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PUBLIC INTEREST LAW INITIATIVE

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Access to Justice

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PRELIMINARY
FORUM REPORT

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About the Report:

The Second European Forum on Access to Justice was organized by the Open Society Justice Initiative and the Public Interest Law Initiative, and took place in Budapest, Hungary, on February 24-26, 2005. The Forum brought together approximately 200 legal professionals, rights advocates, representatives of international institutions, and government officials from 40 countries to discuss strategies for improving access to justice in Europe and beyond. The presentations expanded on the themes of the first European Forum on Access to Justice, held in 2002, and covered a wide range of regional and country-specific efforts to expand access to justice for the indigent. They included discussions of ongoing legal aid reforms in Europe and beyond, developments in international legal aid standards, and civil society and government initiatives to put these standards into practice.

The Preliminary Forum Report presents a narrative summary of the proceedings of the Forum. The Report was produced by the Public Interest Law Initiative and the Open Society Justice Initiative, based on the notes of rapporteurs at each session. Any errors, inaccuracies, or omissions are our own.

2ND EUROPEAN FORUM ON ACCESS TO JUSTICE
FEBRUARY 24–26, 2005

Welcoming Remarks

- Edwin Rekosh
  Executive Director, Public Interest Law Initiative
- Edit Juhasz,
  Head of the Department for Justice, Administration and Codification, Ministry of Justice, Hungary
- Alexey Kojemiakov
  Head of the Private Law Department, Directorate General I (Legal Affairs), Council of Europe
- Zaza Namoradze
  Director, Budapest Office, Open Society Justice Initiative

In his opening remarks, **Edwin Rekosh** reflected on the changes that had occurred in the field of legal aid since the first European Forum was held in December, 2002. That year's conference brought together 100 individuals from about 25 countries. The growth in size and scope of the Forum's program in 2005, with 200 participants from approximately 40 countries now participating, indicated, according to Mr. Rekosh, the profound changes that have been occurring in the field of access to justice, and the rapidly accelerating pace of law reform around the world.

The agenda of the present forum aimed to update participants on changes in countries that were the focus of the first Forum, such as Lithuania, where reforms have steadily continued; Bulgaria, which has recently seen some dramatic reforms; and Poland, where a new legal aid law was submitted to the parliament in the days immediately preceding the Forum. Some legal reforms have also taken place in the last two years in a number of other countries, including Estonia, Latvia, the Czech Republic, Slovakia, Romania, Moldova, Georgia, Kyrgyzstan, Mongolia, and China – where the reforms have taken on a remarkable scale. And very recently, in a case that has received significant publicity, the European Court of Human Rights found that the United Kingdom had committed a violation by refusing to provide legal aid in a case in which two activists were defending themselves against defamation charges brought by McDonald's.

Both the Public Interest Law Initiative (PILI) and the Open Society Justice Initiative (Justice Initiative) have been very actively encouraging these kinds of changes, and the organizers were pleased to be able to bring together such a diverse and active group of participants to compare notes and continue to make progress in further reforms.

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Speaking on behalf of the Hungarian Ministry of Justice, **Edit Juhasz** discussed the details of the recent judicial reform in Hungary, the development of which was a topic at the 2002 Forum, and as a result of which a new law on legal aid was ultimately adopted in 2003. In addition to creating new forms of legal aid and reforming existing institutions, the biggest achievement of the new law was to define legal aid as a state service that operates consistently in all judicial fields.

The law addresses legal assistance in three main areas. First, it introduces a new system of legal assistance in extra-judicial matters. This service, in operation since 2004, provides a way for the indigent to get basic legal information on everyday questions and helps individuals determine, for example, which agency or ministry to turn to, and where to get further legal assistance if necessary. The second area of reform is in civil legal disputes, and essentially consists of making available various reductions in fees for the parties as well as state-paid legal representation. Third, the law makes changes in the criminal law sphere, reforming various elements of the existing system of representation for injured parties in criminal cases. Both the civil and criminal legal aid reforms will come into effect in 2006. Legal aid services will involve two main actors: a network of legal aid offices, which will determine clients' eligibility, direct them to the appropriate service provider, and take care of lawyers' remuneration; and the lawyers and organizations under contract with the state to provide substantive legal assistance.

The most tangible effect of the reforms will be to make it possible for more people to get legal aid in more ways and in a broader range of legal matters. By this means, the Hungarian government hopes to have taken a meaningful step toward mitigating social inequality, and promoting equal opportunity. Secondly, by dedicating budgetary resources to legal aid, the reforms not only promote the stability of the legal aid system, but also establish access to justice as a governmental priority on a level similar to that of social security or education.

However, Ms. Juhasz noted, there are many more challenges that lawmakers will need to address in the future, such as improving the predictability of the system, incorporating efficient financial planning and management of funds, and implementing effective quality control. The goal of establishing a comprehensive legal aid system that will assure individuals the most rapid, affordable, professional, and definitive resolution of disputes possible is a project that will take many years. The most immediate tasks Hungary faces include fulfilling its obligation under the EU to provide legal aid in cross-border disputes, as well as undertaking reforms in perhaps the most typical access to justice sphere, legal aid for criminal defense.

In closing, Ms. Juhasz extended greetings from the Hungarian Minister of Justice, Mr. Jozsef Petretei and the administrative state secretary, Mr. Ferenc Kondorosi, and expressed the hope that the lessons learned in the course of Hungary's reform will be useful to participants from other countries, and will help draw attention to the social and political benefits of improving access to justice.

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Alexey Kojemiakov of the Council of Europe began his welcoming remarks by noting that the Forum provides an opportunity to thoroughly discuss the international issue of access to justice, and come to a clear vision on how best to ensure that the principle is upheld in practice. Access to justice is a priority for the Council of Europe – bilateral

cooperation and activities promoting access to justice are part of the Council's daily work. Improving legal aid presumes cooperation among governments in a number of areas: increasing the independence of the judiciary, developing the capacity of professionals, and improving the quality of services provided. At the intergovernmental level, work in these areas has also intensified, especially in the last decade since the expansion of the Council of Europe.

Working in this field requires asking a somewhat provocative question: How can the quality and efficient implementation of justice be measured? To begin to answer his question, Mr. Kojemiakov pointed to the recently completed European Judicial Systems 2002 report. This report, produced by the European Commission on the Efficiency of Justice (CEPEJ), is the first ever large-scale evaluation of European judicial systems. Though the report would not be presented officially to professionals and media until later in 2005, Mr. Kojemiakov drew participants' attention to a section on access to justice issues which was made available at the Forum. The report shows substantial differences between countries with respect to the degree to which states finance legal aid.

