

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

NATIONAL REPORT: MOLDOVA

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Country general information

Moldova gained its independence in 1991 and since then has been trying to build democracy, the rule of law and market economy in the country. It is a parliamentary republic with a post-socialist legal system. It is a unitary republic, however, due to a political conflict that broke in 1992, a tiny part in the East of the country has separated, self-proclaiming its independence. Hence the report reflects only the system in Moldova, not including the Transnistria, over which Moldova has no de facto authority, unless specified.

The population of Moldova is slightly over 3,5 million, with slightly more females than males. 25,8% of the population live under the absolute poverty line and 2,8% under the extreme poverty line. The population has decreased in the last ten years mainly due to the conflict in the Transnistrian region, the high flow of migration and negative population growth. The full size of Moldova, including Transnistria, is only 33,700 km², with 350 km from North to South and 150 km from East to West. The rough estimates of Transnistrian population are of 534,000 inhabitants over a territory of 4,163 km².

Moldova is a signatory of the International Covenant for Civil and Political Rights and the European Convention of Human Rights (ECHR), hence the standards and case-law of the European Court are of high importance in the country.

Legal aid system overview

The legal aid reform is currently unfolding in Moldova, as a result of the entry into force on July 1, 2008 of the Law on state guaranteed

legal aid.¹ 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 area and introduced a mixed system of legal aid delivery.

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.

Qualified legal aid should be provided in criminal, civil, misdemeanour and administrative proceedings.

To date effectively only legal aid in criminal cases is provided. Legal aid is available from the moment of arrest throughout all stages of the case. Anyone who does not have the means or that is charged with an offence for which the Criminal Procedure Code requires mandatory legal representation is eligible for legal aid.

Civil legal aid should also be available for persons with no means to retain a lawyer and whose case is of a certain “legal or procedural complexity”. The legislator has left the civil legal aid field for later implementation, namely for 2012. Until then the criteria and mechanisms for delivery should be developed.

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.² 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. To date primary legal aid

¹ 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.

² Article 18 of the Legal aid law.

is provided either, only consultations are held for preparing the necessary operational rules.

The Law has created the National Legal Aid Council as an advisory body to the Ministry of Justice, charged with overseeing the legal aid system and advise the Ministry on legal aid policies. The Council's functions are implemented by five territorial offices, covering the entire country.

Delivery of legal aid was diversified, by instituting public defenders to provide legal aid alongside the private lawyers that are willing to provide legal aid on contract basis with the Territorial Offices of the National Legal Aid Council. Accredited non-governmental organizations (NGOs) will also be allowed to provide legal aid in civil cases. Paralegals and NGOs will provide primary legal aid.

Moldova has about 1,100 lawyers, out of which until the adoption of the law approximately 240 were engaged in legal aid.

Historical remarks – why reform was needed

The main reasons that determined the Government to embark on the reform process were the problems related to the availability, quality and cost of legal aid services and Moldova's aspiration to join the international community with good records on implementation of international human rights standards.

The main problems of the Moldovan legal aid system, many similar to the systems of Central and Eastern Europe, were the following: vague norms on entitlement for legal aid, lack of procedural norms for implementing the right to legal aid in non-criminal proceedings, lack of rules on appointment of legal aid lawyers that, in practice, put the latter in dependence on the criminal investigation bodies and judges, cumbersome rules for payment for legal aid and low fees that did not motivate lawyers to do a good job for their defendants/clients.³ A 2004 study⁴ revealed additional appalling details about the practice of legal

³ See for details the legal analysis of the legal aid system, drafted by Eugen Osmochescu, Ion Vizdoaga and Viorel Rusu, based on the methodology provided by the Open Society Justice Initiative, Budapest and Law Program of the Soros Foundation – Moldova, October 2003, report available upon request (Romanian or English).

⁴ See for details the statistical study on criminal legal aid delivery in Moldova, carried out by Victor Munteanu, Victor Zaharia and Ion Jigau, Soros Foundation – Moldova, 2004. The methodology was developed based on methodologies used in the studies

aid delivery, namely that legal aid was delivered only in criminal cases where the presence of a lawyer was mandatory, although by law it should have been delivered also in civil cases where legal assistance was mandatory; legal aid lawyers were appointed in a very high percentage of cases, while in practice these lawyers would often require additional payment from the clients, in-kind or in a monetary form,⁵ making impossible to do any reliable estimation on the needs and actual costs for legal aid; lawyers appointed in legal aid cases were very passively defending their clients; low payment for legal aid did not motivate good defence, but rather resembled a social assistance scheme for a category of lawyers that would not have otherwise a stable clientele.

