

**International Legal Aid Group Conference**  
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**National Report – Moldova**

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## 1. Country general information

Moldova is a unitary republic; however, due to a political conflict that broke in 1992, a tiny part in the east of the country – Transnistria – has separated, and proclaimed its independence. This report reflects the situation only in Moldova, and does not include Transnistria, over which Moldova has no *de facto* authority.

### Population

The population of Moldova is just over 3.5 million.<sup>1</sup> There are slightly more females than males.<sup>2</sup> Out of the total number of population, over two million people live in rural areas and slightly fewer than 1.5 million live in urban areas. The major centres of population are the capital, the municipality of Chisinau, with 765,200 people (21.49 per cent of the country's population), and the municipality of Balti, with 128,100 people (3.6 per cent).<sup>3</sup>

According to the last census, carried out in 2004, 75.8 per cent of the population identified themselves as Moldovans, 8.4 per cent as Ukrainians, 5.9 per cent as Russians, 4.4 per cent as Gagauz, 2.2 per cent as Romanians, 1.9 per cent as Bulgarians, 1 per cent as other nationalities, with 0.4 per cent not declaring anything. In the two most populated centres the situation is as follows: in Chisinau – 67.6 per cent are Moldovans, 13.9 per cent Russians, 0.9 per cent Gagauz and 4.5 per cent Romanians; in Balti – 52.4 per cent are Moldovans, 23.7 per cent are Ukrainians, 19.2 per cent are Russians, 0.2 per cent are Gagauz and 1.8 per cent are Romanians.

### Type of legal system

Moldova is a parliamentary republic with a post-socialist legal system. The criminal justice system is a quasi-adversarial system, and defence powers are significantly limited at the pre-trial stage (the defence lawyer is entitled to full access to the case file only at the end of the criminal (pre-trial) investigation, and has limited investigative and administration of evidence powers).<sup>4</sup>

Moldova is a signatory of the International Covenant for Civil and Political Rights and the European Convention of Human Rights (ECHR) is directly applicable in the national legal system, hence the standards and case-law of the ECtHR are of high importance in the country. After gaining

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<sup>1</sup> The number of population at the beginning of 2013 was of 3,559,500. Source: National Bureau of Statistics: <http://www.statistica.md/category.php?!=ro&idc=103&>.

<sup>2</sup> Out of a total of 3,559,541 people at the beginning of 2012, there were 1,711,725 men and 1,847,816 women.

<sup>3</sup> Source: National Bureau of Statistics.

<sup>4</sup> For more details on criminal justice system see Cape E. and Namoradze Z., (2012), *Effective Criminal Defence in Eastern Europe*, chapter on "Effective criminal defence in Moldova", by Hriptievschi N., 2012 Soros Foundation-Moldova, pp. 260-285, available at <http://www.legalaidreform.org/criminal-legal-aid-resources/item/399-effective-criminal-defence-in-eastern-europe> (last accessed 25 February 2013).

sovereignty in 1990 and independence in 1991, Moldova undertook several reforms of the legal system to comply with the European standards, mainly derived from the European Court of Human Rights (ECtHR) jurisprudence and various recommendations by the United Nations, the Council of Europe and, more recently, European Union experts. Many elements of the post-Soviet system are still present in practice, as well as in various legal provisions.

## **GDP**

Moldova's GDP for 2012 was estimated at EUR 5,644 million / USD 7,252 million or EUR 1,586 / USD 2,038 per capita. In 2011 the GDP was estimated at EUR 5 million / USD 7 million or EUR 1,416 / USD 1,971 per capita.<sup>5</sup>

## **Average annual salary (full time work)**

The average monthly salary per economy for 2012 was MDL 3,477.7 (EUR 223 / USD 287). In the public sector, the average monthly salary for 2012 was MDL 3,265 (EUR 210 / USD 270).<sup>6</sup>

The average annual salary per economy for 2012 was MDL 41,731 (EUR 2,681 / USD 3,445).

## **2. Overview of the legal aid system**

The legal aid system was practically created after the entry into force on July 1, 2008 of the Law on state guaranteed legal aid.<sup>7</sup> The law has reformed the system on three levels: revised the scope and eligibility criteria for legal aid, created a new management body to oversee the legal aid system and introduced a mixed system of legal aid delivery.

Legal aid is provided in criminal and non-criminal cases. The current system provides two categories of legal aid: primary legal aid (advice on any matter except assistance with drawing procedural documents for courts, provided by paralegals and non-governmental organizations) and qualified legal aid (advice and representation in court, provided by qualified lawyers and non-governmental organizations). In case of detention, legal aid is provided immediate after arrest (called urgent legal aid that includes advice and representation during the first 72 hours of detention, known elsewhere as police station advice).

The legal aid system is managed by the National Legal Aid Council. It has a central administrative apparatus, led by the Executive Director, and 5 territorial offices throughout the country. The system employs a mix of delivery models: paralegals for primary legal aid, public defenders and private lawyers providing legal aid for qualified legal aid and non-governmental organizations for primary legal aid mainly.