The starting point for improving access to justice is to establish a coordinated and coherent legal aid system. However, many countries lack standards on legal aid when they join the Council of Europe, and time is needed for countries to satisfy their obligations under the European Convention on Human Rights and Fundamental Freedoms, including the jurisprudence of the European Court of Human Rights. The Council is developing systems for new members to share information with other European states, and is working with local and international donor organizations, including the Justice Initiative, to develop interim measures, pilot projects, and legislation to facilitate the transition. Most of these cooperation activities are focused on Eastern European countries. Recognizing the need for an individualized approach to each country, Mr. Kojemiakov noted that the discussions and conclusions of the Forum would be helpful in the Council's effort to develop a common model.

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Zaza Namoradze extended a welcome from the Open Society Justice Initiative. As the Justice Initiative's mission is to pursue law reforms grounded in human rights, Mr. Namoradze remarked that it was exciting to observe that the right to legal aid is receiving more recognition, and that reforms are giving real substance to this right. The goal of the Forum was to highlight recent legal developments and the strategies for their implementation. There are consequences for particular choices made under different policies, and it is hoped that the Forum would also help focus attention on the social, political, and financial consequences of policies.

One of the Justice Initiative's major areas of work is to promote understanding, adoption, and implementation of institutions that organize, manage, and deliver legal aid. One project that the Justice Initiative has conducted with the Lithuanian government aimed to reform the legal aid system, including through the establishment of two pilot public defender offices. Just recently, in January 2005, the Lithuanian Seimas (Parliament) adopted a comprehensive law on legal aid. Other Justice Initiative tasks have involved supporting the legal reform work of the governments of Bulgaria and Mongolia, and the Justice Initiative is also active in a number of other countries such as Kyrgyzstan, Georgia, Moldova, Nigeria, and Turkey. In addition, the Justice Initiative has focused on projects that promote local solutions for access to

justice, such as a project which established five paralegal advice centers in Sierra Leone using community-based paralegals; similar efforts are underway in Mongolia and Cambodia as well.

The Justice Initiative has drawn a number of lessons from its work on legal aid reform. For one thing, asking for more money and proposing the establishment of new institutions for managing legal aid is never politically attractive, and may face opposition from the private bar and other actors in the field. In these circumstances, it may be impossible to adopt and implement a full-fledged legal aid system, due to a lack of capacity and of financial means. Thus, it is better to develop a legal aid management system with fewer pre-set rules and as much flexibility as possible, in order to allow for experimentation and modification within budgetary and organizational constraints. Many of the presentations during the Forum provided good examples of how more established systems have adjusted dynamically to political and legal realities, in order to improve legal aid management and delivery standards.

Naturally there are ongoing questions. How do we successfully advocate to governments and policy makers that establishing legal aid management institutions is not about bigger bureaucracies but about increased efficiency? How do we ensure that legal aid in criminal matters is focused on clients' interests and provided in a holistic manner? How can we achieve adequate recognition by governments of the individual and societal benefits of accessible, high-quality legal services? Given the fact that it is not feasible to cover free legal assistance in *all* civil disputes from public funds, how can we guarantee that access to justice is ensured to individuals of modest means in civil matters? Is there a need to improve international standards on legal aid? How should we promote more effective implementation of existing standards? Mr. Namoradze expressed his hope that these questions and others would generate productive discussions in breakout groups during the Forum, and wished participants an interesting, fruitful, and intellectually challenging meeting.

Panel I.
European and International Standards on Access to Justice – Recent Developments

- Developments on standards and jurisprudence on access to justice and legal aid since 2002, globally and in the Council of Europe.
  Borislav Petranov
  Program Officer, Human Rights and Justice, Ford Foundation, Moscow
- Impending developments in the field of access to justice in civil and commercial matters, with special reference to private international law.
  Robert Bray
  Principal Administrator, European Parliament

  Moderator: *Karoly Bard, Professor, Central European University*

This panel discussed recent international and European developments in case law and standard-setting, examining the impact of the changes on questions of access to justice.

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Borislav Petranov began his presentation on international standards by acknowledging that there is always a question of whether international standards are relevant to cases going through courts on a day to day basis. How does the case law of the European Court of Human Rights (ECtHR) address specific problems of legal aid in European countries?

Research done in preparation for the first Forum on Access to Justice in Central in Eastern European Countries in 2002 documented a number of problems with regard to legal aid. A very large number of defendants were falling out of the system, and serving sentences without ever having seen a lawyer. Individuals whose cases did not trigger mandatory defense were not getting legal aid at all. The system of appointment of counsel was seriously dysfunctional in many countries, often riddled with cronyism, leaving defendants hostage to chance. Some countries had no system at all. Means testing was in its infancy, legal aid in pre-trial phases was patchy, and management of legal systems was largely non-existent – no-one knew how much money was being spent, or how many cases were being supported. Also, the scope of legal aid in civil cases was extremely limited.

These problems have been confirmed by several other investigations since. An

additional point that has come to light is that initial legal advice has been a particular point of weakness. Once an individual is facing an actual court procedure he or she might be appointed a lawyer, but the system of getting initial advice is practically non-existent.

How have these problems been addressed by the European Court of Human Rights? ECtHR case law has broached a number of access to justice issues:

- The right to legal aid (Article 6 of the Convention).
- The right to an effective remedy.
- Exhaustion of domestic remedies. Specifically, the case law remains open question as to what the obligation to exhaust domestic remedies means for a person who does not have an attorney. There are some cases pending on this point, but nothing has been resolved as of yet.
- Non-discrimination in procedure. In some countries, procedures and rules operate to exclude some sections of the population from legal aid: residency requirements, or requirements to possess certain documents (such as the *propiska* [residence permit] in the Russian Federation).
- Absence of arbitrariness in operation of the legal aid system. The court has increasingly been looking into how courts operate, in order to exclude arbitrariness.

There are two ways to bring ECtHR case law to bear on systemic issues. First, there is the control that the Committee of Ministers exercises over a judgment. Once a judgment becomes final, there is a debate between the Committee and the government regarding what measures to take to avoid future harm. There are several recent examples (such as in Ireland and the UK) in which governments have changed national laws following ECtHR judgments. Second, there is the friendly settlement procedure, as in *Faulkner v. United Kingdom*, for example, in which the case did not go to judgment, but as part of the settlement the UK government agreed to implement a legal aid system in Guernsey.