The new law and the subsequent legislation are meant to respond to these problems, but the National Council and the other involved stakeholders are aware that problems are rooted too deeply in the mentality of the justice actors and many more efforts and time will be required to bring meaningful changes. The main focus in 2008 was put on developing the legal framework and educating the actors involved: criminal investigators, prosecutors, judges and lawyers about the new rules. Half a year is perhaps too short to draw conclusions about how effective the implementation of the law has been. What is clear so far is that the system cannot be rebuilt unless the actors involved are abiding by the rules and systemic problems of the justice system are addressed (some of the main challenges faced in the first months of implementing the new law are highlighted below).

Legal aid at police station (urgent legal aid)

Any arrested person in a criminal or misdemeanor procedure⁶ is entitled to free legal assistance,⁷ 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

on access to a lawyer carried out by the Bulgarian Helsinki Foundation in Bulgaria in 2002 and the Open Society Justice Initiative's recommendations. Findings available upon request (Romanian).

⁵ Regretfully such practices were noticed up to recently, e.g. in the Analytic Report: Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings (analyzed the findings of the trial monitoring programme for the one-year period of April 2006 through May 2007, OSCE Mission to Moldova, available on www.osce.org/moldova)

⁶ In Moldova criminal procedure and misdemeanor are regulated by different legislative acts and procedure differs, perhaps a tradition from the soviet legal system.

⁷ Article 19 para (1) l. c) and l. d) of the Legal aid law

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 Territorial Office of the Council. 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.

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 Criminal Procedure Cod, 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 Territorial Office of the National Legal Aid Council, 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.⁸

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

⁸ 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.

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 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 Territorial Office of the National Council 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.

Ordinary Criminal legal aid – eligibility and procedures

The law requires two conditions to be met for benefiting from legal aid: lack of financial means to retain a lawyer and the interests of justice to require delivery of legal aid.

Although mentioned as a requirement, the "interests of justice" is practically met in any criminal case and both the letter of law and the practice show that legal aid is provided in any criminal case, unless the person expressly waives the right to defence.

As far as the financial requirement is concerned, the beneficiary should have a lower income than the level provided by the Government for

benefiting of legal aid,⁹ except those persons that can get legal aid irrespective of their financial status. For calculating the level of the income for benefiting from legal aid the income received in the last 6 months of the month preceding the request for legal aid is taken into account. The detailed methodology for calculating the income and determining the level for benefiting from legal aid, as well as the template declaration that should be filled by the person requesting legal aid are provided for in the Government's Decision Nr. 1016 of 01.09.2008.¹⁰ One note has to be made here about the presumption and the need checking the applicant's financial status. The Government's decision states a presumption of trust in the data provided by the applicant. Thus, for taking a decision about the financial suitability of the applicant, it is sufficient for the latter to complete and sign the template declaration about financial means and submit it to the Territorial Office of the National Legal Aid Council. The respective office can request additional documents proving the financial status in cases when the sincerity of the person raises concern. Also, it can take a decision to provide legal aid and request the respective proofs to be brought later on during the case examination. This presumption is a very important one, as gathering the necessary proofs of the financial status might take up to 2 weeks, while the Territorial Office has to take a decision about legal aid in maximum 3 days from the moment of receiving the request. To ensure that the applicant provides the correct information, the declaration has a provision about the possibility of criminal liability in case of provision of false information.

In cases where the presence of a defence lawyer is mandatory (mandatory defence cases) according to article 69 para (1) p. 2) – 12) of the Criminal Procedure Code of Moldova (*CPC hereinafter*),¹¹ legal aid is provided irrespective of the person's financial status.

⁹ Article 20 of the Legal aid law.

¹⁰ Government's Decision Nr. 1016 from 01.09.08 regarding the approval of the Regulation on the methodology for calculating the income for providing state guaranteed legal aid, published on 05.09.2008.

