № 3475. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=3475&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3475&skl=10)

<sup>4</sup> Shkarupa V. K., Lahoda O. S. Administratyvna protsedura ta yiyi znachennya ta mistse v administratyvno-protseusualniy diyalnosti. *Pravo Ukrainy*. 2006. № 4. S. 12–14.

shed by current legislation for consideration of individual administrative rights, freedoms and legitimate interests of individuals and legal entities by public administration entities, culminating in the adoption of an administrative act<sup>1</sup>.

There is also no unanimous opinion among foreign scholars on the relationship between “administrative procedure” and “administrative process”. For example, the concept of “administrative due process” began to take shape in the second half of XX century in the United States, which formally manifested itself in the creation of administrative procedural law. Later, the concept of “substantive due process” appeared in American jurisprudence, which criterion of belonging is not procedural rights, but directly fundamental rights and human freedoms. Thus, W. Bernham notes that the “substantive due process” presupposes the existence of certain rights that are included in the concept of “freedom”, which cannot be violated by the state, no matter what procedure it establishes<sup>2</sup>.

Thus, taking into account all the above opinions and positions of scholars and practitioners, administrative procedures can be defined as a sequence of actions and operations carried out or performed by an administrative body on its own initiative or upon request, in order to decide on rights, interests and

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<sup>1</sup> Administratyvne pravo Ukrainy. Povny kurs: pidruchnyk. Vyd. druge. OLDI-PLyuS, 2019. 520 s.

<sup>2</sup> Nykolyna K. Nalezhna yurydychna protsedura: teoretychni aspekty vyznachennya. *Visn. Kyiv. nats. un-tu im. Tarasa Shevchenka. Yurydychni nauky*. 2012. № 94. S. 44–46.

the obligations of the parties of the proceedings or to take a decision based on the public interest in accordance with the applicable administrative legal acts.

An important direction of state policy is the implementation of norms and principles in the field of human rights enshrined in the Constitution, laws of Ukraine, ratified international treaties, in particular the creation of appropriate bodies for the formation of certain mechanisms that would ensure their implementation. The level of human rights and freedoms testifies to the cultural and social level of development of society and the state as a whole. Ensuring the realization of human rights and freedoms is the main feature of a modern democratic, civilized society. This specific activity of the state involves the creation of the necessary legal conditions under which the exercise of these rights and freedoms is most effective. The main condition is the legislative consolidation of human rights and freedoms, which collectively constitutes the legal status of citizens and is a prerequisite for their provision<sup>1</sup>.

Mechanisms for ensuring the realization of human rights and freedoms and the process of their formation began to interest scholars in the mid XX century, when they began to develop the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966).

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<sup>1</sup> Novikov V. V., Borovikova V. S. Pro mekhanizm realizatsii prav i svobod lyudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav.* 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsv/nvsvy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsv/nvsvy_03_2018/07.pdf)

Since then, the mechanisms of legal regulation, law, and the mechanism of ensuring rights have been studied<sup>1</sup>. The term “mechanism” is most often used by the technical sciences because it means “device that transmits or converts motion”<sup>2</sup>. However, the “mechanism” is also understood as “internal structure, system of something”<sup>3</sup>, and is widely used in the legal field.

Thus, a number of authors (S. Alekseev, O. Malko, S. Rabinovych, T. Falkina, etc.) define the mechanism of realization of rights as a block of regulatory and protective legal means of different levels, a set of legal means which embodies the objective and subjective law, and is realized in the actual behavior of the subjects. In their opinion, the decisive role in the implementation mechanism belongs to legal means, which, in fact, constitute its content. The result of achieving the goal of legal regulation, ensuring the effectiveness of law in general depends on the correctness of their choice. Remedies include the rules and principles of law, law enforcement acts, legal facts, subjective rights, legal obligations, prohibitions, benefits, incentives and penalties<sup>4</sup>.

In our opinion, it is more promising to determine the mechanism for ensuring the implementation of

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<sup>1</sup> Novikov V. V., Borovikova V. S. Pro mekhanizm realizatsii prav i svobod lyudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav*, 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsy/nvsy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsy/nvsy_03_2018/07.pdf)

<sup>2</sup> Slovnyk ukrainskoi movy. Akademichniy tlumachnyi slovnyk (1970–1980). URL: <http://sum.in.ua>

<sup>3</sup> Ibid.

<sup>4</sup> Novikov V. V., Borovikova V. S. Pro mekhanizm realizatsii prav i svobod liudyny...

human rights and freedoms using the activity approach. For example, this mechanism is considered through the mutual activity of man and government agencies, which is aimed at achieving the ultimate goal of the mechanism – the effective realization of rights and freedoms. Moreover, human activity – the bearer of law, is characterized as legitimate, often active (with the direct realization of rights and freedoms). And the activity of the state is manifested through the implementation of functions – protection, defense, control, law enforcement functions and so on<sup>1</sup>.

Most authors include various systems to the elements of the mechanism for ensuring the implementation of human rights and freedoms: a) guarantees; b) protection and defense; c) law enforcement; d) legal procedures; e) legal liability.

Thus, as can be seen from the above, an independent element that reflects the essence of this mechanism of ensuring the implementation of human rights and freedoms are legal procedures that must be developed and adopted by public administration bodies. Then a person can organize their implementation or use the services of professionals. It is possible to conclude that public administration bodies, that ensure the exercise of the right to professional legal assistance, create standard conditions and rules for the protection and restoration of human and civil rights and freedoms through legal procedures in general and through administrative in particular.

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<sup>1</sup> Novikov V. V., Borovikova V. S. Pro mekhanizm realizatsii prav i svobod liudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav.* 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsv/nvsvy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsv/nvsvy_03_2018/07.pdf)

Adoption of the Law of Ukraine “On Free Legal Aid” initiated a mechanism to ensure and implement the constitutional right of everyone to receive professional legal assistance through the development of a system of administrative procedures for providing such assistance.

This law established the procedure for providing free legal assistance by entities endowed with such powers. As for other entities, namely individuals and legal entities engaged in charitable activities alone or jointly with the relevant charitable organizations, the procedure for providing free legal assistance to individuals on a charitable basis is regulated by the relevant legislation and statutes of these organizations<sup>1</sup>.

The analyzed law established two types of legal aid (primary and secondary), and therefore there are two groups of administrative procedures – in the field of providing primary and secondary legal aid.

The procedure for providing primary legal aid is enshrined in Section II of the Law of Ukraine “On Free Legal Aid”, detailed in the Order of the Ministry of Justice of Ukraine of 15.06.2012 № 891/5 “Procedure and Criteria for Involvement of Private Law Entities by Local Self-Government Bodies in Providing Free Primary Legal Aid”<sup>2</sup> (hereinafter Procedure 1).

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<sup>1</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>2</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytzii Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

Administrative procedures in the field of primary legal aid consist of the administrative procedure of ensuring the implementation of primary legal aid and the administrative procedure of its provision. As part of our study, we will analyze the first type of procedure.

Any administrative procedure consists of participants, stages and the final result. The subjects of ensuring the implementation of the right to receive primary legal aid are local governments, as they are the ones who decide on the involvement of legal entities of private law in the provision of primary free assistance. For this purpose, a tender commission consisting of at least seven persons is created, and it must include representatives of the tender organizers. In our opinion, there are significant contradictions in the norm regulating the composition of the commission, as designated organizer in paragraph 1.2 of Procedure 1 – is a local government body. Paragraph 4.2 of Procedure 1 states that “the commission includes representatives of the competition organizer, the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in regions, in Kyiv and Sevastopol, the body (institution) for free legal aid and representatives of public organizations in the relevant field (with their consent)”<sup>1</sup>. That is, there is no definition of “repre-

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<sup>1</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytysii Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

sentative of the organizer of the competition” in the general provisions, although the main composition of the commission is formed of representatives of the Ministry of Justice of Ukraine, and the representative of the self-government body has the role of “observer” and nominal organizer (approves the composition of the tender commission (p. 4.2), but does not form it).

The fact is that local self-government bodies play an important role in the development of the system of ensuring the implementation of legal aid. This is indicated by the Law of Ukraine “On Free Legal Aid” which states that the obligation to provide the population with primary legal aid is imposed on local governments<sup>1</sup>.

Local governments, deciding to establish a system of free primary legal aid in the community, can choose one of two proposed models – the creation of a public institution or the involvement of private law entities in the provision of free primary legal aid through an open competition, guided by the provisions of the “Model Regulations on Primary Legal Aid Institution” or “Procedure and Criteria for Involving Legal Entities of Private Law by Local Self-Government Bodies”<sup>2</sup>.

Thus, it is necessary to amend Procedure 1 and determine the status of the organizer of the compe-

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<sup>1</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>2</sup> Konkurs “Rozbudova staloi systemy nadannya bezoplatnoi pervynnoi pravovoi dopomohy”. *Mizhnarodnyi fond “Vidrodzhennya”*. 2014. URL: [https://www.irf.ua/contest/konkurs\\_rozbudova\\_staloi\\_systemy\\_nadannya\\_bezoplatnoi\\_pervynnoi\\_pravovoi\\_dopomogy/](https://www.irf.ua/contest/konkurs_rozbudova_staloi_systemy_nadannya_bezoplatnoi_pervynnoi_pravovoi_dopomogy/)



tition – the local government, and the representative of the organizer – the Ministry of Justice of Ukraine and its territorial bodies and legal aid centers.

A competition is held in order to provide highly qualified legal assistance. The administrative procedure for involving local governments of private law legal entities in the provision of free primary legal aid consists of two main stages, each of which may consist of several stages and one optional.

The first stage – the preparation of the tender consists of two stages: the announcement of the tender and the submission of tender proposals.

The first step of the analyzed stage is characterized by the following actions: the organizer of the competition places information about the conditions and procedure, the list of documents specified in the Procedure on the official website of the local government or in other local media. Such information must be posted one month before holding a competition.

In addition, the organizers are obliged to provide explanations about the competition documents and other conditions of its holding during the entire period of preparation for the competition. Explanations are given on written appeals, which the contest participants can submit no later than 7 days before the day of the contest, or the organizers hold a meeting of its participants where they provide oral explanations (the minutes of the meeting are kept).

If necessary to obtain clarification, participants submit bids after reviewing the terms and conditions of the competition. This stage is detailed in para-

graphs 3.1–3.5 of the Procedure<sup>1</sup>. The content of this stage is that participants, following all the formalities set out in the Procedure, submitted a tender proposal. Then the tender organizers checked their compliance and decided to accept or reject them if they were received after the deadline. In this case, the envelope with the bids is not opened and returned to the bidder.

Bidders may also withdraw their bid, amend it or add the necessary documents before the deadline for submission of bids<sup>2</sup>.

The tender proposal together with the documents shall be submitted by the authorized person of the tender participant in a sealed envelope in person or sent by post to the tender organizer in the manner and within the time specified in the tender notice. The envelope shall indicate the name and location of the organizer and participant of the competition, as well as the name of the project (program).

Tender proposals are registered by the secretary of the tender commission in the journal of accounting of tender proposals. The tender organizer confirms the receipt of tender proposal, indicating the registration number, date and time at the request of the tender participant. The organizer of the tender may make a decision on its extension before the

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<sup>1</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytсии Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

<sup>2</sup> Ibid.

deadline of tender proposals. The organizer of the competition must notify all participants of the competition to whom the tender documentation has been sent within three working days of such a decision, as well as inform about the change of the place, date and time of opening the envelopes<sup>1</sup>.

Preparation for the competition ends with the issuance of a final decision without reviewing the actual content of the tender proposal to accept the application together with the submitted documents for participation in the competition or not. Any decision of the contest participants shall be notified in writing.

The next stage – the competition, consists of the following stages: consideration of the tender and decision-making.

The stage of consideration of the tender offer begins with the opening of envelopes with tender proposals. It is held on the day following the deadline for their submission in the place and time provided by the tender documentation and the tender announcement. Bidders may be present during the opening of envelopes and consideration of bids. During the opening of the envelopes with the bids, the secretary of the commission announces the information about the name and location of the bidder, the list of documents contained in the bid, and checks the correct-

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<sup>1</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytсии Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

ness of the bid. During the consideration of the bids, the commission may ask the bidders present at the meeting for clarification on their content<sup>1</sup>.

This stage ends with a decision on the quality and compliance of the submitted bid with the requirements of the Procedure – acceptance of the bidder’s bid or its rejection. It should be noted that the procedure for rejecting the proposal is prescribed, and the procedure for acceptance and what follows after the acceptance of the tender is not specified. In our opinion, this should also be regulated and defined in the Procedure.

The tender offer is rejected in case of: absence of documents (document) provided by the tender documentation; non-compliance of the tender participant with the qualification requirements stipulated by the tender documentation; inconsistencies of the tender proposal with the tender documentation; availability of information on liquidation of the bidder, recognition of his bankruptcy or initiation of bankruptcy proceedings against him; submission by the contestant of unreliable information<sup>2</sup>.

The next stage – making a decision on the results of the competition. At this stage, a decision is made on the success of the competition or it is considered as not held.

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<sup>1</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytсии Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

<sup>2</sup> Ibid.

The tender shall be is considered as not held in the case of: non-submission of tenders or submission of tenders by less than two tenderers; rejection of all bids for the reasons defined in paragraph 4.6 of the Procedure. If the tender commission decides to declare the tender as not held, the tender organizer shall notify in writing all tenderers who were not present during the tender commission meeting about it within three working days from the date of the relevant decision. The announcement of a new tender is carried out in accordance with the Procedure within ten days from the date of the decision to recognize the tender as failed<sup>1</sup>.

The results and decisions of the tender commission may be appealed in court at any stage. However, we believe that Section VI of the “Procedure for Appealing the Results of the Competition” should be amended, as any administrative procedure contains an optional stage – appealing the actions and decisions of public administration bodies in our case, the results of the competition. Therefore, it is necessary to create an out-of-court, administrative mechanism for appealing decisions.

In addition, the modern world of information technology requires the development of electronic services. It is about both the automation of processes in the system and the digitalization of legal services.

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<sup>1</sup> Poryadok ta kryterii zaluchennya orhanamy mistsevoho samovryaduvannya yurydychnykh osib pryvatnoho prava do nadannya bezoplatnoyi pervynnoyi pravovoyi dopomohy: nakaz Ministerstva yustytсии Ukrainy vid 15.06.2012 r. № 891/5. URL: <https://zakon.rada.gov.ua/laws/show/z0987-12#n15>

Oksana Grechko, UNDP Local Government and Transparency Specialist, briefly presented digital solutions for legal aid. In particular, the project “Human Rights for Ukraine” was presented, a component of which is an initiative on digital solutions to improve access to legal assistance. The project is supported by the Danish Ministry of Foreign Affairs and aims to strengthen inclusiveness and sustainable human development in Ukraine and further promote democratic change in the country, focusing on human rights and access to justice for all. The expert identified the following criteria for evaluating legal services for further digitization: demand; digital adaptability; constancy; regulation of digitalization. Oksana Grechko summed up: “Unlike administrative or social, legal services are more complex, varied and complicated, and largely personalized. Therefore, transferring them into electronic format seems to be quite a difficult task, and not all services are subject to digitalization”<sup>1</sup>. We agree with the expert Oksana Grechko that it is very difficult to transfer all services into digital format. However, we believe that there is a need to review the entire procedure for holding a competition towards its digitization and develop its online form due to the current realities of pandemic spread and the transition of public authorities and non-governmental organizations to online format.

Thus, the administrative procedure for involving local self-government legal entities of private law in

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<sup>1</sup> Informatsiynyi daydzhest systemy BPD. *Ministerstvo yustytsii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnj-dajdzhest-systemy-bpd-zhovten-2020-roku/>

the provision of free primary legal aid consists of two main stages and one optional, each of which may consist of several stages. The first stage – the preparation of the tender, which consists of two stages: the announcement of the tender and the submission of tender proposals. The second stage – the competition, which consists of the following stages: consideration of the tender proposal and decision-making. The final result of the analyzed administrative procedure is the decision to enter into an agreement between the local government (organizer of the competition) and the winner of the competition (legal entity of private law) for the provision of free primary legal aid. Optional stage – appeal in court and the decision of the tender commission.

The next administrative procedure that we will analyze is the procedure of holding a competition to select lawyers who are involved in the provision of free secondary legal aid.

According to the Law of Ukraine “On Free Legal Aid”, the Centers for Secondary Free Legal Aid Provision must ensure the participation of a defense attorney in court proceedings if his or her assistance is necessary or mandatory. According to the requirements of the Constitution of Ukraine and the Code of Criminal Procedure of Ukraine, lawyers who meet the requirements of this law and have passed a competitive selection are involved in defense or representation in court.