In 2013 the approved budget for legal aid is 25.89 million MDL (EUR 1.6 million / USD 2.1 million),<sup>8</sup> which constitutes MDL 7.2 per capita (EUR 0.45 / USD 0.6). In 2006, before the adoption of the legal aid law, the budget for legal aid was 3.5 million MDL (EUR 212,227 / USD 226,527), which constituted 0.97 MDL per capita ( EUR 0.05 / USD 0.07). The increase of the budget is a considerable achievement of the system.

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<sup>5</sup> Source: National Bureau for Statistics: <http://www.statistica.md/category.php?l=ro&idc=191&>. The data for 2012 are only preliminary, the final data are not yet published.

<sup>6</sup> Source: National Bureau for Statistics: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3975>

<sup>7</sup> The Law on State Guaranteed Legal Aid was adopted on 26 July 2007, providing for a period of up to a year prior to its entry into force.

<sup>8</sup> The exact amounts according to the official exchange rate of 1 January 2013: EUR 1,618,459 / USD 2,146,161.

The current main challenges of the legal aid system are the following: ensuring quality of legal services; covering the remote areas of the country; improving eligibility criteria to ensure provision of legal aid to all in need; raising awareness of the population about the right to legal aid, especially in non-criminal cases, and expanding the paralegal and public defender networks. Several studies have been commissioned by NLAC in 2013 in order to provide recommendations in these areas.

## **Focus of 2013 ILAG reports: innovations in the methods of delivery and delivering legal aid services in a time of austerity**

Since 2013 the legal aid system is gradually including paralegal services among the legal aid providers. Paralegal services have been piloted since 2011 by the Soros Foundation-Moldova. Community paralegals are new to Moldova (and the Central and Eastern European region) as a concept and are considered an innovative model to both deliver basic legal advice and rights education on community level. In Moldova, community paralegals are persons that undergo paralegal training, irrespective of the background, and work in villages to provide basic legal advice and education to the population, as well as initiate activities in community interest. More details are provided below.

### **2.2 Delivering legal aid services in a time of austerity**

The legal aid system in Moldova did not face financial issues in 2013 mainly due to the fact that the system is new and growing (non-criminal legal aid became effective only since January 2012). However, judging by the speed at which the budget has increased since 2008 and the political and economic situation of the country, cuts in the legal aid budget might become an issue for the 2014 budget.

## **3. Administration of legal aid**

The legal aid system is administered by the National Legal Aid Council (NLAC) and its territorial offices (NLAC territorial offices). NLAC is an advisory body to the Ministry of Justice, charged with overseeing the legal aid system and advising the Ministry of Justice on legal aid policies. Hence the Ministry of Justice remains the policy making body in the field, with NLAC helping the Ministry to adopt relevant legal aid policies.<sup>9</sup>

NLAC is a collegial body with status of a legal entity of public law, composed of 7 members: two members are appointed by the Ministry of Justice, two members are appointed by the Bar Association, one member is appointed by the Ministry of Finance, one member is appointed by the Supreme Council of Magistracy and one member is appointed by the Ministry of Justice through public competition among the representatives of non-governmental organizations or academia.<sup>10</sup> A member of the NLAC may be a person with a degree in law or economy (for the member appointed by the Ministry of Finance), with minimum 5 years of experience, who enjoys a high level of respect in society. The mandate of the member of the NLAC is of 4 years and may be renewed once. The

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<sup>9</sup> See article 9 of the Legal aid law.

<sup>10</sup> See for details art. 11 of the Legal aid law; Minister of Justice order of 2 February 2008 regarding the regulation for organizing the competition for selecting a member of the National Legal Aid Council among the representatives of non-governmental organizations and academia.

Chair-person of NLAC is selected by its members via secret vote and can be revoked at the request of one third of the members. Revocation decision must be voted by two thirds of the members.

A diverse representation in NLAC was chosen on purpose, as an additional guarantee of its independence. NLAC members are not employed by this body or the Ministry of Justice; they only meet for the Council's meetings, which shall be organized not less than once every three months.<sup>11</sup> NLAC reports annually directly to Ministry of Justice, the Government and the Parliament<sup>12</sup> and submits quarterly reports to Ministry of Justice regarding the way it spends the finances allocated for legal aid.<sup>13</sup>

NLAC main functions are the following:

- Implements the legal aid policy in the state. This means overseeing the implementation of the legal aid law and other relevant laws, implementation of the Government or Ministry of Justice decisions, as well as of its own decisions. It also implies NLAC participation at drafting the legal aid policies, being entrusted with the function of collecting and analysing statistical data, making proposals about relevant legal aid policies and submitting the proposals about the legal aid budget to the Ministry of Justice;
- Determines the financial criteria and mechanisms for benefitting from legal aid, to be later on approved by the Government;
- Establishes the admission criteria for lawyers willing to be included in the national registry for legal aid providers. Initially NLAC has approved very "easy" admission criteria because the lawyers were sceptical and the system risked not having sufficient providers. Currently NLAC is working on new criteria that would allow selecting lawyers with good record in order to ensure better quality of legal aid. Since 2013 NLAC requires Bar Council's recommendation for the lawyer that applies to be on the roster of legal aid lawyers, in an attempt to involve more the Bar Association in ensuring quality of legal aid;
- Determines the payment mechanism and amounts of fees and other costs to be paid to legal aid lawyers;
- Ensures the quality of legal aid services, including by establishing standards for the providers involved in the legal aid system and determining assessment criteria for monitoring the legal aid services, in cooperation with the Bar, etc. NLAC has developed a quality monitoring methodology, which is currently being evaluated.