The Court has developed the fair trial principle in civil cases in two circumstances. The first is when access to the court is at issue. The second relates to the equality of arms principle, to prevent a situation where a huge disparity between litigating parties would make a trial manifestly unfair. As regards the quality of legal aid systems, the Court's practice is very superficial. The Court has basically deferred to the judgment of national authorities on this point, and is very

The Forum brought together approximately 200 participants from 40 countries.

reluctant to impose standards of practice on a state's lawyers.

There are several new cases of note with regard to legal aid. First is the McDonald's libel case (*Steele and Morris v. the United Kingdom*), just decided in January 2005. The Court unanimously found a violation of the Convention's guarantee of the right to a fair trial. However, the judgment is not yet final and could be appealed, and it reverses a long-standing line of jurisprudence that legal aid is not necessary in defamation cases, because there are other ways to achieve equality of arms in the English system. However, there was an exceptional disparity of means and opportunities between the litigants here. McDonald's spent about £10 million on the case, while the applicants spent about £40,000; the applicants' income was about $200 a week, versus about $30 billion annually for McDonald's. Because the case was so unusual, Mr. Petranov cautioned, it may be best not to make too much out of it. However, it does show that abrupt changes are possible – suddenly the Court found legal aid to be a requirement in cases where it had clearly *not* been required previously.

European Court rulings emphasize the importance of creating legal aid systems so that litigants can actually get a lawyer who is prepared to act for them.

Another recent case, *Santambrogio v. Italy*, from September, 2004, addresses the issue of means testing. An individual denied legal aid in a divorce case contested the means test, but the Court found no violation of the Convention, determining that the applicant had means at his disposal to pay for representation in the proceedings. The ECtHR's decision in *Santambrogio* demonstrates a reluctance on the part of the Court to control in detail how a means test operates, unless it is arbitrary or discriminatory.

In the 2003 case of *Bertuzzi v. France*, a prospective litigant was granted legal aid but was unable to actually obtain a lawyer after a series of appointed attorneys withdrew from the case because of their connections to the opposing party (also an attorney). The Court unanimously found a violation of Article 6.1, determining that the applicant was denied effective access to a court. The Court's decision emphasizes the importance of creating a legal aid system so that litigants can actually get a lawyer who is prepared to act for them.

In conclusion, Mr. Petranov focused on areas where there is scope for development of standards in the ECtHR. First, we may see some enlargement of the scope of cases in which legal aid is necessary, the primary example being in criminal cases where detention is at issue. For example, the UK recently settled the case of *Broadhurst v. The United Kingdom*, in which an individual without representation was detained for a few days. The fact that the UK settled could suggest that the case law is moving in the direction of affirming that legal aid should be provided when an applicant faces even brief imprisonment.

The second potential area for development in ECtHR case law is in the prevention of discrimination and arbitrariness in decisions on legal aid. For governments in Central and Eastern Europe, the questions that are bound to arise in legal aid in civil cases have to do with the scope of legal aid, the operation of courts, and the prevention of discrimination and arbitrariness. In general, the related cases all send the message to be flexible: Mr. Petranov noted that while he might hesitate to use the word "discretion", the rules should be flexible enough so that in certain cases

legal aid could be granted to respond to specific circumstances.

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Robert Bray of the European Parliament focused his remarks on developments in international standards in civil and commercial matters, with emphasis on private international law matters in which courts have to apply foreign law to the elements of the case before them. The European Parliament is currently developing a proposal for regulation of the law applicable to non-contractual obligations. The creation of European Union rules to define which law applies in international disputes will facilitate access to justice for parties involved in such disputes.

In developing the proposal, the drafters have read laws on private international law from a variety of jurisdictions, such as Switzerland, Belgium, and the United States, and have seen that often the best way to achieve justice is to give a lot of discretion to judges. It is a very Anglo-Saxon idea, and has met with some resistance from European governments.

In many cases involving private international law, the parties are already in a relationship. The first thing to look for, then, is autonomy of the parties. In the absence of an explicit agreement, the applicable law is that of the location where the harm occurs, but courts still have discretion within that rule. If the matter is more closely connected with the law of a different country, then that law should apply. Also, if the parties are both habitually resident in a particular country, they should have the opportunity to use that law. Second, where there is a pre-existing relationship in the form of a contract, the law that applies to the contract should also apply in the non-contractual relationship. The goal is to permit uniformity of result. Lastly, courts may rely on the principle of protection of expectations – i.e., what law would the parties have thought would apply? This is approach is typical of the UK, but the drafters have received a lot of positive observations from judges in the other member states on this solution.

The instrument currently being drafted in the European Parliament also deals with the question of damages. The actual damage or loss will be determined according to the applicable law, but there may be some question regarding the quantum of damages. For example, suppose there is a traffic accident involving a person from a wealthy country in a foreign country, where the standard of living is very low, and the victim requires intense, ongoing care. It seems inequitable to apply the standards of the country with the lower standard of living.

Lastly, Mr. Bray mentioned another interesting provision contemplated in the proposal, a public policy exemption by which a court would not have to apply foreign law when it is incompatible with public policy.

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Discussion

In the discussion on the developing case law of the European Court, there was agreement that the case law is tending to enlarge the scope of cases in which legal aid is required. One participant drew attention to the notion of the "interests of justice" included in Article 6.3(c) of the European Convention on Human Rights, which allows the Court to consider whether the "interests of justice" require the provision of legal aid. This notion allows courts to consider such things as the gravity of the offense, the seriousness

of the potential sentence, the complexity of the case, and the personal situation of the individual accused.

On the issue of international standards on legal aid, some discussion concerned problems related to the implementation of international standards in member states, and particularly among new members. Is ten years sufficiently long to expect national courts to have understand international standards sufficiently to ensure direct application in domestic proceedings? International standards are still interpreted and perceived in contradictory ways in the academic community, among professors training future judges, and among judges themselves, even on a high level.

The superimposition of many different standards – EU, Council of Europe, and domestic – calls for a concerted effort to make sure that the relevant institutions send consistent messages. Also, careful attention must be paid to how the judicial community and the Bar explain international standards. There needs to be an understanding of the actual barriers to implementation in local courts – for example, if there is no support or structure for implementation.

With regards to the European Union's proposed Framework Decision on Certain Procedural Rights in Criminal Proceedings, participants raised the concern that while it is important to have standards elaborated in writing, implementation and monitoring are also part of the equation. Though methods of monitoring do currently exist, they are not strong enough.