Resolution of the Cabinet of Ministers of Ukraine of December 28, 2011 № 1362 “On Approval of the Procedure and Conditions of the Competition for the

Selection of Lawyers Involved in the Free Secondary Legal Aid Provision”<sup>1</sup> and the Order of the Ministry of Justice of Ukraine of 13.11.2017 № 3552/5 “On Approval of the Procedure for Evaluation of Lawyers Based on the Results of the Competition for the Selection of Lawyers Involved in the Free Secondary Legal Aid Provision, and the Forms of Documents Used during its Implementation” (hereinafter Procedure 2)<sup>2</sup> establishes the administrative procedure for the selection of lawyers of free secondary legal aid provision.

The bodies of the Ministry of Justice of Ukraine, including the Coordination Center, are the subjects of the administrative procedure for the selection of lawyers involved in the provision of free secondary legal aid.

In accordance with these regulations, the administrative procedure of the competition consists of several stages and steps. The content of the administrative procedure for the selection of lawyers involved in the provision of free secondary legal aid is to select only those lawyers (from the list of contestants)

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnia 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

<sup>2</sup> Pro zatverdzhennya Poryadku otsinyuvannya advokativ za rezul'tatamy konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy, ta form dokumentiv, shcho vykorystovuyutsya pid chas yoho provedennya: nakaz Ministerstva yustytzii Ukrainy vid 13.11.2017 r. № 3552/5. URL: <https://zakon.rada.gov.ua/laws/show/z1387-17#Text>



who can provide professional and quality legal assistance according to the established criteria (both moral and professional).

The first stage is preparation for the competition, which consists of the following stages: announcement of the competition, registration of participants and participation of lawyers in the distance course.

The first step of this stage begins with the decision to hold the competition, which is made by the Ministry of Justice at the request of the Coordination Center. The order must be posted on the official websites of these government agencies no later than 30 days before the competition. The order states: the name of the administrative-territorial unit (units) on the territory (territories) of which the competition is held; the period of its holding; the name of the distance course that the lawyer must pass before the beginning of the first stage of the competition; a link to the address of the web page created for the registration of lawyers for participation in the competition (hereinafter – the registration web page); as well as the minimum scores for each stage of the competition and the final score of the lawyer, sufficient for its inclusion in the Register of Lawyers Providing Free Secondary Legal Aid (hereinafter – the Register of Lawyers), other necessary information (e. g. schedule of the competition)<sup>1</sup>.

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnia 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

Simultaneously with the decision to hold the Competition, a commission is created for its holding. The commission is formed on the territory of the administrative-territorial unit, where the competition was announced, consisting of not less than seven and not more than nine persons. The personnel of the commission is approved by the relevant main territorial department of justice in the Autonomous Republic of Crimea, regions, in Kyiv and Sevastopol (hereinafter – the Main Territorial Department of Justice) at the request of the director of the relevant regional center for free secondary legal aid or a person performing his duties. The chairman of the commission shall be the director of the relevant regional center for free secondary legal aid or the person performing his duties (in exceptional cases – the deputy director of the regional center for free secondary legal aid), the secretary – another employee of the center who has the right to vote<sup>1</sup>.

Observers may be involved to increase the transparency and objectivity of the competition, but their status and authority during the competition are not established by regulations. Procedure 2 states only that they may be present during the competition and be representatives of foreign states and international organizations. Accordingly, we believe that Procedure 2 should be amended and there is a need to

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnya 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

prescribe the rights and responsibilities of competition observers.

The next stage after the announcement of the decision to hold the competition is the registration of participants. Registration of lawyers is carried out in electronic form. The link to the registration form is provided in the announcement of the competition.

The lawyer fills in the questionnaire and biographical information on the registration website, the forms of which are set by the Ministry of Justice. The lawyer has to indicate the e-mail address to receive information about the competition and downloads scanned copies certified by the lawyer: consent to personal data processing, the form established by the Ministry of Justice; all completed pages of the passport of a citizen of Ukraine or other identity document confirming the citizenship of Ukraine, defined by the Law of Ukraine “On the Unified State Demographic Register and Documents Certifying Citizenship of Ukraine, a Person’s Identity or Special Status” or passport document of a foreigner; certificates of the right to practice law; motivation letter (up to 500 words), composed in any form. The lawyer is responsible for the accuracy of the information contained in the scanned and certified copies of the documents sent by the lawyer<sup>1</sup>.

The next step: Coordination Center has to check the scanned documents sent by the lawyer. The

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnya 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

inspection is carried out only for compliance with their forms and quantity, which is specified in paragraph 16 of Procedure 2. This stage ends with the adoption of one of two decisions: the invitation of a lawyer for the second round or no invitation.

Thus, if documents meet the requirements set out in paragraph 16 of Procedure 2 and conditions, then a lawyer is invited to take a distance course via the message to the appropriate e-mail address, which contains links to the web page of such course, access identifiers (login and password) and the date and time of opening access to the course; if documents do not meet the specified requirements – a lawyer gets a corresponding message to the appropriate e-mail address. In this case, the lawyer may re-pass the registration procedure to participate in the competition until the expiration of the registration period specified in the announcement of the competition<sup>1</sup>.

Participation in a distance course is the last step of the analyzed stage.

The distance course contains tests, the evaluation of which is carried out automatically by the content management system of the corresponding distance course. The result of the course is formed automatically. When the distance course is completed, the Coordination Center with the help of electronic means sends scanned copies of documents certified and sub-

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnya 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

mitted by a lawyer and the results of the distance course in the form prescribed by Ministry of Justice to the chairman and secretary of the commission within the period specified in the schedule. If the lawyer has not registered for the distance learning course or has not completed it, then the result of the course has not been formed. In this case, the Coordination Center shall indicate such information when sending copies of documents to the relevant commission<sup>1</sup>.

Thus, the first stage of the administrative procedure – preparation for the competition ends with the sending packages of documents of the participants to the competition commission (package consists of certified documents and the results of the distance course).

The second stage – the competition with the following steps: verification of the participants' documents sent by the Coordination Center; assessment of the lawyer on the information provided in the documents according to the established criteria and decision-making (assessment of the lawyer's experience, the presence or absence of disciplinary sanctions, the results of the distance course). The commission can make one of the following decisions: to admit to participation in the second round of competition or reject.

If the final score based on the results of the first stage of the competition is lower than the minimum

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokatuv, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnya 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>

score set in the decision of the Ministry of Justice on the competition, then such a lawyer is not allowed to participate in the second round of the competition. If the final score is higher than the minimum score established by the decision of the Ministry of Justice, then such a lawyer is allowed to participate in the second round of the competition according to the decision of the commission<sup>1</sup>.

The second round of the competition is held in the form of an individual interview of commission members with a lawyer. The lawyer's sociability, emotional balance and ability to present examples of legal assistance are assessed during the interview. The evaluation of a lawyer for each criterion is carried out by the members of the commission individually after discussing the level of compliance with the criterion at a meeting of the commission. The grade is given in points, based on the following levels of compliance with the criterion: 5 points – full compliance with the criterion; 4 points – high level; 3 points – average level; 2 points – low level, 1 point – very low level<sup>2</sup>.

According to the results of the final assessment of the interview, this stage ends with one of two decisions: the lawyer meets the established criteria

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<sup>1</sup> Pro zatverdzhennya Poryadku otsinyuvannya advokativ za rezul'tatamy konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy, ta form dokumentiv, shcho vykorystovuyutsya pid chas yoho provedennya: nakaz Ministerstva yustytсии Ukrainy vid 13.11.2017 r. № 3552/5. URL: <https://zakon.rada.gov.ua/laws/show/z1387-17#Text>

<sup>2</sup> Ibid.

and is considered to have passed or not passed the second round. The decision of the commission is drawn up in a protocol.

Minutes of commission's decisions, evaluation forms of lawyers, applications of commission members and other documents created during the competition are kept in the relevant regional centers for free secondary legal aid for six months, the heads of which are the chairmen of the commissions<sup>1</sup>.

Interestingly, in contrast to the competition procedure for involving local governments of private legal entities in the provision of free primary legal aid, the results of the competition for the selection of lawyers involved in the provision of free secondary legal aid may be appealed both in judicial and administrative order – by filing a complaint to the Ministry of Justice of Ukraine.

Thus, the administrative procedure of the competition for the selection of attorneys involved in the provision of free secondary legal aid ends with the publication of the result and the decision to include a lawyer, who has successfully passed the competition, to the Register of lawyers who provide free secondary legal aid.

As an exception, the Ministry of Justice, at the request of the Coordination Center, may decide to

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<sup>1</sup> Pro zatverdzhennya Poryadku otsynuyannya advokativ za rezultatamy konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy, ta form dokumentiv, shcho vykorystovuyutsya pid chas yoho provedennya: nakaz Ministerstva yustytzii Ukrainy vid 13.11.2017 r. № 3552/5. URL: <https://zakon.rada.gov.ua/laws/show/z1387-17#Text>

repeat the competition (individual stages of the competition) in the case of: no applicants for participation in the competition; according to the results of the competition none of the lawyers has been selected; violation of the competition procedure<sup>1</sup>.

The administrative procedure for selecting lawyers involved in the provision of free secondary legal aid consists of two main stages and one optional. The first stage – preparation for the competition, consists of the following steps: announcement of the competition, registration of participants and participation of lawyers in the distance course. The second stage – the competition, which consists of the following steps: verification of the participant's documents sent by the Coordination Center; assessment of the lawyer on the information provided in the documents, in accordance with the established criteria and decision-making. The subjects of ensuring this procedure are the bodies of the Ministry of Justice of Ukraine, including the Coordination Center. The final decision of the analyzed administrative procedure is the inclusion of lawyers (who took part in the competition) to the Register of lawyers who provide free secondary legal aid.

Thus, our analysis of the mechanism for ensuring the right to receive professional legal aid, and the place and role of administrative procedures in this

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<sup>1</sup> Pro zatverdzhennya Poryadku i umov provedennya konkursu z vidboru advokativ, yaki zaluchayutsya dlya nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Kabinetu Ministriv Ukrainy vid 28 hrudnya 2011 r. № 1362. URL: <https://zakon.rada.gov.ua/laws/show/1362-2011-%D0%BF#n93>



mechanism allowed us to come to the following conclusions:

1) international legal acts are not only standards that must be followed, but also they are aimed at implementing an effective procedure, as one of the elements in the mechanism of ensuring the right to professional legal assistance to everyone who needs it, regardless of financial capabilities and problems;

2) administrative procedures are a sequence of actions and operations carried out or performed by an administrative body on its own initiative or upon request in order to decide on the rights, interests and obligations of the parties, or to make a decision based on public interests, in accordance with current administrative and legal acts;

3) an independent element, that reflects the essence of the mechanism of ensuring the implementation of human rights and freedoms, are legal procedures that must be developed and adopted by public administration bodies. Then a person can organize their implementation or use the services of professionals. It is possible to conclude that public administration bodies, that ensure the exercise of the right to professional legal assistance, create standard conditions and rules for the protection and restoration of human and civil rights and freedoms through legal procedures in general and through administrative – in particular;

4) most authors include various systems to the elements of the mechanism for ensuring the implementation of human rights and freedoms: a) guarantees; b) protection and defense; c) law enforcement; d) legal procedures; e) legal liability;

5) administrative procedures to ensure the implementation of the right to receive and provide professional legal assistance have been developed at the present stage. The administrative procedures to ensure the right to receive professional legal aid have been analyzed. They consist of two types depending on the scope: the field of primary legal aid and the secondary;

6) administrative procedures in the field of primary legal aid that ensure the right to receive such assistance includes the procedure of involvement of local governments of legal entities of private law to provide free primary legal aid, and administrative procedures in the field of secondary legal aid – the procedure for selecting lawyers, who are involved in the provision of free secondary legal aid;

7) the administrative procedure for involving local self-government bodies of legal entities of private law in the provision of free primary legal aid consists of two main stages and one optional, each of which may consist of several steps. The first stage is the preparation of the tender and consists of two steps: the announcement of the tender and the submission of tender proposals. The second stage – the competition, which consists of the following steps: consideration of the tender proposal and decision-making. The final result of the analyzed administrative procedure is the decision to enter into an agreement between the local government (organizer of the competition) and the winner of the competition (legal entity of private law) for the provision of free primary legal aid. Optional stage – appeal in court and the decision

of the tender commission. The subjects of ensuring the implementation of the right to receive primary legal aid are local governments, as they are the ones who decide on the involvement of legal entities of private law in the provision of primary free aid;

8) the order of the Ministry of Justice of Ukraine of 15.06.2012 № 891/5 “Procedure and Criteria for Involvement of Private Law Entities by Local Self-Government Bodies in Providing Free Primary Legal Aid” must be improved with the help of changes, namely: the procedure for adoption and the following steps after acceptance of the competitive offer; determine the status of the organizer of the competition – the local government, and the representative of the organizer – the Ministry of Justice of Ukraine and its territorial bodies and legal aid centers; create an out-of-court, administrative mechanism for appealing decisions; review the entire procedure of the competition due to its digitization and develop its online form;

9) the content of the administrative procedure for the selection of lawyers involved in the provision of free secondary legal aid is to select only those lawyers who can provide professional and quality legal assistance on the basis of established criteria (both moral and professional);

10) the administrative procedure for the selection of lawyers involved in the provision of free secondary legal aid consists of two main stages and one optional. The first stage – preparation for the competition, consists of the following steps: announcement of the competition, registration of participants and

participation of lawyers in the distance course. The second stage – the competition, which consists of the following steps: verification of the participant’s documents sent by the Coordination Center; assessment of the lawyer on the information provided in the documents according to the established criteria and decision-making. The subjects of ensuring this procedure are the bodies of the Ministry of Justice of Ukraine, including the Coordination Center. The final decision of the analyzed administrative procedure is to include a lawyer, who has successfully passed the competition, to the Register of lawyers who provide free secondary legal aid;

11) observers may be involved to increase the transparency and objectivity of the competition, but their status and authority during the competition are not established by regulations. The Resolution of the Cabinet of Ministers of Ukraine of December 28, 2011 № 1362 “On Approval of the Procedure and Conditions of the Competition for the Selection of Lawyers Involved in the Free Secondary Legal Aid Provision” states only that they may be present during the competition and be representatives of foreign states and international organizations. In accordance with the above, we believe that this Resolution should be amended and there is a need to prescribe the rights and responsibilities of observers of the competition.

Thus an independent element, that reflects the essence of mechanism of ensuring the implementation of human rights and freedoms, are legal procedures that must be developed and adopted by public

administration bodies. Then a person can organize their implementation or use the services of professionals. It is possible to conclude that public administration bodies, that ensure the implementation of the right to professional legal aid, create standard conditions and rules for the protection and restoration of human and civil rights and freedoms through legal procedures in general and through administrative – in particular.

### **2.3. Legal Guarantees to Ensure the Implementation of the Right to Receive Professional Legal Assistance**

The mechanism for the realization of human rights and freedoms is designed to guarantee the actual realization of rights and freedoms, to prevent their violation and to promote their restoration. Guarantees occupy one of the main places in it, which are understood as conditions and means that ensure the actual implementation and comprehensive protection of human rights and freedoms. It is the duty of the state to create legal guarantees for people to realize their legitimate interests and goals<sup>1</sup>.

There is no single approach to understanding the term “guarantee” in the legal literature. Due to the ambiguity of the interpretation of the term “guaran-

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<sup>1</sup> Novikov V. V., Borovikova V. S. Pro mekhanizm realizatsii prav i svobod lyudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav.* 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsvy/nvsvy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsvy/nvsvy_03_2018/07.pdf)

tee”, there are differences in its understanding at the scientific and doctrinal level. Thus, there are various features that underlie the concept of guarantees in the legal literature. Scholars define a guarantee as “conditions”, “means”, “factors”, “measures”, “responsibilities of the state”, “mechanism”, etc. The guarantee is a very extensive socio-political and legal phenomenon, which is used in many fields of law, sociology, philosophy, political science, economics and other sciences<sup>1</sup>. The explanatory dictionary of the Ukrainian language defines the concept of “guarantee” as a guarantee something, the provision of something; conditions that ensure the success of something<sup>2</sup>. The most common definitions of the general concept of guarantees are based on the methodological understanding that guarantees are certain means of ensuring the actual possibility of enjoying rights and freedoms<sup>3</sup>. That is, the state creates all the conditions for a person to be able to enjoy their rights and freedoms with the help of guarantees<sup>4</sup>.

Guarantees are divided into general (any rights and freedoms) and special (individual rights and freedoms). The system of general guarantees includes: a)

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<sup>1</sup> Kulinich O. O. Harantii konstytutsiynoho prava na osvitu: ponyattya ta oznaky. *Nauk. visn. Dnipropetr. derzh. un-tu vnutr. sprav*, 2014. № 1. S. 78–84.