The Council's functions are implemented by its administrative central apparatus and five territorial offices, covering the entire country.

In 2012 the Law on legal aid was amended and the function of Executive Director and administrative apparatus of NLAC was introduced. The executive director is appointed by the NLAC, based on an employment competition, for a period of 5 years. The mandate can be renewed only once. The process of selection of candidates for the position of executive director and the competition procedure are determined by NLAC. The employees of the administrative staff of NLAC ensure the secretarial activities of NLAC. In 2013 the administrative apparatus of NLAC includes 5 employees, including the Executive Director.

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<sup>11</sup> Article 13 of the Legal aid law.

<sup>12</sup> See Art. 12 par. (1) let. f), Legal aid law.

<sup>13</sup> See Art. 12 par. (1) subpar. g), Legal aid law.

The delivery of state guaranteed legal aid in the regions is ensured by NLAC Territorial Offices.<sup>14</sup> These are legal entities of public law, set up in the 5 appeal court jurisdiction districts covering the territory of the country.<sup>15</sup> These offices have a distinct legal personality, being organizationally subordinated to NLAC. Their purpose is to implement the legal aid policies adopted by NLAC in the territory of their jurisdiction. They are in charge with eligibility determination, appointment of legal aid lawyers, making the duty schedules of lawyers for urgent legal aid, reviewing the lawyers' reports and making the payments, coordinating the primary legal aid in their jurisdiction, collecting necessary statistical data and submitting activity reports to NLAC every three months, monitoring the provision of legal aid, including by inspecting randomly the reports submitted by legal aid lawyers. In 2013 the total staff of the five NLAC territorial staff included 22 persons (coordinators / directors of the offices; consultants and accountants).

#### 4. Scope of legal aid

The Legal aid law provides for two categories of legal aid:

- Qualified legal aid – legal consultation and representation in criminal investigation offices, courts and public authorities, and
- Primary legal aid – basic information about law and assistance for drafting different acts, except procedural acts for court proceedings.

*Primary legal aid* should be provided to any person on any issues s/he might have, without being limited to a certain legal field. Any person can benefit from primary legal aid without having to prove his or her financial status. Primary legal aid should be provided immediately upon request or the latest in 3 days after the request was filed with the paralegal/NGO.<sup>16</sup> If the client's issue is a complicated one or the paralegal / NGO does not know the answer, the person should be advised to contact a lawyer or invited to come later if the provider can have an answer in maximum 3 days. The paralegal / NGO providing primary legal aid should explain the person the possibilities to apply for qualified legal aid. Lawyers can by default provide primary legal aid, but their services will not be paid by the state. Only qualified legal aid is provided by lawyers on state funding.

*Qualified legal aid* is provided in criminal, civil, misdemeanour and administrative proceedings. Legal aid in criminal cases is available from the moment of arrest throughout all stages of the case and in civil cases also before the civil law suit is initiated.<sup>17</sup>

Qualified legal aid is provided depending on means and merits test. For criminal cases practically the merits test is not applied, for every criminal case being considered that it is in the interests of justice to provide legal aid. Even means test in criminal cases is practically of a very limited application due to mandatory legal assistance that is provided in a wide range of cases.

*Means test for qualified legal aid:*

Qualified legal aid is provided irrespective of the person's financial status:

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<sup>14</sup> For details see the Regulations on the functioning of the Territorial Offices of NLAC, approved by Decision of NLAC no. 15 from 30.07.2008.

<sup>15</sup> Territorial Offices have their premises in the cities (municipalities) where the appeal Courts are located (Chişinău, Bălţi, Cahul, Comrat, Bender, Căuşeni).

<sup>16</sup> Article 18 of the Legal aid law.

<sup>17</sup> Art. 19 para (2) of the Legal aid law.

- when the person is arrested within a criminal or misdemeanor / minor offences procedure (in this case urgent legal aid is provided up to the appearance of the person before a judge to decide on pre-trial detention or the disposition of the case by the prosecutor);
- when legal assistance is mandatory in criminal procedure according to art. 69 para. (1), p. 2)-12) of the Criminal Procedure Code (CPC)<sup>18</sup> and art. 77 of the Civil Procedure Code;
- when the person is suspected of having committed a misdemeanour for which the sanction of arrest is provided within a misdemeanour procedure;
- when a person risks expulsion as sanction within the misdemeanour procedure;
- when the sanction of fine or community work is requested to be replaced with imprisonment or misdemeanour arrest;
- when the person has benefitted from social assistance during 6 months prior to the month when the legal aid application was filed in.<sup>19</sup>

Qualified legal aid is provided depending on the applicant's financial status:

- When the person needs legal assistance on criminal cases, and the interests of justice so require, but does not have sufficient means to pay this service,
- When the person needs legal assistance in complex misdemeanour, civil and administrative cases from the legal or procedural point of view, and the person does not have sufficient means to pay for this service.

