

# Qualified Legal Aid in Developed Democracies: A Comparative Legal Study

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**Abstract:** Professional associations of lawyers play an important part in improving the quality of qualified legal aid. The largest association of legal professionals today is the International Bar Association. In September 1990, the International Bar Association adopted the Standards for the Independence of the Legal Profession, which are designed to enhance the role and importance of lawyers. Accordingly, as stated in the preamble to the Standards, they should be taken into account and respected by national governments when drafting national legislation and practice, as well as by all lawyers, judges, the representatives of executive and legislative power, and society at large. The purpose of the study is a comparative legal analysis of the features of providing qualified legal aid in developed democracies. The leading method during the study was comparative legal analysis. As a result of the analysis, it was concluded that the problem of guaranteeing the right to receive qualified legal aid is common to all modern states. But the ways to solve it differ, because the content of law as a statutory regulator of social relations is determined in the context of national systems and is deeply connected with their culture.

**Keywords:** Modern legislation, developed countries, lawyers' association, professional activity.

## INTRODUCTION

The preamble to the Standards for the Independence of the Legal Profession emphasises that professional associations of lawyers play a vital role in maintaining professional standards and ethics, in protecting their members from unjustified restrictions and violations, in providing legal assistance to those in need, and in interacting with government and other institutions to achieve the goals of justice (IBA General Principles... 2006). At least one independent self-governing legal association recognised by applicable law must be established in each region, and its executive body must be freely elected by all members without any interference from other bodies or individuals. This provision should be exercised independently of the right to form or join, *inter alia*, other professional associations of lawyers and jurists. The tasks of the International Bar Association (IBA – International Bar Association) include: to promote free and equal access of the population to the justice system, including the provision of legal aid; to promote the proper level of legal education as a necessary condition for practicing law, continuing to improve the

skills of lawyers, etc. (Makushkin 2019; Mansurova *et al.* 2018).

In many countries around the world, associations and unions of lawyers are active, enjoying public and political authority, they significantly influence the development of public policy and legal culture of citizens. In Ukraine, since November 2002, the Bar Association of Ukraine has become such a professional association. The priority aspects of the Association's work include reforming the legislation on advocacy; assistance in judicial reform; monitoring the implementation of the Visa Facilitation Agreement by the European Union; development of international cooperation with legal organisations of the world, holding field conferences and meetings; development and intensification of the activities of its branches in the regions; protection of professional rights of its members and monitoring of human rights; response to the resonant events of the legal life of Ukraine (Charter of the Association... 2020). The Association is a member of the International Bar Association and maintains close relations with the Bar Council of Europe and the American Bar Association (Alieva *et al.* 2020).

In the United Kingdom, there are two similar associations, the Law Society, the joint governing body of solicitors, and the General Council of the Bar

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England and Wales, the central governing body of barristers. The status of the Bar Association is determined by the Royal Charter of 1845 and the Additional Charters of 1872, 1903, 1909, and 1954. All practicing solicitors are required to be members of the Bar Association. In Scotland, the professional organisation of lawyers is called the Law Society of Scotland. It was founded in 1949 and is currently governed by the Solicitors Act (Solicitors Act Scotland 1980).

According to the English Solicitors Act of 1974, the competence of the Bar Association includes: establishing requirements for the education and practical skills of persons wishing to become solicitors and monitoring their implementation (Article 2); issuance of a certificate (practicing certificate), which must have each practicing solicitor (Article 10); maintaining a register of solicitors (Article 6); regulation of professional activity of solicitors and their disciplinary responsibility (Article 31), specific features of reporting rules on clients' money (Article 32); development and maintenance of a compensation fund to aid clients who find themselves in a difficult situation due to the dishonesty of the solicitor (Article 36); insurance of solicitors against property liability in connection with their professional activities (Article 37). The Bar Association is responsible for implementing legislation on legal aid in civil cases; publishes a bulletin in which information relevant to solicitors is published. The General Council of Barristers of England and Wales performs the functions inherent in the trade union organisation: the protection of the professional interests of barristers, the expansion of the market for barristers, the regulation of their activities. The Council cooperates with judicial corporations that have retained their autonomy (Charter of the Association... 2020).

The purpose of the study is a comparative legal analysis of the features of providing qualified legal aid in developed democracies.