<sup>2</sup> Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

<sup>3</sup> Volkova V. V. K voprosu o ponyatii garantii v prave. *Vestn. Mosk. un-ta MVD Rossii*. 2008. № 6. S. 71–73.

<sup>4</sup> Kulinich O. O. Harantii konstytutsiynoho prava na osvitu...; Soroka L. V. Administratyvno-pravovyi mekhanizm realizatsii kosmichnoyi doktryny Ukrainy: teoriya i praktyka. Kyiv: FOP Chalchynska N. V., 2020. 366 s.

institutional guarantees related to the functioning of bodies whose activities are aimed at protecting and defending violated rights; b) procedural guarantees that are implemented in the administration of justice, primarily within the criminal process; c) material guarantees in the form of a person's right to compensation for damages caused by the violation of his rights<sup>1</sup>.

V. Novikov and V. Borovikova singled out guarantees in the system of guarantees, which are aimed at creating favorable conditions for the enjoyment of fundamental rights and freedoms, fulfillment of duties and guarantees, which act as ways, methods and techniques of protection and enforcement of rights and freedoms. In turn, the authors include the following favorable conditions that contribute to the realization of human rights and freedoms: the level of democracy, political regime, economic potential of society, the degree of legislation, the level of legal awareness, culture, accuracy of prevention of violations, their full and rapid update<sup>2</sup>. It is possible to conclude that the mechanism of realization of rights and freedoms consists of two subsystems that interact

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<sup>1</sup> Bohachova L. L. Yurydychni harantii prav i svobod lyudyny i hromadyannya v yevropeyskomu ta natsionalnomu pravi. *Derzhavne budivnytstvo ta mistseve samovryaduvannya*. 2011. Vyp. 22. URL: [http://dspace.nlu.edu.ua/bitstream/123456789/3235/1/Bogacheva\\_56.pdf](http://dspace.nlu.edu.ua/bitstream/123456789/3235/1/Bogacheva_56.pdf); Pravo Yevropeyskoho Soyuzu: ucheb. dlya vuzov/pod red. S. Yu. Kashkina. Moskva: Yurait; Vyssh. obrazovaniye, 2010. S. 460–469.

<sup>2</sup> Novikov V. V., Borovykova V. S. Pro mekhanizm realizatsii prav i svobod lyudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav.* 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsvy/nvsvy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsvy/nvsvy_03_2018/07.pdf)

and complement each other: the subsystem for ensuring the realization of rights and freedoms creates conditions that allow unimpeded use of rights and freedoms (legal, organizational, legal guarantees, legal regime, protection and defense, state control); subsystem of human actions for the use of goods, rights and freedoms (active lawful human actions)<sup>1</sup>.

The right to professional legal assistance on the one hand is part of the system of legal guarantees, and on the other is a fundamental human right and an inherent component of the right to a fair trial, which falls under the rule of law (Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms). The obligation of the state is to guarantee this right<sup>2</sup>.

Professional legal aid is associated with a guarantee of access to justice in the legal literature of foreign authors<sup>3</sup>. Although it is relevant not only in access to justice but also in solving other important issues, such as: detention and family problems (divorce or domestic violence), problems of consumers, refugees and persons related to immigration, employment, debt, personal injury, housing or social security issues, etc.

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<sup>1</sup> Novikov V. V., Borovykova V. S. Pro mekhanizm realizatsii prav i svobod lyudyny. *Nauk. visn. Lviv. derzh. un-tu vnutr. sprav.* 2018. № 3. URL: [https://www.lvduvs.edu.ua/documents\\_pdf/visnyky/nvsvy/nvsvy\\_03\\_2018/07.pdf](https://www.lvduvs.edu.ua/documents_pdf/visnyky/nvsvy/nvsvy_03_2018/07.pdf)

<sup>2</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy.* 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

<sup>3</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie.* 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>



Professional legal aid in both criminal and non-criminal aspects must be provided with appropriate guarantees of its provision and be effective to a natural or legal person, a legal entity of private or public law. On the basis of this approach, it can be argued that the requirements of the rule of law, such as access to justice and the prohibition of discrimination and equality before the law, were met. As we have already noted, the right to professional legal assistance belongs to the constitutional guarantees of human rights and freedoms and the constitutional guarantees of the administration of justice. It is no coincidence that O. Drozdov pointed out that the assistance of a lawyer, among other types of legal aid, is regulated by constitutional norms and norms of international law, while the right to other types of legal aid is enshrined in law<sup>1</sup>.

Thus, the constitutional right to receive professional legal aid corresponds to the corresponding obligation of the state in the form of a system of legal guarantees, which we will examine below.

As we have already noted in the previous stages of our study, the constitutional right to receive professional legal assistance has a multifaceted nature, which consists of a set of mechanisms for its implementation, ensuring the implementation of other constitutional guarantees such as:

– Constitution of Ukraine guarantees care and protection to its citizens who are beyond its borderst

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<sup>1</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

(Part 2 of Art. 25 of the Constitution of Ukraine); the subject of such a right is to provide consular institutions with professional legal assistance to citizens of Ukraine in various life situations outside Ukraine;

– Constitution of Ukraine guarantees protection and assistance to foreigners and stateless persons (Art. 26 of the Constitution of Ukraine); the subject of such a right is to provide professional legal aid in various life circumstances to foreigners and stateless persons on the same terms as citizens of Ukraine, and if necessary, grant asylum. For example, Persons covered by the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection” are entitled to free secondary legal aid – a statement of claim and other procedural documents, protection and representation in court. Such assistance is provided from the moment a person applies for refugee status or a person in need of additional protection in Ukraine until the final decision on the application is made, as well as foreigners and stateless persons detained for identification and forced deportation, from the moment of detention. 1409 persons applied for secondary legal assistance during July 1, 2015 to August 31, 2020, which are covered by the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection”<sup>1</sup>;

– Constitution of Ukraine guarantees protection of labor rights (Part 5 of Art. 43 of the Constitution of Ukraine); the subject of such protection is under-

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<sup>1</sup> Informatsiynyi dayzhest systemy BPD. *Ministerstvo yustytsii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnyj-dajzhest-systemy-bpd-zhovten-2020-roku/>

stood as the provision of professional legal aid through the establishment of trade union committees, (employment centers, etc. in Ukraine). This form of providing professional legal assistance in EU member states is used as an alternative assistance before the state has to join the provision of legal aid at public expense. For example, a cooperation agreement was signed by the Regional Center for Free Secondary Legal Aid Provision in Ivano-Frankivsk Region and the Region Employment Center. The joint efforts of these bodies were made in order to improve information, consultation and career guidance work with the population. The parties agreed to hold joint events, including in the online format, for the implementation of state policy in the field of employment and expanding opportunities for access to free legal aid to citizens, including persons applying to the employment service<sup>1</sup>;

– Constitution of Ukraine guarantees judicial protection of the rights and freedoms of every person and citizen (Part 2 of Art. 8; Parts 1, 2, 3 of Art. 55 of the Constitution of Ukraine); the subject of a particular right is understood as a professional legal aid provided by a court in carrying out its activities in the form of protection and restoration of human and civil rights and freedoms. The International Covenant on Civil and Political Rights (1966) stipulates that the state must guarantee an effective remedy to everyone whose rights and freedoms have been viola-

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<sup>1</sup> Informatsiinyi daidzhest systemy BPD. *Ministerstvo yustytzii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnyj-dajdzhest-systemy-bpd-zhovten-2020-roku/>

ted, and such a right must be established by a judicial or any other competent body provided by the legal system of the state (Art. 2)<sup>1</sup>;

– Constitution of Ukraine guarantees protection of the rights and freedoms to everyone who apply to the relevant international judicial institutions or to the relevant bodies of international organizations, of which Ukraine is a member or participant, if national protection mechanisms were used (Part 4 of Art. 55 of the Constitution of Ukraine); the subject of such a right is understood as the implementation of professional legal aid when applying to the European Court of Human Rights or other international organizations and institutions;

– a set of constitutional mechanisms for the protection of man and citizen in criminal proceedings (Part 2 of Art. 63, Part 3 of Art. 131-2 of the Constitution of Ukraine); the specified mechanisms are understood as procedural requirements established in the legislation (providing free suspect, representation in court, etc.). The rule of law cannot exist without an independent and professional judiciary, and the latter cannot function without an organized and independent advocacy, which must treat the case honestly and professionally. This thesis is confirmed by a number of international documents and EU legislation<sup>2</sup>. Advocacy in the constitutional and legal sense is characterized as professionally provided

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<sup>1</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

<sup>2</sup> Ibid.

qualified legal assistance, which is authorized by persons who have received 1) the status of a lawyer in accordance with legal requirements and legal restrictions that prevent obtaining the status of a lawyer and 2) the right to exercise activities as part of one of the forms of advocacy associations, which are provided by current legislation. At the same time, these features, designed to improve the quality and efficiency of constitutionally guaranteed legal aid as professional and qualified assistance, which is directly enshrined in the legislation of Ukraine (in the narrow sense), limit a person's ability to receive legal aid from any entity at its discretion (in the broadest sense of the word)<sup>1</sup>;

– Constitution of Ukraine guarantees protection of the rights of victims from offenses and crimes (Part 1 of Art. 19; Articles 27–29; Part 5 of Articles 55; 56 of the Constitution of Ukraine); the subject of certain constitutional guarantees is professional legal assistance to victims provided by the state free of charge if necessary. For example, an important step towards protecting the rights of victims of domestic violence was the signing of a cooperation agreement between the Regional Center for Free Secondary Legal Aid in Dnipropetrovsk Region and the Charitable Foundation “For Children”. Now, citizens who faced with domestic violence and who have applied for help for the Charitable Foundation “For

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<sup>1</sup> Potanina M. P. Advokatura kak harant realizatsii konstitutsyonnoho prava cheloveka i hrazhdanina na yurydycheskuyu pomoshch v Rossiyskoy Federatsii: avtoref. dis. ... kand. yurid. nauk: spets. 12.00.02 “Konstitutsyonnoye pravo, munitsypalnoye pravo”. Cheliabynsk, 2009. 23 s.

Children”, have the opportunity to obtain a lawyer at the expense of the state. “Establishing a systematic redirection between all legal aid providers helps to expand people’s access to justice”, said Lyudmila Yatsuba, director of the Regional Center for Free Secondary Legal Aid.

The charitable organization is also involved in the protection of children’s rights, one of the priority categories in the free legal aid system. After all, last year, almost 2,500 applications of minors for legal assistance from the state were registered<sup>1</sup>.

Thus, the constitutional right to receive professional legal assistance acts as a special legal guarantee that ensures the realization of rights, freedoms, legitimate interests of the individual, promotes the implementation of other legal guarantees of their implementation, protection (judicial, administrative, control, supervision and other activities of the relevant authorities) and as a means of providing access to them<sup>2</sup>.

Now, we need to analyze the legal guarantees of ensuring the realization of the right to receive professional legal aid in Ukraine.

The certain “means and methods” become actual legal guarantees only through the legal form, through

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<sup>1</sup> Informatsiynyi daydzhest systemy BPD. *Ministerstvo yustytysii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnyj-dajdzhest-systemy-bpd-zhovten-2020-roku/>

<sup>2</sup> Potanina M. P. Advokatura kak harant realizatsii konstitutsyonnoho prava cheloveka i hrazhdanina na yuridicheskuyu pomoshch v Rossiyskoy Federatsii: avtoref. dis. ... kand. yurid. nauk: spets. 12.00.02 “Konstitutsyonnoye pravo, munitsypalnoye pravo”. Chelyabinsk, 2009. 23 s.

their enshrinement in law. The very term “legal guarantees” indicates their regulatory framework<sup>1</sup> (legal guarantees are legislative (including in the constitution) enshrined means of protection of rights and freedoms of citizens, ways to implement them, as well as means of protecting law and order, the interests of society and the state<sup>2</sup>).

S. Shylo considers it expedient to distinguish two elements in the structure of legal guarantees of legality: legal norms and activity of subjects. Thus, the rule of law establishes specific obligations for the subject of legal relations, the implementation of which (i. e. the activities of this subject) will ensure the realization of the rights of another subject. The law is the legal basis of legal activity, and legal activity is a means of enforcing the law<sup>3</sup>.

Thus, legal guarantees are a complex set of mechanisms formed from a set of normatively enshrined means, methods that provide appropriate conditions for the protection of human and civil rights and freedoms from unlawful encroachments and their restoration in case of violation.

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<sup>1</sup> Kuzmenko Ya. P. Zahalna kharakterystyka yurydychnykh harantiy prava lyudyny na zhyttia. *Nauk. visn. Uzhhorod. nats. un-tu. Seriya: Pravo*, 2014. Vyp. 29 (1). S. 27–32.

<sup>2</sup> Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kuiv: VTF “Perun”, 2001. 1440 s.

<sup>3</sup> Shylo S. M. Ponyattya ta zmist pravovykh harantiy zakonnosti v sferi administratyvnoi diyalnosti militsii. *Visn. Luhansk. derzh. un-tu vnutr. sprav im. E. O. Didorenka*, 2013. Vyp. 4. S. 283–292; Soroka L. V. Administratyvno-pravovy mekhanizm realizatsii kosmichnoi doktryny Ukrainy: teoriya i praktyka. Kyiv: FOP Chalchynska N. V., 2020. 366 s.

As we noted above, legal guarantees are special guarantees through which the practical realization of the right to receive professional legal assistance is possible, which can be classified into normative and legal, institutional and organizational guarantees.

Normative and legal guarantees of ensuring the realization of the right to receive professional legal aid are constitutional and sectoral, depending on the type of normative legal act in which they are enshrined. As for the constitutional guarantee, Part 2 of Art. 59 of the Constitution of Ukraine laid the foundation for ensuring the implementation of this right by the norms of other industries.

In turn, sectoral guarantees (administrative, administrative and procedural, criminal, criminal and procedural, etc.) detail the implementation of the right to receive professional legal assistance. For example, they determine the fundamental procedure for receiving free legal aid (Law of Ukraine “On Free Legal Aid”), the administrative and legal status of bodies and officials providing legal aid (Regulations on the Coordination Center for Legal Aid Provision, Regulations on Centers for Free Secondary Legal Aid Provision).

Although normative and legal guarantees are enshrined in the right to legal aid, the Constitution of Ukraine imposes on the state the relevant obligations to provide a person with the appropriate level of legal aid. Such responsibilities necessitate the definition in the laws of Ukraine and other legal acts of the procedure, conditions and methods of providing this assistance.



However, Constitutional Court of Ukraine noted that not all sectoral laws of Ukraine, including procedural codes, contain instructions aimed at exercising such a right, which may lead to a restriction or narrowing of the content and scope of everyone's right to legal aid<sup>1</sup>.

Guarantees of a material nature are reflected in the substantive rules of law, these are the so-called declarative rules that establish the principles of legal status, legal personality. Legal restrictions as an element (consequence) of legal liability can be considered as an independent and effective means of legal protection of human and civil rights and freedoms. After all, the application of special legal restrictions creates conditions that encourage specific individuals to strictly comply with constitutional obligations. In addition, the fulfillment of legal obligations can be ensured through incentives, financial incentives, etc.<sup>2</sup>

The legal obligation in the field of ensuring the constitutional right to professional legal assistance can be defined as the statutory mandatory conduct of the subjects of ensuring this right, aimed at achieving equal access to qualified legal assistance.

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<sup>1</sup> Rishennya Konstytutsiyynoho Sudu Ukrainy u spravi za konstytutsiyynym zvernenniam hromadyanyna Holovanya Ihorya Volodymyrovycha shchodo ofitsiyynoho tlumachennya polozhen statti 59 Konstytutsii Ukrainy (sprava pro pravo na pravovu dopomohu) vid 30.09.2009 r. № 23-rp/2009. URL: <https://zakon.rada.gov.ua/laws/show/v023p710-09#Text>

<sup>2</sup> Natsionalnyi mekhanizm zakhystu prav ta svobod lyudyny. 1. Harantii prav ta svobod lyudyny. UA Pravo.com, 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id\\_book=4221&id\\_parent=4221&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id_book=4221&id_parent=4221&id_vid_res=17)

For example, the Coordination Center provides: introduction of modern information technologies in the field of free legal aid; conducting of research and applied developments, including the preparation of reviews of legislation of Ukraine and foreign countries on legal assistance and practice of its application, dictionaries, reference books, collections, scientific and practical comments, guidelines and manuals; establishment of print media, publication and distribution of books, other printed products, production and placement of social advertising, production, reproduction and distribution of video and audio products, etc.<sup>1</sup>

An important element of normative and legal guarantees to ensure the realization of the right to receive professional legal assistance is legal liability. Thus, the Law of Ukraine “On Free Legal Aid” stipulates that persons who have violated the legislation on free legal aid are legally liable (Art. 32). Actions and failure thereof by public officials and employees which violate procedures and deadlines for reviewing requests for free legal aid, as well as poor quality legal aid, can be challenged judicially through procedures set forth by the law, or through administrative proceeding (Art. 31)<sup>2</sup>.