¹¹ Art. 69 para (1) of the CPC states the following: "Participation of a lawyer in criminal proceedings is mandatory in the case when: 1) requested by the defendant (*note: this provision is very broad, encompassing practically any case. this was the reason for its exclusion from the legal aid law*); 2) the defendant cannot defend him/herself because of deafness, blindness, dumbness or other serious the physical or mental disabilities, 3) the defendant does not know well the language in which the case is conducted, 4) the defendant is a minor, 5) the defendant is an enrolled soldier (military), 6) the defendant is charged with a grave, very grave or exceptionally grave offence, 7) the defendant is arrested or is sent for a psychiatric expertise in a medical institution, 8) the interests of the co-defendants are

Provision of legal aid irrespective of the financial means to the person facing proceedings where legal assistance is mandatory is definitely a positive provision for the person. In practical terms, however, it raises a legitimate concern about the sustainability of the state budget to cover all the needs adequately. Especially that the CPC provides for an additional reason for mandatory legal aid at court stage, when the judge can decide that "interests of justice require legal aid in the given case" and the Territorial Office would have to appoint a lawyer. Again, it is too early to draw any conclusion, but there are already signs that show the tendency of judges to request appointment of legal aid even if the person has financial means, which may lead to increased demand for legal aid. A possible solution, under consideration by the National Council, is review of the rules on reimbursement of legal aid fees after the person's final conviction.

As far as the procedure, the Territorial Office takes a decision about providing or not legal aid within 3 working days from the moment the request for legal aid was received by the Territorial Office of the National Legal Aid Council. The request can be submitted by the potential beneficiary (the legal aid applicant), any relative, criminal investigation bodies or the court.¹²

Management of the system

The Legal aid law established the National Legal Aid Council, a legal entity of public law, in charge with administering the legal aid system in the country.¹³

The Ministry of Justice remains the policy making body in the field, reporting to the Government and the Parliament, with the National Legal Aid Council advising the Ministry of Justice on legal aid policies and overseeing the implementation of these policies.

contradictory and at least one is represented by a lawyer, 9) the victim's lawyer takes part in the respective case, 10) the interests of justice require the participation of a lawyer at first instance, appeal or recourse, or during the extraordinary ways of appeal (*Note: quit a broad provision, which can be applied quite broadly by the judge*), 11) the defendant is mentally irresponsible person, 12) the criminal procedure refers to rehabilitation of a deceased person at the moment of examining the case.

¹² See articles 26 and 27 of the Legal aid law.

¹³ Article 11 of the Legal aid law.

The National Legal Aid Council is a collegial body with the status of a legal entity of public law, composed of 7 members. The members are proposed by: 2 – Ministry of Justice, 2- Bar Council, 1 – Superior Council of Magistrates, 1- Ministry of Finance and 1 is chosen by the Ministry of Justice through a public competition among the members of NGOs and academia.¹⁴ A diverse representation in the National Council was chosen on purpose, as an additional guarantee of its independence. The National Council's 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.¹⁵

The National Legal Aid Council's 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's decisions, as well as of its own decisions. It also implies National Council's 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. Previously anyone who wanted to provide legal aid could do so. The criteria that the Council have adopted in 2008 are also quite broad, allowing any candidate to enrol. However, if later on proved that the lawyer does not provide legal aid according to the rules, she can be excluded from the registry;
- 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. The mechanism is not yet elaborated but is on Council's agenda.

¹⁴ Article 11 of the Legal aid law, as well as the Regulation of the National Legal Aid Council, adopted on 24.01.08, The Regulation regarding the procedure of selecting the member of the National Legal Aid Council from the NGOs and academia, approved on 11.02.08.

¹⁵ Article 13 of the Legal aid law.

The main handicap of the National Legal Aid Council is its status and modus operandi. The law entrusted the Council with very important functions, at the same time not providing for any remuneration for the Council's members and no permanent staff. The law only provides for the Ministry of Justice to provide secretarial assistance of the Council. This option would have been a more or less acceptable option (with questionable operational independence though) if the Ministry had at least a specialised Department dedicated to legal aid. But so far this is not the case. Moreover, the Ministry does not even have a full-time person to act as the Council's secretary, the function being carried out by one person that is also responsible for notaries and Bar issues in the Ministry. Since the National Legal Aid Council was created (March 2008) three secretaries have already been changed, which once again proves that the chosen solution is not the best one.

So far the National Legal Aid Council has managed to work well and achieve impressive results, given all the constraints it has, due to the dedication of some of its members, particularly the chairman, and the fact that it received technical assistance (especially for drafting secondary legislation and training the personnel and justice actors on the new rules) from the Soros Foundation – Moldova and the Joint programme between the Council of Europe and the European Commission on Increased Independence, Transparency and Efficiency of the Justice System of the Republic of Moldova.