## **HISTORY OF CLINICAL MOVEMENT IN EUROPE AND THE USA**

In the United States, the most influential and oldest professional bar association is the American Bar Association (ABA). It is a voluntary non-governmental organisation founded in 1878 by 75 lawyers representing 21 states. Most individual ABA members are currently lawyers. Individual members can also be lawyers of government agencies, lawyers, scholars, law students. About 35 specialised professional organisations of lawyers take part in the activities of the

ABA as collective members (for example, the Judges' Association, the National Association of District Attorneys, the National Association of Attorney Generals, the National Association of Criminal Lawyers, the National Association of Women Lawyers) (Melnichuk *et al.* 2020).

The operation of the ABA is organised into sections, branches, committees. Its activities cover all aspects of the functioning of the US legal system: from issues of professional ethics to the development of bills of major political importance. Thanks to ABA, American lawyers differ favourably from lawyers in other countries in matters of professional ethics. Since its inception, this organisation has been working on formulating rules of professional ethics for lawyers. The association is a private organisation and cannot force anyone to accept and follow its rules. However, the Model Rules have been approved by many state legislatures or courts and have become legal regulations. The activities of the ABA are noted in all manifestations of the legal profession, starting with education. Since its inception, it has launched a long campaign aimed at developing a single educational standard for legal education (Boyd 1993).

ABA conducts informal accreditation of law schools (Burnham 2006), formulates general examination standards for those wishing to become lawyers, in particular a list of recommended examinations. Of particular note is The Multistate Professional Responsibility Examination (MPRE), as well as the Multistate Performance Test (MPT). The MPRE is held over two hours and contains 50 questions. ABA recommends this exam to be taken three times a year. The Professional Responsibility Exam is mandatory in all but three states. MPT lasts 90 minutes and covers legal analysis of problems, giving conclusions on ethical issues, organisation and management, definition of communicativeness (Official site of the... 2020). Thus, the ABA is the most influential association of lawyers compared to associations in other countries. Perhaps that is why the prestige of the legal profession in America is so high. ABA has invaluable experience in the ethical education of lawyers. In America, deprivation of the status of a lawyer (disbar) usually means that there has been a violation of professional ethics. ABA simulated almost all possible situations when there is a conflict of interest, as well as identified how to behave in such situations. This positive experience should be analysed in order to apply it in Ukraine (Barabanshchikov *et al.* 2016; Mingaleva *et al.* 2017; Talaspayeva *et al.* 2017).

Notably, the greatest influence and breadth of powers have legal associations in common law countries (UK, USA). As it turns out, this may be due to the specific features of the legal system, namely the leading role of precedents in the regulation of relations in the field of legal aid. Legal practice in common law countries is the most difficult, as it requires a lawyer to know a considerable number of precedents. Mutual aid within professional associations can significantly facilitate and streamline legal activities. Furthermore, associations always play a very important role in providing free legal aid. For example, the work of lawyers under the pro bono programme (free legal aid to the poor), which is not compensated by the US government, is the result of ABA policy. Thus, an important place in the mechanism of guaranteeing the right of everyone to receive qualified legal aid is occupied by the activities of states in the face of relevant institutions, which is aimed at providing such aid to poor citizens. Moreover, each country independently determines the grounds and procedure for providing “free legal aid”, which in its qualitative set are called “programmes (or systems) for providing free legal aid”.

As previously noted, legal clinical education takes an important place among the institutions guaranteeing the right to professional legal aid. In particular, according to M. Duleba, due to the creation of legal clinics, public human rights protection has become more effective and qualified and legal clinics have become the link of legal protection, which was insufficient to provide legal aid to the most vulnerable citizens (Gentosh *et al.* 2003). Legal clinical aid also differs in foreign countries, in particular this refers to legal clinical movement in the USA, Germany, the Netherlands, and other democratic countries (Monni *et al.* 2018; Tashpulatov *et al.* 2018a; Tashpulatov *et al.* 2018b; Tashpulatov *et al.* 2020; Timkina *et al.* 2019; Yulin *et al.* 2019).