Thus, the normative and legal guarantees to ensure the realization of the right to professional legal assistance are divided into: constitutional and sectoral,

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<sup>1</sup> Polozhennya pro Koordynatsiynyi tsentr z nadannya pravovoi dopomohy: Postanova Kabinetu Ministriv Ukrainy vid 6 chervnya 2012 r. № 504. URL: <https://zakon.rada.gov.ua/laws/show/504-2012-%D0%BF#n17>

<sup>2</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

substantive and procedural. In addition, structurally they also include legal obligations and legal liability. Material guarantees establish the legal status of the subjects of ensuring the right to professional legal assistance; procedural guarantees are enshrined in procedural rules governing procedural issues of ensuring this right. The establishment of an obligation for the subjects of ensuring the right to receive professional legal assistance at the legislative level also serves as a guarantee for timely and professional assistance to applicants. If this obligation is violated, legal liability will be applied to the perpetrators.

Along with the normative and legal guarantees contained in the Constitution and laws of Ukraine, institutional and organizational guarantees also play an extremely important role<sup>1</sup>. Institutional and organizational guarantees are social and political institutions provided in normative legal acts, which are entrusted with the relevant functions and certain powers to organize and implement legal support for the implementation, protection and defense of human and civil liberties<sup>2</sup>.

According to the Constitution of Ukraine, the main institutional guarantors of the right to receive professional legal assistance are:

– the Verkhovna Rada of Ukraine determines human and citizens' rights and freedoms, the guarantees

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<sup>1</sup> Natsionalnyi mekhanizm zakhystu prav ta svobod lyudyny. 1. Harantii prav ta svobod lyudyny. UA Pravo.com, 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id\\_book=4221&id\\_parent=4221&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id_book=4221&id_parent=4221&id_vid_res=17)

<sup>2</sup> Fuley T. I. Zastosuvannya praktyky Yevropeyskoho sudu z prav lyudyny pry zdiysnenni pravosuddya. 2-he vyd. vypr., dopov. Kyiv, 2015. 208 s. URL: <https://www.osce.org/files/f/documents/4/7/232716.pdf>

of these rights and freedoms, the main duties of the citizen exclusively by the laws of Ukraine (Art. 92);

- the President of Ukraine (Art. 102);
- the Cabinet of Ministers of Ukraine, ministries and other central executive bodies. In particular, the Cabinet of Ministers of Ukraine takes measures to ensure human and civil rights and freedoms (Art. 116);
- local state administrations ensure the observance of the rights and freedoms of citizens on their respective territory (Art. 119);
- courts protect the rights and freedoms of man and citizen (Art. 53);
- the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (Art. 55);
- the Procuracy of Ukraine represents the interests of a citizen or state in court in cases determined by law;
- local governments (Art. 143);
- advocacy acts to ensure the right to a defence against accusation and to provide legal assistance in deciding cases in courts and other state bodies (Art. 59);
- citizens of Ukraine have the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms (Art. 36);
- international judicial institutions and relevant bodies of international organizations of which Ukraine is a member or participant (Art. 55)<sup>1</sup>.

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<sup>1</sup> Konstyutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>; Natsionalnyi mekhanizm zakhystu prav ta svobod lyudyny. 1. Harantii prav ta svobod lyudyny. UA Pravo.com, 2020. URL: [http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id\\_book=4221&id\\_parent=4221&id\\_vid\\_res=17](http://www.uapravo.com/hro/text.php?lan=rus&id=4222&id_book=4221&id_parent=4221&id_vid_res=17)

In most democracies, the main mechanism for protecting human rights is the court (USA, Canada), the constitutional complaint (Germany, Austria, Spain), the ombudsman (Sweden, Norway, Finland), and so on<sup>1</sup>. Implementing its law enforcement function, the state creates a system of judicial and law enforcement agencies that allows a deeper understanding of the essence of state and legal phenomena, to understand the mechanism of protection of human and civil rights from unlawful encroachments, to form an idea of implementation of relevant legal norms<sup>2</sup>.

The content of “legal guarantees for the state authorities of Ukraine to ensure the constitutional right of man and citizen to professional legal assistance” is carried out by the activities of the above institutional guarantors, as well as law enforcement and supervisory authorities, their officials, centers for free legal aid; civil society institutions; international and national specialized institutions, representative offices, funds accredited in Ukraine; enterprises, institutions and organizations of public and private forms of ownership, etc. Their aim is to exercise their functions using the powers granted to them by law in order to create optimal conditions for the fullest realization of this subjective right, and in case of violation – its restoration and bringing the perpetrators to justice<sup>3</sup>.

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<sup>1</sup> Kozlov S. Moralna shkola: sotsialno-pravovi aspekty. *Yurydychna hazeta*. 2006. 28 lyut. № 3 (39).

<sup>2</sup> Vidshkoduvannya moralnoi shkody za trudovym zakonodavstvom. URL: [https://otherreferats.allbest.ru/law/00124605\\_0.html](https://otherreferats.allbest.ru/law/00124605_0.html)

<sup>3</sup> Bakirova I. O. Derzhavno-pravovyi mekhanizm zabezpechennya konstytutsiynoho prava lyudyny i hromadyanyna na sudovyi zakhyst ta mistse orhaniv yustytzii Ukrainy u zdiysnenni pravosuddia. *Ofitsiynyi sait*

Thus, the institutional and organizational guarantees of the right to receive professional legal assistance is the activity of guarantors to ensure appropriate conditions for the exercise of this right within the limits and in the manner prescribed by law. The organizational component consists of an extensive infrastructure created at the state level to provide professional legal assistance to the population.

Thus, having analyzed the legal guarantees of ensuring the realization of the right to receive professional legal aid, the following conclusions can be made:

1) professional legal aid is associated with a guarantee of access to justice in the legal literature of foreign authors. Although it is relevant not only in access to justice but also in solving other important issues, such as: detention and family problems (divorce or domestic violence), problems of consumers, refugees and persons related to immigration, employment, debt, personal injury, housing or social security issues, etc.;

2) the constitutional right to receive professional legal assistance has a multifaceted nature which consists of a set of mechanisms for its implementation, which ensures the realization of other constitutional guarantees: the constitutional guarantee of pro-

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*Ministerstva yustytzii Ukrainy.* URL: [https://minjust.gov.ua/m/str\\_9254](https://minjust.gov.ua/m/str_9254);  
Nalyvayko L. R., Oryeshkova A. F. Kryterii klasyfikatsii ta vydy harantii prav i svobod vnutrishnyo peremishchenykh osib. *Pravova derzhava: istoriya, suchasnist ta perspektyvy formuvannya: materialy XVIII Vseukr. nauk.-prakt. konf. (DDUVS, 28.02.2020).* URL: <http://er.dduvs.in.ua/bitstream/123456789/4366/1/2.pdf>

tection of Ukrainian citizens who are beyond its borderst (Part 2 of Art. 25 of the Constitution of Ukraine); constitutional guarantee of protection and assistance to foreigners and stateless persons (Art. 26 of the Constitution of Ukraine); the constitutional guarantee of protection of labor rights (Part 5 of Art. 43 of the Constitution of Ukraine); constitutional guarantee of the right of every person and citizen to judicial protection of his rights and freedoms (Part 2 of Art. 8; Parts 1, 2, 3 of Art. 55 of the Constitution of Ukraine); constitutional guarantee of the right of everyone to apply for protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant, if national protection mechanisms have been used (Part 4 of Art. 55 of the Constitution of Ukraine); a set of constitutional mechanisms for the protection of man and citizen in criminal proceedings (Part 2 of Art. 63, Part 3 of Art. 131-2 of the Constitution of Ukraine); constitutional guarantees for the protection of the rights of victims of offenses and crimes (Part 1 of Art. 19; Articles 27–29; Part 5 of Articles 55; 56 of the Constitution of Ukraine);

3) legal guarantees are a complex set of mechanisms formed from a set of normatively enshrined means, methods that provide appropriate conditions for the protection of human and civil rights and freedoms from unlawful encroachments and their restoration in case of violation. They refer legal aid to special guarantees through which the practical realization of the right to receive professional legal

assistance is possible, which can be classified into normative and legal, institutional and organizational guarantees;

4) normative and legal guarantees of ensuring the implementation of the right to professional legal assistance are divided into: constitutional and sectoral; material and procedural; structurally they also include legal duties and legal responsibility;

5) constitutional guarantees are enshrined in the Constitution of Ukraine (Part 2 of Art. 59), which laid the foundation for ensuring the implementation of certain rights and norms of other industries. In their activities, sectoral guarantees (administrative, administrative and procedural, criminal, criminal and procedural, etc.) detail the implementation of the right to professional legal aid. For example, they determine the fundamental procedure for obtaining free legal aid (Law of Ukraine “On Free Legal Aid”), the administrative and legal status of bodies and officials that provide legal aid (Regulations on the Coordination Center for Legal Aid Provision, Regulations on Centers for Free Secondary Legal Aid Provision);

6) material guarantees establish the legal status of the subjects of ensuring the right to professional legal assistance; procedural guarantees are enshrined in procedural rules governing procedural issues of ensuring this right; the establishment of an obligation for the subjects of ensuring the right to receive professional legal assistance at the legislative level also serves as a guarantee for timely and professional



assistance to applicants. If this obligation is violated, the perpetrators will be subject to legal liability;

7) institutional and organizational guarantees of the right to receive professional legal assistance is the activity of guarantors to ensure appropriate conditions for the implementation of this right within the limits and in the manner prescribed by law. The main institutional guarantors are: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, ministries and other central executive bodies, local governments, courts, the Commissioner for Human Rights of the Verkhovna Rada, the Procuracy of Ukraine, Advocacy, public institutions, international judicial institutions and international organizations. The organizational component consists of an extensive infrastructure created to provide professional legal assistance to the population at the state level.

Thus, legal guarantees to ensure the realization of the right to receive professional legal assistance are a set of normative, economic, social and political mechanisms established at the legislative level, by means of which the state creates appropriate conditions for ensuring the realization of the constitutional human and civil right to receive professional legal assistance. The creation of an effective system of legal guarantees (normative and legal, institutional and organizational) to ensure the realization of the right to receive professional legal aid in Ukraine is possible only by harmonizing these components in the direction of sustainable and inclusive development.

## Conclusions to Section 2

It was found that most of administrative scholars consider the concept of “status” through a set of elements that are part of its structure. These elements are the most controversial, they are unanimous only in one thing – they must be defined in administrative norms.

It is proposed to consider the administrative and legal status of subjects through a set of rights, responsibilities, purposes of creation and tasks of their activity, powers, and also responsibility for non-performance of the functions assigned to them by the state, or violation of the established norms.

It is determined that the Constitution of Ukraine enshrines the right to receive professional legal aid, but does not establish special rules that would clarify the competence of the entities that must ensure the implementation of this right.

It has been proved that public authorities as subjects of ensuring the right to receive professional legal assistance are characterized by the following features: a) ensuring the implementation of the right to receive professional legal assistance should be within the competence of a particular body (not the main task); b) the activity of public authorities in the field of ensuring the implementation of the right to legal assistance is most often indicated in regulations governing their status; c) the ensuring of the right to legal assistance in the form of professional legal representation is carried out by public authorities on their own behalf, but in the interests of a particular

person; d) the presence of state powers. In turn, non-governmental organizations that ensure the exercise of the right to professional legal assistance are voluntary associations of citizens who are not empowered, non-profit, do not use violent methods and are apolitical, which operate on the basis of the statute and are created to protect human and civil rights and freedoms.

It is determined that the Cabinet of Ministers of Ukraine as a leading entity in the system of state bodies that ensure the exercise of the right to receive professional legal assistance, primarily creates conditions for the implementation of this constitutional right by establishing and approving the procedure and conditions for its implementation.

The cost of free legal aid is high, most EU member states have severely restricted it, but they have started to use alternative procedures and seek additional sources of funding in order to ensure the implementation of the right to free legal aid. According to the example of foreign experience, it is necessary to make some changes in Art. 6 of “Regulations on Coordination Center for Legal Aid Provision” approved by the Resolution of the Cabinet of Ministers of Ukraine of June 6, 2012 № 504 and add item 5 to the list of sources, which should state: “the property of the Coordination Center is formed at the expense of the National Lottery”.

The group of subjects to ensure the realization of the right to receive professional legal assistance are non-governmental bodies, which are traditionally called “non-governmental organizations” or “public

organizations”, and can be in various organizational and legal forms. This group includes international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation. It was found out that various international non-governmental organizations operate on the territory of Ukraine on the basis of international and national legislation. Their missions are mainly aimed at building civil society and creating reliable mechanisms for the protection of human and civil rights and freedoms. Not least, they also play a role in ensuring the realization of the right to receive professional legal assistance, but their projects and initiatives in the field of ensuring the realization of the right to receive professional legal aid are mainly educational in nature.

It is proved that legal clinics are a unique element in the extensive system of subjects ensuring the realization of the right to free legal aid, which on the one hand are designed to provide professional legal assistance to vulnerable groups, and on the other are a basis for students’ skills (lawyers). They are created at the law faculties of higher educational institutions of III–IV levels of accreditation – are a subject of the non-governmental system of free legal aid and operate on the basis of the Regulations and the Charter of the higher educational institution approved by its head.

It was clarified that international legal acts are not only standards that must be met, but also they are aimed at implementing an effective procedure as one of the elements in the mechanism of ensuring the

right to professional legal aid to everyone who needs it regardless of financial means and type of problems.

It is proposed to understand administrative procedures as a sequence of actions and operations carried out or performed by an administrative body on its own initiative or upon request, in order to decide on the rights, interests and obligations of the parties or to make decisions based on public interests in accordance with current administrative and legal acts.

It is proved that an independent element that reflects the essence of the mechanism of ensuring the realization of human rights and freedoms are legal procedures that must be developed and adopted by public administration bodies. Then a person can organize their implementation or use the services of professionals. It is possible to conclude that public administration bodies, that ensure the exercise of the right to professional legal assistance, create standard conditions and rules for the protection and restoration of human and civil rights and freedoms through legal procedures in general and through administrative in particular.

It is determined that most authors include different systems to the elements of the mechanism for ensuring the realization of human rights and freedoms: a) guarantees; b) protection and defense; c) law enforcement; d) legal procedures; e) legal liability.

It is determined that administrative procedures to ensure the implementation of the right to receive and provide professional legal aid have been developed at the present stage. The administrative proce-

dures to ensure the right to receive professional legal assistance have been analyzed. They consist of two types depending on the scope: the field of primary legal aid and the secondary. Administrative procedures in the field of primary legal aid that ensure the right to receive such assistance includes the procedure of involvement of local governments of legal entities of private law to provide free primary legal aid, and administrative procedures in the field of secondary legal aid – the procedure for selecting lawyers, who are involved in the provision of free secondary legal aid.

It is substantiated that the administrative procedure for involving local self-government bodies of legal entities of private law in the provision of free primary legal aid consists of two main stages and one optional, each of which may consist of several steps. The first stage is the preparation of the tender, which consists of two steps: the announcement of the tender and the submission of tender proposals. The second stage – the competition, which consists of the following steps: consideration of the tender proposal and decision-making. The final result of the analyzed administrative procedure is the decision to enter into an agreement between the local government (organizer of the competition) and the winner of the competition (legal entity of private law) for the provision of free primary legal aid. Optional stage – appeal in court and the decision of the tender commission. The subjects of ensuring the implementation of the right to receive primary legal aid are local governments, as they are the ones who decide on the involvement of legal entities of private law in the provision of primary free assistance.

The order of the Ministry of Justice of Ukraine of 15.06.2012 № 891/5 “Procedure and Criteria for Involvement of Private Law Entities by Local Self-Government Bodies in Providing Free Primary Legal Aid” must be improved with the help of changes, namely: the procedure for adoption and the following steps after acceptance of the competitive offer; to determine the status of the organizer of the competition – the local government, and the representative of the organizer – the Ministry of Justice of Ukraine and its territorial bodies and legal aid centers; create an out-of-court, administrative mechanism for appealing decisions; review the entire procedure of the competition due to its digitization and develop its online form.