It is hoped that after the initial period of operation the necessary changes will be done both to the legal aid law and the legal aid budget to provide some remuneration to the National Legal Aid Council members and to create an apparatus for the Council, both these conditions being crucial for ensuring the effective operation and sustainability of this body.

One good provision and innovation of the legal aid law was the creation of 5 Territorial Offices of the National Legal Aid Council, set up in the 5 appeal court jurisdiction districts covering the territory of the country. These offices have a distinct legal personality, being organizationally subordinated to the National Legal Aid Council. Their purpose is to implement the legal aid policies adopted by the National Legal Aid Council 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 the National Legal Aid Council every three months.

Legal aid providers

The Legal aid law establishes a mixed system of delivery, including paralegals and specialised NGOs for primary legal aid and public defender offices, private lawyers and specialized NGOs for the qualified legal aid. The reason for choosing a mixed model was mainly to increase the quality, accessibility and ensure a reasonable cost of legal aid services. This is hoped to be possible in a system where different providers compete for the best cost and quality they provide. In addition, public defenders and paralegals, to be paid by the state, would ensure a good back up for the state in case the private lawyers increase unjustifiably the costs of legal aid or simply refuse to provide legal assistance.

Paralegals – this is a new concept for Moldovan legal system, a new profession that still needs to be created. The goal is to have a shorter training period than a law degree requires, preparing the persons that have already received a medium or high degree of education, who are based in the rural areas and are not likely to leave it. The paralegals are meant primarily for rural areas, providing their population a chance for solving their basic legal issues in the village, without having to travel to the nearest urban centre to find a lawyer. It is also expected from the paralegals to engage with the local community in implementing various initiatives in the community, taking leadership and teaching the local members how to become more active in asserting their rights.

Specialized NGOs – these were introduced in the legal aid providers' list given the rich experience of NGOs providing legal aid we have in Moldova, especially in areas where few or no lawyers are specialized. Another reason was the fact the current legal framework allows representation in court in non-criminal proceedings even by a non-lawyer. The state is interested to use such resources given their expertise in a series of fields, as well as the additional sources they have for legal aid, as so far NGOs mostly operate on foreign money.

Public defenders – the law defines a public defender as a person that qualified as a lawyer according to the Law on Bar and was admitted to provide legal aid on the basis of special admission criteria. For acting as public defenders they receive a fixed monthly remuneration from

the relevant Territorial Office of the National Legal Aid Council. All public defenders are requested to provide urgent legal aid.

Private lawyers that provides legal aid on request are the lawyers that can enter into contracts with the Territorial Office if interested to provide legal aid and are paid for the handles cases and/or days being on duty for urgent legal aid.

In the case of Moldova working for a public defender office is attractive firstly to persons interested and committed to helping the poor, for young lawyers seeking experience, for lawyers that prefer working in teams and/or for lawyers interested in specializing in criminal defence. The level of remuneration is higher than in the public offices (e.g. the medium public officials in the Ministry of Justice) or what an average private lawyer would get providing only criminal defence, but lower than what an active experienced private lawyer would make. Thus the salary is not the main attraction for joining the office, except the fact that it is stable and guaranteed for at least a year. The well-equipped office is an attractive element for working in a public defender office. The fact that the office receives the clients from the Territorial Office and thus does not have to look for clients is another attractive part. And lastly, but not least, the in-house quality assurance mechanism is one of the most attractive aspects of the Public Defender Office operation, especially for young lawyers. The office manager is responsible for case distribution, overseeing the equal workload and ensuring the quality of the office' services. The manager reviews every pending case at least once, advising the lawyer on the measure that the latter can take for improving his/her performance in the case and reviews the case when finished. The manager is also available at any moment for consultation by any lawyer of the office. The lawyers are encouraged to work in teams and help each other. The most difficult and interesting cases are regularly discussed at the office meetings, which both helps the relevant lawyer and her client, and teaches the others about the relevant issue. The lawyers also benefit from on-going in-house training targeted to improve their professional skills. In a context of dominant solo practice in criminal cases, as Moldova is so far, practice in an office that shares experiences, encourages team work and learning from each other is a very useful place to start for any young lawyer. The biggest disadvantage of public defenders is their restriction on taking private cases and the mandatory inclusion in the duty lawyers' lists.