Panel II.
From Theory to Implementation: Reforming Legal Aid in Central and Eastern Europe

- The goals and processes of institutional legal aid reform in Lithuania.
  Paulius Koverovas
  State Secretary of the Ministry of Justice, Lithuania
- Efforts to reform the legal aid system in Bulgaria.
  Miglena Tacheva
  Deputy Minister, Ministry of Justice, Bulgaria
  Martin Gramatikov
  Law Program Coordinator, Open Society Institute-Sofia, Bulgaria
- Overview of legal aid reform in Hungary. Hungarian Helsinki Committee's advocacy strategy for reforming the criminal legal aid system.
  Andras Kadar
  Program Coordinator, Hungarian Helsinki Committee, Hungary

Moderator: *Zaza Namoradze, Director, Budapest Office, Open Society Justice Initiative*

The Forum's second panel was devoted to "legal aid in action". Presentations evaluated the progress of legal aid reforms implemented in the Central and Eastern European region, and included the perspective of both government officials and civil society representatives.

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The presentation by **Paulius Koverovas** focused on recent legal aid reforms in Lithuania. On January 20, 2005, the Lithuanian Seimas adopted a new legal aid law, to come into effect on May 1, 2005. The law was the culmination of a multi-year reform effort, carried out in close cooperation with the Open Society Justice Initiative, aiming to improve access to justice for poorer members of society.

Mr. Koverovas explained that the new law classifies legal aid into primary and secondary types. Primary legal aid encompasses simpler forms of legal assistance such as provision of legal information, consulting, and out-of court dispute settlement. Secondary legal aid covers legal representation and related activities in court proceedings. Under the new law, primary legal aid may be provided by legal professionals employed by the municipality, or by attorneys or public institutions that have entered into an agreement with the municipality. This is a change from the previous system,

under which only lawyers or lawyers' assistants who had an agreement with the municipality were permitted to provide legal aid. Secondary legal aid is to be provided in all cases by attorneys who have concluded agreements with the state legal aid services.

Mr. Koverovas noted that a major change under the new law will be the creation of a system of legal aid offices administered by the Ministry of Justice. Two public defender offices, established in Siauliai in 2000 and Vilnius in 2002 in cooperation with the Justice Initiative will be transformed into state institutions, funded from budget resources for legal aid provision, and renamed, respectively, as the Siauliai and Vilnius State Guaranteed Legal Aid Service. Three additional state legal aid services will be established in the cities of Kaunas, Panevezys, and Klaipeda, for a total of five legal aid service offices administered by the Ministry of Justice.

The new procedures in Lithuania aim at more efficient use of resources to improve the quality of services provided.

The determination of eligibility for legal aid will be simplified by the new law, which does away with a complicated 5-tiered eligibility system relying on cumbersome property and income declarations. These shall no longer be required in order to receive primary legal aid. In the case of secondary legal aid, eligibility will be based on a two-level determination, under which the result of the property and income declaration will determine whether individuals qualify for 100 percent or 50 percent coverage of legal expenses. Certain vulnerable groups will be exempted from the declaration requirement for secondary legal aid as well.

The legal aid management system will be reorganized somewhat under the new law, improving coordination among institutions that participate in legal aid provision. The new law creates a Council for Coordination of State-Guaranteed Legal Aid, which Mr. Koverovas described as a collegial, advisory body operating on a voluntary basis and made up of representatives of institutions and associations working in legal aid provision or human rights protection. The Council will review the work of legal aid providers and will have the ability to offer proposals on improving legal aid, such as proposals on efficient use of funds, changes to fee structure for participating attorneys, and proposals regarding acts implementing the new law.

Before concluding, Mr. Koverovas summarized the goals of this recent reform. First, the new procedures aim at more efficient use of resources, focusing on rendering legal services to those who are in most need. Changes to the selection process and compensation structure for attorneys are intended to improve the quality of services provided. In addition, it is hoped that the reforms will strengthen management and coordination of the system, ensure systematic data collection on the functioning of legal aid institutions, and facilitate the dissemination of information on legal aid to the public. Finally, Mr. Koverovas added, the achievement of these goals will ensure that the Lithuanian state fulfills its constitutional and international obligations regarding equal access to justice.

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The presentation given by **Miglena Tacheva**, Deputy Minister of Justice of Bulgaria, addressed the strategy and vision of the Ministry of Justice on legal aid reform. In Bulgaria, legal aid reform

has become an important part of the EU accession process, as accession progress reports have highlighted the need to enhance access to justice and streamline legal aid. Ms. Tacheva noted that various initiatives, including a 2001-2002 study by the Bulgarian Helsinki Committee, have been undertaken to determine the scope of the problem and help define solutions.

The various studies have defined a number of problems, including a high degree of exclusion from access to legal counsel. There is no specialized body to administer legal aid, and there are no standard criteria for appointment of *ex officio* counsel or for quality control. There are also no standard criteria for evaluation of applicants' financial status. The state does not have an independent budget for legal aid, and information on the amount or effectiveness of existing spending on legal aid out of the general budget is inadequate. Another persistent problem is a lack of motivation on behalf of attorneys to participate in the legal aid system, which in turn affects the quality of aid that can be provided.

In light of these findings, Ms. Tacheva continued, the Bulgarian government adopted an official Strategy for Reform of the Bulgarian Judiciary, as well as an Action Plan for Implementation, expressing the government's commitment to reform. Further, in mid-2004, a group of academics, representatives of the Bar and of the Open Society Justice Initiative, and experts from the Ministry of Justice completed a Concept Paper elaborating basic principles that should underlie the legal aid system in order to conform with the European Convention on Human Rights, as well as with the requirements for EU accession, and outlining some options for legal aid reform.

Bulgarian Deputy Minister of Justice Miglena Tacheva (left) addresses the Forum.

A Draft Law on Legal Aid has been created, which Ms. Tacheva announced would soon be discussed in Parliament and which, if adopted, would put a new legal aid system in place by the beginning of 2006. The new law would grant legal aid in civil, criminal, and administrative cases. A National Legal Aid Bureau will be established as an independent legal aid body with an independent budget. The new law also outlines the scope of legal aid, as well as procedures for granting legal aid and for selecting providers, and introduces a mechanism for administering reimbursement for services provided.

Ms. Tacheva concluded her presentation with a reference to the Chinese saying that, "A journey of many miles begins with a single step." With this reform, Ms. Tacheva believes Bulgaria has taken that first step, and hopes the new system will continue to develop until the granting of legal aid becomes an integrated part of everyday life.