At one time, Edward Levy (Attorney General in 1975-1977) wrote that the legal clinic would be an important step in American legal education. In his opinion, it is necessary to put law schools in a position where they will deal with real facts. It is necessary, according to the statesman, to conduct an experiment in the training of lawyers by methods similar to those used in medical schools (Tibitz 2010). The rise of legal clinics in the United States has been greatly facilitated by programmes organised by the Ford Foundation, including The National Council on Legal Clinics (NCLC) and the Council on Legal Education for Professional

Responsibility (CLEPR). For the first 5 years of its work, the Council on Legal Education for Professional Responsibility Foundation has issued over 100 grants to create new practice opportunities for young lawyers. And thus, by 1973, 125 of the 147 American law schools already had law clinics in one form or another. And in the late 1990s, there were already 147 structural units of legal clinics in the United States (Barry *et al.* 2011; Muniz *et al.* 2018; Stepaniuk 2018).

To date, law clinics operate in all law schools in the United States (Barashkin and Samarin 2005; Hovhannisian 2006). One of the first was the Chicago Law Clinic, a non-governmental organisation comprising practicing attorneys and partners of Chicago law firms. During the period of its historical existence (until present), this clinic has provided legal aid to more than 400 thousand clients. The clinic works in several different areas of free legal aid, for example:

- 1) direct service – the clinic provides cheap legal aid in general areas of law (in 2015, about 5,160 clients used this service);
- 2) “Pro Bono” – allows to direct clients who are unable to pay for legal services to the clinic's lawyers who provide free legal aid (more than 225 lawyers) (since 2015, this programme has provided free legal aid to more than 1,496 cases);
- 3) programme to combat domestic violence – provides aid to victims of domestic violence free of charge (in 2015, aid was provided to 735 victims of domestic violence, including their children);
- 4) seminar programmes – the clinic conducts not only free legal seminars for the population, but also a TV show on CAN-TV, which addresses immigration issues (in 2015, 161 seminars were held under this programme, which were attended by 3,789 people);
- 5) legal programme for environmental protection – legal services under this programme are provided free of charge, in particular in 2015 aid was provided to 20 clients;
- 6) immigration programme – implemented through the Pilsen office, which provides legal aid on immigration (in 2015 it was received by 1,233 clients);

- 7) "Advocate for the elderly and people with disabilities" – initiates aid to the elderly and people with disabilities (in 2015, this programme helped 368 clients);
- 8) the project of aid to former criminals, previously convicted of a crime and those who were serving sentences in prisons, makes provision for aid in employment (in 2015, 408 clients received assistance);
- 9) assistance in relations with creditors, where the lawyer directly draws up a debt repayment program to prevent bankruptcy of the client, and thus facilitates its implementation (in 2015, 419 clients received such aid);
- 10) protection of paternity, motherhood and childhood (almost 1,444 citizens received such aid under this programme);
- 11) holding field meetings to counsel people in poor areas;
- 12) "Municipal lawyer for contract and lease law" (about 150 clients are served under this programme annually free of charge) (Chicago Legal Clinic 2020).

In general, the Chicago Law Clinic is completely transparent and open to all legal practitioners and law students who are fully prepared to join its initiatives and a wide scope of programmes to provide quality aid to those in need (Onishchenko and Suniehin 2018; Onishchenko and Bobrovnyk 2019). This clinic specialises in most legal issues and implements a lot of diverse, interesting, and necessary programmes. In fact, most of its initiatives can be improved and implemented directly and in the practice of domestic legal clinics. In general, in practice, for the better assimilation of the material by the participants of legal clinics, special educational programmes are arranged for their clients, in the United States, for example:

1. "Interaction programme" – within its framework, groups of high school students are formed, then partnerships and interaction are established between each of these groups and any law firm or legal branch of a commercial organisation. With the help of such interaction, students learn the fundamentals of law and legal activity in practice.
2. "Parents and the Law" – a training course designed and conducted for young parents to

help them acquire practical legal knowledge and skills to preserve their families, prevent violence, and raise awareness of the consequences of various negative situations.

3. "Resource people" – an interactive programme designed to improve interaction between the police and the public. The training course is designed to prepare police officers for legal training (Tibitz 2010; Panfiluk and Szymańska 2017; Zvorykin *et al.* 2016).

These American programmes, as well as other clinical courses, have been introduced into educational programmes in law schools as specialised courses. As for Germany, until 2007, a law banning the provision of legal aid to non-lawyers was in force for almost seventy years. In 2007, this statutory act was declared unconstitutional by the Constitutional Court. Following the adoption of the relevant amendments to the legislation, legal clinics will appear in 14 higher education institutions in Germany. Since then, Heidelberg High School students have provided legal advice to those wishing to start a private business. The University of Hamburg specialises in social media, and the Hamburg Private Law School Brucerius Law School specialises in social law, as well as the rights and responsibilities of foreigners (Dubchak 2015; Bayboltaeva *et al.* 2018; Polovchenko 2019a; Prause and Atari 2017; Zykova *et al.* 2021).