*Merits test for qualified legal aid:*

Legal aid can be refused if:

- the legal aid application is manifestly ill-founded;
- the applicant does not have the right that is allegedly violated, as it results from the presented documents;
- the applicant has the possibility to cover the legal assistance costs from the property, except goods that are not included in assessing the wealth according to the law.<sup>20</sup>

In addition, in civil, administrative and misdemeanor cases, legal aid can be refused if:

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<sup>18</sup> Art. 69, (1) of the CPC states the following: 'Participation of a lawyer in criminal proceedings is mandatory in the case when:

- 1) requested by the suspect/defendant<sup>18</sup> (*note: this provision is very broad, encompassing practically any case. This was the reason for its exclusion from the Legal Aid Law, see below the explanation*);
- 2) the suspect/defendant cannot defend him/herself because of deafness, blindness, dumbness or other serious disabilities of speech, hearing, sight, as well as other physical or mental disabilities;
- 3) the suspect/defendant does not know or knows insufficiently the language in which the case is conducted;
- 4) the suspect/defendant is a minor;
- 5) the suspect/defendant is an enrolled soldier (military);
- 6) the suspect/defendant is charged with a grave, very grave or exceptionally grave offence;<sup>18</sup>
- 7) the suspect/defendant is arrested or is sent for a psychiatric expertise in a medical institution;
- 8) the interests of the co-suspects / co-defendants are contradictory and at least one is represented by a lawyer;
- 9) the victim's or civil party's lawyer takes part in the respective case;
- 10) the interests of justice require the participation of a lawyer at the hearing at first instance, appeal or cassation/recourse (*recurs*), or during the extraordinary modes of appeal (*note: the judge decides on the circumstances relevant to the interests of justice, based on the interpretation of the legislation in Article 71, paragraph (2) of the CPC and the SCJ explanatory decision on the right to defence in 1998, which is now largely outdated*);
- 11) the suspect/defendant is a mentally irresponsible person or he/she became mentally ill after committing the incriminating offence;
- 12) the criminal procedure refers to rehabilitation of a deceased person at the moment of examining the case.

<sup>19</sup> Art. 20 of the Legal aid law.

<sup>20</sup> Art. 24 para (1) of the Legal aid law.

- the legal aid application results from the applicant's commercial activity;
- the value of the claim is ½ smaller than the minimum of existence level, calculated by the Government;
- the applicant already benefits from legal aid for the same case;
- the legal aid application refers to damages for defamation;
- the legal aid application refers to the violation of the neighborhood / vicinity rights, except the cases that refer to the danger of collapsing of buildings, respect of the distance for buildings and disputes regarding the border.<sup>21</sup>

The refusal to provide qualified legal aid shall be reasoned and can be challenged in court within 15 days from the day when it was communicated to the applicant.<sup>22</sup>

## 5. Financial eligibility

The *means test* is regulated by the Legal Aid Law and other secondary legislation.<sup>23</sup> The beneficiary should have a lower income than the level provided by the government for eligibility for legal aid.<sup>24</sup> According to a government decision,<sup>25</sup> qualified legal aid is provided to persons whose average monthly income is lower than the minimum existence level per capita in the country. When calculating the average monthly income, the income for the past six months prior to the month in which the legal aid application was submitted is considered. The average monthly income is calculated from the monthly average income of the family to the number of family members. The amount of the minimum existence level is determined on the basis of National Bureau of Statistics data and is calculated according to the Regulation approved by Government Decision No. 902 of 28 August 2000. The average minimum level of existence in 2012 was 1,507 MDL (EUR 97 / USD 124).

The detailed methodology for calculating the income and determining eligibility for legal aid, as well as the template declaration that should be filled in by the person requesting legal aid, are provided for in Government Decision No. 902.<sup>26</sup> The beneficiary completes the declaration and also needs to attach one of the following documents, as relevant:

- A certificate regarding his/her family (how many family members, age);
- A certificate from the work place(s) regarding his/her monthly income, obtained during the previous six months;
- A certificate from the National Agency for Social Assistance regarding the monthly social benefits received.

In practice, the means test relies on the defendant's declaration. It is not checked by the NLAC territorial offices due to a lack of resources and access to the relevant databases to ascertain income and property of the legal aid applicants. They also do not have the necessary human resources to verify even a small sample of the requests. As a result when deciding whether a person is eligible or not, they have to rely purely on declarations compiled and deposited by the applicants. There is a perception among the Territorial Office coordinators that the system allows applicants

<sup>21</sup> Art. 24 para (1<sup>1</sup>) of the Legal aid law.

<sup>22</sup> Art. 24 para (2) of the Legal aid law.

<sup>23</sup> Art. 19 (1)(a) and (e); Art. 21 of the Legal Aid Law; Government Decision No. 1016 of 1 September 2008 regarding the approval of the Regulation on the methodology for calculating the income for providing state guaranteed legal aid, published on 5 September 2008.