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Martin Gramatikov presented the highlights of some of the research that has been done on the legal aid system currently in existence in Bulgaria, in which defense lawyers are appointed *ex officio* by law enforcement organs. For example, it has been demonstrated that 35 percent of individuals accused of a crime are not represented at the pre-trial stage, and 25 percent of defendants go through trial in the first instance court without a lawyer. Other problems include inadequate funding and scattered

responsibility for legal aid. There is a lack of standards for *ex officio* appointed counsel, and no direct link between performance and payment. With respect to legal aid funding, Mr. Gramatikov reiterated Ms. Tacheva's point that legal aid is currently financed out of the general budget of the judiciary. The lack of specific line-item funding, creates a large possibility for ineffective spending. It is hoped that the proposed legal aid draft law will address problems such as these.

Mr. Gramatikov also briefly discussed the ways in which civil society groups in Bulgaria have been participating in the reform process. First, civil society groups have been active in advocating for legal aid policy changes. Second, they have been involved in information-gathering on problems in legal aid. This has involved research into prominent issues and the scope of problems, and has also helped to uncover the hidden costs of the existing legal aid provision system.

Bulgaria's pilot Legal Aid Bureau project assesses the real demand for legal aid, and provides concrete financial information to reveal the true costs.

Another civil society contribution is the implementation of a pilot Legal Aid Bureau, which has provided a good picture of the benefits of an alternative legal aid provision system. Mr. Gramatikov noted that the project has also helped in assessing the real demand for legal aid, and has provided concrete financial information to reveal the true costs. By providing an easy break-down of the particular activities involved in its work, the pilot Legal Aid Bureau has facilitated a better understanding of needs, which in turn helps to formulate quality standards for legal aid. Finally, the project creates valuable and important momentum for change of the existing system.

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Andras Kadar's presentation dealt with recent reforms that have been undertaken in an effort to improve the delivery and quality of legal aid in Hungary. The new civil legal aid law, commonly known as the "People's Attorney" law, modifies the existing system of legal aid in court proceedings, establishes legal aid in more areas, and reforms the institutional framework, establishing a Legal Aid Service with national and regional offices.

Under the new law, legal aid in civil matters is available for indigent clients who meet financial eligibility criteria. Certain groups of people (such as homeless individuals and asylum seekers) are automatically entitled to legal aid with costs borne by the state. Others may request legal aid, with costs either borne by the state (for those living below the minimum pension level) or advanced by the state (for those earning above the minimum pension level but below the minimum wage).

Also, the law changed the system of legal aid providers. It is no longer a mandatory requirement that licensed attorneys take on legal aid cases. Legal aid providers contract with the Ministry of Justice on a voluntary basis. Clients apply to the Legal Aid Office, which handles eligibility testing and determines the number of hours of legal assistance that will be offered. The client can then select a lawyer from a list of participating lawyers provided by the Ministry. Currently, the list includes 303 law firms and private attorney's offices (comprising approximately 7,000 lawyers), 12 notaries public, six NGOs, and one law school legal clinic.

Some changes have recently been made to legal aid in criminal cases as well. The 2003 Code of Criminal Procedure, which provides for legal aid in cases of mandatory defense, increased the hourly fees for participating attorneys and did away with a requirement that convicted defendants repay the costs of their defense. However, Mr. Kadar pointed out, the *ex officio* system of appointment was largely untouched by the most recent law reform, and severe structural problems remain. For example, appointment of defense counsel is made by the investigating authority, raising a troubling conflict of interest which may hamper effective legal assistance. Individual quality assurance is provided only indirectly through the disciplinary powers of the Bar, but even this is ineffective as the Bar does not receive information on individual cases. There is no system for general systemic quality control – no data collection on the work of *ex officio* lawyers, and no statistics on the numbers of cases or how much they are paid, for example. Financial management is also problematic as the budget for legal aid is spread among several administrative areas, with no single body supervising a single legal aid budget.

Investigators and prosecutors in Hungary and Bulgaria are gradually beginning to accept the idea that solid defense representation serves the interests of justice.

In an effort to develop solutions to these problems, in 2004 the Hungarian Helsinki Committee implemented a Model Legal Aid Board project with the support of the Dutch Ministry of Foreign Affairs. Under the program, police officers in five Budapest districts were instructed not to appoint *ex officio* lawyers in mandatory defense cases, but rather to notify the program's dispatchers. The dispatchers then contact a participating lawyer, based on a pre-set duty schedule and other considerations such as specialization in a particular type of case or relevant language skills. The appointed lawyer must meet his or her client at the police station within 90 minutes. Lawyers submit monthly reports to the Model Legal Aid Board – made up of Ministry and Bar Association representatives, Hungarian Helsinki Committee members, practicing lawyers, and university professors – which serves as a supervisory authority, provides quality control, and determines appropriate payment for the lawyers.

Although the Model Legal Aid Board project is not yet completed, Mr. Kadar acknowledged that some lessons have already been learned from the 131 cases taken thus far. Some problems have occurred in practice, such as varying degrees of cooperation from police authorities, and the discovery of unlawful interpretation of the Code of Criminal Procedure on the part of the police. Also, the early experience of the program has revealed some weaknesses in the pilot project. It requires a great deal of administration, which is time consuming and expensive. One possible solution would be to set up a lump-sum payment system based on types of cases. The lump-sum payment option would also help control for costs that lawyers may claim against the system but which cannot with certainty be determined to pertain to particular cases. The dispatcher system is also costly; one option to make it more cost-efficient would be to employ a pre-scheduled duty system. Lastly, general quality control could be improved by a regular meeting of a specialized body tasked with monitoring performance and undertaking a nation-wide assessment.

Discussion

This segment began with an

acknowledgment that many of the countries of Central and Eastern Europe are confronting similar problems with the conceptualization and implementation of legal aid reforms. During the discussion, participants sought suggestions and comments from the panelists on specific issues and problems, with a focus on the Bulgarian and Hungarian examples. One participant raised concern over the appointment of legal aid lawyers by law enforcement actors who direct the investigation and prosecution, because of the potential conflict of interest. Mr. Gramatikov noted that in Bulgaria, an effort was made to delegate power of appointment to an external body, but the Ministry of Finance objected on the grounds that doing so would create an enormous burden on the budget. However, Mr. Gramatikov continued, in practice, investigators have not been unwilling to appoint public defenders, and are gradually beginning to accept the idea that that solid representation serves the interests of justice. Mr. Kadar added that in Hungary, police in districts participating in the Hungarian Helsinki Committee program had agreed that even if it may be inconvenient for the investigative authority, it is good for defendants to be represented.

