Practice Standards

for Legal Aid Providers

Developed in the framework of the project: Enhancing the Quality of Legal Aid: General Standards for Different Countries

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The preparation of this manual was coordinated by the research team of Goethe University based on material elaborated by each country team.

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A. Introduction

I. Basic information about the project

The project "Enhancing the Quality of Legal Aid: General Standards for Different Countries (QUAL-AID)" was developed and implemented in 2016-2018 by partners from three EU Member States: Lithuania, Germany and the Netherlands. The project was led by the Law Institute of Lithuania with the main researchers being Dr. *Simonas Nikartas,* Dr. *Agnė Limantė* and *Laurynas Totoraitis*. The project benefited from EU co-funding which was provided under the Justice Programme (JUST/2015/JACC/AG/PROC/8632).

Besides Law Institute of Lithuania, Lithuanian team also included Lithuanian State-Guaranteed Legal Aid Service, represented by Dr. *Anželika Banevičienė* and *Diana Jarmalė,* and Lithuanian Bar Association, represented by Dr. *Laurynas Biekša*. The German partner was Goethe University of Frankfurt under principle investigation of Prof. Dr. *Christoph Burchard* (LL.M. NYU) and Prof. Dr. *Matthias Jahn* (judge at the Higher Regional Court Frankfurt) with their researcher being *Sarah Zink*. The National Legal Aid Board of the Netherlands, institution entrusted with all matters of administration of legal aid, was team member from the Netherlands, represented by *Herman Schilperoort*, Dr. *Susanne Peters* and Dr. *Lia Combrink-Kuiters*.

The project was developed in the light of the recent efforts of international community to take steps towards improving legal aid quality and, in the EU context, taking into account the new Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings[1]. Project partners sought to contribute to enhancing the quality of legal aid services in criminal proceedings within the EU by developing practice standards for legal aid provision, enhancement of its quality and for supervision. In this regard, the project aimed at assisting Member States in proper implementation of Directive 2016/1919. As additional target, the project partners sought to raise capacity of legal aid policy makers, administrators and providers in ensuring high quality legal aid.

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1 OJ L 297, 4.11.2016, p. 1–8.

The project was structured in three working packages:

(i) Firstly, under working package I, the project team performed assessment of the existing legal frameworks and practices aimed at ensuring high quality legal aid in criminal proceedings in their home countries. This consisted of desk research, survey of beneficiaries, interviews with stakeholders and complaint analysis. In addition, three study visits were organised for mutual learning and information exchange. Under this working package an international conference was organised in November 2017 in Vilnius, where experts from over 20 different countries shared their knowledge and views. The Report of this working package is available online: http://qualaid.vgtpt.lt/sites/default/files/0412675001517559135.pdf.

(ii) Working package II was dedicated to drafting these Practice Standards and "Tools and Criteria for Measuring Legal Aid Quality: Guidelines to EU Member States". These two documents were the major outcomes of this package. Important to note, that extensive survey on quality of legal aid was implemented to validate the initial ideas of the project partners and to support them with inputs from different experts across Europe. In June 2018, workshop was held in Frankfurt to discuss the findings of the survey and to exchange further ideas.

(iii) Working package III consisted of organising trainings in three project countries. Trainings were held in October-December 2018.

II. Introducing the Practice Standards and Tool-Box approach

These Practice Standards set out **selected good practices** that are **able to contribute to enhancing the quality of legal aid in criminal proceedings** that were identified in the context of the QUAL-AID project. Explicit presentation of such good practices, together with examples, are intended to assist administrators[2] and supervisors of legal aid in improving quality of legal aid in their

2 Under UNODC Handbook: Legal aid administration – an institution that carries out the organizational and management functions to ensure the appointment of legal aid providers and delivery of legal aid services to eligible recipients.

jurisdictions. For legal aid providers[3], these Practice Standards are of no less importance as they should encourage to further stream for quality.

Practice standards[4] are measures, norms or models that can be used in actual comparative evaluations of the quality of legal aid in criminal matters. They are to support, inter alia, legal aid stakeholders in complying with Directive 2016/1919, which require the Member States to take necessary measures, including with regard to funding, to ensure that there is an effective legal aid system that is of an adequate quality; and that legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession (Article 7 (1)). The Practice Standards also contribute to the aims of Directive 2013/48/EU[5] on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, Commission Recommendation C(2013) 8179/2[6] on the right to legal aid for suspects or accused persons in criminal proceedings and Commission Recommendation C(2013) 8178/2[7] on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

Improving the quality of legal aid services was also identified as the number one priority for the Member States in the global study on legal aid (UNODC, 2016[8]).

Since the quality, effectiveness, efficiency and fairness of legal aid in criminal matters can be achieved by many means, and since their assurance is contingent on many factors (just to give a simple example - on the general "legal culture" in a given jurisdiction), the QUAL-AID partners agreed to follow a **toolbox** concept, which allows the legal aid stakeholders to take into consideration several tools to enhance the quality of legal aid in criminal matters, thus establishing general standards for legal aid in criminal matters for different jurisdictions (see the project title). The toolbox concept allows building a coherent system, in which legal aid stakeholders (lawyers, legal aid agencies, etc.) deliver an adequate quality of legal aid services.

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3 Under UNODC Handbook: Legal aid provider – a legally trained professional (lawyer or paralegal or other suitably trained person who provides state-funded legal aid on a full-time or part-time basis.
4 See Oxford Dictionary: standard.
5 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0048&from=EN.
6 http://www.ecba.org/extdocserv/projects/legalaid/20131127_PropEC_RECLegalAid.pdf.
7 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224(02)&from=EN.
8 http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html.

It is important to stress, that we do not claim that every country should adopt all of the tools listed in this document. On the opposite, presenting the document as a tool-box, we suggest, that every country can choose, which of the tools would be proper in their jurisdiction and then implement the selected ones.

This report presents the practice standards by accounting for the different tools in our toolbox to enhance legal aid, by indicating the way respondents of the survey think about the tools[9], by discussing their respective **advantages and shortcomings,** and by pointing out if/why their **integration into the legal orders** of the Member States might (not) be problematic.

III. Methodology of the toolbox concept

The **toolbox concept** is premised on the assumption that the legal aid system has many facets, that a legal aid scheme must in itself balance divergent interests and values (e.g. the independence of the legal profession vs. quality assurance by means of external review), and that the effectiveness of a legal aid regime rests on many influencing factors, which must not be evaluated in isolation. The toolbox concept takes to heart the European idea of "unity in diversity", which means that there are national identities, which must be protected as a matter of EU constitutional law.

The **toolbox** concept does **not necessarily rest on the premise** that the use of many of our suggested practice standards has a positive impact on the functioning of the legal aid system, although this would seem likely and probable. Further empirical work needs to be done to verify the said premise. As of now, several legal aid experts have voiced the opinion that the use of certain individual tools can outweigh the non-use of others, a factual statement that has been disputed by other experts. For

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9 The numbers in the report are generated from our survey and they are written in colours, which symbolize a certain significance. The adaption level ("Do you have this tool in your system?"), potential adaption level ("If you don`t have this tool in your system, can you imagine to adopt it?") and the general assessment of the tool ("How important is the tool in order to guarantee a high quality of legal aid?") in order to guarantee a high level of legal aid services in criminal matters, are written in colours, which stand for high level (green), medium level (orange) and low level (red). For the (potential) adaption level, where we asked if the respondents have the tool in their system and, if no, if those of them who do not have it, can imagine to adopt it, we set the standards in the following way: 0-33,33 % Yes (red-low level); 33,34-66,66 % Yes (orange-medium level); 66,67-100 % Yes (green-high level); in the general assessment, where we asked the respondents how important in their assessment a tool is for guaranteeing a high level of legal aid in criminal proceedings on a scale from 1 (not important at all) to 5 (very important), we set the standards as the following: 1-2,33 (red-low level); 2,34-3,66 (orange-medium level); 3,67-5 (green-high level).

example, it is open for debate whether an excellent formation of lawyers compensates deficits in life-long-learning regimes. Therefore, further analyses are necessary to query if there exist general hierarchies in our toolbox, e.g. if a peer review system contributes to the quality of a legal aid scheme in a better way than other tools.

As noted above, list of tools in this document emerged in the extensive research that we performed in our home countries, through expert and legal aid clients' interviews, conference, workshops, study visits, studies of national systems, good practise examples, and running the survey.

Several words should be said here as to the survey. In order to secure the adequacy of the proposed Practice Standards for legal aid providers, to check whether they are complete, and to guarantee that they can sufficiently take into account the particularities (including the constitutional identities, see Article 4 TEU) of the legal orders of the Member States, we have conducted one of the **most holistic online survey on the practice standards for adequate legal aid in criminal matters**. As of 1 October, the survey was completed by 90 experts, who are involved in the process of organising and providing legal aid and who come from 22 different Member States. The survey has run for five months, and will be open until the end of the year 2018. The interim results were discussed in a meeting of international legal aid experts and the input has been entered into the following report. Based on the assessment of the international experts in the survey and the conference and our own research, we have developed practice standards – arranged as tools – that can be applied across jurisdictions. The tools in this report are not meant to be applied in isolation, but in combination with each other. Every tool has its own advantages and shortcomings, which need to be mutually checked and balanced.