Only one Public Defender Office is operational to date and there is still a resistance on behalf of the private lawyers towards the public

defenders. In 2009 the National Council is scheduled to open at least two more public defenders. The experience of the existing office shows advantages of the public defenders mainly regarding the quality of the services provided. Given the specific context of Moldova, where the quality of legal aid was too low, creating the public defender office as an additional model of delivery was crucial in order to be able to create a critical mass of new lawyers, concerned primarily with ensuring quality for their clients. It is believed that after several years of operation, the public defenders, even if not established throughout the country, will positively influence the practice of all private lawyers to ensure effectively the right to defence of any individual.

Payment for legal aid

The main criticism of the old system was the methods and levels of payment for legal aid. The National Council has adopted new payment regulations (a temporary one for 2008 and a new one, improved as a result of the 2008 monitoring, for 2009). The new payment rules have not been changed radically, fees being calculated by procedural actions and a cap figure of what a lawyer can make in one day. The ceiling per day is heavily criticised by lawyers but could not be changed due to the fears that the budget would not bear significant increases that might occur if the ceiling is abolished.

Notwithstanding these limitations, the new payment rules provide for some innovations meant to motivate lawyers to actively engage in defending their clients. For example, the lawyers do not have to bring copies certified by criminal investigation officers, prosecutors or judges in order to receive their fees for legal aid they had provided, but rather have to submit a report at the end of the case where all defence actions are listed and on the basis of which the Territorial Office makes the payment. Only in cases that raise suspicion of the territorial Office, the lawyer may be asked to bring evidence of the legal aid s/he provided. If the case lasts more than three months, the lawyer can claim partial remuneration for the services delivered up to the day of submitting the respective report. For being on duty lawyers can receive monthly remuneration based on the submitted reports.

Another positive change was the provision of a fixed fee for being on duty. This was included in order to motivate lawyers to take the calls when contacted for urgent legal aid. The payment for being on duty is done irrespective of whether the lawyer had received any call, but can be withheld if the lawyer received a call but did not take it without a good reason.

The new rules have also extended the types of procedural actions for which lawyers can be reimbursed for, for example the first interview with the client, higher fees for services delivered on weekends or public holidays, additional points if the appeal or cassation claims are admitted, higher fees for cases involving juveniles or extremely difficult cases and a fixed fee for early resolution of the case. The last provision is aimed at getting lawyers interested in ending the cases earlier and hence contributing to the decrease of the courts' caseload, which is a big challenge so far for the justice system in Moldova.

The rules are far from ideal and are still criticised by the lawyers, however, they are an improvement as compared to the previous system and it is hoped that the lawyers will realize that and provide services of higher quality. This is the biggest challenge for the National Legal Aid Council for 2009 – to ensure that the entire country is covered and services are of an acceptable quality.

Legal aid budget

In 2007 the budget for legal aid was of 278,728 eur / \$381,017, with a 0,86 per \$10,000 GDP. This included only criminal legal aid and no funding on administration of legal aid.

The adoption of the Legal aid law has determined an increase in the legal aid budget, which for 2008 was of 3,840,000 MDL / 274,286 Euro and for 2009 is 6,946,800 MDL / 496,200 Euro.¹⁶ The increase is significant, given the economic situation of the country and compared with growth in other areas, however it is not enough. A note has to be made that the budget for 2008 has included also costs for administering legal aid (the Territorial Offices) for 5 months. Being the transition year, 2008 cannot be used to assess how sufficient this budget is. The real test is the 2009 year, which should indicate at least for criminal legal aid how adequate the budget is.

Challenges for implementing the new system

The main challenges in implementing the new system included the difficulties in setting up the National Legal Aid Council and its Territorial Offices. Both have been set later than the established scheduled, particularly the Territorial Offices that did not have offices

¹⁶ Information about the budget – discussion with Ms. Alexandrianu, Accounting Department of the Ministry of Justice, 16.10.2008.

and full staff for the first months (July – October). Another difficulty is the functioning of the National Treasury Office that delayed the payments to the lawyer. Although it is the Territorial Office that makes the payment, the funds are being transferred from the National Treasury and the procedure is quite cumbersome.

The biggest challenges concern the way the justice system function and the mentality of the actors involved towards legal aid. For example, criminal investigation bodies are used with the practice of calling the lawyer last minute and even carry out a procedural action where lawyer's presence is required and have the lawyer sign the papers later. This is an inadmissible practice and the Territorial Office's main task is to cut it. It is far from being properly addressed, but there are some signs of the criminal investigation officers trying to contact lawyers with a reasonable notice for the latter to be able to arrive at the police station. An unexpected tendency has been noticed towards the end of 2008, namely the criminal investigation officers calling on Territorial Office to appoint lawyers for urgent legal aid while the case should be dealt with as ordinary legal aid. Although positive for the client who gets to see the lawyer, such practices make planning impossible and the Territorial Office may end up with insufficient lawyers to cover all the requests.