<sup>24</sup> Article 20 of the Legal Aid Law.

<sup>25</sup> Government's Decision on the Methodology for a means test regarding eligibility for legal aid 2008.

<sup>26</sup> Government's Decision on the Methodology for a means test regarding eligibility for legal aid 2008.

that could afford a lawyer to benefit from legal aid and it is an area where NLAC should find solutions in the near future to ensure efficient spending of the legal aid budget. In a study carried out in 2011, some interviewed lawyers, judges and prosecutors thought that between 20%-50% of legal aid beneficiaries could in fact pay for legal aid, or at least partially.<sup>27</sup>

Qualified legal aid may also be offered with the partial financial contribution of the applicant when the person, whose income is greater than the amount set by the Government, is able to pay for a part of the legal assistance services, subject to condition that this contribution does not overcome his/her financial condition.<sup>28</sup> However, the mechanism for partial legal aid provision is not yet developed.

## 6. Different legal aid schemes and innovations in the methods of delivery

The Legal aid law provides a mixed system of delivery of legal aid. Qualified legal aid can be provided by private lawyers registered in the National register for legal aid providers and by public defenders. NGOs can also provide non-criminal qualified legal aid.<sup>29</sup> Primary legal aid can be delivered by paralegals and specialised NGOs.

The reason for choosing a mixed model was mainly to increase the quality and accessibility of the legal aid system well as to ensure that legal aid services are provided on a cost-efficient basis. It is believed that the competition between different types of providers will contribute positively to the cost and quality of the legal aid. In addition, it is believed that public defenders and paralegals, funded with public resources, would ensure a reliable back-up for the legal aid system in a scenario in which the fees of private lawyers escalate or they refuse or are unable to provide legal assistance for any particular reason. To date there is only one public defender office supported financially by the state since January 2012, until then the Soros Foundation – Moldova supported the public defender office from 2006 to 2011.

### 6.1 Public defenders

The law defines a *public defender* as a person who has qualified as a lawyer according to the Law on the Bar and who was admitted to provide legal aid on the basis of special admission criteria. Public defenders receive a fixed monthly remuneration from the relevant territorial office of the NLAC. All public defenders are requested to provide urgent legal aid (early access to lawyer, see below).

At the beginning of 2013, there were 12 public defenders, which represent 2.3 per cent of all legal aid lawyers (520) and 0.7 per cent of all lawyers (1,729 the total number of qualified lawyers, except those with suspended license). Until 2012, the Public Defenders' Office (PDO) was paid for by public and private funds: office maintenance and rent were covered by the legal aid budget, while the lawyers' honoraria were paid by the Soros Foundation–Moldova within the framework of a project on improving the legal aid system in Moldova. During 2009–2010, there were another 10 public

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<sup>27</sup> See Martin Gramatikov, Nadejda Hriptievshi, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, Soros Foundation-Moldova, 2012, available at: [http://www.soros.md/files/publications/documents/LAA%20Assessment\\_ro.pdf](http://www.soros.md/files/publications/documents/LAA%20Assessment_ro.pdf) (in Romanian, English copy available upon request)

<sup>28</sup> Art. 22 of the Legal aid law.

<sup>29</sup> NGOs potential to provide qualified legal aid was reduced after the amendment of the civil procedure effective since January 2012, according to which only qualified lawyers can represent in court. The law on equality expressly provides that NGOs can represent victims of discrimination in courts.

defenders specialized in juvenile cases who worked for approximately one year before joining the private lawyers providing legal aid, as their funding by UNICEF–Moldova was stopped at that time. From January 2012, the PDO in Chisinau, with seven public defenders, is funded from the legal aid budget. In 2013 NLAC hired 5 new public defenders to work in each of the Territorial Offices.

The PDO was created in 2006, prior to the adoption of the Legal aid law and served as a pilot office until the state took over its funding in 2012. The main idea for creating the PDO was to try a new model of delivery, bringing together a few lawyers who share similar values and standards for defence, placing quality of representation as the main goal of the office. In addition, the office had the role to develop standards for effective defence and try them in the Moldovan context. Criminal defence practice in Moldova has been dominated by solo practitioners who depended to a large extent on the system. Besides, active defence has not been a tradition in the Moldovan Bar and lawyers had always had a weak position in the criminal justice system.

The study on the impact of the Legal aid law in Moldova concluded that “the PDO has proved as a viable and necessary model for Moldova in terms of quality. To date the public defender office has integrated well in the justice system. The public defenders are well respected in the respective districts for their professionalism towards clients and other justice stakeholders. The justice actors, particularly criminal investigators, are significantly more careful regarding the procedures when they know that a public defender is appointed on the case. A proof of this is the few instances when the TO [Territorial office] was particularly asked to appoint any lawyer but a public defender. The clients’ feedback regarding the services of the public defenders is positive or very positive. The office has consistently applied various practices in order to ensure an effective defence to their clients. For example, the public defenders consistently insist on a private meeting with the client before the first police interrogation; they insist on having sufficient time for preparing the defence and demand that the law enforcement agencies and courts respect the terms provided by law. The PDO treats all clients with respect and tries to represent the client holistically, addressing the other needs that brought the client to the system rather than only the criminal case aspects”.<sup>30</sup>

## 6.2 Private lawyers providing legal aid

The Legal aid law uses the term “private lawyers who provide legal aid on request”, which means the lawyers who can enter into contracts with the NLAC Territorial Offices if they are interested to provide legal aid and are registered in the national registry for legal aid providers.