Our compilation of practice standards reports the results of the aforementioned survey. It should be noted – as a disclaimer – that the figures of the survey are by no means representative. Just to name a few examples, first of all the biggest part of the respondents come from the three project-partner countries Germany, Lithuania and the Netherlands (24,44 % of the respondents are from Germany, 13,33% from the Netherlands and 12,22 % from Lithuania). Furthermore, the largest part of respondents are lawyers (48,89 % of the respondents), in the consequence their view has a high impact on the evaluation. Further empirical analyses are necessary to check if these figures only represent individual points of views of the participants, or whether they mirror general points of views in and across jurisdictions. In annex 2 the results of the survey are described. Further methodological etc. considerations are needed to explore if the practice standards can be transformed into a tool to evaluate the quality of legal aid services numerically (e.g. by giving

individual tools a specific amount of “points” to calculate the total of toolbox points of a given jurisdiction).

The aforementioned **survey** used a questionnaire that we added in annex 1; annex 2 compiles the results of the survey.

(The annex is only included in the online publication. We kindly ask the readers of the printed publication to find the annex at the project homepage: http://qualaid.vgtpt.lt/en.)

B. Practice Standards

I. Education

Practice Standard: Minimum requirements for education of legal aid providers

a. Explanation of the practice standard

Legal education is the education of individuals in the principles, practices, and theory of law. It may be undertaken for several reasons, including to provide the knowledge and skills necessary for admission to legal practice in a particular jurisdiction, to provide a greater breadth of knowledge to those working in other professions such as politics or business, to provide current lawyers with advanced training or greater specialisation, or to update lawyers on recent developments in the law.

b. Examples in national practice

In **Lithuania**, different requirements are set for primary and secondary legal aid providers. As for first-line legal aid (general legal consultations), it is usually provided by civil servants who have law (Bachelor's or Master's) degree. To become a civil servant one has to take special examinations of general competence and foreign language. As for second-line legal aid, it is provided by lawyers (advocates) or associates. To become an advocate one needs to hold a university degree in law (Bachelor of Laws and Master of Laws degrees or the professional qualification degree (one-stage university degree), at least two years of practice and to pass the Bar exam. Associates are working under the supervision of advocates and need to pass Bar exam before they become advocates. After the Bar exam, a person willing to practice as an advocate has to be included in the list of practicing advocates. Then, a procedure before the SGLAS has to be passed to become a legal aid lawyer.

As a good practice to mention from Member State practice, the **Dutch** bachelor education system started a law course to train students on the provision of first-line legal aid some years ago.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **77,8 %** of the respondents are of the opinion that they already have an adequate education system in their jurisdiction.

ii. Advantages

Many respondents find that the required legal education in their countries combine theoretical and practical education adequately.

iii. Shortcomings

Some of the respondents criticize that the practical part in the education in certain countries is not high enough (indicated, e.g. by a consultant in judicial reforms from Bulgaria). Especially, it is claimed that the education concerning working with vulnerable groups has to be improved and that not enough courses in legal aid topics exist. Some experts claim that the education in law in certain countries has become too easy to pass (indicated by respondents from Bulgaria and Lithuania). To some extent, experts criticize the increasing number of law students leading to the fact that Universities do not have the resources to ensure the attention and feedback for the students that is necessary for instilling a sense of reasoned and critical decision-making into the students and thus a sound education in University (indicated by an academic from the Netherlands).

d. Recommendations

According to CCBE recommendations[10] in order to ensure the quality of legal aid services, all legal aid providers should, as a minimum, have a legal qualification and be able to practice as lawyers in the relevant jurisdiction.

The United Nations Office on Drugs and Crime[11] (UNODC) suggests activating practicable systems of practice management, including training senior practitioners to be effective, proactive supervisors who can actively mentor legal aid providers on a day-to-day, case-by-case basis.

Meanwhile experts suggest some additional requirements for legal aid providers*:*

- **basic education: university/ law/ scientific/ conversion degree + legal practice + special state exam**
- **improvement of university studies (practical skills, legal aid clinics as part of studies)**

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10 CCBE Recommendations on legal aid, 23/03/2018, applicable at https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ACCESS_TO_JUSTICE/ATJ_Position_papers/EN_ATJ_20180323_CCBE-Recommendations-on-legal-aid.pdf, p. 2.

11 Global Study on Legal Aid, Global Report, 2016, applicable at https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf, p. 157 f.

- **special (introductory) trainings for legal aid providers**
- **mandatory continuous trainings.**

Additionally, the education should drive more attention to the needs of vulnerable groups, in the theoretical education as well as in practical trainings.

II. Trainings and Qualification

1. Practice Standard: Requirement of specialization and continuing training

a. Explanation of the practice standard

This tool requires that in order to be eligible for legal aid work in criminal cases, a lawyer has to pass an additional specialization-based criminal law exam (alongside the general Bar examination), or take specialized trainings in criminal law, or have experience in criminal law. However, this should be implemented in a way which would not deter young professionals from joining the legal aid system, i.e. requirement for years of experience should be reasonable or otherwise an alternative should be available (taking an examination).

b. Examples in national practice

For instance, in the **Netherlands**, all beginning lawyers have to follow the basic training program organized by the Dutch Bar Association. For those who want to focus their practice the most on criminal law there is the possibility to choose the major education program for criminal law (extended criminal law training organised by the Bar). In other cases, if someone wants to focus his or her practice more on civil or administrative law, there is the possibility to choose for the minor (minimum criminal law training organised by the Bar). To register as a legal aid provider at the Legal Aid Board (LAB), the minor criminal law is sufficient. Additionally, the lawyer should have done at least 5 cases, under supervision of a mentor. Also, a permanent education system exists, in which lawyers have to earn a certain amount of study/training-points every year in order to keep being trained constantly.

In **Finland**, lawyers (including legal aid lawyers) have to pass minimum 18 training hours per year to have their knowledge up to date.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **40 %** of the respondents indicate that they have this standard in their jurisdiction. **77,4 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4,04** (1-not important at all; 5-very important).

ii. Advantages

Having in mind that ex post evaluation of legal aid lawyers` performance is expensive (i.e. in a form of peer review), ex ante evaluation is both, cost-efficient and a reliable source of the lawyer's skills. This is especially useful if a person has taken the Bar examination many years ago and some knowledge is lost due time.

Assessment of training requirements arising from specialization could be organised on a regular basis, i.e. every 5 years of legal aid practice.

iii. Shortcomings

Such requirement restricts the choice of the beneficiary to nominate a lawyer of his/her own. In countries where a significant part of population lives in small towns and villages and the transport infrastructure is not well developed, it leads to the fact that many lawyers work as generalists in many areas. The requirement of specialization would limit the choice or in some cases no lawyer would be available at all.

Especially lawyers are of the opinion that the Bar examination is difficult enough. Such requirement imposes that the Bar examination is not sufficient to say that a lawyer is qualified for legal practice.

d. Recommendations

Our studies reveal that this is an important tool. In some jurisdictions, esp. where legal aid is not organised by a Legal Aid Board or an equivalent, it is possible to restrict the choice of the lawyer made by the beneficiary to a selection of lawyers who are specialized in criminal law or undertake certain continuous trainings. Doubts arise that this interferes with the client-attorney-relationship. Nevertheless, this is less problematic when the restriction only applies to the institution which chooses a lawyer for the beneficiary. On the other hand, the

requirement to continue with the training and pass a certain number of training hours per year is reasonable and fitting to most of jurisdictions.

2. Practice Standard: Trainings for the lawyers/for stakeholders within their groups or together with other stakeholders

a. Explanation of the practice standard

This is a special type of trainings which has the goal to help improve stakeholders' work by understanding each other's role better. These activities can be organised as lectures or workshops. One way to implement this tool is to organize an activity for a group of same stakeholders (lawyers, judges, prosecutors, government officials etc). Another possibility is to organize an inter-stakeholder activity where actors from different groups would meet and accomplish tasks together.

b. Examples in national practice

In **Germany**, Hessische Justizakademie in the state of Hesse opened their trainings for judges and prosecutors up for counsels in order to exchange views on different topics (e.g. on the risk of criminal liability in connection with the "Deal" in court).

In the **Netherlands**, lawyers do trainings for policemen in order to create more mutual understanding for the perspective of each other.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **70 %** of the respondents indicate that they have this standard in their jurisdiction. **94,1 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,58** (1-not important at all; 5-very important).

ii. Advantages

Understanding of each other's role during a criminal proceeding where legal aid is being provided can improve due process.

These activities can also be used to collect information from judges and prosecutors regarding work quality and work ethics of legal aid lawyers.

iii. Shortcomings

Doubts arise that this could be a time and cost consuming activity in/for which success greatly depends on the motivation of participants and their willingness to actively participate.

Also, such events could lead to undesirable familiarity amongst lawyers/prosecutors/judges as beneficiaries may perceive such relations as attitude against him/her during criminal proceeding.

In some jurisdictions lawyers are sensitive regarding the safeguards of the constitutional principle for the separation of powers. It is not customary for the defense lawyers to participate in trainings or professional discussions with prosecutors, the police or judges. Participation of the government officials would be welcome.

d. Recommendations

Our studies show that this is a very important tool, which is able to increase mutual understanding between the actors outside their natural habitat in courtroom.

3. <u>Practice Standard: Establish meetings on a structural basis amongst professionals within the field of criminal law</u>

a. Explanation of the practice standard

This is a special kind of activity of which has as its primary goal to improve cooperation and communication amongst the stakeholders. It is similar to the previously mentioned tool, however, less formal meeting sessions are used rather than trainings or workshops.

b. Examples in national practice

For instance in **Germany** an exchange is possible between the academics and practitioners in the legal system concerning different topics in the series of events called "Karlsruher Strafrechtsdialoge" (not especially in the field of legal aid/mandatory defence, but this may also be a possible subject).