The clinical movement in Germany is described by a special factor of development – mutual aid. At an early stage, already operating legal clinics share their experience with already established clinics on various issues. Meetings are organised between representatives of different clinics to exchange materials and techniques, as well as to consider how the clinical movement can contribute to the further development of the clinic and the improvement of existing legal aid models in Germany. For example, after several such informal meetings in 2016, it was decided to create a network association, which allowed this interaction to reach a higher level, and rightly so (Beljatynskij *et al.* 2010; Polovchenko 2019b).

The German Clinical Movement Network Associations are organisations that are designed to bring together clinics on a wide range of issues across the country on a voluntary basis. Therefore, the German clinical movement has a hierarchical structure and a full opportunity to find additional sources of funding to further develop legal clinical education in the

country. The Association of Legal Clinics for Refugee Rights was established on this principle. This association, along with other formal and informal associations in the field of clinical legal training in Europe (e.g. the transnational European Network of Clinical Legal Education, the Union of French-Language Legal Clinics, national associations in Italy, Poland, Russia, Spain, and the UK) plays a fundamental role in the dissemination of clinical education programmes.

All of the above associations constitute a valuable tool for like-minded people, providing them with a platform for learning, exchanging thoughts and ideas, or simply for mutual support and aid: through participation in conferences, trainings, joint projects, launching or implementing new programmes. In general, they play a fundamental role in the development of stable clinical education programmes in the long run, attracting institutional support (mainly from higher education institutions), setting common standards or allocating available financial resources. However, such a “family of clinical associations” is even more significant in terms of the human factor in the development of the clinical movement, because legal clinics are based on the motivation and enthusiasm of those who manage and direct the clinic. It is in the absence of this human factor that legal clinical education simply could not really function in the educational environment (Bieliatynskiy *et al.* 2018; Bogaevskaia *et al.* 2020; Polovchenko 2019c).

For example, J. Schukotske (2020), a professor at the University of Maryland’s Baltimore Law School, examines the world’s legal education system and emphasises that law schools in many parts of the world complement the teaching of legal theory in classrooms with so-called “clinical education”. This is an educational method that gives students the opportunity to work in a law firm, real or specially created within the university – the so-called “clinic”. Working in it, students provide legal services to real citizens who need their help. Indeed, in both the United States and Germany, the clinical movement is very closely linked to access to justice, and therefore clinics for the “living client” are usually the norm.

In most countries, university law clinics have been established to provide legal services and access to justice for poor communities, as well as to train the legal skills of lawyers (Barry *et al.* 2011). According to domestic scholars, legal clinical education is a new form of practical training of law students, which aims to

develop their professional skills of a lawyer and provides free legal aid to certain categories of the population who cannot solve legal problems. (Yelov *et al.* 2004; Pukhkal *et al.* 2016; Pylypenko 2018; Pylypenko 2020). According to Yu. Savelova (2011), the essence of legal clinical education is to strengthen the practical training of students by involving them in practical legal activities and providing free legal aid to the poor.

The activity and functioning of legal clinics at higher education institutions of legal orientation fully justify themselves, because, on the one hand, they are approached for free legal aid by a large part of the population, while on the other hand, those students-clinicians of law clinics who graduated from law school gain professional experience that allows them to be more competitive in the labour market. However, in many cases, legal clinics were set up by practicing lawyers. They headed clinics and at the same time participated in broader clinical programmes. Clinicians working in the clinic are considered on a par with law professors. For example, in 2001, the first African clinician was appointed a university professor. All clinics, without exception, were established at law faculties (Legal Clinics in South... 2002).

Clinical programmes are funded mainly from the following resources: from the university budget, from the General Fund, the Board of Legal Aid (organised by legal centres). The General Justice Fund is a special fund established by the lawyers of the Bar Association. The programmes are supported with the expectation that well-educated students will become their favourite lawyers in the future. Support also comes from well-known law firms that are not afraid of competitors and do not have to fight for clients. To date, this resource has not been fully used (Cardoso *et al.* 2018; Kostruba and Vasylyeva 2020b; Kostruba 2018; Kostruba 2020).