It is determined that the content of the administrative procedure for the selection of lawyers involved in the provision of free secondary legal aid is to select only those lawyers (from the list of contestants) who can provide professional and quality legal aid according to the established criteria (both moral and professional).

It was found that the administrative procedure for selecting lawyers involved in the provision of free secondary legal aid consists of two main stages and one optional. The first stage – preparation for the competition, consists of the following steps: announcement of the competition, registration of participants and participation of lawyers in the distance course. The second stage – the competition, which consists of the following steps: verification of the participant’s documents sent by the Coordination

Center; assessment of the lawyer on the information provided in the documents, in accordance with the established criteria and decision-making. The subjects of ensuring this procedure are the bodies of the Ministry of Justice of Ukraine, including the Coordination Center. The final decision of the analyzed administrative procedure is the inclusion of lawyers who took part in the competition to the Register of lawyers who provide free secondary legal aid.

It is proposed to increase the transparency and objectivity of the competition by involving observers, but their status and authority during the competition is not established by regulations. The Resolution of the Cabinet of Ministers of Ukraine of December 28, 2011 № 1362 “On Approval of the Procedure and Conditions of the Competition for the Selection of Lawyers Involved in the Free Secondary Legal Aid Provision” states only that they may be present during the competition and be representatives of foreign states and international organizations. In accordance with the above, we believe that this Resolution should be amended and there is a need to prescribe the rights and responsibilities of observers of the competition.

It was found that professional legal assistance is associated with a guarantee of access to justice in the legal literature of foreign authors. Although it is relevant not only in access to justice but also in solving other important issues, such as: detention and family problems (divorce or domestic violence), problems of consumers, refugees and persons related to immigration, employment, debt, personal injury, housing or social security issues, etc.



It is proved that the constitutional right to receive professional legal aid has a multifaceted nature which consists of a set of mechanisms for its implementation, which ensures the realization of other constitutional guarantees: the constitutional guarantee of protection of Ukrainian citizens who are beyond its borderst (Part 2 of Art. 25 of the Constitution of Ukraine); constitutional guarantee of protection and assistance to foreigners and stateless persons (Art. 26 of the Constitution of Ukraine); the constitutional guarantee of protection of labor rights (Part 5 of Art. 43 of the Constitution of Ukraine); constitutional guarantee of the right of every person and citizen to judicial protection of his rights and freedoms (Part 2 of Art. 8; Parts 1, 2, 3 of Art. 55 of the Constitution of Ukraine); constitutional guarantee of the right of everyone to apply for protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant, if national protection mechanisms have been used (Part 4 of Art. 55 of the Constitution of Ukraine); a set of constitutional mechanisms for the protection of man and citizen in criminal proceedings (Part 2 of Art. 63, Part 3 of Art. 131-2 of the Constitution of Ukraine); constitutional guarantees for the protection of the rights of victims of offenses and crimes (Part 1 of Art. 19; Articles 27–29; Part 5 of Articles 55; 56 of the Constitution of Ukraine).

It is determined that legal guarantees are a complex set of mechanisms formed from a set of norma-

tively enshrined means, methods that provide appropriate conditions for the protection of human and civil rights and freedoms from unlawful encroachments and their restoration in case of violation. They refer legal aid to special guarantees through which the practical realization of the right to receive professional legal assistance is possible, which can be classified into normative and legal, institutional and organizational guarantees.

It was found that normative and legal guarantees of ensuring the implementation of the right to professional legal assistance are divided into: constitutional and sectoral; material and procedural; structurally they also include legal duties and legal responsibility.

It is highlighted: a) constitutional guarantees enshrined in the Constitution of Ukraine (part 2 of Art. 59), which laid the foundation for ensuring the implementation of certain rights and norms of other industries; b) sectoral guarantees (administrative, administrative and procedural, criminal, criminal and procedural, etc.) detail the implementation of the right to professional legal assistance, for example, determining the fundamental procedure for obtaining free legal aid (Law of Ukraine “On Free Legal Aid”), determine the administrative and legal status of bodies and officials that provide legal aid (Regulations on the Coordination Center for Legal Aid Provision, Regulations on Centers for Free Secondary Legal Aid Provision); c) material guarantees establish the legal status of the subjects of ensuring the right to professional legal assistance; d) procedural

guarantees are enshrined in procedural rules governing procedural issues of ensuring this right; e) the obligation for the subjects to ensure the right to receive professional legal assistance is established at the legislative level, which serves as a guarantee for timely and professional assistance to applicants; f) legal liability arises for the subjects of ensuring the realization of the right to receive professional legal assistance – public authorities in case of violation of a certain obligation.

It is determined that Institutional and organizational guarantees of the right to receive professional legal aid is the activity of guarantors to ensure appropriate conditions for the implementation of this right within the limits and in the manner prescribed by law. The main institutional guarantors are: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, ministries and other central executive bodies, local governments, courts, the Commissioner for Human Rights of the Verkhovna Rada, the Procuracy of Ukraine, Advocacy, public institutions, international judicial institutions and international organizations. The organizational component consists of an extensive infrastructure created to provide professional legal assistance to the population at the state level.

## **Section 3**

# **Main Directions of Improvement of Administrative and Legal Enforcement of the Right to Receive Professional Legal Assistance**

## **3.1. Administrative and Legal Regulation of the Quality of Professional Legal Assistance in Ukraine**

Constitutional right of everyone to receive professional legal assistance requires a certain level of its organization – the existence of a system of formal, official social institutions of legal aid (social infrastructure of legal aid, legal framework), more or less detailed, depending on the type of legal assistance, legal regulation of relations arising in the field of its provision<sup>1</sup>. Thus, we will explore legal aid in terms of professional and organizational regulation by public authorities in the direction of its proper quality.

There are two approaches to the quality of professional legal assistance. The first approach is narrow, considered through the quality of legal aid that is

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i hosudarstva; istoriya ucheniy o prave i hosudarstve". Krasnoyarsk, 2004. 32 s.

actually provided to persons entitled to free legal aid. The following questions are relevant in this approach: Is the assistance provided sufficient? Has the problem been resolved as a result of this assistance? Is the recipient satisfied?

Another approach is broad, considered through access to justice. Then the following question is resolved: Has the trial received a proper procedure that would allow obtaining a fair result? Then it is related not only to the personal legal assistance, but also to the quality of other elements of the process that ensure access to justice. Both the quality of court proceedings and the laws that affect results are important in this approach.

These two approaches can lead to different results. For example, a highly qualified lawyer provides legal assistance to a trial participant, but he or she finds himself in a very complicated procedure for ten years, faces many unclear laws, and gets a rather poor result. On the other hand, a litigant can get a good result through a simple and straightforward procedure using the services of a mediator who has excellent conflict resolution skills. Both approaches are valuable and promising. Legal aid is a means of gaining effective access to justice (free of charge or not).

Free legal aid can be provided in cash or in kind, by providing a criminal defense lawyers, or through legal counseling centers, websites, or telephone services. So far, there are no examples of creating a system for the use of public-private partnerships, such as the transfer of certain tasks of legal assis-

tance to private parties, or, for example, funding through so-called social security bonds<sup>1</sup>.

Provisions of Part 1 of Art. 59 of the Constitution of Ukraine establishes “everyone is free to choose a defender of his rights”, but the state must guarantee the quality of professional legal aid, no matter if such assistance is provided at its expense or not.

The term “quality” is used to describe products or services, using such features as “degree”<sup>2</sup>, “totality”<sup>3</sup>, “condition”<sup>4</sup> in normative legal acts. However, most often quality is determined through a set of characteristics of a product or service that relate to its ability to meet established and anticipated needs.

In turn, the philosophical interpretation of the term “quality” means “the internal certainty of the

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<sup>1</sup> Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?/M. Barendrecht, L. Kistemaker, H. J. Scholten, R. Schrader, M. Wrzesinska. *Ministerie van Veiligheid en Justitie*. 2014. URL: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>

<sup>2</sup> Pro zatverdzhennya Aviatsiynykh pravyl Ukrainy “Obsluhovuvannya aeronavhatsiynoyu informatsiyeyu”: nakaz Derzhaviasluzhby Ukrainy vid 13.05.2019 r. № 582. URL: <https://zakon.rada.gov.ua/laws/show/z0760-19#Text>

<sup>3</sup> Pro zatverdzhennya Pravyl sertyfikatsii ekspluatantiv, shcho zdiysnyuyut ekspluatatsiyu tsyvilnykh povitryanykh suden (litakiv) z metoyu vykonannya komertsyynykh transportnykh perevezen zghidno z vymohamy OPS 1: nakaz Ministerstva transportu ta zvyazku Ukrainy vid 05.07.2010 r. № 430. URL: <https://zakon.rada.gov.ua/laws/show/z0558-10#Text>

<sup>4</sup> Pro zatverdzhennya Vymoh do systemy upravlinnya yakisty pro vedennya diahnostychnykh ta terapevtychnykh protsedur z vykorystanniam dzherel ionizuyuchoho vprominyuvannya: nakaz Derzhatomreholuvannya Ukrainy vid 03.10.2008 r. № 166. URL: <https://zakon.rada.gov.ua/laws/show/z1054-08#Text>

subject, which is the specificity that distinguishes it from all others”<sup>1</sup>. If quality is considered through the prism of economics then it means the “degree of cost, value, suitability of something for its use by appointment”<sup>2</sup>.

In foreign literature, the term “quality” is used to describe legal aid, and the term “qualification” is derived from it. In turn, the term “qualification” means “the degree of suitability, readiness for any kind of work”<sup>3</sup>.

Thus, the quality of professional legal assistance should be characterized through the qualification standards set for a lawyer or attorney in general and in the implementation of legal aid in particular.

The International Bar Association (IBA) assumes that a person must meet certain qualification requirements in order to be eligible to provide paid legal services professionally. This position is reflected in many IBA documents. The Declaration on the Right and Duty of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights (1998) also deals with the qualified nature of legal aid<sup>4</sup>. Art. 9 of the Declaration states: “Everyone has the right, individually and in association with others, to benefit from an effective

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<sup>1</sup> Slovnyk ukrainskoi movy. Akademichnyi tлумachnyi slovnyk (1970–1980). URL: <http://sum.in.ua>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

remedy and to be protected in the event of the violation of those rights”<sup>1</sup>.

The terms “effective legal aid” or “effective judicial protection” are used in the precedents of the European Court of Human Rights (“Beles and others v. the Czech Republic”, p. 49; “Bellet v. France”, p. 38). Thus, the ECtHR has repeatedly emphasized that the right of access to a court enshrined in §1 of Art. 6 of the Convention, is not absolute: it may be subject to permissible restrictions, as it requires state regulation by its nature. However, such a restriction will not comply with § 1 of Art. 6, if it does not have a legitimate purpose and does not achieve a reasonable proportionality between the means and the goal<sup>2</sup>.

Thus, it is necessary to investigate how the state can achieve the proper quality of professional legal assistance by achieving administrative and legal regulation.

Effective legal aid presupposes professionalism – the person providing assistance must have special education, special knowledge, skills, work experience, subordination of his activity to professional rules, etc.

Professional legal assistance can be organized (formal) and unorganized (informal). According to V. Panchenko, the distinction between professional

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<sup>1</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted by General Assembly resolution 53/144 of 9 December 1998. URL: <https://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>

<sup>2</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>



and non-professional, organized and unorganized (formal and informal) levels of different types of assistance is of fundamental importance for the concept of the quality of professional legal aid. This is due to the fact that one of the main functions of the concepts “medical care”, “psychological assistance”, “social assistance”, “legal assistance” is to determine what assistance, its order and conditions can be received by a person in a difficult life situation, how the social infrastructure of this or that type of legal aid should be organized, what requirements are imposed to the persons providing assistance and to their activity by the society and the state<sup>1</sup>.

Professional legal representation is the commission of a subject of providing legal actions to obtain and implement the rights and obligations of the subject of receipt, aimed at overcoming the problematic legal situation. The concept of legal representation reflects the content of the subject of professional legal aid and differs from other types of representation as a procedural form of legal assistance to a person (judicial representation in civil proceedings, criminal procedure representation, etc.). Professional legal representation can both replace the activity of the subject of receipt, and be carried out along with it. Among other forms of legal aid, professional legal representation is mostly regulated by the Law of Ukraine “On Free Legal Aid”. The subject of pro-

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i hosudarstva; istoriya ucheniy o prave i hosudarstve”. Krasnoyarsk, 2004. 32 s.

vision in the exercise of professional legal representation may act both on behalf of the subject of receipt and on its own behalf in the interests of the subject of receipt. A special case of professional legal representation as a form of legal aid is professional protection in criminal proceedings<sup>1</sup>.

The specified type of professional legal assistance, namely secondary legal aid, is regulated by the Law of Ukraine “On Free Legal Aid” and other normative legal acts. As well as ensuring the quality of its provision is regulated by administrative and legal standards.

A key aspect in the implementation of the Law of Ukraine “On Free Legal Aid” is to ensure the quality of this assistance. According to the paragraph 7 of Part 1 of Art. 28 of this law, the Ministry of Justice of Ukraine is empowered to approve the quality standards of free legal aid<sup>2</sup>. In pursuance of the law, the Ministry of Justice of Ukraine approved the order of 25.02.2014 № 386/5 “On Approval of Quality Standards for Free Secondary Legal Aid in Criminal Proceedings”<sup>3</sup>. The Ministry’s order states that the quality standards of free secondary legal aid

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i hosudarstva; istoriya ucheniy o prave i hosudarstve”. Krasnoyarsk, 2004. 32 s.

<sup>2</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>3</sup> Pro zatverdzhennya standartiv yakosti nadannya bezoplatnoi vtorynnoi pravovoi dopomohy u kryminalnomu protsesi: nakaz Ministerstva yustytсии Ukrainy vid 25.02.2014 r. № 386/5. URL: <https://zakon.rada.gov.ua/laws/show/z0337-14#Text>

in criminal proceedings (hereinafter – the Standards) are a set of basic characteristics of the model of state-guaranteed protection provided by international legal acts, legislation of Ukraine. According to the agreed legal position of the defense party, the defender is independent in choosing the strategy and tactics of defense in criminal proceedings to carry out active and reasonable protection of the rights, freedoms and legitimate interests of the client by all means not prohibited by law<sup>1</sup>.

Of course, the standards of free secondary legal aid are formalized conditions designed to declare own expectations with the help of executive power of the state for the perfection of this service, to direct the practice of the subjects of free legal aid to their implementation, to assess the quality of their work and to report to the society. The standards are certain orienting points, fairly stable and never fully achieved, as the process of ensuring the quality of free legal aid requires constant effort and improvement, which has no limits.

The evaluation of the quality of the provision of free secondary legal aid (FSLA) provided by lawyers is carried out in accordance with these standards of the commissions established for this purpose by the

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<sup>1</sup> Mudrenko O. V. Problema pravovoho rehulyuvannya u nadanni bezoplatnoi pravovoi dopomohy. *Bezoplatna pravova dopomoha v Ukraini: shlyakhy podalshoho rozvytku ta modernizatsii: materialy Vseukr. stud. nauk.-prakt. konf. (m. Dnipro, 5 zhovt. 2018 r.)*. Dnipro: DDUVS, 2018. S. 110–114; Pro zatverdzhennya standartiv yakosti nadannya bezoplatnoi vtorynnoi pravovoi dopomohy u kryminalnomu protsesi: nakaz Ministerstva yustytzii Ukrainy vid 25.02.2014 r. № 386/5. URL: <https://zakon.rada.gov.ua/laws/show/z0337-14#Text>

regional bar councils. The evaluation is carried out upon the submission of the relevant centers in accordance with the established procedure. Undoubtedly, activities in this direction should be based on a correct methodology related to the standards and quality criteria of lawyers, as well as standards of data collection and analysis, which should be part of the plan to fulfill the state's obligations to provide legal assistance to citizens<sup>1</sup>.

In accordance with paragraph 4 of the Standards, the assessment of the quality of assistance provided by lawyers is carried out by commissions established for this purpose by the regional bar associations, at the request of the relevant centers for the provision of free secondary legal aid. In turn, the quality of such assistance in criminal proceedings is monitored by the Coordination Centre for Legal Aid Provision and the centers<sup>2</sup>. Statistics on the activities of lawyers also show the quality of the provision of FSLA. In 2019, lawyers managed to obtain 280 acquittals or decisions to close the proceedings in the interests of

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov_govoruha.pdf); Mudrenko O. V. Problema pravovoho rehulyuvannya u nadanni bezoplatnoi pravovoi dopomohy. *Bezoplatna pravova dopomoha v Ukraini: shlyakhy podalshoho rozvytku ta modernizatsii: materialy Vseukr. stud. nauk-prakt. konf. (m. Dnipro, 5 zhovt. 2018 r.)*. Dnipro: DDUVS, 2018. S. 110–114.