In the **Netherlands**, the role of the dean is to cooperate with all institutions which helps to improve the communication in the whole system and to reveal problems in a cooperative and in an informal manner; there is also a close cooperation between prosecutors and police in the ASAP program.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **50 %** of the respondents indicate that they have this standard in their jurisdiction. **96,2 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,41** (1-not important at all; 5-very important).

ii. Advantages

Understanding of each other's role during a criminal proceeding where legal aid is being provided can improve due process.

These activities can also be used to collect information from judges and prosecutors regarding work quality and work ethics of legal aid lawyers.

iii. Shortcomings

Doubts arise that this could be a time and cost consuming activity in/for which success greatly depends on the motivation of participants and their willingness to actively participate.

Also, such events could lead to undesirable familiarity amongst lawyers/prosecutors/judges as beneficiaries may perceive such relations as attitude against him/her during criminal proceedings.

In some jurisdictions lawyers are sensitive regarding the safeguards of the constitutional principle for the separation of powers. It is not customary for the defense lawyers to participate in trainings or professional discussions with prosecutors, the police or judges. Participation of the government officials would be welcome.

d. Recommendations

Our studies reveal that this is a practice standard with a high adaptation-level, which is also able to increase mutual understanding.

4. <u>Practice Standard: Online-Trainings for lawyers</u>

a. Explanation of the practice standard

Specific trainings online (in a form of video lectures, webinars, texts, courses, quizzes) made available to legal aid lawyers regarding the specifics of their job.

b. Examples in national practice

The website www.salduzlawyer.eu provides training material for lawyers in pretrial detention situations. It was developed by universities in 4 jurisdictions under EU funded project.

In **Lithuania**, an NGO working in the field of human rights created an online learning platform "New EU law standards in criminal proceedings" (funded by EU). It widely covers the right to effective protection and legal aid. Available at http://www.be-ribu.lt/visi-kursai.

There is a similar platform in **Belgium**.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **46,8 %** of the respondents indicate that they have this standard in their jurisdiction. **88,5 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,67** (1-not important at all; 5-very important).

ii. Advantages

Specifics of legal aid usually are not studied at universities. Similarly to trainings for new employees in other fields, such trainings could be made mandatory for every new legal aid lawyer.

Once a qualitative course material is prepared it can be used for a several years with no or minor adjustments. Anyone can do the online courses at a convenient time.

It can be a very flexible extra option for people who are familiar with the technology of the internet.

iii. Shortcomings

Problems can arise when legal aid providers are not familiar with the technology of the internet.

Such trainings can provide no or only limited possibilities to ask questions, which should be kept in mind when developing such online trainings.

Some respondents are of the opinion that video material takes too much time to undertake. All in all, a lot of trust is given on a lawyer – it works for those willing to learn and is just formality for those who just want to tick the box of "training done". Thus, it is advisable to insert certain evaluated tasks if a participation certificate is issued.

d. Recommendations

Our studies reveal that this is a practice standard with a high adaptation-level and can be successfully used as an additional tool to enhance the quality of legal aid services.

III. Evaluation

1. Practice Standard: Peer review

a. Explanation of the practice standard

As defined by prof. A. Paterson, peer review is "the evaluation of the service provided against specified criteria and levels of performance by an independent person with significant current or recent practical experience in the areas being reviewed".

In a more extensive definition, „peer review" is usually understood as a form of contract audit based on a review of a sample of a provider's case files in a category of law, undertaken by an experienced practitioner who is trained in the peer review framework. The entire process and the management by the Independent Consultant of areas such as consistency and training, ensures that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers. The framework involves the assessment of files using a standard criteria and ratings system to determine the quality of advice and legal work provided to clients in a particular category of work. Following consideration of the files using the criteria, an overall judgement on the quality of advice and legal work is made. Peer reviews are category specific and are carried out by a practitioner who is experienced and skilled in that area of law.[12]

During peer review, lawyers hired as peer reviewers evaluate work of other lawyers. Peer reviewers examine a number of files per practitioner or public defender chosen in a stratified, random fashion. They use a set range of criteria for assessing each file (the criteria are developed in consultation with the legal profession; most criterion are client centred). To ensure consistent marking of

12 Independent Peer Review Process Document. Legal Aid Agency, 2017: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/620110/independent-peer-review-process-guidance.pdf.

different peer reviewers, they are often trained in advance. As a result of peer review, the lawyer is provided with evaluation, extensive comments and advise as to areas of improvement.

b. Examples in national practice

The peer review system was developed by the researchers A. Sherr and A. Paterson 20 years ago and for 16 years or more it has been rolled out in England and for all legal aid lawyers in **Scotland**.

The system has been copied in a range of other countries (**Netherlands**, **South Africa**, **Chile**, **China**). There are **pilots** in ***Georgia***, ***Finland***, ***Moldova*** and ***Ontario (Canada)***.[13]

In the **Netherlands**, peer review is established in the area of asylum law. In this field of law lawyers came to the agreement that clients are highly vulnerable and have little possibilities to complain if they were dissatisfied with the quality of the legal aid service by the lawyer as they are typically sent back to their home country after their application for asylum is refused. All lawyers decided on the implementation of the peer review system in a democratic vote and they also elect the peer who conducts the peer review; in order to do that the peer reviews the files of the lawyers regularly, attends court sessions and monitors new asylum lawyers.

c. Evaluation of the practice standard based on our research

i. Survey results

According to our survey, **13 %** of the respondents indicate that they have this standard in their jurisdiction. **69,4 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.58** (1-not important at all; 5-very important).

ii. Advantages

Review of files or court performances by experienced/ expert lawyers (peer). Feedback encourages continuous improvement: analysis of peer review results in Scotland evidence that peer review is driving up standards.

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13 For more information, please see the following article: https://www.albertalawreview.com/index.php/ALR/article/viewFile/341/338.

It is more expensive than input measures such as education and training but it is closer to evaluating the quality of what lawyers do. Moreover, peer review can be applied also to one or some most vulnerable areas as for example it is in Netherlands, where peer review is established only in legal aid cases of refugees.

iii. Shortcomings

It is an expensive tool, requiring high competence reviewers, their trainings and appropriate remuneration, administration expenses etc.

The risk of independence of lawyers during surveys was raised. In this context „Peer review" is perceived as intervention to Lawyer-Client relationship: the most effective result not always correspond to Clients will, which should be respected by Lawyer.[14]

The essential precondition of the tool is the requirement to collect documentation of the case. However not all countries established such requirement.

The implementation of the tool could be complicated in the context of client-lawyer confidentiality principle safeguards, which are strictly regulated in many countries.

d. Recommendations

Our studies result that this is a practice standard which is not very popular in Europe in the field of criminal law yet, but works out quite well in parts of the United Kingdom and outside Europe. It has a high adaption-rate.

14 Regarding the violation of indipendence of lawyers, it should be noted that the legal conception of indipendence varies in different countries. For example in Germany, a very strict perception of the independence of lawyers exists. The indipendence of lawyers is a constitutional value. It means that any external intervention to lawyers work can be interpreted as violation of lawyers` indipendence. In other countries as Netherlands and Lithuania, there is no such strict regulation and perception. It is important to note that the factor of self-regulation and certain self-defence to any external intervention of Bars should be assessed as well.

2. Practice Standard: Evaluation of the work of lawyers by client`s satisfactory survey

a. Explanation of the practice standard

The relevance of the tool is based on the presumption that the interests of the client is the most important aim for legal aid. Surveys can question whether the client received the help he or she wanted/needed/expected and if he or she has been treated correctly etc.

There could be different forms and ways of the conduction of such surveys, for example:

- Regular (at least one in one year) legal aid clients' surveys based on social research methods, ensuring clients population representativeness. Its purpose is to assess clients' satisfaction with the work of lawyers, focusing on communication and ethics of lawyer work aspects;
- Electronic questionnaires that are submitted to clients in an electronic system after the provision of legal assistance services;
- Surveys conducted through call centres, where after the legal aid is provided clients receive calls with questions on satisfaction, etc.

b. Examples in national practice

In Finland, the electronic system for quality assessment functions as follows. When a commission is marked as completed in the system, the system automatically generates a self-evaluation questionnaire for every tenth completed commission and sends it to the electronic workflow of the public legal aid attorney. The questionnaire remains open until the attorney has filled it in. Upon marking a commission as completed, the system also sends the client a link to the client questionnaire. Primarily, the link is sent to the email address notified by the client, and secondarily to the client's mobile phone number. The client questionnaire is kept open for 30 days, after which it is closed automatically if the client has not filled it in. Clients answer to the questionnaire anonymously, and the results are presented as averages. Clients cannot thus be identified based on the answers to the questionnaire. In addition to answering to the questionnaire, clients may also give direct written feedback to their attorneys. This feedback cannot be seen by anyone else except the attorney in question. The attorney may, if he or she so desires, have the system generate a personal report on the assessments concerning the attorney's completed commissions, if there has been a minimum of ten respondents to the client questionnaire. The system will then compile a report on the average values given in the different areas of assessment and the statements included in them. At national level and at the level of individual legal aid offices and districts, the reports are based

on the averages of all responses so that individual attorneys cannot be identified in the results. The evaluation covers also the commissions handled by private attorneys.

c. Evaluation of the practice standard based on our research

According to our survey, **82,2 %** of the respondents indicate that they have this standard in their jurisdiction. **71,1 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **2.91** (1-not important at all; 5-very important).

i. Advantages

It helps to get information about client`s satisfaction and views to legal aid quality, especially on its ethical and communicational aspects. Respectively, it helps to identify legal aid providers work quality issues regarding communication, respectful behaviour and select measures for the improvement of these aspects of lawyers work (for example organizing, trainings, setting up ethical standards for legal aid providers etc.)

ii. Shortcomings

Most customers lack detailed legal knowledge. As a result, these surveys are limited to reveal certain aspects of the quality of legal aid providers` work. This tool is not very proper in evaluating the legal-professional quality of legal aid providers` work.