In Poland, every higher education institution in law has interdisciplinary clinical legal training programmes that provide an excellent organisation of their work (Berbec-Rostas *et al.* 2011; Ryapukhin *et al.* 2019; Sabirova *et al.* 2018). The first Polish legal clinic was established in Krakow at the Jagiellonian University on October 1, 1997. The Student Legal Council (Legal Clinic) of the Jagiellonian University provides legal aid in five sections: civil law, criminal law, medical law, labour law, and human rights (essentially, the international legal understanding of human rights and their protection in the European Court of Human Rights) (Student Legal Clinic... 2020a). The Legal

Council of the University of Silesia (Katowice) positions its services as the protection of human rights in their broadest sense in the fields of civil, criminal, labour law, administrative justice, and the protection of animal rights (Student Legal Clinic... 2020b). The University Legal Council of the University of Gdańsk (Gdańsk), apart from the already conventional areas of civil, administrative, criminal, and labour law, includes sections of tax law and a legal clinic such as Street Law (Student Legal Clinic... 2020c).

Such a peculiar organisation of Polish legal clinics may appear similar to the Ukrainian one (the presence of one general practice and several specialisations in one legal clinic). However, this similarity is misleading, as the Ukrainian General Practice Clinic does not specify in which areas it provides the aid (i.e. when applying to legal clinics in Poland and Ukraine for a specific, less common area of law, the client in Poland will probably be denied due to lack of aid in this area, while in Ukraine the client will either get poor consultation, or refusal due to the complexity of the case). After all, the provision of quality advice by a legal clinic involves its control and verification by a competent teacher. If a curator is responsible for each area of legal aid in Polish legal clinics, in Ukraine a legal clinic often has only one or two teachers permanently involved in its work (admittedly, they cannot gain insight onto all specialised cases, at best – they will redirect the client to the expert, if any, among the partners of the legal clinic). Therefore, the presence of specialisation in a legal clinic must involve the involvement of a teacher or lawyer-practitioner on a permanent basis, who is an expert in a particular field (Galay 2016; Dinzhos *et al.* 2015a; Dinzhos *et al.* 2015b; Kostruba and Vasylyeva 2020a).

Another feature of legal clinical education in Poland is that legal clinics, based on mutual expression of will, enter into cooperation agreements with the Ombudsman for joint legal education activities (Ivanovskaya 2013; Kostruba 2017a; Kostruba 2017b; Shakbutova *et al.* 2020). The management and financing of Polish legal clinics is carried out by the Foundation of Legal Clinics, which also organises liability insurance of legal clinics for damage caused by their actions. The insurance contract is concluded by the institution of higher education, which acts as the insurer. Thus, the legal clinics of many European countries during the period of their existence have developed the practice of their activities due to a number of developed clinical training programmes, which, admittedly, differ from each other. The analysis

of these programmes allows to identify such models of legal clinics in European countries:

1. Legal clinics that work directly with the client. Historically, they have been called in-house clinics, or live-client clinics. Such clinics operate within universities and work with real-life clients, who are selected from across the array of faculty-curators based on their learning value to students (Duncan and Kay 2011). Students, on the other hand, are accountable to clients and conduct evaluative research, structured analysis necessary for a particular case, and prepare procedural documents based on the results, and in those countries where permitted, offer not only legal advice but also representation of the client's interests in court (for example, in Germany, Great Britain, the Netherlands). Here the main aspect is the direct control and assistance of teachers-curators in the preparation and analysis of the work. Thus, law clinic students have the opportunity to personally feel the problems of their clients, face ethical issues, and this helps them develop the values of professional activity (Smorto 2015).
2. Law clinics that work on the programme of activities outside the university (the externship programmes) allow students to work with professional lawyers – barristers, judges. Such clinics are described by a “three-tier relationship” between student, practitioner, and teacher-curator (Milstein 2001; Kostruba and Hyliaka 2020; Kostruba *et al.* 2020).
3. In legal simulation-based clinics, students do not work with “real” clients, here cases are resolved, selected and developed by teachers-curators based on “standard legal cases” (legal conflicts). The only positive factor in the activities of these clinics is the safety of the practice given the absence of risk of negative legal consequences for the client due to an accidental mistake of the student clinician (Dunn and Mckeown 2015; Dubrovin *et al.* 2014).