For a lawyer to provide legal aid, he/she must apply to the NLAC, which reviews the applications on a continuous basis. Initially the system had difficulties in recruiting sufficient lawyers to cover the entire country, in some districts the lawyers directly boycotted the new legal aid system and refused to participate in any way. Therefore, the criteria for selecting legal aid lawyers were very easy and virtually any candidate was accepted. This system of almost guaranteed acceptance was chosen to ensure that sufficient lawyers joined the system. Currently NLAC is revising the criteria for selecting the legal aid lawyers as a means to raise the quality of legal aid.

They are paid for handling cases. Private lawyers have so far been the main method of delivery of qualified legal aid.

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<sup>30</sup> See Martin Gramatikov, Nadejda Hriptievshi, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, Soros Foundation-Moldova, 2012, available at: [http://www.soros.md/files/publications/documents/LAA%20Assessment\\_ro.pdf](http://www.soros.md/files/publications/documents/LAA%20Assessment_ro.pdf) (in Romanian, English copy available upon request)

### 6.3 Advice sector – paralegals and NGOs

The Legal aid law states that a paralegal is “a person who is respected by the local community, with incomplete legal studies or completed higher education studies, who does not practice as a qualified lawyer and who, after a special training, is qualified to provide primary legal assistance to members of the community from the budget allocated for state guaranteed legal aid, according to a regulation on the status and qualifications of paralegals”.<sup>31</sup>

Initially the paralegals were introduced in 2010-2011 through a pilot project, implemented by the Soros Foundation-Moldova with the financial support of Swedish Government. The project has further detailed the concept of a paralegal and developed the following functions a paralegal should carry out:

- Provide basic legal advice to community members,
- Provide basic education about rights for community members, including the local government authority,
- Refer community members to appropriate institutions and / or lawyers,
- Solve local conflicts, including through mediation,
- Advocate issues pertinent to the entire community,
- Help the community fundraise for particular issues,
- Provide continuous information to the relevant stakeholders.

The regulation on paralegals’ activity was adopted by the National Legal Aid Council on 15 June 2011 (published on 13 January 2012) largely based on the project’s findings. Since 2013 NLAC undertook to fund 23 paralegals.

The rules for state funding of NGOs to provide legal aid are not yet developed, but are included in NLAC strategy for 2013-2014.

### 6.4 Early access to lawyer scheme

Any arrested person in a criminal or misdemeanor procedure<sup>32</sup> is entitled to free legal assistance,<sup>33</sup> which is provided up to the moment when the person’s status is clarified: either released or detained during pre-trial proceedings. In the Moldovan law this category of legal assistance is called “urgent legal aid”. The purpose of the urgent legal aid is to provide the lawyer as soon as possible after person’s arrest, ensuring the right to consult a lawyer shortly upon arrest, as well as preventing any possible abuse by the detaining authority. Usually it is provided up to the first hearing when the arrested person is brought before the investigative judge, unless the criminal investigation body or the body that arrested the person decides to let him/her free before bringing to the judge. If the case continues, the person can apply for ordinary legal aid at the NLAC Territorial Office. In cases where the defendant is detained prior to court, urgent legal aid is transformed automatically in qualified legal aid, with the same lawyer continuing to represent the person up to final resolution of the case. The client has in principle the right to request the appointment of another lawyer, but it would be the Territorial Office’s prerogative to decide whether to appoint a different lawyer or not, depending on the reasons brought by the client, the interests of justice and efficiency considerations.

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<sup>31</sup> Art. 2 of the Legal aid law.

<sup>32</sup> In Moldova criminal procedure and misdemeanor are regulated by different legislative acts and procedure differs, perhaps a tradition from the soviet legal system.

<sup>33</sup> Article 19 para (1) l. c) and l. d) of the Legal aid law

Urgent legal aid is provided by lawyers who agree to be included on the list of duty lawyers, drafted by each Territorial Office for the respective jurisdiction. Duty schedules are drafted every month, being agreed with the lawyers and sent to the criminal investigation bodies and courts 5 days prior to the end of the month. According to the CPC, urgent legal aid should be provided maximum in 3 hours from the moment the person is arrested: the body that arrested the person shall contact immediately, maximum within 1 hour from arrest, the NLAC Territorial Office, that has to appoint a lawyer immediately, but not later than 2 hours from the moment it received the request for appointment from the body that arrested the person.<sup>34</sup>

The roster of duty lawyers includes those lawyers who provide “ordinary” legal aid who have expressly applied to be included in the roster. The legal aid authority signs a contract with each legal aid lawyer, which sets out the lawyer’s obligations as duty lawyer. A duty lawyer is obliged to be available on all of the telephone numbers provided to the legal aid authority (usually mobile telephone numbers) during their duty days, and must be available to provide legal assistance. If a lawyer does not respond to a duty call within half an hour, s/he is considered unavailable. If a duty lawyer will not be available for more than one hour during a duty period, s/he must inform the legal aid authority, giving at least one day’s notice. A lawyer can be excluded from the duty roster if they cause delays to investigative actions, ignore duty calls (for example, by switching off their telephone during a duty period), or refuse to provide urgent legal aid for an unjustifiable reason. In the case of repeated breaches of their contractual obligations, the legal aid authority will terminate the contract and inform the Bar.