Interviews conducted during the project revealed that some lawyers use their communication skills to attract clients and to impress them, but the quality of their legal representation might be low. Thus there is a risk that client satisfactory surveys could show a distorted „picture of legal aid quality".

d. Recommendations

Our studies reveal that this tool is popular, but there are some limitations in measuring the quality of legal aid services, esp. when it comes to the legal expertise of a legal aid provider.

3. Practice Standard: Evaluation of the work of lawyers by prosecutors and judges

a. Explanation of the practice standard

The assessment from judges and prosecutors can be important evaluating legal aid quality, as judges and prosecutors have high legal knowledge and experience observing and communicating with legal aid providers (lawyers) during the process.

The evaluation could be conducted via regular surveys, discussions, workshops, meetings etc.

b. Examples in national practice

Lithuanian State Guaranteed Legal Aid Service conducts stakeholders (judges, prosecutors, police officers) surveys regularly each year. The questionnaire includes questions about frequency of contact with legal aid providers, stakeholders` opinion on the frequency of requests for a lawyer to postpone the hearing, reasonableness of the lawyers request for postponement of the hearing, free comments on the quality of legal aid providers` work.

c. Evaluation of the practice standard based on our research

According to our survey, **17,8 %** of the respondents indicate that they have this standard in their jurisdiction. **28,6 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.42** (1-not important at all; 5-very important).

i. Advantages

Assessment of legal professionals who observe lawyers work in the process.

The tool can help identify shortcomings of legal aid provider's work ensuring qualitative defence of lawyers.

ii. Shortcomings

It is important to bear in mind that this is an assessment of the opposite site of the process.

Such evaluation should be seen in the light of the specific roles of judge and prosecutor in the process. Some lawyers work aspects that are positive in the sense of defending client interests can be assessed as negative by judges and prosecutors as it creates obstacles for their work.

According to some of respondents, it would be an interference with the client-attorney privilege (Germany), the constitutional principle of separation of powers (Bulgaria), independency of the lawyers (Austria), a violation of the principle of rivalry (Lithuania), not objective (Lithuania), not possible in an adversarial system (Israel), an infringement of the independency of the Bar (Netherlands).

One expert (academic from UK) warns that care has to be taken concerning this tool, as many of the difficulties faced by defence solicitors, for instance, could be due to problems with the prosecution.

Having prosecutors evaluate the defence might detract from those problems. There could also be difficulties in the court of judges having a preference for barristers over solicitor advocates.

d. Recommendations

Our studies show that this tool meets considerable concerns when it comes to the separation of powers between the actors in criminal procedure and therefore it has a low adaption-rate.

IV. Terms of Reference for an Audit of the Quality and Value of the Services provided by Lawyers

1. Explanation of the practice standard and examples in national practice

a. Explanation of the practice standard

Concrete best practice standards and/or terms of reference for legal aid lawyers can be drafted and afterwards used in the context of an auditing instrument to check on the compliance with the set criteria.

First, the member state that is willing to make use of this tool has to come to an agreement about of which nature these standards should be. It is possible to only identify ethical or professional rules as minimum standards, but it is nevertheless possible to agree on content-related quality standards.

b. Examples in national practice

Australia: In Australia, the Legal Aid Commission determined criteria for the appointment of practitioners to a panel of private legal lawyers to provide legal services. They are divided in General Principles and Practice Standards for the certain field of law. In criminal law, they follow the general principle that the majority of people appearing in the Criminal Justice System are disadvantaged and practitioners should have an understanding of cross-cultural issues and issues facing socially and economically disadvantaged people. The concrete principles refer to responsibilities to clients, briefing counsel in Supreme Court matters, appearing at sentence, Supreme Court appeals and duty lawyer services. Please find the standards here: http://qualaid.vgtpt.lt/sites/default/files/08185110015257822 78.pdf

USA: The Standing Committee on Legal Aid and Indigent Defendants formulated standards which come for organizations and practitioners serving the civil legal needs of low-income persons and

seeking to provide high-quality legal representation. They are divided in Standards for Governance, Standards regarding provider effectiveness – general requirements, standards regarding provider effectiveness – delivery structure and methods, standards for relations with clients, standards for internal systems and procedure, standards for quality assurance and standards for practitioners. The quality assistance standards, which are of the most interest in the present context, consist of characteristics of staff, assignment and management of cases and workload, responsibility for the conduct of representation, review of representation, training and providing adequate resources for research and investigation. Please find the standards here: http://qualaid.vgtpt.lt/sites/default/files/0024898001525782304.pdf

The Council of Bars and Law Societies of Europe (CCBE): The Standards consist of the Charter of Core Principles of the European Legal Profession and the Code of Conduct for European Lawyers. The latter contains general principles as well as regulations about the relation with clients, the relation with the courts and relations between lawyers. Please find the standards here: https://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf

c. Evaluation of the practice standard based on our research

According to our survey, **35,9 %** of the respondents indicate that they have this standard in their jurisdiction. **84 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.73** (1-not important at all; 5-very important).

64,3 % of the respondents are of the opinion that the standards should be ethical.

35,7 % of the respondents are of the opinion that the standards should be substantial.

i. Advantages

Binding standards standardize the quality of legal aid and are able to enhance the quality of legal aid as they go further than a non-binding orientation (indicated by a member of the ministerial bureaucracy from Latvia). Generally speaking, standards provide a guidance or a checklist to a legal aid provider.

ii. Shortcomings

Practice standards might be short-lived and inflexible (indicated by one participant of the experts` survey from the Netherlands). Furthermore, it could be difficult to agree on uniform standards for

all EU member countries (indicated by a judge from Germany). If the standards are set too high or too low, it could come to an unbalance in the system, especially if the standards were binding (indicated by a judge from Germany). Furthermore, there are concerns that standards could be converted into something they are not meant for: They are meant to help lawyers and not to evaluate or audit the work (indicated by a judge from Austria). Some respondents noted that a certain list of such standards is already included in Code of Conduct binding upon Bar members.

d. Recommendations

Our studies highlight that this tool has a high adaption rate, but the forms of appearance are diverse. The majority of the respondents prefer to have ethical standards rather than substantial.

V. Complaints

Complaints as measures of measuring quality of legal aid are widely used world-wide. This is an instrument which, similar to surveys of beneficiaries, reveals the opinion of the beneficiaries as to legal aid.

1. <u>Practice Standard: Examination of complaints</u>

a. Explanation of the practice standard

The quality of the lawyer's activity is assessed on account of a complaint from a legal aid beneficiary. For this assessment to be possible, a legal aid beneficiary has to make a complaint to particular institution (Court, Bar, LAB and etc.). Thus, the assessment of the quality depends on the beneficiaries` initiative of complaining.

b. Examples in national practice

Latvia: The Bar Association’s Disciplinary Commission monitors the activities of sworn advocates and attorneys at law, examines complaints and reports submitted to them, and initiates disciplinary proceedings. Any person is entitled to complain about a lawyer or his/her work quality.

Belgium: Clients may bring their complaints to the Bureau of Legal Aid of the Bar Associations in each district. The Bars can also take measures against lawyers who abuse the Legal aid system.

The Bar Associations in each district are in charge of the general quality of legal services and are responsible for handling complaints for breaches of professional conduct.

Lawyers are subject to disciplinary sanctions of the bar association. A possible sanction is the removal from the list of legal aid providers.

Finland: Bar Association's Disciplinary Board supervises how public legal aid attorneys and licensed legal counsels fulfil their obligations. Dissatisfied clients may make a complaint.

The Chancellor of Justice of the Government is the supreme guardian of the law. He oversees, from a public interest standpoint, the actions of advocates to ensure that they are complying with the Advocates Act and with the Code of Conduct. He supervises by handling any written complaint, cannot interfere with the actual work of an advocate or impose any disciplinary sanction.

Lithuania: The activity of a lawyer can be evaluated in two aspects:

- whether the client was provided with quality legal aid (by Lithuanian Bar);
- whether the lawyer did not breach the agreement on the provision of legal aid (by State-guaranteed Legal Aid Service).

There is established a special State Guaranteed Legal Aid Service (SGLAS) commission which resolves beneficiaries` complaints. If it appears that a lawyer has not provided with quality legal aid, the commission sends the complaint to the Bar Association asking to evaluate lawyers` behaviour.

Germany: Supervision of legal aid providers is carried out by professional associations. The Bar Association resolves beneficiaries' complaints against the actions of legal aid lawyers.