The history of the clinical movement in Europe shows that the effort alone, albeit significant, is insufficient to create a clinical education, there is also a need to have enough money and energy to support the daily work of the clinic for a long time. However, the experience of many innovative and exciting clinical education programmes across Europe demonstrates

the strength and success of this form of qualified legal aid.

### **FEATURES OF PROVIDING QUALIFIED LEGAL AID IN DEVELOPED DEMOCRACIES**

In each country, the systems of aid to the poor are unique, given the local, cultural, and historical specifics, even within one legal system. The American system, much more widely than the British, uses lawyers working in the legal aid service, public defenders. The English system is dominated by private lawyers. In the United States, the approach to legal aid services in civil matters has been, at least in part, highly politicised, which has not been the case in the United Kingdom (Reznichenko 2004). Moreover, legal aid models differ not only at the state level, they can also be different within one country. For example, each US state has its own model, as the method of providing such assistance is left to the discretion of the states themselves. Furthermore, in some countries the systems of aid in civil and criminal cases differ (USA, Ukraine), and in others it is a single programme (Netherlands, France). Each country considers its system to be the best. But there is no best system, there is only the optimal one, which is suitable for a particular country, considering the existing legal traditions. One thing remains the same – governments are constantly balancing between the efficiency of the system and the principle of economy. After all, for the system to be viable, funding is required, and the more efficient the system is supposed to be, the larger the financial infusions must be. The principle of reasonableness does not allow this to be done. Thus, in seemingly prosperous France, a general strike of lawyers took place on December 18, 2006, the main demand of which was an increase in fees for free legal aid and a change in the free aid system itself (Shtal *et al.* 2019).

The experience of Western countries indicates that the government itself has made little effort to create a multifaceted legal aid system. The initiative must go both from above and below. And in many countries where the institution of civil society has already been developed, we see a variety of forms of legal aid initiated by society itself. In the Netherlands, these are the so-called “legal shops”, in the United States – various public organisations, such as the American Civil Liberties Union, etc. A positive experience for most countries has been the creation of an intermediate body (for example, the Legal Aid Council in the Netherlands), which is affiliated with the government and formally independent, such a body as

close as possible to the population and its problems, but funded from the budget (Krayushkina *et al.* 2019).

Legal aid systems in their purest form are almost non-existent, as most countries have concluded that mixed systems are effective. Here are some government models that have become widespread in developed Western countries. The most common models of free legal aid include “appointment of lawyers”. In European countries, this model is dominant, and in Ukraine – in fact, the only one. This system is the simplest for law enforcement, but does not protect the rights and interests of the client (Soloviova 2020; Starikov *et al.* 2011).

In the United States, for example, defence attorney programmes are most often created in small municipalities that do not have an independent public defence agency. Local authorities compile a list of privately practicing lawyers who are ready to represent the interests of those who need it. The selection of lawyers for a particular case is carried out by the court based on a one-time appointment or by the judge choosing a lawyer from the relevant list (in cases that require specialisation). Attorney fees are paid through the federal or state budget, and the attorney must obtain the court’s consent to the costs of conducting their own investigation or inviting experts (Manafov and Dmitriev 2002). For such a system to function properly, the state determines the remuneration of lawyers, which must be no lower than the market price for the provision of such legal services, otherwise lawyers will perceive their activities under this system as a burden. In such a situation, they will prefer to run the affairs of clients who will pay generously for their work. The shortcomings of the appointment system arouse interest in other models that have been successfully tested in different countries.

Among the models of free legal aid, one should also note the “office of the state (public) defender”. This model assumes the existence of a special government agency that provides free legal aid. The lawyers working in such an office are full-time employees and receive a regular salary, not remuneration for handling specific cases. This system is called the Public Defenders’ Office. Public Defenders’ Offices are state-funded organisations that serve the accused underprivileged citizens free of charge. In some states of the United States, attorneys, employees of the department, are formally considered government officials. The public defender has assistants: private detectives who collect evidence in favour of the

accused, clerks, stenographers, and other auxiliary apparatus. A public defender can use the services of lawyers who are not in their office, but who have agreed to speak on specific cases free of charge. Employees of public defender departments are paid and recruited from among admitted lawyers who have passed the examination of the qualification commissions, they are created by the authority that founded the department. Usually, employees are prohibited from joining together so that they devote all their working time to protecting the poor (Stepanchuk *et al.* 2017).