<sup>2</sup> Pro zatverdzhennya standartiv yakosti nadannya bezoplatnoi vtorynnoi pravovoi dopomohy u kryminalnomu protsesi: nakaz Ministerstva yustytstii Ukrainy vid 25.02.2014 r. № 386/5. URL: <https://zakon.rada.gov.ua/laws/show/z0337-14#Text>

clients, 6,809 cases of release from probation, 6,956 cases of appointment the minimum term of punishment<sup>1</sup>.

Thus, the subjects of administrative and legal regulation of the quality of professional legal aid are: commissions of regional councils of lawyers, centers for free secondary legal aid and the Coordination Center. But it should be noted that this case concerns only the quality standards of secondary legal aid provided by lawyers during criminal proceedings. As for other types of legal aid, this will be discussed below.

In 2018, the main legal aid providers – the National Bar Association of Ukraine, the Coordination Centre for Legal Aid Provision, the Ukrainian Legal Aid Foundation, the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Group – signed a memorandum to improve access to justice for vulnerable populations<sup>2</sup>. The purpose of the memorandum is to establish a Commission for Expert Legal Analysis consisting of representatives of the above organizations, which will develop mechanisms to ensure the quality of free secondary legal aid in criminal proceedings.

Thus, it is possible to create effective tools for administrative and legal regulation of the quality of

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<sup>1</sup> Pro rezultaty monitorynhu dotrymannya advokatamy standartiv yakosti nadannya BVPD u 2018 rotsi. *Kvalifikatsiyno-dystsyplinarna komisiya advokatury Kyivskoi oblasti*. 2019. URL: <http://kdkako.com.ua/pro-rezultati-monitoringu-dotrimannya-advokatami-standartiv-yakosti-nadannya-bvpd-u-2018-roci/>

<sup>2</sup> Pravova Matrytsya (Legal Matrix). *Koordinatsiynyy tsentr z nadannya pravovoi dopomohy*. 2019. URL: <http://pravokator.club/projects/pravova-matrytsya/>

professional legal assistance using the resources of civil society.

An example of successful cooperation between different entities is the activity of Law Clubs “PRAVOKATOR” and the Legal Matrix created on their basis – a discussion platform for exchanging views in a convenient and open format of communication. This is the same necessary platform for expert dialogue between representatives of different legal professions. Law club professionals are professionals; most of them are certified trainers, experienced facilitators and who constantly contribute to the development of staff of free legal aid and lawyers, the introduction of new ideas to improve access to justice in Ukraine and create a comfortable environment for open dialogue<sup>1</sup>.

The platform brings on one plane the representatives of various legal professions such as lawyers, judges, prosecutors, etc. This format of conversation helps to avoid differences in the interpretation of the law by each participant in the process. Within the framework of the “Legal Matrix”, five events of this format were held in 2020. All opinions were gathered at the national level to form a common understanding of the stated issues: “Separate procedural action is a participation of a lawyer in a separate procedural action on behalf of the regional center for free secondary legal aid provision, ethical and procedural

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<sup>1</sup> Pravova Matrytsya (Legal Matrix). *Koordinatsiynyy tsestr z nadannya pravovoi dopomohy*. 2019. URL: <http://pravokator.club/projects/pravova-matrytsya/>

aspects”. The participants of the discussion club considered the problems that arise in the activities of the free legal aid system during the implementation of resolutions/decisions of the pre-trial investigation body and the court. All activities were carried out by the Coordination Center for Legal Aid Provision with the support of the Council of Europe Project “Further Support to Criminal Justice Reform in Ukraine,” funded by the Government of Denmark<sup>1</sup>.

According to other types of legal aid and due to the emergence of new conditions for the implementation of the principles of justice in connection with the entry into force of the modernized procedural codes, as well as the fact that free legal aid is a part of procedural mechanisms to ensure effective, fair, impartial and timely protection of the rights and freedoms of the individual in court, the requirements of quality standards of assistance should be correlated with the dynamics of not only criminal proceedings, but also civil and administrative. This is due to the introduction of new versions of the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine. According to I. Koziakov and O. Hovorukha, certain provisions of the order of the Ministry of Justice of Ukraine of December 21, 2017 № 4125/5 “On Approval of Quality Standards for Free Secondary Legal Aid in Civil, Administrative Proceedings and Representation in

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<sup>1</sup> Pravova Matrytsya (Legal Matrix). *Koordinatsiynyy tsentr z nadannya pravovoi dopomohy*. 2019. URL: <http://pravokator.club/projects/pravova-matrytsya/>

Criminal Proceedings”<sup>1</sup> should be systematically synchronized with judicial practice of application of these legislative novelties, after all provisions of the order were formed only on the basis of norms of just accepted codes without practice. Therefore, we agree with the opinion of these authors that monitoring the implementation of quality standards for free secondary legal aid in civil and administrative proceedings in the process of implementing new versions of procedural codes and formation of judicial practice should be carried out in order to clarify the adequacy, validity and improvement of this legal instrument<sup>2</sup>.

First of all, this applies to general quality standards for the provision of FSLA in civil, administrative proceedings (regarding compliance with procedural deadlines), certain quality standards for the provision of FSLA at the stage of pre-trial settlement of civil or administrative disputes (paragraphs 4, 6 and 7), and other standards for the provision of FSLA during the trial of civil and administrative cases (paragraphs 1, 3–5, 7–16). In this regard, it is necessary to involve representatives of the bar self-government, higher legal educational institutions and research institutions, public organizations, etc. in

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<sup>1</sup> Pro zatverdzhennya Standartiv yakosti nadannya bezoplatnoi vtorynnoi pravovoi dopomohy u tsyvilnomu, administratyvnomu protsesakh ta predstavnytstva u kryminalnomu protsesi: nakaz Ministerstva yustytсии Ukrainy vid 21 hrudnya 2017 roku № 4125/5. URL: <https://zakon.rada.gov.ua/laws/show/z1554-17#Text>

<sup>2</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov_govoruha.pdf)



the formation of proposals. In general, the system of monitoring the quality of the provision of FSLA provided by lawyers should focus on assessing the level of satisfaction of citizens as consumers of this service<sup>1</sup>.

There is no need to discuss the “lawyer’s monopoly” on the provision of professional legal aid, but it must be noted that we support the position of those scholars and practitioners who point to the need for a lawyer to participate as a representative in litigation (in providing secondary legal aid).

O. Drozdov rightly noted, that the market of legal services in Ukraine is deregulated, it is not controlled by either the state or the corporate governance bodies. If non-lawyers are admitted to court, the state will not be able to fulfill its positive obligations and guarantee everyone the right to professional legal assistance established by Article 59 of the Constitution. Today, according to the Unified Register of Advocates of Ukraine, there are about 52,000 lawyers, which is higher than the average number of lawyers per 100,000 population in Europe. At the same time, the number of lawyers in Ukraine is constantly growing. This also serves as a strong argument in favor of the fact that the Ukrainian Bar is able to provide effective professional legal aid in quantitative terms<sup>2</sup>.

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov_govoruha.pdf)

<sup>2</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

Consolidation at the legislative level of rights, responsibilities, guarantees of advocacy, as well as a special procedure for prosecuting for their violation, a special procedure for access to the profession, the obligation to maintain legal secrecy, legal immunity are aimed at ensuring proper implementation of the Constitution human rights and fundamental freedoms in the aspect of providing professional legal assistance. The exclusive right of lawyers to exercise the functions of protection and representation in courts is in line with the international practice of the world's leading states and promotes the formation of the legal profession with uniform standards and ethical rules<sup>1</sup>.

We have analyzed the administrative and legal regulation of the quality of free secondary legal aid and can draw intermediate conclusions: this type of assistance is a positive obligation of the state to guarantee vulnerable citizens quality and timely resolution of problems related to their representation of interests in criminal, civil and administrative proceedings through its free legal aid system; the adoption of regulations in the field of quality standards for the provision of such assistance needs to be reformed in connection with the adoption of amendments to the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine.

The next stage of our study will be the analysis of administrative and legal regulation of the quality of primary legal aid, because the Part 1 of Art. 59 of

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<sup>1</sup> Drozdov O. Monopoliya kvalifikatsii. *Natsionalna Asotsiatsiya Advokativ Ukrainy*. 2019. URL: <https://unba.org.ua/publications/4752-monopoliya-kvalifikacii.html>

the Constitution of Ukraine states “everyone has the right to professional legal aid”<sup>1</sup>.

Free primary legal aid is a type of state guarantee, which includes the informing a person about his rights and freedoms, the procedure for their implementation, restoration in case of violation and the procedure for appealing against decisions, actions or inaction of public authorities, local governments, officials. It includes the following types of legal services: 1) provision of legal information; 2) provision of consultations and explanations on legal issues; 3) preparation of applications, complaints and other legal documents (except for procedural documents); 3-1) provision of consultations, explanations and preparation of draft land use agreements (lease, sublease, land easement, emphyteusis, superficies) for the rural population – land owners; 4) provision of assistance in ensuring a person’s access to secondary legal aid and mediation<sup>2</sup>.

According to the intensification of cases of raider seizures of land plots, the Verkhovna Rada of Ukraine adopted the Law of Ukraine of 05.12.2019 № 340-IX “On Amendments to Certain Legislative Acts of Ukraine on Combating Raiding”, which amended the Law of Ukraine “On Free Legal Aid” and paragraph 3-1 is included in Part 2 of Art. 7<sup>3</sup>.

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<sup>1</sup> Konstyutsiya Ukrainy: Zakon Ukrainy № 254k/96-VR vid 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>2</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

<sup>3</sup> Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrainy shchodo protydii reyderstvu: zakon Ukrainy vid 05.12.2019 r. № 340-IX. URL: <https://zakon.rada.gov.ua/laws/show/340-20#n9>

The “land” topic is not new for the system of free legal aid. After all, the International Bank for Reconstruction and Development provided support for a pilot project “Support for Transparent Land Management in Ukraine” which was implemented in three regions – Kyiv, Lviv and Mykolayiv. Trainings were conducted for free legal aid employees, lawyers, attorneys of local self-government bodies, united territorial communities, land managers and registrars. Mobile groups traveled to remote communities for land counseling. Currently, 10 regions have been selected for the project implementation “Accelerating Private Investment in Agriculture Program” in 2020. Local free secondary legal aid centers received 6,765 land applications in these regions from May to September this year. Of these, 6,588 are legal consultations and clarifications. A decision was made to provide free secondary legal aid on 147 appeals<sup>1</sup>.

However, we believe that it is necessary to counter raiding, but another type of illegal action will be invented tomorrow, so it is not an effective method to make changes to the law every time. We believe that it was necessary to develop an effective consultation procedure on this issue and enshrine it in the order of the Ministry of Justice of Ukraine.

It must be noted that such legal services as educational and legal assistance must be included in the legal aid system in order to overcome the legal nihilism of the population and reduce the burden on state

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<sup>1</sup> Informatsiynyi daydzhest systemy BPD. *Ministerstvo yustytsii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnjy-dajdzhest-systemy-bpd-zhovten-2020-roku/>

or municipal budgets. It will help to form a set of skills, abilities and knowledge through the impact on the consciousness of the applicant, which will help the person in the future to act independently in a standard life situation.

Educational and legal assistance is a pragmatic aspect of the legal development of the individual, the educational side of legal education, i.e. an organized, purposeful process of cooperation in the formation of the latter's legal knowledge, skills and abilities of legal activity. Educational legal education pursues a utilitarian, practical goal – self-prevention and (or) overcoming of a problematic legal situation by the subject of legal aid with the help of legal means and focuses on the formation and development of intellectual (rational) components of legal consciousness<sup>1</sup>.

Since almost every life situation is unique, educational and legal assistance cannot cover all the variety of problematic legal situations, but it is possible and necessary to identify the main, most common, typical, recurring in everyday life and the most significant problematic legal situations. The content of educational and legal aid is the process of forming legal knowledge, skills and abilities to work in typical problematic legal situations.

The task is that the subject with the help of legal knowledge, skills and abilities was ready independently and in a timely manner to: a) recognize a real

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.

problematic life situation as legal or to anticipate the possibility of its occurrence in the future; b) take the necessary measures to prevent the occurrence of a problematic legal situation or to overcome it, or at least to create conditions for the effective overcoming of a problematic legal situation in the future (for example, to consolidate evidence); c) be aware of the need to apply for other types of legal assistance<sup>1</sup>.

It is possible to carry out administrative and legal regulation of the quality of legal aid through the creation of specific state standards for the qualification of entities that provide it. For example, the Model Regulations on the Institution of Free Legal Aid stipulate that “employees of the institution whose powers directly include the provision of free primary legal aid may be citizens with higher legal education”.

Regarding the quality of higher legal education, it should be noted that in recent years the Ministry of Education and Science of Ukraine together with the Ministry of Justice of Ukraine and other public authorities have focused on promoting the following processes using technical assistance from international organizations and foundations: development, coordination and approval of the national program of legal education development, legal education standards, improvement of licensing requirements for higher education institutions and requirements for accreditation of educational programs; nurturing the

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

culture and values of quality education through the introduction of mechanisms to ensure its quality, strengthening academic integrity, deploying a system for monitoring the quality of education and the use of interactive teaching methods; reorientation of law schools to the formation of students' professional values, skills and abilities necessary for legal practice<sup>1</sup>.

The USAID New Justice Program and its partners are developing and implementing a number of initiatives, projects and documents aimed at modernizing legal education in Ukraine, namely: the concept of legal education development in Ukraine, national standards for bachelors and masters in law, policies and procedures for quality assurance centers for legal education, requirements for the content of the system of academic integrity in law schools, various internship projects through the use of court broadcasts in teaching law, etc.

Thus, the international experts involved in the Program, in cooperation with Ukrainian colleagues, developed and tested the Methodology of external independent evaluation of legal education quality assurance processes, the Tool for evaluating the standard quality of legal clinics of Ukraine, Modern tools for teaching law, as well as separate innovative curricula and methodological materials on professional responsibility of a lawyer, rule of law, legal innovations, prevention and counteraction to corruption,

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<sup>1</sup> Pidvyshchennya yakosti yurydychnoi osvity. USAID, 2020. URL: [https://newjustice.org.ua/uk/program\\_areas/pidvishchennya-yakosti-pravninchoyi-osviti/](https://newjustice.org.ua/uk/program_areas/pidvishchennya-yakosti-pravninchoyi-osviti/)

gender equality and women's rights, legal clinical education, mediation and other issues<sup>1</sup>.

Thus, administrative and legal regulation of the quality of higher legal education as a component of the quality of professional legal aid in Ukraine is carried out through independent monitoring of the quality of legal education, standardization of legal clinics, involvement of employers in the educational process and more.

The list of entities that can provide professional, but unorganized, informal legal assistance is wide and includes any lawyers who are willing to explain the content of a rule of law, consult, take up the case in court.

At the same time, there should be an accessible infrastructure of professional legal assistance within the state, region and municipality, which may include only those state and municipal structures, public organizations, individuals who provide legal assistance on official, formal and organized basis. Legal aid is recognized as organized only when its implementation is directly entrusted to a subject by law, other regulations, including local (statutes of commercial and non-commercial organizations, etc.), or when the functions assigned to the subject fall under the signs of professional legal assistance, even when it is not explicitly stated in the regulations<sup>2</sup>.

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<sup>1</sup> Pidvyshchennya yakosti yurydychnoi osvity. USAID, 2020. URL: [https://newjustice.org.ua/uk/program\\_areas/pidvishhennya-yakosti-pravninchoyi-osviti/](https://newjustice.org.ua/uk/program_areas/pidvishhennya-yakosti-pravninchoyi-osviti/)

<sup>2</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.



Therefore, the main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is to provide legal aid; information about them is freely available and can be checked (website, official registers, directories, etc.).

We agree with the position of S. Vilkov, who stressed that the resolution of the issue of administrative and legal regulation of the quality of professional legal assistance should be based on the approach according to which the qualification of legal aid covers two aspects – qualification (professionalism) of the subject (in this sense is a sign that characterizes the subject of provision) and the quality of the assistance itself (is a sign of the activity itself, its structure and content). It is not possible to say whether it is qualified or not until the actual provision of legal aid. Thus, the concepts of “legal aid” and “qualified legal aid” are related as generic and types of concepts<sup>1</sup>. In this context, there is no doubt that “professional legal aid” is associated by both domestic legislators and scholars, primarily with the activities of a lawyer. In the case of other entities that provide legal aid (for a fee or free of charge) – lawyers, notaries, local government officials and

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 “Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve”. Krasnoyarsk, 2004. 32 s.

executive authorities, it should be regarded as activities in the field of law or the provision of legal services (in the case of their payment)<sup>1</sup>.