The Council of the Bar monitors the performance of the duties incumbent on the members and to take steps to issue reprimands when required.

c. Evaluation of the practice standard based on our research

According to our survey, **83,3 %** of the respondents indicate that they have this standard in their jurisdiction. **62,5 %** of the respondents who stated that they do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.56** (1-not important at all; 5-very important).

i. Advantages

Such systems could benefit the quality of the Bar without interfering with its independence. However, such instrument only helps to enhance the quality of legal aid in countries where the Bar is active in supervising the quality of their members.

ii. Shortcomings

This tool is not a very effective way of assessing and ensuring the quality of legal aid. This tool should be used in addition to other tools. Our research confirmed findings of earlier researches that only a small number of dissatisfied clients do submit formal complaints to the Bar or to a legal aid board. Complaints are always reactive, moreover the clients can only assess parts of quality, taking into account that the number of illiterate people and people with a poor level of education amongst the legal aid clients is very high.

d. Recommendations

Our studies reveal that this is a rather popular instrument, but has many shortcomings. It can only give a rough indication of the quality of legal aid services and should be used in combination with other tools.

2. Practice Standard: Ensuring of awareness about the possibility to complain

a. Explanation of the practice standard

Legal aid beneficiaries have to know about their right to complain and how to complain: instruments and proceedings.

b. Examples in national practice

Finland: The biggest part of information can be found in internet.

Netherlands: Information about the possibility to complain is published on internet and is easily found with google, e.g. for Amsterdam https://www.advocatenorde-amsterdam.nl/3225/complaints.html.

Lithuania: Information about the possibility to complain and request that the appointed advocate is changed is stated in the decision on the provision of secondary legal aid. It is also published on the web page of the State-guaranteed legal aid service and web page. Besides, the decision for the provision of legal aid contains information about the possibility to change the lawyer if he/she has

a complaint against him/her. The decision is delivered to every person, who is granted free legal aid.

c. Evaluation of the practice standard based on our research

According to our survey, **55,6 %** of the respondents indicate that they have this standard in their jurisdiction. **68,8 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.45** (1-not important at all; 5-very important).

i. Advantages

The effectiveness of the instrument of resolving of complaints depends on the awareness not only about availability about the instrument but also about the procedure.

ii. Shortcomings

Awareness rising tools are often not developed. In most countries information is provided just on the websites. However, a considerable part of legal aid beneficiaries might not be very professional in the use the internet. A further problem is if there is no adequate information about the procedure of resolving complaints.

d. Recommendations

Our studies show that this is an important tool and the adaption-level is rather high.

VI. Choice of Lawyer made by the Beneficiary/an Institution

1. Practice Standard: Grant the beneficiary the right to choose a lawyer on his/her own; if no choice is made the appointment shall be made under transparent circumstances

a. Explanation of the practice standard

The right to name a legal aid lawyer ought to be granted to a beneficiary rather than appointing one by others (i.e. court). A beneficiary should be allowed to request for any legal aid lawyer to be appointed for him without any financial, administrative or temporal burden.

When it comes to the situation that the beneficiary does not make use of his or her right to choose a certain lawyer, the choice can be made under the following suggested circumstances: (i.) principle

of equality (ii.) random principle; (iii.) adjustment to the needs of the client, which may be a certain specialisation of the lawyer, language skills etc.

b. Examples in national practice

In the **Netherlands** if a beneficiary does not choose his or her own lawyer, a lawyer is selected randomly (Of course in a duty solicitor scheme situations, the lawyers is picked according to availability)

In **Lithuania** a beneficiary has a possibility to choose a counsel he or she wants. If a beneficiary wishes to have a counsel who is not on the list of legal aid providers, he or she should get the permission from that counsel and submit it to the investigation officer, prosecutor or court. In other words, a beneficiary can choose from any attorney-at-law in Lithuania.

In **Germany** the suspect/accused can choose his or her own lawyer; if it is not possible for the lawyer to take over the case, the judge chooses the lawyer in a decision covered by his or her judicial independence.

c. Evaluation of the practice standard based on our research

According to our survey, **71,8 %** of the respondents indicate that they have this standard in their jurisdiction. **66,7 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,96** (1-not important at all; 5-very important).

i. Advantages

The right to pick a lawyer increases the sense of self-responsibility. If a beneficiary can choose a legal advisor from a number of options, this will make him/her more collaborative with a person he/she picked himself/herself rather than having a lawyer appointed to him/her.

ii. Shortcomings

This tool is only useful if a beneficiary knows a particular lawyer, i.e. has previous (successful) experience with legal aid system. If a person does not know any lawyer (as it usually is the case), this tool is not so beneficial.

More popular lawyers will be requested more frequently thus creating a non equal workload.

d. Recommendations

This is a very important tool according to our studies. It is widely disseminated and has a high adaptation-level. However, it is important to take measures for beneficiaries who have little experience with the system.

VII. Providing the Beneficiary with extended information on legal aid

1. Practice Standard: Compile a list of lawyers with different information (an informative list of legal aid lawyers)

a. Explanation of the practice standard

The tool requires to compile a list of available legal aid lawyers with certain information about his/her expertise and provide this list to a beneficiary during selection procedure. This allows to make a more informative decision.

The list may contain contact information (name, surname, address, phone, e-mail), specialisation of the lawyer, professional experience, language skills and/or other personal information (such as age, gender, rating etc.). It should be noted that information about specialisation, experience and language skills should be certified.

The list ought to be public and available at every police station, prosecutor's office, court and also online.

N.B. In jurisdictions where a beneficiary cannot choose a lawyer, this tool is not applicable.

b. Examples in national practice

Our research showed that a list of lawyers (with names and addresses) is rather common (i.e. in **Austria**, the **Netherlands**, **Lithuania, Germany**). However, as one academic from the **UK** noted, it is not helpful by itself. A list of advocates with their experience in particular criminal cases would be even more effective. In some jurisdictions a shortlist of "Emergency defenders" if a person is arrested is provided.

In some jurisdictions, there is a search engine (e.g. in **Finland** and **Lithuania**) which provides information about lawyers (not only legal aid lawyers). Filters are available (i.e. area of expertise,

language skills, level of experience). However, this is only rational in countries where general IT knowledge is sufficient.

c. Evaluation of the practice standard based on our research

According to our survey, **60,5 %** of the respondents indicate that they have this standard in their jurisdiction. **86,7 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,26** (1-not important at all; 5-very important).

i. Advantages

This tool increases the trust needed between a lawyer and a beneficiary, thus contributing to the confidence in a lawyer. This results in better representation (as beneficiary is more willingly to share information and collaborate).

ii. Shortcomings

There is a risk that only the most experienced lawyers will be selected. In time the level of quality of the lawyers will be unequal as less experienced lawyers will be selected less frequently. Furthermore, there is the disadvantage that the workload will not be distributed equally. If the list includes only lawyers who have contracts with a legal aid board in a member state, this information will not be complete as more lawyers are entitled to provide legal aid services.

It was noted that not all suspects are aware of their right to pick a defender, which is a precondition for this tool. Even if they do, some decide to not exercise this right.

Lastly, laws on data protection should be considered.

d. Recommendations

Our research confirms that this tool can serve as an orientation for the beneficiary and is therefore important. Furthermore it has a high adaption-level.

2. Practice Standard: Ensure that the client is completely informed about his or her rights (Better notification of suspect's rights)

a. Explanation of the practice standard

Countries should seek to ensure that a police officer, prosecutor, legal aid agency or lawyer properly informs the suspect or accused of his rights. This information should be provided in a way understandable to a suspect (i.e. in a form of letter of rights, a leaflet or video-clip, through app) and using less technical legal language.

b. Examples in national practice

The obligation to inform the suspect about his or her right in a language he or she understands is mandatory in all European jurisdictions. Mostly the information is provided in written, often this is done by police officers.

However, it might be the case (as indicated by one lawyer from **Austria**, who participated in our survey) that people do not always understand their legal rights. Indeed, our research has consistently proven that. Possible police ploys might discourage legal advice – or just the routinized way in which such rights are delivered.

In the UK, as a pilot project, a suspect`s app is being developed. The app is to help people better understand their legal rights. It cannot provide legal advice but it can help people to better understand the main legal questions related to his/her situation, to make more informed decisions, particularly over the waiver of legal advice or choice of lawyer.

One researcher from **Bulgaria** noted, the use of app might be problematic where the large share of the suspects are illiterate. This researcher explains that in 2015 in Bulgaria about 10 % of suspects were foreign nationals and 16 % did not speak Bulgarian.

c. Evaluation of the practice standard based on our research

According to our survey, **58,3 %** of the respondents indicate that they have this standard in their jurisdiction. **100%** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,88** (1-not important at all; 5-very important).

i. Advantages

Notification of suspect's rights (including rights related to legal aid) is an essential procedural issue.

This notification must not be a formality. Current drawbacks are that text is technical, a suspect may be illiterate, a suspect does not speak national language.

ii. Shortcomings

No drawbacks identified.

d. Recommendations

Our studies reveal that this tool has the highest adaption-level that is possible. In addition to traditional methods of providing information to suspects and accused, use of IT technologies should also be increased taking into account the suitable target group.