As practice shows, lawyers for public defenders work very vigorously, but citizens still distrust such aid and prefer to approach private lawyers, who have taken on the burden of providing free legal aid. Private lawyers themselves are just as sceptical of public defenders. For example, Edward Levy notes: "There is one reason for my concerns about the work of public defenders. It seems absurd to have two state bodies, which are maintained at the expense of taxpayers, but one of them is trying to put a person in prison, and the other – to get him out of there. It is difficult to understand how a public defender, a servant of the state, can perform their duties satisfactorily both in relation to the state and in relation to their client. It's really hard to determine who their client is" (Inbau *et al.* 1968).

Nevertheless, it is believed that the system of public defence agencies provides better legal aid than a "lawyer by appointment". After all, for lawyers working on this programme, the agency is the only place of work. The psychological point is very important here: lawyers do not perceive this work as a burden. Notably, services of public defender were established for the experiment in Scotland and England. They constitute small groups of staff who are in fact employees of the English Legal Services Commission or the Scottish Legal Aid Council. Within both legal systems, the services of the public defender conduct only a relatively small part of all cases. Private lawyers look at them with some arrogance and suspicion (Reznichenko 2004).

The most cost-effective free legal aid programmes include the "duty lawyer" programme. These are in-house lawyers who are recruited by the legal aid authorities responsible for the provision of legal services, with the obligation of "duty" representation. Another lawyer can handle many cases at the same time. However, a considerable number of different

cases can negatively affect the quality of legal aid. The duty lawyer institution is active in the UK to provide aid in criminal matters. To receive it, one does not need to confirm their property status.

In states with the Anglo-Saxon system of law, the *judicare* system is especially common. Under the *judicare* system, the help to the poor is provided by experienced private lawyers, who receive a separate fee for each case. In many countries, certificates are used, which are issued in each particular case and confirm the performance of work. Those who need legal aid choose their own lawyer, and this is undoubtedly a plus of this system. The advantages also include the ability to control each financing decision. Under this system, the responsibility for quality lies with the lawyer. To ensure an adequate level of quality, a rather cumbersome state apparatus is required; therefore, the *judicare* system is considered to be the most expensive form of providing free aid to the poor.

At present, multinational judicial systems (England, the Netherlands) are interested in the idea of contracts with legal aid providers. Contractual services are services provided by legal practitioners or organisations that engage legal practitioners under contract with public authorities responsible for the provision of legal services. The advantages of this system are as follows: a certain degree of control over the appointments; used to improve the quality of services (provided that there are clearly defined quality criteria); facilitates cost control; gives the "service provider" some certainty about funding; allows to stimulate the provision of services not otherwise available. The disadvantages of this system include the lack of energy representation due to dependence on government contracts. Although this system can be introduced to improve the quality of services, in the absence of clearly defined quality criteria, it can lead to their reduction.

For maximum effectiveness, special attention is paid to the development of qualification requirements for lawyers who wish to provide services under contracts. For example, in England, a contract for the provision of free legal aid services contains various requirements for quality assurance. Firms are audited according to criteria such as the quality of procedural documents and business plans, financial control mechanisms, personnel policy (including job descriptions, personnel evaluation procedures, equal opportunities policy, control of employees, etc., quality



of record keeping, quality of business management, skills and abilities of the person supervising the work of staff). Factors such as “customer satisfaction” are also considered – the presence of special procedures for recording and confirming information, approved lists of “suppliers” (for example, experts who are consulted on certain issues) and “quality orientation” – the presence of a procedure in the company filing and handling complaints and procedures for determining customer satisfaction. All these requirements are not only burdensome, but also sometimes involve considerable bureaucratic red tape. However, law firms go for it – the very height of the bar makes participation in the programme quite prestigious and useful for the reputation of the firm. The commission controls the quality of specific cases. For this purpose, special “criteria for conducting the case” were developed – special control questions, based on which a trained observer, even if they are not a qualified lawyer, can evaluate the work of a lawyer based on the case materials (Reznichenko 2004; Hasanudin *et al.* 2019).