Some discussion centered on the question of the legal aid eligibility of legal entities, as opposed to natural persons. As one participant commented, it is possible to imagine a scenario in which a legal entity could have a need for legal aid – for example, a violation of the right to representation could occur where a resource-poor NGO is dissolved. In the Bulgarian draft law, it was explained, only natural persons may receive legal aid, partly because NGOs do not fit within the conventional grounds for legal aid (such as disability or indigence). Moreover, many categories of cases in which an NGO may be a party (such as property disputes) are excluded from the scope of legal aid. (The panelist also noted that the specific example regarding a dissolved NGO could not occur in Bulgaria, where such actions are prohibited by law.)

Another participant noted that the draft legal aid act of Bulgaria gives practicing attorneys a majority on the Legal Aid Board, which is problematic with respect to Council of Europe standards, as the question of non-arbitrariness of a legal aid system also relates to the composition of the Legal Aid Board. Ms. Tacheva responded that in the Bulgarian case it is necessary to balance the needs of the client with the interests of a powerful Bar, without whose cooperation the system will not function. At the same time, the legal aid board is a cooperative body; its members will have common goals and a common road to follow.

Other comments focused on cost issues, but at the moment, it is too soon to draw conclusions about budgetary needs or consequences of either the Bulgarian draft law or the Hungarian Model Legal Aid Board. Concern was also raised over the high threshold of the means tests, which will work to exclude persons with middle income from legal assistance. It was suggested that other means should be explored to expand the reach of legal aid, such as contributions from recipients of legal aid, the use of legal advice centers, or the possibility of an insurance system.

Panel III.
Selected approaches to promoting legal aid reform

- Findings of the "Access to Legal Assistance and Information" project in Serbia and Bosnia and Herzegovina.
  Dusan Ignjatovic
  PILI Consultant, Belgrade, Serbia and Montenegro
- Reform of the criminal system in Chile: from an inquisitorial to an adversarial oral system. Public Defenders Office role and goals.
  Sofia Libedinsky
  National Public Defenders Office, Studies and Research Department, Santiago, Chile
- A pragmatic approach toward addressing the pre-trial detention phenomenon and the provision of effective legal aid in Nigeria.
  Yemi Akinseye-George,
  Senior Special Assistant to the Hon. Attorney General of the Federation and Minister of Justice, Federal Ministry of Justice, Abuja, Nigeria

Moderator: *Edwin Rekosh, Executive Director, Public Interest Law Initiative*

The panelists in this session work in countries that are culturally very different, yet common themes, experiences, and challenges regarding access to justice in their countries are apparent.

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Dusan Ignjatovic introduced the Public Interest Law Initiative's Access to Justice program, and described PILI's current project in the Balkans, part of a wider British government-funded program, *Safety, Security and Access to Justice in the Balkans*. The work involves conducting empirical research with the help of local partners; holding roundtables and conferences to engage a wide range of stakeholders and support legal aid reform initiatives; and publishing related reports with extensive data, conclusions and clear recommendations. The goal of the project is to build political will for evidence-based policy making and reform by gathering data regarding legal aid provision and practices, disseminating findings and recommendations, and fostering a participatory approach to reform.

Mr. Ignjatovic shared some of the most important findings of survey research conducted by PILI in Serbia and Bosnia and Herzegovina. For instance, in Bosnia and Herzegovina, 45.3 percent of those in

prison had no defense counsel during the first appearance, and 16 percent had no attorney throughout the proceedings. In Serbia, 54 percent of all suspects had no defense counsel during the first appearance before an investigative judge, and 29 percent of accused persons with an income of less than $140 per month did not have defense counsel at all. In Serbia, *ex officio* counsel is available on request to low-income individuals accused of a crime that carries a sentence between 3 and 10 years. However, Mr. Ignjatovic pointed out that only 11 percent of all appointed lawyers were appointed on the basis of the client's indigence, and only 4 percent based on the "interests of justice". These figures reveal the underlying need for a clear and robust means test.

The survey yielded telling information with respect to the quality of legal aid provided. In Bosnia and Herzegovina, 25 percent of accused persons surveyed who had been appointed an *ex* officio lawyer had not met their lawyer during pre-trial detention. Furthernore, Mr. Ignjatovic reported, when asked to assess their defense counsels' performance, 38 percent of prisoners with *ex officio* attorneys in the Bosnia and Herzegovina survey said they were very unsatisfied with their attorneys' performance, while only 19 percent said they were satisfied.

The goal is to build political will for evidence-based policy making by gathering data on legal aid provision and practices.

In conclusion, Mr. Ignjatovic noted that the reform process in the region is quite active, with all relevant stakeholders participating in a series of round tables and conferences organized by PILI. In Bosnia and Herzegovina and in Serbia, Ministry of Justice decision makers have taken the lead in the reform efforts by establishing working groups to explore further reform.

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Sofia Libedinsky spoke on legal reforms that have occurred in Chile since the 1970s. For much of its history Chile, as was typical of Latin America, had a pure inquisitorial criminal justice system, in which written proceedings were conducted in secret, with a single judge in charge of investigation, accusation, and sentencing. Resolution often took years, and often ended without a sentence for the accused.

Since the 1990s the Chilean legal system has gone through a radical transformation from an inquisitorial to an adversarial system. The reform created several new institutions, including an autonomous Prosecutors Office to handle the investigation and accusation phase, a reorganized judiciary with one judge for the pre-trial phase and a separate 3-judge panel deciding the oral trial, and a National Public Defenders Office.

The right to legal defense is granted in the constitution, but Ms. Libedinsky explained that previously, legal aid services were provided predominantly by law students in their last year of study, during which they were required to practice before receiving their degree. Almost 90 percent of legal defense of indigent persons was conducted by law students under this system. The result was generally low-quality legal defense for the poor, partly because proceedings often lasted longer than the students' practice terms, meaning that cases would pass from one student to another.

The legal reform established a mixed system of legal aid, in which approximately 70 percent of legal aid cases are handled by private lawyers

under contract. Defense counsels participating either as individuals or as law firms are selected through a bidding process. Defendants may choose a lawyer from a list provided by the judge before the first hearing; lawyers are assigned cases for a period of three years. The remaining 30 percent of legal aid cases will be handled by the newly-created Public Defenders Office, where 145 lawyers serve as public employees. Representation will be provided free of charge for defendants with a monthly income of less than $200 per month; above that clients will be charged on a sliding scale, between 10 percent to 70 percent of the attorneys fees.