VIII. Procedural Safeguards

1. Practice Standard: Requirement of an expressed agreement of the client regarding the loss of rights

a. Explanation of the practice standard

In order to guarantee, that the lawyer acts according to the wishes of his or her client, it is important to give the suspect certain rights that can only be exercised by the suspect him-/herself. Before the lawyer does anything on behalf of the suspect, it is therefore important to guarantee that the suspect is aware of it. In this way, the suspect maintains sovereignty without making it necessary to check on the quality of the work of lawyers. As long as the client makes independent decisions in the criminal proceeding, there is less space for mistakes the lawyer can make or at least the client does not depend on them and therefore is less vulnerable. Of course, this only can serve as a safety mechanism regarding to quality-aspects. This can be ensured in different ways. Some Codes of Criminal Procedure in the Member States contain regulations how a loss of rights must be performed and this encourages that the suspect stays in control of the acts of the lawyer to a certain extent. For example, such procedural steps can be the waiver of a request to appear as a witness in the courtroom regarding an alibi evidence; furthermore, a guilty plea should only be possible for the accused him- or herself to make.

b. Examples in national practice

Germany: The waiver of the right to file an appellate remedy can only be made by the accused, unless the defence counsel can show an express authorization for such withdrawal, § 302 par. 2 German Code of Criminal Procedure.

c. Evaluation of the practice standard based on our research

According to our survey, **47,06 %** of the respondents indicate that they have this standard in their jurisdiction. **85,7 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4,00** (1-not important at all; 5-very important).

i. Advantages

This tool serves several purposes, not only the quality of legal assistance, but also increases the subject status of the suspect in the proceedings as he or she is actively involved. The tool intends to get the suspect in a position in which he or she has things firmly under control.

ii. Shortcomings

As already pointed out above, this tool only serves as a minimum safeguard to keep the suspect in control of the actions, also towards his or her own lawyer. This also contains the risk that the suspect can be influenced by other parties, e.g. police officers who can put the suspect under pressure in order to waive certain rights (in our survey this is indicated by a lawyer from Greece, an academic from the Netherlands and a lawyer from Austria).

d. Recommendations

Our studies show that this standard is of high importance for the legal aid system as a whole. The adaption-level is high. However, this is a tool that serves the quality of legal aid services more indirectly by strengthening the position of the suspect in the proceedings in toto.

2. <u>Practice Standard: Requirement of documentation</u>

a. Explanation of the practice standard

It can be made a procedural requirement that lawyers are obliged to document the course of working for the client. In this way, more transparency arises and it minimizes the risk that lawyers act in an inappropriate way. Moreover, having proper documentation allows the case to be easier transferred

to another lawyer (if the first lawyer cannot continue the case or take certain actions or the legal aid beneficiary asks to change the lawyer). It is also necessary if peer review is used in the jurisdiction.

b. Examples in national practice

Germany: Professional law provides a duty of documentation for attorneys in Section 50 Bundesrechtsanwaltsordnung, as to the exact wording of the provision, see https://www.brak.de/w/files/02_fuer_anwaelte/brao_engl_090615.pdf

c. Evaluation of the practice standard based on our research

According to our survey, **48,5 %** of the respondents indicate that they have this standard in their jurisdiction. **72,22 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,76** (1-not important at all; 5-very important).

i. Advantages

It should be noted that this tool surely does not guarantee a good quality, nevertheless it enables to know about the course of the work between the lawyer and the client and is a necessary condition to assess the quality. Furthermore, documenting the procedural steps and communication of the client encourages might leads lawyers to improve their work.

ii. Shortcomings

Judging from individual indications in the survey, it is not clear to what extent this tool benefits the quality of legal aid services (indicated by an academic from the Netherlands).

d. Recommendations

Our studies reveal that this standard is of high importance for the legal aid system as a whole. The adaption-level is high. It also serves other purposes, not only in ensuring the quality of legal aid services.

3. Practice Standard: Revelation of ineffective defence in appeal procedures

a. Explanation of the practice standard

As it is especially problematic to interfere in an ongoing proceeding taking into account the independence of a lawyer, it is less problematic to control the defence subsequently in appeal

proceedings; this is a safeguard countries can implement which have the particularity that their constitutional protection of the independence of a lawyer goes very far and therefore cannot implement other tools concerning they have doubts about interfering with the independence of lawyers.

b. Examples in national practice

Germany: The choice of the court appointed lawyer can be reviewed in appealing proceedings due to Section 304 Code of Criminal Procedure, as to the exact wording of the provision, see https://www.gesetze-im- internet.de/englisch_stpo/englisch_stpo.html#p1883

c. Evaluation of the practice standard based on our research

According to our survey, **53,3 %** of the respondents indicate that they have this standard in their jurisdiction. **68,8 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,59** (1-not important at all; 5-very important).

i. Advantages

A mechanism that takes into account the potential failures of lawyers which could lead to a miscarriage of justice is supposed to be quite helpful in combination with other mechanisms of the tool-box (indicated in our survey by an academic from UK).

ii. Shortcomings

This tool only works when an appointed lawyer is deeply ineffective and incompetent (indicated by a lawyer from Austria). Furthermore, some doubts arise that this tool could be a gateway for quality control by the court (indicated by another lawyer from Austria). The previous statements of lawyers from Austria conflict with each other: The less scope a court has to control the quality of legal services, the less it can have a positive impact on a high quality. Clearly a balance has to be found here to meet all concerns.

d. Recommendations

According to our research, this tool is important and helpful in combination with other tools enhancing the quality of legal aid.

4. Practice Standard: Confer procedural rights to the suspect/accused to ensure his or her possibility to participate in the proceedings and check on the quality of the defence him- or herself

a. Explanation of the practice standard

Since the suspect or accused person has to be treated as a subject in the proceedings, it goes without saying that he or she should be involved in the proceedings. This also means that the suspect or accused person is present and has the chance to see the actions of the lawyer before court for example. This enables (or even obliges) him or her to notice possible mistakes the defence lawyer makes.

b. Examples in national practice

Germany: In Germany, in the main hearing the presence of the accused is mandatory, see Section 230 (1) and Section 231 (1) Code of Criminal Procedure, as to the exact wording of the provision, see https://www.gesetze-im- internet.de/englisch_stpo/englisch_stpo.html#p1883

Germany: The inspection of records in preliminary proceedings is possible with reservations for the suspect, see Section 147 (7) CCP, as to the exact wording of the provision, see https://www.gesetze-im- internet.de/englisch_stpo/englisch_stpo.html#p1883.

c. Evaluation of the practice standard based on our research

According to our survey, **66,7 %** of the respondents indicate that they have this standard in their jurisdiction. **81,8 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4,09** (1-not important at all; 5-very important).

i. Advantages

This tool serves several purposes and is widely spread in European jurisdictions.

ii. Shortcomings

Naturally, this is again not a tool that directly has an impact on the quality of legal aid services. It mainly guarantees the position in the procedure of the suspect or accused person. This indirectly affects the relationship between the lawyer and his or her client. The more the suspect or accused person is actively involved in the proceedings, the more he or she is able to act autonomously and to discover possible mistakes of the lawyer. This very indirect effect is evaluated by experts to

demand consequences in case it turns out that the defence counsel has made a mistake; e.g. it is suggested to demand a proper financial compensation when it turns out that the lawyer has made a mistake, which means this tool has to be combined with other tools (indicated by a respondent from the Netherlands).

d. Recommendations

Our studies clearly reveal that this is a very important tool, which is very popular and has a very high adaption-level. It emphasizes the subject status of the suspect/accused in criminal proceedings.

IX. Special Needs of fast Provision of Legal Aid in Detention Cases

1. Practice Standard: Establish a duty solicitor scheme in order to guarantee a fast arrival of a lawyer

a. Explanation of the practice standard

Suspects who are arrested have the right to consult a lawyer before police questioning and have the right to have a lawyer present during police questioning (see *Salduz v. Turkey* judgement of the European Court of Human Rights). This results in an increase of actions necessary by police /prosecution service and an increasing demand for legal aid. Therefore governments should take measurements and play an active role in monitoring the undertaken measurements to establish well-functioning duty solicitor schemes. This is largely because time may be of significant value in some investigations. This necessity for speed means that authorities have to organise the acceptance of applications for legal aid from suspects and the transfer of those applications to lawyers efficiently.

This tool requires that a legal aid lawyer makes himself/herself available and arrives at police station in a timely manner once a person is detained. Duty solicitors work according to a scheduled timetable. They provide necessary legal aid without standard appointment procedures or under different (faster) procedures. Such duties do not mean that the same lawyer will be representing the beneficiary in the following stages of the trial. Furthermore assistance of a professional translator could be also necessary.

b. Examples in national practice

Most criminal defence lawyers who provide legal aid in the **Netherlands** are also listed in the duty solicitor scheme (90%). Once they are needed, a police officer fills in an online application to contact a lawyer of the choice of the suspect or a randomly chosen lawyer who is available. The online platform processes applications for legal aid from the police to lawyers. The police computer system can now automatically send a notification to a web-server. Electronic notification includes details of the case from the police: what kind of offence is involved, preference for a particular lawyer, is the suspect addicted, does he need an interpreter etc. The computer system will pass the application automatically either to the preferred lawyer of the suspect or to the lawyer that is on duty. Lawyers have to respond in 45 minutes if they accept the case and have to arrive in the police station within two hours. When a request is not accepted, the computer system will automatically select another lawyer from the scheme. All information about the process is logged automatically in the system.

In the **UK** there is an established duty solicitor scheme for police stations and another one for magistrates` courts in England and Wales. It also circumvents the police or court from choosing a solicitor of their pleasing.

In **Lithuania** lists of duty legal aid lawyers exist for weekends and public holidays. A researcher from **Bulgaria** declares that Bulgaria also has a system for appointment of legal aid lawyers in cases of detention, whereas the rosters are regional and managed by the local bar councils. Experts from **Malta** and **Portugal** explain that they also have similar systems of a duty solicitor schemes. In Austria, it is organised through free of charge phone hotline. The police has to inform the suspect about this right to call the hotline.

c. Evaluation of the practice standard based on our research

According to our survey, **54,4 %** of the respondents indicate that they have this standard in their jurisdiction. **100 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4,3** (1-not important at all; 5-very important).

i. Advantages

First of all, this tool is cost-efficient. Practically little-to-no amount of funds is needed to implement this tool.