Thus, typical models of legal aid to low-income citizens were presented. However, in this form, they are practically not found. The increased demand for legal aid around the world has led to the development of hybrid (mixed) models of legal aid. For example, the Dutch legal aid system is a mixed model in which legal aid is provided by advocates and lawyers in private practice who work in legal aid and counselling centres (in the Netherlands, such centres are called Bureaus Rechtshulp). The privately practicing lawyer is paid a flat fee, and the legal aid workers are subsidised by the Legal Aid Board. The Dutch free aid system is designed to provide aid in both criminal and civil matters. Criminal defence is not the dominant field of activity for Dutch lawyers. Most of the budget is spent on legal aid for social security (employment, immigration, housing and welfare benefits), and the “quality orientation” is the firm's grievance and customer satisfaction procedures (Boytsova and Boytsova 2000).

To ensure the right of everyone in need of qualified legal aid, it is not enough to create an effective system. It is necessary to inform the public that they have such a right and can use it. The educational function, which is of guaranteeing importance, should be assumed by the above-mentioned coordinating body. As a general rule, persons with income exceeding the established level are not entitled to apply for financial support from the state, therefore they pay for services on their own. For such citizens, many states make provision for the

institution of legal aid insurance (Reznichenko 2004). The guarantee of obtaining qualified legal aid is the consolidation of the grounds and procedure (mechanism) for bringing to responsibility for the provision of low-quality legal aid and its insurance. The constitutionally significant goal of the functioning of such a mechanism from the stand point of ensuring the studied law is to stimulate the proper performance of their duties by persons providing legal aid.

As for the specific features of legal aid in developed democracies, for example, the Basic Law of the Federal Republic of Germany, in the section “Fundamental Rights”, does not enshrine the right to receive qualified legal aid. In accordance with the provisions of paragraph 1 of Article 74 of the Basic Law of Germany “judiciary, bar, notary and legal advice” belong to the legislative competence of the Federation (Maklakov 2003). Thus, Article 91 of the Constitution of the Republic of Bavaria, entitled “Hearing a case in accordance with the law, protection”, enshrines “the opportunity for everyone to use the services of a lawyer” (Dubrovin 2001). Moreover, this article is in the section “Judiciary”, because there is no section on the fundamental rights of citizens. The institution of criminal protection is a concretised right to a fair trial (the impact of paragraph 1 of Article 2 of the Constitution of Germany “right to life and personal integrity” in conjunction with the rule of law and the general principle of human dignity). The accused has the right to use the services of a defence counsel at any time during the trial. This right is a direct consequence of the implementation of the rule of law (Ambroselli 2006; Efimov *et al.* 2014; Fialko *et al.* 1994).

In general, the mechanism of guaranteeing the right to receive qualified legal aid in developed democracies has a pronounced similarity with the Ukrainian mechanism, but there are also fundamental differences. For example, if in Ukraine the establishment of legal means and methods of using and protecting the law under investigation (legal guarantees) is the prerogative of the legislator, in common law countries it is also vested in the courts (for instance, the US Supreme Court). Furthermore, in these countries, the law under study is not constitutionally directly enshrined (fundamental guarantee) or is implemented through the enshrinement in the higher legal acts of these countries' analogues of this law, such as the right to representation in court or the right to defence in criminal proceedings.

A general positive feature of the mechanism for guaranteeing the right to receive qualified legal aid for the United States is the existence of such a restrictive guarantee as a permitting procedure for access to legal practice. Experience has indicated that guaranteeing the right to qualified legal aid is not only a direct responsibility of the state, but also a concern of civil society. The activity of public guarantee institutions here is very important and effective.

## CONCLUSIONS

Evidently, the problem of guaranteeing the right to receive qualified legal aid is common to all modern states. But the ways to solve it differ, because the content of law as a statutory regulator of social relations is determined in the context of national systems and is deeply connected with their culture. However, the legal culture of most countries is being transformed due to increasing globalisation, as well as the development of the common market of the European Union. For example, one cannot fail to note the spread of an entire network of large US law firms throughout the world at the end of the 20th century, in which American content is actively involved. Furthermore, some large American law firms have become "international law firms", displacing their competitors, national law firms, in their own countries.

However, the legal forms of legal aid have undergone significant changes in most developed countries. The current sources in Ukraine, represented mainly by books by domestic authors and articles in Ukrainian legal journals, allow to trace the process of evolutionary changes in the forms of legal aid in the United States and Western Europe, to identify the impact of this process on Ukraine.

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