Since the 1990s Chile has undergone a radical transformation from an inquisitorial to an adversarial legal system.

Quality control is exercised in three ways. First, all public defenders and private attorneys working in public defense must submit regular reports to the National or Regional Public Defenders Office. Second, the national office has a team of 18 lawyers who serve as inspectors, tasked with visiting all the defenders working for the office, and checking their work by reviewing their case load, observing hearings, etc. These visits must occur at least once a year, and are followed by written reports from the inspectors to the defenders office, which decides if any measures need to be taken in response. The inspection process is confidential. The third quality control method involves external audits conducted by independent evaluators. However, Ms. Libedinsky added that this last option has been difficult to implement as there is no previous experience of auditing the law system in Chile.

Ms. Libedinsky remarked that the reform in Chile has been a challenging process involving many people and a great deal of extra study and training, but it has been a positive change.

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Yemi Akinseye-George introduced some of the problems facing the legal system in Nigeria, and followed with details about a project of the Legal Aid Council of Nigeria, Open Society Justice Initiative, and Legal Services Consortium aimed at reducing pre-trial detention and supporting ongoing legal aid reform.

Mr. Akinseye-George explained that one of the biggest challenges for access to justice in Nigeria is the enormously high incidence of pre-trial detention. Nationwide, more than 70 percent of all persons incarcerated are actually awaiting trial. In the city of Lagos, that number reaches 90 percent. At the same time, most lawyers are reluctant to take legal aid cases because they fear that they will not be paid by the state.

The aim of the reform is to extend legal aid beyond representation, improving real access to justice overall, not just in court proceedings. One goal is to assist poor people in accessing a number of out-of-court procedures that are provided for by law, as an alternative to court. Because of the high degree of poverty in Nigeria, another important element of the reform will be to establish an effective means test, possibly using the national minimum wage as a threshold, with a sliding scale contribution system above that level.

One important access to justice project in Nigeria involves the National Youth Service Corps working together with the Legal Aid Council of Nigeria, Legal Services Consortium, and the Justice Initiative on a service provision pilot project in four states. In Nigeria, all law graduates under 30 years of age are required to spend one year in service to

the state. The new lawyers, after a one-month training course, are posted to various government departments and private sector organizations, with the government paying part of their salary. In the pilot project, four National Youth Service Corps lawyers are sent to the four target states, where they work under the supervision of the Legal Aid Council Directors of the respective states. The main focus of their work is to provide necessary legal services immediately at the point of arrest, in an effort to curtail the excessive use of pre-trial detention. After a year, the pilot project will be evaluated to determine whether more attorneys can be brought into the program.

* * *

Discussion

The discussion after this session was largely focused on quality control. For example, one participant was concerned about the use of competitive bidding in selection or participation of lawyers in legal aid system, as in Chile. The risk is that requiring lawyers to outbid each other in a competitive process will compromise the quality of services provided. Another question raised was how to set measurable standards and how to keep lawyers accountable without interfering with the lawyer-client relationship. In Chile, the Public Defenders Offices have created written standards that take account of such things as how many times lawyers meet with a detained client, for instance. Also, the quality control system in Chile is designed to make use of multiple evaluation methods.

One comment suggested that two issues – the problem of opposition by the Bar and the question of external quality control – were perhaps being given too much emphasis. First, the obligation of the state is to provide legal aid, not to concern itself with the relative wealth of lawyers. The position of the Bar on legal aid does not diminish the state's obligation. Second, as regards quality assurance, extensive assessment mechanisms impose another bureaucratic system and more costs of administration – why not leave quality control to lawyers' professional obligations? Others quickly disagreed with this last point, noting that without a monitoring system, there is no way to provide assistance when the work is done poorly, nor to provide reinforcement when lawyers perform well. Richard Moorhead (UK), whose studies quality control in legal aid, noted that extensive research into legal aid in the UK showed that poor quality work was being done in about 30 percent of all cases. Also, when solicitors were compared with paralegals, paralegals were often performing higher quality work, which suggests the need to be cautious about relying solely on lawyers' professionalism to preserve quality.

Panel IV.
Recent Developments in Selected Countries

- Legal aid in England and Wales: Current issues and lessons.
  Roger Smith
  Director, JUSTICE, United Kingdom
- Reforming primary legal aid in the Netherlands.
  Frans Ohm
  Director, Legal Aid Board Amsterdam, The Netherlands.
- Striving to square the circle: Accommodating the need for quality legal aid in an age of shrinking budgets – the Israeli experience.
  Moshe Hacohen
  Head of Public Defender Office, Jerusalem, Israel
- Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients.
  Robin Steinberg
  Executive Director, The Bronx Defenders, New York, United States

Moderator: *Nadejda Hriptievschi, Junior Legal Officer, Open Society Justice Initiative*

Panel IV focused on a few selected countries with well-established, functional legal aid systems that have inspired many of the legal aid reforms in Central and Eastern Europe. Even still, their legal aid systems are constantly being redesigned and reshaped to strike an optimal balance between the costs and quality of legal services. Such experiences may provide useful lessons for other legal aid reformers.

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Roger Smith discussed recent reforms of the legal aid system in England and Wales. In recent years scholars have undertaken a great deal of intricate research into the system, especially with regard to civil legal aid. Much of the current reform has focused on issues of quality assurance, with various mechanisms to improve the quality of the legal aid system being introduced.

The idea of legal aid in England and Wales emerged out of the traditions of the legal profession, which promote voluntary charitable work. As a result, lawyers have always been a driving force behind legal aid reforms, with legal aid primarily provided by private practitioners. From the time the legal aid scheme in England and Wales was first introduced after the Second World War, the system did not have a set budget. However, costs have

risen sharply, and some of the recent reforms have involved the determination of a fixed budget, with the state assuming more control over both spending and legal aid quality.

Practitioners enter into contracts for the provision of legal aid services, and are audited for quality. A "Quality Mark" system – through which the government grants its stamp of approval to external agencies providing legal information, advice, or services of acceptable quality – allows the state to incorporate a much broader range of services beyond those it directly funds, while still providing a degree of quality assurance to the client. Also, in a new pilot project in London, lawyers can participate in a competitive bidding process for contracts to provide criminal legal aid. If the competitive bidding trial is successful in London, then the program may be expanded nationally.

The priority is to strike the proper balance between the independence of the legal profession and the need for quality control.