Secondly, in case of detention each hour spent in captivity is harmful. This tool reduces the number of excessive application of detention.

ii. Shortcomings

It may be impossible to ensure that a lawyer will be present in a police station in a timely manner in remote districts, especially if no legal aid lawyers are residing there.

d. Recommendations

Our survey shows that this is a very important tool with the highest possible adaption-level. It has a huge impact of the functioning of legal aid services in detention cases and therefore is a key element in legal aid in preliminary proceedings.

2. Draft best practice standards which orient on the special needs of defence in situations at the police station

a. Explanation of the practice standard

Guiding principles for the defense lawyers (about the role and duties of the lawyer) at police stations can be made available and distributed to legal aid lawyers. In addition, a police interrogation check-list (a non-binding tool assisting lawyers to remember what main questions should he/she cover during the first meeting with the client) could be drawn. Such tools would assist lawyers especially in cases where the meeting at police stations come suddenly and lawyers have little time to prepare or they are not provided with the file records of the prosecution.

b. Examples in national practice

Proposal from the **Netherlands**: Best practice for the defence lawyer at the police station during questioning of his client (the suspect) and a checklist formulated by Prof. Dr. *Jan Boksem*.[15]

c. Evaluation of the practice standard based on our research

According to our survey, **23,3 %** of the respondents indicate that they have this standard in their jurisdiction. **83,3 %** of the respondents who do not have this standard in their system can imagine

15 Applicable at http://www.jura.uni-frankfurt.de/71952433/Defence-counsel-at-police-questioning_-protocol-Jan-Boksem-DBA.pdf.

to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,56** (1-not important at all; 5-very important).

i. Advantages

Even lawyers with no or little experience during detention hearings could provide more qualitative legal aid if they had such guidelines/checklists.

ii. Shortcomings

It is the responsibility of the lawyer to understand the law and make the best arguments based on every case. Having such standards would partially shift the responsibility from a lawyer to the standard providers.

d. Recommendations

According to our survey results, this tool is not widespread, but relatively important and has a high adaption-level. However, it is important to emphasize that of course, lawyers still bear responsibility for their actions and cannot exonerate themselves with those lists.

X. Operating Principles

In the context of legal aid, operating principles (OP) are legal and organizational measures which help to facilitate the work of legal aid providers (in terms of reducing costs of time, financial and human resources) ensuring the high quality legal aid.

1. Practice Standard: Regulation of quotas in terms of lawyers who work as legal aid/court appointed lawyers and private lawyers

a. Explanation of the practice standard

The state may limit the number of lawyers who are entitled to provide legal aid or work as court appointed counsels.

b. Examples in national practice

In **Lithuania,** there are two types of lawyers-legal aid providers:

1) the ones, who continuously provide legal aid only to the persons eligible for it (legal aid courses are their main work);

2) lawyers who provide secondary legal aid in case of necessity.

The quotas in terms of the number of lawyers exist only to the first one, i.e. who provide legal aid continuously.

The second group is given legal aid contracts ad hoc.

The similar dual system is established **in Finland:** Legal Aid is provided by public legal aid attorneys and private attorneys. In most cases, the applicant`s first contact is the lawyer of his or her choice, who then draws up the application for legal aid. The recipient of legal aid has a choice of attorney in every court case. The client may choose whether he or she wishes to be assisted in judicial proceedings by a public legal aid attorney working at the state legal aid office, and advocate, or licensed attorney. In matters that are not to be before a court (e.g. advice or drawing up of a document), legal aid is given only by legal aid attorneys. In these situations, the recipient of legal aid cannot choose a private attorney, unless there is special reason for it (which might be that the legal aid office has a conflict interest in the matter, is too busy or the matter requires special knowledge).

c. Evaluation of the practice standard based on our research

According to our survey, **22,6 %** of the respondents indicate that they have this standard in their jurisdiction. **21,7 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3,36** (1-not important at all; 5-very important).

i. Advantages

It could help select most competent lawyers for legal aid cases and ensure that they have a proper number of cases to deal with it.

ii. Shortcomings

In the case of lack of lawyers, willing provide legal aid, it would not be an effective regulation. It could work only in high remuneration and high competition environment.

d. Recommendations

Our studies reveal that this tool is neither very popular, nor does it have a high adaption-level. Nevertheless, it is middle important in order to guarantee a high quality of legal aid.

2. Practice Standard: Create structures within the system to ensure that lawyers have enough time to prepare a case

a. Explanation of the practice standard

The tool includes organizational measures in the terms of reducing costs of time to lawyers providing legal aid and ensuring an equitable remuneration of workload, e.g. differentiate by categories like the complexity of the case, or to guarantee that lawyers are paid by working hours and not by a fixed salary.

b. Examples in national practice

In the Netherlands there are established fixed fees for different types of services (flat rate) based on extensive analysis of the average time spent on legal aid cases and varies per type of case (e.g. 8 hours for criminal cases); fixed fees per case multiplied by an hourly rate (around 106 Euro); exceptions (that means extra hours) are only possible in very time intensive cases (e.g. in very complicated criminal cases). The number of cases a legal aid provider should handle per year is a minimum of 15 criminal cases and a maximum of 250.

In Bulgaria, lawyers` remuneration is regulated by a normative act (Bulgarian Regulations for the minimal lawyers` fees issued by the Bulgarian Lawyers Council). It sets obligatory minimums per each type of criminal case - i.e. the remuneration for a case of murder cannot be lower than a certain amount. There is also a normative act of the Government that establishes the same type of principle for the remuneration of the legal aid lawyers - there are certain fixed minimums and maximums of the remuneration depending on the type of crime. Certain flexibility is allowed and legal aid lawyers` remuneration can exceed the maximum payments under specific circumstances that are described in the normative act in question (i.e. when there were numerous court sessions for the case, when there were more than one defendant, when the legal aid was provided on the weekend or holidays etc.).

c. Evaluation of the practice standard based on our research

According to our survey, **31 %** of the respondents indicate that they have this standard in their jurisdiction. **78,3 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4,00** (1-not important at all; 5-very important).

i. Advantages

It allows:

- to ensure that lawyers have enough time to prepare a case, which may lead to higher quality;
- to ensure a fair distribution of workload;
- to differentiate the remuneration according to the complexity of the case.

This tool also acts as a motivational factor to lawyers as they are remunerated as close as possible to the time they spend.

ii. Shortcomings

There is always subjective factor of evaluation of time spend (e. g. it depends on lawyers abilities to organize their time etc.).

The lack of flexibility of formal criteria (e.g. the type of case). For example, serious crime cases can be very different regarding the time spent: for example, the time spent on a case in which the evidence is clear would not be the same as compared with a case in which there is a lack of evidence, etc.).

d. Recommendations

The results of our survey allow to argue that this tool should be considered by Member States. It has a high adaption-level and is ranked to be very important.

3. Practice Standard: Privilege lawyers in later stages of the proceeding who have worked in earlier stage (Continuity of representation)

a. Explanation of the practice standard

In order to ensure the continuity of the defence, it makes sense to privilege lawyers who have been involved in the case in an earlier stage of the proceeding, (provided that the client has not complained about the lawyer of course). This can be done by persons who are obligated to check this information first or by a system which first seeks for a lawyer having been appointed in an earlier stage. Since the lawyer continuing with the case is familiar with its details and already knows the beneficiary, this allows to achieve a better quality of legal aid, unless particular reasons are invoked for not doing so.

b. Examples in national practice

The results of Global Studies on Legal Aid[16] indicate that ensuring continuity of representation is the world-wide practice in cases of legal aid. 70% of experts surveyed in the global study (from 105 countries) report that once a legal aid provider is appointed, the same provider always or often remains in the case until it is resolved (unless the original legal aid provider becomes unavailable or otherwise unfit to provide services).[17]

In the **Netherlands**, duty lawyers very often continue with the case as it proceeds.

c. Evaluation of the practice standard based on our research

According to our survey, **44,8 %** of the respondents indicate that they have this standard in their jurisdiction. **85,7 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.71** (1-not important at all; 5-very important).

i. Advantages

Continuity of representation strengthens the relationship and mutual trust between client and lawyers and saves time to prepare for a case.

ii. Shortcomings

In the cases in which a client is not satisfied with the representation, the continuity can harm the quality of legal aid and client`s interests. Therefore the mechanisms of beneficiaries' safeguards shall be provided (e. g. possibilities to complain about legal aid lawyer, providing information etc.).

d. Recommendations

This practice standard is important and has a high adaption-level. However, it has to be combined with the possibility to change the lawyer if the relationship of trust declines.

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16 http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html.

17 UNODC, UNDP, Global Study on Legal Aid, Global Report (2016), available online at http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf.

4. Practice Standard: Simplify procedures (from the client`s perspective) and make them more user-friendly

a. Explanation of the practice standard

The tool could be defined as legal, organizational, technical measures aimed at reducing bureaucracy and increasing the availability of legal aid services to a client. The application of such measures can help to reduce time needed to receive legal aid and legal aid costs as well as create a more user-friendly legal aid system, e.g. by applying automatisation/digitalisation within the system.

b. Examples in national practice

An example of good practices implementing such measures is **the Netherlands.**

In the Netherlands the Legal Aid Board (LAB) uses daily electronic information exchange systems and other electronic measures making the legal aid more accessible to the beneficiary. For example **t**here is a system of daily electronic exchange of relevant financial information between the LAB and the tax office established. Such a measure helps to significantly reduce the time costs when checking whether the beneficiary meets the financial criteria required for legal aid. There is also 24/7 electronic exchange of information between the police and the LAB to appoint a duty solicitor.