Another example is the procedure for scheduling cases for appeal and cassation proceedings, which does not include a check on whether a lawyer is retained or not on the case. As a result, judges request legal aid for all scheduled cases, to ensure that they will not drag the case if the lawyer is not present, even if the client shows up with his/her client. In such circumstances, public funds are wasted only because there is no one to check and assess in advance if legal aid is indeed needed. The legal aid lawyers get paid for reviewing the case and appearing in court while the client has a private lawyer.

Finally, the lawyers themselves are a big problem. In a few administrative units there is no lawyer willing to provide legal aid and the Territorial Offices are struggling with finding lawyers from other regions. This is more expensive and lengthy. The lawyers are mostly resistant to enter into contract with the Territorial Offices because they do not want to change the way of work or simply because of being misinformed about the new rules. At the end of 2008 only three administrative units have not been covered by at least one legal aid lawyer, but negotiations are under way to recruit lawyers in the entire country. Also the National Council is considering the establishment of

two new public defender offices, which can help solve the issue of unavailability of lawyers.

Final remarks

Given the short time since the legal aid law entered into force and short activity periods of the new system, it is hard to draw any conclusions yet as to the real impact of the law. However, some preliminary conclusions can already be drawn regarding several aspects of the legal aid system.

Increase in the persons eligible for legal aid. While previously legal aid was practically provided only in cases of mandatory representation in criminal (though note it is a very long list, encompassing a high % of the criminal cases), the new legal aid law provides for criminal legal aid for poor persons when interests of justice so require, even if these do not fall under mandatory legal representation. Although previously legal aid at police station was supposed to be provided, the practice showed it was provided with a series of shortcomings.¹⁷ The new law provides for "urgent legal aid" and the implementing regulation provides for a separate payment for just being on duty, trying to motivate lawyers to participate in the scheme.

The creation of the National Legal Aid Council and its Territorial Offices should lead to a better management of the system and increased quality. They have already proven their usefulness by revealing many shortcomings of the established practice in the field and the steps taken to end the old practice, e.g. the new rules for lawyers' appointment, insistence on criminal investigation bodies to request the appointment of a lawyer in advance, except for urgent proceedings, insistence on the courts to request the presence of a lawyer in advance cutting on the practice of appointing shortly before a hearing with no time to prepare for defence. The Territorial Offices have also started influencing the criminal investigation bodies to call for appointment of lawyers upon arrest, otherwise they risk of not finding a legal aid lawyer willing to enter the case later on at the risk of not getting paid for that. Finally, the Territorial Office are starting

¹⁷ See for example the Institute for Penal Reform Preliminary report on the situation of defendants in pre-trial detention, carried out for the period of April 2007 – March 2008 in 4 pre-trial detention facilities, interviewing 363 defendants. The report found that 70% of the interviewed defendants have talked to the police before seeing their lawyer (although the law expressly states the right to a lawyer prior to the first police interrogation) and 40% of defendants have stated that they signed various procedural acts without having a lawyer.

disciplining the lawyers too as they refuse payments for procedural actions and insist on lawyers to observe their own Code of Ethics and stay with the client until the case is solved,

The implementation of the Legal aid law has also determined an increase in the legal aid budget from 274,286 Euro in 2008 to 496,200 Euro for 2009. It is hoped that the 2010 budget will be even higher, allowing to provide primary legal aid and civil legal aid.

Qualitatively speaking it is difficult to assess yet the impact of the legal aid law, but it is hoped that the new appointment rules will increase the independence of legal aid lawyers from criminal investigation bodies, which should contribute to an increase in quality of the legal aid services. Quality is also hoped to be boosted by the new selection rules for legal aid lawyers and as a result of introducing a mixed system of delivery, the public defender offices alongside private lawyers.

Lastly, the success of the system mostly depends on the commitment of the people involved in the system, particularly the members of the National Legal Aid Council and its territorial offices and the adherence of lawyers to their ethical rules. It is hoped that ensuring quality of legal aid will remain the focus of the National Legal Aid Council and it will find appropriate ways for retaining good lawyers in the system.