Duty lawyers are remunerated for the defence actions they provide, per each undertaken action. For example, a duty lawyer is paid 60 MDL (appr. 4 Euro) for the first meeting with the client, the same amount is paid for drafting a motion regarding a procedural action carried by police or for getting acquainted with the materials of the case, 40 MDL (appr. 3 Euro) are paid for each waiting hour after the first 30 minutes have passed for the time set for carrying out a procedural action. . Although lawyers are not entirely happy with the fees paid, they are not contesting these much. What they are contesting is the ceiling set to 200 MDL (appr. 12 Euro) per day, irrespective of the number of procedural actions taken (the fees and the ceiling is set in the Payment Regulation, 2008). This ceiling is a reminiscent of the old system and seen by the legal aid authorities as tool for controlling the costs for legal aid. However, in practice this ceiling is a deterrent for quality defence and an incentive for dragging the case. In order to encourage lawyers to accept duty calls on weekends and official holidays, duty lawyers are paid a “symbolic” fee of 40 MDL (appr. 3 Euro) for the period spent on duty, irrespective of whether they are called upon to provide advice to a client . The novelty of the law was to assign to the Territorial Offices’ the function of appointing the legal aid lawyers as compared to the previous rules when criminal investigation bodies and courts were directly calling on lawyers. The old appointment system per se is more effective, however, it got completely corrupted, especially at police station. For example, it is acknowledged that previously legal aid lawyers could enter the case after the client had been interrogated and could easily sign as being present at the first interrogation, or could enter the case as ex-officio lawyer while in reality also requesting remuneration from the client. Criminal investigation bodies were calling lawyers that would not be particularly interested in qualitatively defending the client but more in maintaining good relations with the criminal investigation body, who in return to a favour of signing necessary documents on a legal aid case would call the lawyer also for instances where clients were financially well. Even for legal aid, lawyers had to obtain the criminal investigation officer’s

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<sup>34</sup> Articles 28 and 26 of the Legal aid law, as well as the amendments to the CPC. Also see the Regulation of the National Legal Aid Council on the procedure for requesting and appointing a lawyer to provide urgent legal aid, approved on 16.07.08.

signature confirming the delivery of legal aid, in order to claim reimbursement. In such a system, the dependence and lack of lawyers' motivation towards an active defence is quite predictable.

According to the new rules, the NLAC Territorial Office is the one receiving all the calls from criminal investigation and courts and they are the ones appointing the lawyers, while in the localities outside of the Territorial Offices' residence and out of office hours, criminal investigation bodies and the courts call directly the duty lawyers from the list. Provision of urgent legal aid by lawyers not included on the list is not compensated by the budget, which is meant to prevent corrupt practices set between the criminal investigation and legal aid lawyers.

The current system of appointment of duty lawyers is not a very practical one and is rightly criticised for being too technical and bureaucratic, but it is hoped that it can be simplified over time, when a culture of qualitative defence is established in the country and trust regained in both criminal investigation and legal aid lawyers. A call center type of appointment system was discussed by the National Council, through which legal aid lawyers could be appointed. However, at the moment such a system was found too expensive and difficult to set up. Another important challenge is the continuation of the "pocket-lawyers" phenomenon, when lawyers friendly to the police are called during the arrest to sign the papers and thus provide legitimacy to the process. Such lawyers are not usually on duty lawyers' scheme and are not providing any defence to the client, on the contrary. A high profile case involving the arrest of a high official in February 2013 was reported in the media as using a "pocket-lawyer" for the arrest procedures, who did not even advise the client on his rights. This case has spurred discussions among legal community on this phenomenon and for the first time it is hoped that the Bar Ethics and Discipline Commission will take action.<sup>35</sup>

## 7. Legal aid expenditure and other statistics

### 7.1 Legal aid budget

In 2013 the approved budget for legal aid is 25.89 million MDL (EUR 1.6 million / USD 2.1 million), which constitutes MDL 7.2 per capita (EUR 0.45 / USD 0.6).