Thus, having analyzed the administrative and legal regulation of the quality of professional legal assistance in Ukraine, we came to the following conclusions:

1) there are two approaches to the quality of professional legal aid. The first approach is narrow, considered through the quality of legal aid actually provided to persons entitled to free legal aid, and broad, which is considered through access to justice. Both approaches are valuable and promising and complementary. Quality legal aid is a means of obtaining effective access to justice, whether it is provided free of charge or not;

2) effective legal aid presupposes professionalism – the person providing assistance has special education, special knowledge, skills, work experience, subordination of his activity to professional rules, etc. Therefore, the quality of professional legal assistance should be characterized through the qualification standards set for a lawyer or attorney in general and in the implementation of professional legal assistance – in particular.

3) the most standardized, and therefore regulated secondary legal aid is protection and representation in court, where the subjects of administrative and

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<sup>1</sup> Panchenko V. Yu. Yuridicheskaya pomoshch lichnosti (obshcheteoreticheskiy aspekt): avtoref. dis. ... kand. yurid. nauk: 12.00.01 "Teoriya i istoriya prava i gosudarstva; istoriya ucheniy o prave i gosudarstve". Krasnoyarsk, 2004. 32 s.

legal regulation of the quality of professional legal assistance are: commissions of regional councils of lawyers, free secondary legal aid centers and the Coordination Center;

4) it is possible to create effective tools for administrative and legal regulation of the quality of professional legal assistance using the resources of civil society;

5) administrative and legal regulation of higher legal education as a component of the quality of professional legal assistance in Ukraine is carried out through independent monitoring of the quality of legal education, standardization of legal clinics, involvement of employers in the educational process;

6) the main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is to provide legal assistance; information about them is freely available and can be checked (website, official registers, directories, etc.).

Thus, high-quality legal aid presupposes professionalism – the person providing assistance must have special education, special knowledge, skills, work experience, subordination of his activity to professional rules, etc. It is revealed that, it is necessary to adopt a general legal act – the Law of Ukraine “On Legal Aid” and define: all types of such assistance (legal assistance, professional legal assistance and their varieties), legal service and legal procedure,

subjects ensuring its provision and those who provide it and their powers. According to the specified law there is a need to develop by-laws which already detail its basic sections and will establish the state standards of quality of rendering of legal aid in Ukraine.

It is proved that the administrative and legal regulation of the quality of free secondary legal aid is a positive obligation of the state to guarantee vulnerable citizens quality and timely resolution of problems related to their representation of interests in criminal, civil and administrative proceedings through its free legal aid system; the adoption of regulations in the field of quality standards for the provision of such assistance needs to be reformed in connection with the adoption of amendments to the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine.

### **3.2. Improvement of the Administrative and Legal Regulation of the Right to Receive Professional Legal Assistance in Ukraine**

Our study showed that the right to professional legal assistance in Ukraine is of great importance, but there is still controversy on some issues of administrative and legal regulation of certain rights, related to: the content and specific assistance, the subjects and their full implementation, infrastructure and quality standards.

The current legislation, which established the mechanism for exercising the right to legal aid, does

not fully meet the requirements of the time and needs further improvement. Despite the enshrinement of the right to professional legal assistance in constitutional and current legislation, uniform principles and standards for its implementation and provision have not yet been developed. There is an abuse on the part of those who receive such assistance and those who provide it. In addition, the right to professional legal assistance is not fully enshrined in some areas of law<sup>1</sup>.

Digitalization of public services in the framework of judicial and administrative reform, which was announced by the leadership of Ukraine, requires educational activities among the population, which in turn highlights the need for comprehensive reformatting of existing legislation to ensure the right to professional legal assistance.

The amendments to the Constitution of Ukraine and some procedural codes caused the need to increase the efficiency of existing methods and means of ensuring the realization of the right to professional legal assistance and the development of new ones that will expand its implementation. Currently Ukraine has no national policy to address issues related to the provision of legal assistance. Any program document (Strategy, Concept, National Program), any effective and efficient mechanisms for state and corporate

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya garantiya zashchity prav i svobod cheloveka i grazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchi>

control over the activities organizations and persons providing legal assistance have not been adopted since 2006.

Practice shows that even the most legally regulated type of legal aid – free legal aid is in its infancy, the process of its institutionalization and legal regulation has not yet been completed, so it has not reached the level of European standards of access to justice and quality of legal services. But this area in the outlined aspect needs improvement<sup>1</sup>.

Thus, the Law of Ukraine “On Free Legal Aid” does not provide free legal aid to foreigners (except for those who are citizens of the country with which Ukraine has concluded an international agreement on legal aid, the consent of which was given by the Verkhovna Rada of Ukraine; as well as foreigners and stateless persons may receive free legal aid in accordance with international treaties to which Ukraine is a party, if such treaties oblige member states to provide such assistance to certain categories of persons)<sup>2</sup> and stateless persons who permanently reside in Ukraine and have a number of other shortcomings that require urgent elimination. That’s why we can conclude that this law can and should be only part of the general law “On Legal Aid”, the adoption of which is required in the near future.

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov_govoruha.pdf)

<sup>2</sup> Pro bezoplatnu pravovu dopomohu: Zakon Ukrainy vid 02.06.2011 r. № 3460-VI. URL: <https://zakon.rada.gov.ua/laws/card/3460-17>

According to the procedure established in Art. 18 of the Law of Ukraine “On Free Legal Aid”, applications for one of the types of legal services are submitted by adults to the Center for the provision of free secondary legal aid or to the territorial body of justice at the place of actual residence of such persons, regardless of the registration of the place of residence or stay of the person. Along with the application for free secondary legal aid, the person (or his/her legal representative) must submit documents confirming that the person belongs to one of the vulnerable categories, among which are the characteristic features of the person to whom the legal representative is applying. The normative enshrinement of these provisions in accordance with the principle of legal certainty does not seem to raise any doubts about the implementation of the declared guarantees. At the same time, in practice, many people who intend to receive free legal aid face many difficulties. First of all, they are related to access to legal aid itself. In particular, it is a question of receiving and independent preparation of a number of documents which are required by the centers on granting of free assistance. Such requirements generally call into question the availability of this public service to some categories of persons who are unable to protect their violated or disputed rights on their own or exercise their procedural powers due to underage, incapacity or limited legal capacity<sup>1</sup>. It is necessary

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov_govoruha.pdf)

to collect and submit the following documents to confirm that the family has an income less than the subsistence level (one of the grounds for providing free secondary legal aid): 1) passport or other identity document; 2) registration number of the taxpayer's account card; 3) certificate of income for the last 6 months; 3) certificate of registration at the employment center and payments made – in the case of applying to the local center of persons registered in the prescribed manner as unemployed (if available); 4) certificate on the submitted declaration of property and income (on the payment of personal income tax and the absence of tax liabilities from such tax), issued by the relevant service center of the State Fiscal Service – in case of applying to the local center, including individuals – entrepreneurs, self-employed persons; 5) information from the State Register of Individuals – taxpayers of the State Fiscal Service, in particular regarding the amounts of paid income and withheld taxes; 6) certificate of information contained in the register of insured persons of the State Register of Compulsory State Social Insurance, in particular, on income and/or type and amount of pension (certificate OK5/OK7, issued by the Pension Fund of Ukraine) for the last 6 months<sup>1</sup>.

The problem is not even that a person needs to collect a bunch of documents to prove their right to free legal aid. Moreover, the Ministry of Justice of

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<sup>1</sup> Metodychni rekomendatsii shchodo orhanizatsii nadannya bezoplatnoi pravovoi dopomohy mistsevymy tsentramy z nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: nakaz Ministerstva yustytсии Ukrainy, Koor-dynatsiynoho tsentru z nadannya pravovoi dopomohy vid 19.07.2019 r. № 60. URL: <https://zakon.rada.gov.ua/rada/show/v0060419-19#Text>



Ukraine together with the Coordination Center for Legal Aid Provision has carried out regulatory work to facilitate access to free legal aid. This led to the approval of the Procedure for submitting information from the register of insured persons of the State Register of Compulsory State Social Insurance to free secondary legal aid centers<sup>1</sup> and the Procedure for submitting information from the State Register of Individuals – taxpayers on income of individuals’ provision of free secondary legal aid<sup>2</sup>. The technical implementation of the project is still ahead, but it greatly simplifies the procedure for providing free legal aid.

The technical implementation of these Procedures deprives people of the need to collect on their own certificates from the Pension Fund and the State Tax Service. Thus, the Pension Fund will provide, at the request of the centers, information on wages (income, cash benefits, assistance, compensation), on which insurance premiums are accrued and paid, the amount of pensions granted to persons who have applied for

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<sup>1</sup> Pro zatverdzhennya Poryadku podannya informatsii z reyestru zastrakhovanykh osib Derzhavnoho reyestru zahalnoobovyazkovoho derzhavnoho sotsialnoho strakhuvannya tsentram z nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: postanova Pravlinnyia pensiynoho fondu Ukrainy vid 02.07.2020 r. № 12-1. URL: <https://zakon.rada.gov.ua/laws/show/za630-20#Text>

<sup>2</sup> Pro zatverdzhennya Poryadku podannya Derzhavnoyu podatkovoyu sluzhboyu Ukrainy informatsii z Derzhavnoho reyestru fizychnykh osib – platnykiv podatkov pro dokhody fizychnykh osib na zapyty tsentriv z nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: nakaz Ministerstva yustytzii Ukrainy i Ministerstva finansiv Ukrainy vid 02.10.2020 r. № 3459/5/596. URL: <https://zakon.rada.gov.ua/laws/show/z0977-20#Text>

FSLA. The State Tax Service will provide information on the income of persons applying for FSLA at the request of the centers<sup>1</sup>.

The main problem is that the procedure for providing free legal aid is established by an act of a recommendatory nature. Therefore, this procedure and all others that will be adopted should be enshrined in the regulations, which have mandatory basis, but not in the “Guidelines for the Organization of Free Legal Aid by Local Centers for Free Secondary Legal Aid provision”. They “establish an approximate procedure for organizing the provision of free legal aid by local centers for free secondary legal aid provision to subjects entitled to such assistance, defined by the Law of Ukraine “On Free Legal Aid”. They are not a legal act and do not establish mandatory norms (rules of conduct) for persons applying for legal aid to local centers, but are developed and recommended for use only by employees of local centers during the reception of persons applying for legal aid”<sup>2</sup>.

A systematic analysis of the provisions set out in the recommendations shows the presence of a number of contradictions and differences in some aspects of the regulation of the outlined issue. For example, the provisions of paragraph 6 state that “the application

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<sup>1</sup> Informatsiynyi daydzhest systemy BPD. *Ministerstvo yustytzii Ukrainy*. 2020. Zhovt. URL: <https://www.legalaid.gov.ua/publikatsiyi/informatsijnj-dajdzhest-systemy-bpd-zhovten-2020-roku/>

<sup>2</sup> Metodychni rekomendatsii shchodo orhanizatsii nadannya bezoplatnoi pravovoi dopomohy mistsevymy tsentramy z nadannya bezoplatnoi vtorynnoi pravovoi dopomohy: nakaz Ministerstva yustytzii Ukrainy, Koor-dynatsiynoho tsentru z nadannya pravovoi dopomohy vid 19.07.2019 r. № 60. URL: <https://zakon.rada.gov.ua/rada/show/v0060419-19#Text>

for FSLA is made by the client in any form indicating the type of FSLA services and the essence of the legal issue, if the client or his representative has not applied for FSLA independently, the employee of Division 1/Bureau assists him to draw up such application in the form given in Annex 4 of the Guidelines”. If there is a developed application form, it is necessary to inform the applicants about it. In general, most application procedures are developed and implemented in electronic form for a long time, where all information is entered by the applicant personally and information from state registers is pulled up automatically, which in turn simplifies the procedure and makes it impossible to falsify documents by persons who are not entitled to such assistance.

At the same time, the transition only to the electronic form is also problematic, because the category of the elderly (over 60) is more vulnerable in this case. This is confirmed by the results of statistical observations: according to the Coordination Center for Legal Aid Provision in 2017, 118,596 people aged 35 to 60 applied to local free legal aid centers, which is 50.4 % of the total. There are only 6,121 of people over 60, which is 25 % of the total<sup>1</sup>.

Also, today the issue of providing free legal aid to a person who is held administratively liable for committing an administrative offense under the Code of Ukraine on Administrative Offenses has still not been resolved at the legislative level.

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/koziakov_govoruha.pdf)

Thus, a study of the decrees of the European Court of Human Rights has shown that the Court adheres to the following legal position in providing free legal aid in administrative cases: depending on the nature of the offense and the severity of the punishment of the person subject to the administrative offense, the offender may fall under the conventional notion of “accused of a criminal offense” (Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) with appropriate guarantees, including the lack of sufficient funds to pay for the services of a lawyer to use the assistance of a lawyer assigned to him free of charge, if the interests of justice require it<sup>1</sup>.

This guarantee is absent in the Code of Ukraine on Administrative Offenses. Therefore, it is necessary to provide this right in the new Law of Ukraine “On Legal Aid”, and to amend the Code of Ukraine on Administrative Offenses and the Law of Ukraine “On Advocacy and Advocacy Activities” and indicate that “free legal aid is provided to low-income citizens in cases of administrative offenses if sanctions in the form of administrative arrest or a fine are applied to them”.

How is it necessary to improve the administrative and legal regulation of the right to receive professional legal assistance?

First of all, in our opinion, it is necessary to develop and adopt strategic documents, which will

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya harantiya zashchity prav i svobod cheloveka i hrazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

develop a national approach to ensuring the realization of the right to professional legal assistance. This primarily concerns the development and adoption of the “Concept of Ensuring the Implementation of the Right to Professional Legal Aid in Ukraine”, which aims to establish general principles for the formation of a modern infrastructure for professional legal assistance on the basis of public-private partnership.

Based on this Concept, it is also necessary to develop and adopt the Law of Ukraine “On Legal Aid” which has to define: all types of such assistance (legal assistance, professional legal assistance and their varieties), legal service and legal procedure, the subjects of its provision and the actual those who provide it and their powers. Then there is a need to develop by-laws which will already detail its basic provisions and will establish the state standards of quality of rendering of legal aid in Ukraine.

We agree with those scholars and practitioners who point out that the Coordination Center for Legal Aid Provision and regional centers should monitor the implementation of quality standards in the implementation of the new Code of Civil Procedure of Ukraine and the Code of Administrative Procedure of Ukraine, the formation of judicial practice and the accumulation of law enforcement experience to provide the FSLA in civil and administrative proceedings in the feedback mode. This method will give the possibility to quickly and promptly identify and eliminate functional (in particular, procedural) shortcomings of the system of standards by adjusting the basic parameters and the formation of new levels,

which in general will improve the legal instruments to ensure the quality of legal aid<sup>1</sup>.

Increasing the level of access to professional legal assistance requires significant debureaucratization of administrative procedures in this area, by simplifying the procedure for applying for it, in particular by reducing the list of required documents and digitization of the procedure itself.

It must be noted that such legal services as educational and legal assistance must be included in the legal aid system in order to overcome the legal nihilism of the population and reduce the burden on state or municipal budgets. It will help to form a set of skills, abilities and knowledge through the impact on the consciousness of the applicant, which will help the person in the future to act independently in a standard life situation.

The development of new legislation to ensure the realization of the right to legal aid in general and professional legal – in particular, makes it necessary to follow the quality standards of such assistance, established in international legal acts (Basic Provisions on the Role of Lawyers (1990), Basic Principles Concerning the Role of Lawyers (1990)), and in the legislation of Ukraine (On the Advocacy and Advocacy Activity).

It follows from the content of these regulations that the standard of quality of professional legal aid

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<sup>1</sup> Kozyakov I., Hovorukha O. Aktualni pytannya realizatsii pryntsyypiv nadannya bezoplatnoi pravovoi dopomohy. *Nauk. chasop. Nats. akad. prokuratury Ukrainy*. 2018. № 1. S. 107–116. URL: [http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov\\_govoruha.pdf](http://www.chasopysnapu.gp.gov.ua/ua/pdf/1-2018/kozyakov_govoruha.pdf)

is that the person who provides it must properly protect the rights, freedoms and interests of citizens and ensure their access to justice<sup>1</sup>.