The LAB helps to develop innovative web based applications for citizens to be helpful in resolving their disputes. The LAB facilitates the project Roadmap to Justice (Rechtwijzer) for citizens with a legal conflict or problem: a preliminary provision that helps people find solutions for their legal problems in an interactive manner. With the site www.rechtwijzer.nl citizens can actively work to find a solution to their conflict or problem. Where necessary, they will be referred to an appropriate person or organization.[18]

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18 For further information please see here: https://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835_legalaid-brochure_2017.pdf.

The LAB introduced a High Trust method for dealing with the applications for certificates for legal aid lawyers.[19] This High Trust method implies that the LAB and lawyers work together on the basis of transparency, trust and mutual understanding. The High Trust method involves greater compliance on the part of the legal profession, both as to administrative proceedings of rules and working in accordance with the law, fixed procedures and support facilities such as Kenniswijzer (an online tool of the LAB with information about legislation, jurisprudence and guidelines for the application of certificates).

The LAB develops specific tools for compliance assistance, such as information and instruction meetings, which are free of charge for lawyers under High Trust. The basic philosophy underlying High Trust is that trust among a larger group of people will more readily lead to positive cooperation and compliance than institutionalised distrust. The first results already confirm this. The number of offices that are time consuming for the LAB in dealing with applications is fast diminishing. At the same time, the number of offices that have a good relationship with the LAB is increasing fast.

c. Evaluation of the practice standard based on our research

According to our survey, **36,7 %** of the respondents indicate that they have this standard in their jurisdiction. **88,2 %** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **3.93** (1-not important at all; 5-very important).

i. Advantages

Reduces costs, saves time and is user-friendly.

Increases availability of legal aid services.

ii. Shortcomings

Common dangers of digitalized procedures as data protection, technical issues etc.

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19 For further information please see here: https://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835_legalaid-brochure_2017.pdf.

d. Recommendations

This is a very important tool with a high adaption-level. It faces little concerns besides the common dangers of digitalized procedures.

5. Practice Standard: Provide first line legal aid, especially if legal aid depends on an application

a. Explanation of the practice standard

This tool encourages to establish first line legal aid so that consultations on the second line legal aid would be available more easily.

Primary legal aid is usually perceived as the form of legal aid which involves the counselling on legal issues, the provision of relevant information, referral to territorial offices, mediation etc. It is usually available regardless of the financial circumstances of the applicant and is provided either immediately on request or within a short term (maximum several days).

b. Examples in national practice

In **the Netherlands** Legal Service Counters (LSC) act as front offices that provide first line (primary) legal aid. They offer information concerning rules and regulations as well as legal procedures. They give advice and refer clients to private lawyers or mediators if their problems turn out to be more complicated or time-consuming. All services are free of charge. Although the LSC are basically open to any Dutch citizen, the aid is mainly intended for persons of limited means who qualify for legal aid. Clients can turn to the Counters with all kinds of judicial problems that concern civil, administrative, criminal as well as immigration law.

The initial contact at the Counters is meant to clarify the nature of the problems and helps staff members to find out:

- whether the problem is actually a legal problem and, if so,
- whether the problem is within the scope of the legal services provided by the Counters (not all legal problems – e.g. those between businesses – are dealt with by the Counters);
- what kind of help is most suitable for the client.

Staff of the LSC themselves are not allowed to act on behalf of the client. The focus on primary legal aid is meant to serve two major goals. First, the help provided is readily available and free of charge. That is why the LSC are generally regarded as easily accessible and fairly informal.

Secondly, they have an important screening function, in which they tackle disputes and legal problems at an early stage and thereby help to avoid escalation as well as minimise costs, both for the individual in question and for society at large. This latter aim has been reinforced since the diagnosis and triage measure took effect (1 July 2011), which encourages potential clients to contact the LSC before approaching a lawyer.

Similar system is run in **Lithuania**, where first line legal aid is provided for free to everyone by municipalities.

In **Bulgaria**, there is a national telephone hotline where people can call, talk to a lawyer for 15 minutes for free and get information how they can access more detailed legal advice and representation.

c. Evaluation of the practice standard based on our research

According to our survey, **63%** of the respondents indicate that they have this standard in their jurisdiction. **80%** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **4.06** (1-not important at all; 5-very important).

i. Advantages

It is important as a tool of diagnostics, helping to filter legal issues which requires the secondary legal aid provided by lawyers. It is available for all citizens, free of charge.

Compared with legal counselling provided by lawyers there is no economic interest of primary legal aid provider to continue the case in court.

ii. Shortcomings

Usually there is no specialization providing primary legal aid, thus it is difficult to provide detailed and qualitative counselling in in all legal issues.

It is adapted more to non-criminal law cases such as civil, family law etc.

d. Recommendations

Our studies reveal that this practice standard is very important and has a very high adaption-level, but the importance is even higher in other fields of law than criminal law.

XI. Eleventh Category: Payment and Costs

1. Practice Standard: Increase payment

a. Explanation of the practice standard

Assuming that an increase of payment leads to more time to spend on a case, attracts better lawyers and thus leads to a higher quality of legal aid services, it would have a positive impact on the quality to increase the payment of lawyers.

b. Examples in national practice

In **Lithuania**, the indexation of the remuneration of the lawyer is based on the national consumer price index trying to adjust it to the needs of the working population.

For a comparison of the money countries spend on legal aid (not only for legal aid in criminal matters) see the HiiL study "Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?" (2014).[20]

c. Evaluation of the practice standard based on our research

Our study revealed that **31,25 %** are of the opinion that they already have an adequate payment system.[21]

i. Advantages

Positive experiences have been made with systems where extensive research is done on payments and concrete improvements; partly there is an indexation based on consumer prices (indicated in the

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20 Applicable at http://www.hiil.org/data/sitemanagement/media/Report_legal_aid_in_Europe.pdf, p. 49.

21 As already mentioned in the introduction, it should be kept in mind that 48,89 % of the respondents in the survey are lawyers. Nevertheless, not only lawyers indicated that they do not find the payment system adequate: 68, 18 % lawyers (private practice), 18,18 % academics, 4,55 % ministerial bureaucracy, 4,55 % public defender, 4,55 % judges.

survey by a police officer in the Netherlands). Experts see an advantage of systems which have no national pay rate, because the payment can only be reasonable if there is reasonable supply of work to lawyers; where there is an oversupply of lawyers e.g. in cities, the competition for cases prevents economies of scale, while on the other hand payments could be increased in rural areas to incentive providers (indicated by an academic from the UK).

ii. Shortcomings

Fixed fees can discourage lawyers from spending a lot of time on cases (indicated by an academic from the UK and a lawyer from Belgium). As the amount of finances allocated for the provision on legal aid is limited, possible increases are always difficult (indicated by a policy maker from Lithuania). There are voices that strongly disagree with the thesis that the remuneration correlates with the motivation of legal aid providers or even the quality of their work (indicated by a researcher with a non-profit organisation in Bulgaria). Even if there is no proof that a high remuneration affects the motivation in a positive way, the opposite could be true: Some lawyers who feel payed not adequately compare themselves with other groups of profession, for example a lawyer from Lithuania claims that even translators in pre-trial or in court receive a few times bigger payment than the legal aid lawyers. It cannot be excluded that the appreciation status in society of the work of legal aid lawyers is measured by the payment they receive (indicated by a lawyer from Belgium).

d. Recommendations

Our studies only have limited conclusiveness in this regard. Many lawyers are dissatisfied with the payment, but it is not secured that payment has a direct impact on the quality of legal aid services.

2. <u>Practice Standard: Distribute costs for proceedings due to the principle "initiator pays"</u>

a. Explanation of the practice standard

In order to discipline lawyers who tend to postpone court hearings, it would be an option to make the lawyer reimburse the costs arising from the delay caused by own fault.

b. Examples in national practice

Germany: In Germany, such a regulation exists in Section 145 (4) Code of Criminal Procedure, as to the exact wording of the provision, see https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1193.

c. Evaluation of the practice standard based on our research

According to our survey, **32,1%** of the respondents indicate that they have this standard in their jurisdiction. **47,1%** of the respondents who do not have this standard in their system can imagine to adopt it. The respondents of the survey rank the importance of the standard in order to guarantee a high quality of legal aid with **2,54** (1-not important at all; 5-very important).

i. Advantages

If it is clear that poor practices adopted by certain lawyers and/or lawyer firms cause such delays, this should be addressed (indicated by an academic from the UK).

ii. Shortcomings

Doubts arise that it is not always easy to work out the reasons for delays/adjournments and the defence can often be blamed for problems which originate from the prosecution (indicated by an academic from the UK). Even in countries, where such regulations exist, there is little use of that mechanism in practice (indicated by a lawyer from Germany). Furthermore, the risk is seen that this could provide courts a tool to discipline lawyers engaging into an active defence (indicated by a lawyer from Austria). Partly, evaluation of this tool reveals that ethical standards in a system are supposed to settle such problems better and more effectively (indicated by a lawyer from the Netherlands).

d. Recommendations

Our studies show that this standard is used little in the Member States and faces serious concerns. It is ranked to be middle important and adoptable.