The legal aid budget has increased over years as follows:

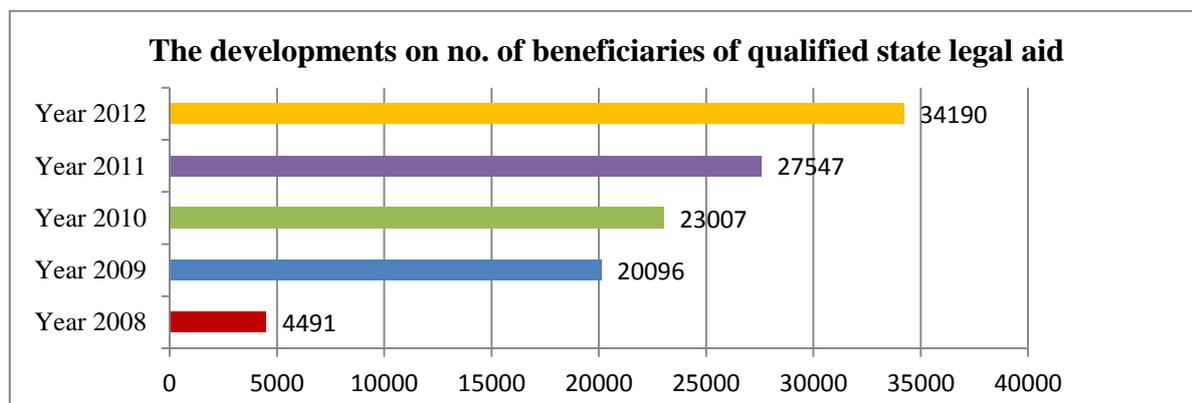
- Year 2008 – 3.8 million MDL (EUR 428,502 / USD 365,753)
- Year 2009 – 6.1 million MDL (EUR 392,920 / USD 548,887)
- Year 2010 – 6.1 million MDL (EUR 371,962; USD 493,276)
- Year 2011 – 6.94 million MDL (EUR 424,895 / USD 591,292)
- Year 2012 – 22.8 million MDL (EUR 1.4 million / USD 1.8 million)
- Year 2013 – 25.89 million MDL (EUR 1.6 million / USD 2.1 million)

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<sup>35</sup> Adevarul (newspaper in Romanian), "Pocket-lawyers" at the service of injustice. How did the head of the fiscal authority fall into the trap of a lawyer-phantom, by Nani A., 22.02.2013, [http://adevarul.ro/moldova/social/avocati-de-buzunar-cheremul-injustitiei-cazut-seful-fiscului-capcana-aparatorilor-fantoma-1\\_51264f3500f5182b85895afc/index.html](http://adevarul.ro/moldova/social/avocati-de-buzunar-cheremul-injustitiei-cazut-seful-fiscului-capcana-aparatorilor-fantoma-1_51264f3500f5182b85895afc/index.html) (last accessed 25 February 2013).

## 7.2 Number of legal aid beneficiaries

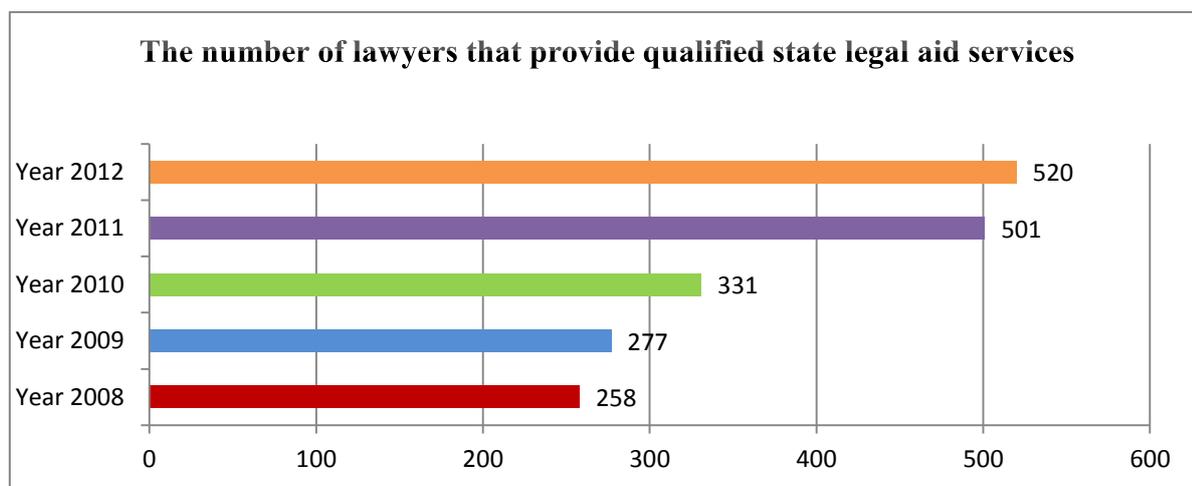
The number of beneficiaries of qualified legal aid has increased significantly over the years, as follows from the below figure:<sup>36</sup>



The number of beneficiaries of primary legal will be available only since 2013.

## 7.3 Number of lawyers that provide legal aid

The number of legal aid lawyers has also increased since 2008, which is a good indicator for the system that was initially boycotted by the Bar:<sup>37</sup>



<sup>36</sup> Source – data presented by the NLAC Executive Director at the Legal Aid Reformers’ Meeting in Tbilisi, 14-15 May 2013.

<sup>37</sup> Idem.