According to the modernized procedural norms (The Code of Administrative Procedure of Ukraine (Part 2 of Art. 16), The Code of Civil Procedure of Ukraine (Part 2 of Art. 16), The Commercial Procedural Code of Ukraine (Part 2 of Art. 16)) the legislator especially emphasized that only a lawyer should provide professional legal aid. This position is shared by the vast majority of scholars and practitioners. Thus, M. Semigin emphasizes that professional legal assistance provides an opportunity for everyone to apply to a person who has professional knowledge (professional) in the field of law (lawyer) in order to obtain proper legal information and/or effective protection of their rights and interests<sup>2</sup>.

As we have already indicated in the work, qualification means the degree and suitability, readiness for any kind of work<sup>3</sup>, the availability of professional education; level of preparation, skill, degree of readiness to perform work in a certain specialty or posi-

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<sup>1</sup> Botnev V. K. Kvalifitsirovannaya yuridicheskaya pomoshch kak konstitutsionno-pravovaya harantiya zashchity prav i svobod cheloveka i hrazhdanina: avtoref. dis. ... d-ra yurid. nauk. Moskva, 2013. URL: <https://www.dissercat.com/content/kvalifitsirovannaya-yuridicheskaya-pomoshch-kak-konstitutsionno-pravovaya-garantiya-zashchit>

<sup>2</sup> Semigin G. Yu. Sotsialnaya spravedlivost i pravo: osnovy vzaimodeystviya. *Sotsiologicheskiye issledovaniya*. 2009. № 3. С. 72–82; Vylkov S. V. Teoretychni problemy vyznachennya zmistu pravovoyi kategorii “bezoplatna pravova dopomoga”. *Yuryd. byul.* 2018. Vyp. 8. URL: [http://www.lawbulletin.oduvs.od.ua/archive/2018/8\\_2018/22.pdf](http://www.lawbulletin.oduvs.od.ua/archive/2018/8_2018/22.pdf)

<sup>3</sup> Velykyi tлумachnyy slovnyk suchasnoi ukrainskoi movy/ukl. i holov. red. V. T. Busel. Kyiv: VTF “Perun”, 2001. 1440 s.

tion, determined by the category, class or other certification categories<sup>1</sup>. Despite the diversity of bodies and persons providing qualified legal assistance, none of these bodies can replace the bar. A lawyer is a person who is able to provide professional legal assistance on all legal issues without exception. Based on the qualification requirements for lawyers, they must provide a much higher level of legal assistance than others<sup>2</sup>.

We agree with the position of these authors, but only with that only lawyers should provide professional legal aid in order to defend a person and be his representative in court. However, other types of legal aid can also be provided not only by lawyers, but also by other jurists.

Analysis of the experience of implementation of these activities by foreign countries demonstrates its three-tier system. Free access of law firms to the market of legal services is restricted and prohibited if the staff of the law firm does not include representatives of the bar. That is, the best way for these entities is to joint activity in the field of law, which involves the provision of legal aid and other types of legal services<sup>3</sup>.

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<sup>1</sup> Yurydychni terminy. Tlumachnyy slovnyk/za zah. red. V. H. Honcharuka. 2-he vyd., stereotyp. Kyiv: Lybid, 2004. 320 s.

<sup>2</sup> Vylkov S. V. Teoretychni problemy vyznachennya zmistu pravovoi katehorii "bezoplatna pravova dopomoha". *Yuryd. byul.* 2018. Vyp. 8. URL: [http://www.lawbulletin.oduvs.od.ua/archive/2018/8\\_2018/22.pdf](http://www.lawbulletin.oduvs.od.ua/archive/2018/8_2018/22.pdf)

<sup>3</sup> Ryabets O. M. Publichne administruvannya diyalnosti yurydychnykh kompaniy v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 "Administratyvne pravo i protses; finansove pravo; informatsiyne pravo". Nauk.-doslid. in-t publich. prava. Kyiv, 2020. 222 s.



However, the social value of the bar as a missionary institution under such conditions may be somewhat devalued. According to O. Riabets, the quality of professional legal aid must be ensured through mechanisms of public control. And the need for legislative establishment of profile self-regulatory organizations in the research area is clearly demonstrated, which, in his opinion, should be regional (municipal) and have the right to:

- receive quarterly information from law firms, individual specialists in the field of law on the scope of their activities, the volume and variety of services provided, their results and a separate justification of the price for the service provided;

- monitor compliance with professional ethics in the practice of law firms in the region;

- publication of methodical recommendations on carrying out activity by law firms of the region;

- represent the interests of the region during communication and cooperation with representatives of the public administration on issues related to regional and national development of the legal services market;

- develop proposals for optimizing the development of the legal services market with further proposals for their implementation by the public administration;

- develop rules, standards and requirements for the activities of law firms aimed at preventing violations of clients' rights, ensuring the quality of legal services, preventing the factors influencing the formation of a negative attitude of the community to the institution of professional legal activity;

– apply disciplinary measures in case of violation of the established and recognized rules which are binding on all law firms in the region<sup>1</sup>.

Therefore, in our opinion, it is necessary to adopt the Law of Ukraine “On Regulation of the Market of Legal Services in Ukraine”, which should define the standards and rules of professional activity of lawyers, which will be mandatory for all members of the legal community. The main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is defined – provide legal assistance; information about them is freely available and can be checked (website, official registers, directories, etc.).

Thus, our study in the field of administrative and legal regulation of the right to receive professional legal assistance in Ukraine makes it possible to state:

- 1) despite the importance of the right to receive professional legal assistance in Ukraine, there is still controversy on some issues of administrative and legal regulation of certain rights, related to: the content and specific assistance, the subjects and their full implementation, infrastructure and quality standards;
- 2) digitalization of public services, in the framework of judicial and administrative reform, which

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<sup>1</sup> Ryabets O. M. Publichne administruvannya diyalnosti yurydychnykh kompaniy v Ukraini: dys. ... kand. yuryd. nauk: spets. 12.00.07 “Administratyvne pravo i protses; finansove pravo; informatsiyne pravo”. Nauk.-doslid. in-t publich. prava. Kyiv, 2020. 222 s.

was announced by the leadership of Ukraine, require educational activities among the population, this in turn, highlights the need for comprehensive reformatting of existing legislation to ensure the right to professional legal assistance;

3) the amendments of the Constitution of Ukraine and some procedural codes caused the need to increase the efficiency of existing methods and means of ensuring the realization of the right to professional legal assistance and the development of new ones that will expand its implementation;

4) there are problematic issues that need to be addressed immediately, namely: a) any program document (Strategy, Concept, National Program) has not been adopted in Ukraine since 2006; b) effective and efficient mechanisms for ensuring state and corporate control over the activities of organizations and persons providing legal assistance have not been established; c) the procedure for providing free legal aid is established in an act that has no legal force, but is of a recommendatory nature; d) the procedure itself is overburdened with bureaucratic formalities and is not digitally endorsed; e) the unresolved issue of providing free legal aid to a person who is held administratively liable for committing an administrative offense under the Code of Ukraine on Administrative Offenses.

Thus, to improve the administrative and legal regulation of the right to receive professional legal assistance in Ukraine, it is proposed to: 1) develop and adopt strategic documents that will develop a nationwide approach to ensuring the right to professional legal assistance. This primarily concerns the

development and adoption of the “Concept of ensuring the implementation of the right to professional legal assistance in Ukraine”, which aims to establish the general principles of modern infrastructure for professional legal assistance on the basis of public-private partnership; 2) develop and adopt the Law of Ukraine “On Legal Aid” which will define: all types of such assistance (legal aid, professional legal aid and their varieties), legal service and legal procedure, the subjects of its provision and those who provide it and their powers; 3) develop bylaws that will already detail its main provisions and establish state quality standards for legal aid in Ukraine; 4) amend the Code of Ukraine on Administrative Offenses and the Law of Ukraine “On Advocacy and Advocacy Activity” and indicate that “free legal aid is provided to low-income citizens in cases of administrative offenses if sanctions in the form of administrative arrest or a fine are applied to them”; 5) adopt the Law of Ukraine “On Regulation of the Market for Legal Services in Ukraine”, which will define the standards and rules of professional activity of lawyers, which will be mandatory for all members of the legal community; 6) the main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is to provide legal assistance; information about them is freely available and can be checked (website, official registers, directories, etc.).

### Conclusions to Section 3

It is proved that there are two approaches to the quality of professional legal aid. The first approach is narrow, considered through the quality of legal aid actually provided to persons entitled to free legal aid, and broad, which is considered through access to justice. Both approaches are valuable and promising and complementary. Quality legal aid is a means of obtaining effective access to justice, whether it is provided free of charge or not.

It is found out that effective legal aid presupposes professionalism – the person providing assistance has special education, special knowledge, skills, work experience, subordination of his activity to professional rules, etc. Therefore, the quality of professional legal assistance should be characterized through the qualification standards set for a lawyer or attorney in general and in the implementation of professional legal assistance – in particular.

It is defined that the most standardized, and therefore regulated secondary legal aid is protection and representation in court, where the subjects of administrative and legal regulation of the quality of professional legal aid are: commissions of regional councils of lawyers, free secondary legal aid centers and the Coordination Center.

It is proposed to create effective tools for administrative and legal regulation of the quality of professional legal assistance using the resources of civil society.

It is found out that administrative and legal regulation of higher legal education as a component of the quality of professional legal assistance in Ukraine is carried out through independent monitoring of the quality of legal education, standardization of legal clinics, involvement of employers in the educational process.

It is defined that the main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is to provide legal assistance; information about them is freely available and can be checked (website, official registers, directories, etc.).

It is determined that despite the importance of the right to receive professional legal aid in Ukraine, there is still controversy on some issues of administrative and legal regulation of certain rights, related to: the content and specific assistance, the subjects and their full implementation, infrastructure and quality standards, etc.

It is found out that the digitalization of public services, in the framework of judicial and administrative reform, which was announced by the leadership of Ukraine, require educational activities among the population, this in turn, highlights the need for comprehensive reformatting of existing legislation to ensure the right to professional legal assistance.

The analysis in the field of administrative and legal regulation of the implementation of the right to

receive professional legal assistance in Ukraine made it possible to identify problematic issues that need to be addressed immediately, namely: 1) any program document (Strategy, Concept, National Program) has not been adopted in Ukraine since 2006; 2) effective and efficient mechanisms for ensuring state and corporate control over the activities of organizations and persons providing legal assistance have not been established; 3) the procedure for providing free legal aid is established in an act that has no legal force, but is of a recommendatory nature; 4) the procedure itself is overburdened with bureaucratic formalities and is not digitally endorsed; 5) the unresolved issue of providing free legal aid to a person who is held administratively liable for committing an administrative offense under the Code of Ukraine on Administrative Offenses.

## Conclusions

The monographic study reveals the content and essence of the administrative and legal framework for the implementation of the right to receive professional legal assistance in Ukraine. The main are:

1. It is proved that the right to receive professional legal aid is an independent component of the structure of the legal status of a citizen of Ukraine. It is one of the main means of ensuring the constitutional rights of citizens, because it is a professional legal support of a particular person in exercising his rights, freedoms, legitimate interests and responsibilities to the state in various forms. Professional legal aid is always personalized assistance, which is carried out at the request of a person in case of any life situation and which has the following characteristics: the presence of several parties (the person to whom assistance is provided and the person (persons) who provides it); existence of two actions (granting and receiving); professionalism (the person providing assistance is a qualified specialist, confirmed by state requirements for his education and experience); availability of the object of assistance (problematic life situation); and the presence of a special purpose (legal support in solving a problematic life situation and meeting the interests of a person in need of assistance).

2. In order to unify and standardize the legal requirements for the implementation of the constitutional right to receive professional legal assistance, it is proposed to adopt a separate special Law of



Ukraine “On Legal Aid in Ukraine” which defines the terminology, principles of such assistance, types of legal assistance and procedures powers of the subjects of providing professional legal aid. Also, the need to develop and implement the State Social Program for free legal aid for the period up to 2035, which should enshrine a nationwide approach to addressing issues of such assistance.

3. As a result of a comparative analysis of the administrative and legal support for the implementation of the right to receive professional legal aid, the following positive experience of foreign countries has been identified: 1) simplification of procedures for obtaining assistance; 2) further development of specialized procedures for frequent and urgent problems; 3) development of services that integrate legal assistance with other types of assistance; 4) reduction of services that are a lawyer’s monopoly; 5) improvement of legal information/consultations through websites; 6) a fixed fee instead of an hourly fee for lawyers for legal assistance; 7) fixed fees on the market of legal services; 8) availability of insurance of court costs; 9) mediation; 10) return of money for legal assistance from applicants, defendants or other sources of funding (for example, from the National Lottery) to the budget.

4. It is proposed to understand the subjects of ensuring the realization of the right to receive professional legal assistance as public authorities, as well as other non-governmental bodies with delegated powers, designed to create reliable conditions for exercising this right, protect and safeguard the con-

stitutional right to receive professional legal assistance. The first group of entities that ensure the exercise of the right to receive professional legal assistance includes: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine; The Commissioner for Human Rights and his staff; Ministry of Justice of Ukraine and its authorized territorial bodies; courts; prosecutor's offices; executive authorities and local governments; Legal Aid Coordination Center for Legal Aid Provision; The Supervisory Board of the Coordination Center for Legal Aid Provision and the Centers for Free Secondary Legal Aid. Non-governmental entities include: international organizations and foundations; NGOs; legal clinics created at law faculties of higher educational institutions of III–IV levels of accreditation. Their administrative and legal status is established in regulations that enshrine a set of their administrative rights and responsibilities and inherent in each of them methods and forms of their activities in the field of ensuring the right to receive professional legal aid.

5. It is proved that an independent element that reflects the essence of the mechanism of ensuring the realization of human rights and freedoms are legal procedures that must be developed and adopted by public administration bodies. Then a person can organize their implementation or use the services of professionals. The public administration bodies, that ensure the exercise of the right to professional legal assistance, create standard conditions and rules for the protection and restoration of human and civil

rights and freedoms through legal procedures in general and through administrative in particular.

6. It is proved that legal guarantees to ensure the realization of the right to receive professional legal assistance are a set of normative, economic, social and political mechanisms established at the legislative level, by means of which the state creates appropriate conditions for ensuring the realization of the constitutional human and civil right to receive professional legal assistance. The creation of an effective system of legal guarantees (normative and legal, institutional and organizational) to ensure the realization of the right to receive professional legal assistance in Ukraine is possible only by harmonizing these components in the direction of sustainable and inclusive development.

7. It is found out that effective legal aid presupposes professionalism – the person providing assistance has special education, special knowledge, skills, work experience, subordination of his activity to professional rules, etc. It is revealed that, it is necessary to adopt a general legal act – the Law of Ukraine “On Legal Aid” and define: all types of such assistance (legal aid, professional legal aid and their varieties), legal service and legal procedure, subjects ensuring its provision and those who provide it and their powers. According to the specified law there is a need to develop by-laws which already detail its basic sections and will establish the state standards of quality of rendering of legal aid in Ukraine.

It is proved that the administrative and legal regulation of the quality of free secondary legal aid

and can draw intermediate conclusions: this type of assistance is a positive obligation of the state to guarantee vulnerable citizens quality and timely resolution of problems related to their representation of interests in criminal, civil and administrative proceedings through its free legal aid system; the adoption of regulations in the field of quality standards for the provision of such assistance needs to be reformed in connection with the adoption of amendments to the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine.

8. In order to improve the administrative and legal regulation of the right to receive professional legal assistance in Ukraine, it is proposed to: 1) develop and adopt strategic documents that will develop a nationwide approach to ensuring the right to professional legal assistance. This primarily concerns the development and adoption of the “Concept of ensuring the implementation of the right to professional legal assistance in Ukraine”, which aims to establish the general principles of modern infrastructure for professional legal aid on the basis of public-private partnership; 2) develop and adopt the Law of Ukraine “On Legal Aid” which will define: all types of such assistance (legal aid, professional legal aid and their varieties), legal service and legal procedure, the subjects of its provision and those who provide it and their powers; 3) develop bylaws that will already detail its main provisions and establish state quality standards for legal aid in Ukraine; 4) amend the Code of Ukraine on Administrative Offenses and the Law of Ukraine “On Advocacy and

Advocacy Activity” and indicate that “free legal aid is provided to low-income citizens in cases of administrative offenses if sanctions in the form of administrative arrest or a fine are applied to them”; 5) adopt the Law of Ukraine “On Regulation of the Market for Legal Services in Ukraine”, which will define the standards and rules of professional activity of lawyers, which will be mandatory for all members of the legal community; 6) the main qualification criteria for inclusion or non-inclusion of a certain entity in the system of entities providing professional legal assistance should be the following: they operate in the legal form established by law (bar association, lawyer included in the Register, public organization, etc.); the main activity is to provide legal assistance; information about them is freely available and can be checked (website, official registers, directories, etc.).

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**A. V. Borovyk, N. Z. Derevianko**

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