Some new mechanisms for quality assurance have been introduced. First, there are accreditation schemes, by which providers are evaluated on their performance within a specialization and certified based on satisfactory performance. The Legal Services Commission may also audit client files against specific "transaction criteria", a series of points and questions that a trained lay auditor could use to determine what was done in a particular case, and the standard to which it was done. Lastly, a peer review system is also being tested, in which independent fellow practitioners, experienced in particular practice areas and trained as evaluators, review the case files of attorneys providing legal aid services.

While these reforms present useful developments from the perspective of the state's interest in quality assurance, Mr. Smith noted that there was initial criticism over interference in legal practice. The priority is to strike the proper balance between the independence of the legal profession and the need for quality control.

* * *

Frans Ohm's presentation focused on a recent reform in the Netherlands, through which an established network of Legal Aid and Advice Centers is being replaced by an updated system of Legal Services Counters, to be more responsive to the primary legal aid needs of a larger number of users.

Since 1994, the legal aid system in the Netherlands has been based on a mixed model in which public lawyers working in Legal Aid Centers handle primary legal aid, and private lawyers provide legal representation. The focus on primary legal aid is meant to maintain a low threshold for access to justice, by making services available at low (or no) cost, and to address legal problems at an early stage, reducing the possibility of escalation and minimizing social and personal costs.

Primary legal aid reduces the possibility of escalation and minimizes social and personal costs.

However, a study carried out in 2000-2001 revealed some problems that signaled the need for reform to the Legal Aid Centers system. A primary issue was the concern that the system was not effectively reaching enough vulnerable people, and demand for legal aid services was likely to increase in the coming years. At the same time, Mr. Ohm noted, some Legal Aid Centers were

beginning to act more like private providers, with increased attention given to more extensive legal assistance cases and, in some instances, assistance being provided to paying clients ineligible for legal aid. Also, the procedure for referring clients to private providers was not

People in need of legal advice are served at walk-up Legal Services Counters in the Netherlands.

sufficiently transparent, with some Centers retaining preferred cases for themselves. And, more generally, there was growing public debate regarding the role of the state in a market economy, and a sense that more types of services should be market-regulated.

With the reform, 30 Legal Services Counters will be established across the country, distributed in such a way that any individual should be able to reach a Legal Services Counter by public transport within approximately one hour.

At the beginning of 2005, eight Counters were already in operation, with the remaining Counters to open by mid-2005. They are staffed by six legal advisers, including lawyers and paralegals, with a receptionist, waiting area, and three walk-up counters. There is an internet point where clients can access a site with extensive legal information, and the Counters also provide advice by telephone and e-mail. All services are provided free of charge, but the Counters are limited to giving legal information and simple legal advice. When more complicated legal services are needed, the Counter staff must make a referral to a private lawyer.

A significant innovation for the work of the legal advisers is a specially-developed software program which tracks inquiries and related data, and incorporates a knowledge base component that staff can use to easily access information on a wide range of legal issues. Also, the software contains referral and scheduling functions, allowing the Counter staff to directly schedule a meeting with an attorney, and confirm the time and date with the client immediately. The software is an important element in ensuring the efficiency and transparency of Legal Service Counter operations.

Mr. Ohms stated that clients' initial

The centers are designed to be open and approachable…

…and easily accessible by public transportation.

response to the new Legal Service Counters has been very positive. At the same time, the new system does carry some risks that will need to be monitored: Will higher client costs, compared to the previous system, have a negative effect on demand, and consequently on access to justice? Will paralegals be able to deliver services of requisite quality? Also, there is a risk that Legal Services Counters will become "referral factories", or that clients will get lost between the counter and the lawyer when referred, ultimately reducing the program's effectiveness in helping vulnerable people find efficient and affordable solutions to legal problems. These concerns notwithstanding, it is believed that the Legal Services Counters will be a meaningful improvement for legal aid in the Netherlands.

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Moshe Hacohen spoke on balancing legal aid needs with the constraints of limited legal aid budgets. In Israel, when the new legal aid system was established in 1996, it introduced very narrow substantive eligibility criteria for legal aid in both civil and criminal cases (5-year or longer potential sentence) and a very restrictive financial eligibility threshold (earnings lower than 67 percent of the average income). In addition, judges in criminal cases were also accorded the discretionary power to grant legal representation to defendants who did not meet the tight eligibility criteria. However, since 1996, the number of applications for legal aid has grown steadily. New legislation has also gradually expanded legal aid eligibility, without the allocation of additional funds, and judges were using their discretionary power more and more often to grant legal aid in otherwise ineligible cases (making up as much as 50 percent of all appointments). As a result, the actual expenditures of the Public Defenders Office greatly exceeded the planned budget, though until 2000 the state managed to cover these costs.

Quality assurance measures can be implemented in order to offset negative effects of budgetary cuts.

In response to the financial crisis, Mr. Hacohen explained, the Public Defenders Office was faced with a difficult dilemma: either to substantially curtail eligibility for legal aid, or to make serious cuts to public defenders' remuneration. After much deliberation, the latter option was adopted, resulting in a 30 percent reduction in public defenders' fees since 2001. The number of public defenders was reduced, increasing individual caseloads in order to compensate for the lower per-case income. A contract system was also introduced, through which private lawyers handle a fixed number of simple cases for a flat fee. These measures successfully capped expenditure, but may reduce the incentive for defenders to maintain zealous, high-quality representation.

Another cost-control measure was the introduction of "mass arraignment" days at court, during which duty attorneys (paid by the day, rather than by the case) represent clients in anywhere from 50-200 cases, attempting to reach favorable plea agreements. The benefit of the duty system is that by increasing the number of clients represented, it does improve efficiency and reduce costs; there is also no eligibility requirement. However, it creates an "assembly line" atmosphere, with little personal attention to individual clients. Lastly, a computerized system was implemented to assess costs for each proceeding, which should help in planning for expenditures on a periodic basis.

Quality assurance measures have also been implemented to offset the negative effects of budgetary cuts. For example, because the funding changes carry a risk of degrading the quality of legal aid provided, the Public Defenders Office has increased the supervision and monitoring of public defenders. Direct monitoring methods include more inspection visits to courts, compulsory reporting by attorneys on cases handled, and the requirement of Public Defenders Office approval when plea bargains result in incarceration. Training and support for public defenders has increased as well, involving frequent training sessions for external public defenders, and the distribution of "information kits" – including, for example, information on legislation and precedents, and model pleadings – to public defenders.

The financial constraints necessitating these reforms in Israel have led to a rethinking of the concept of eligibility. Mr. Hacohen highlighted the disproportion in the current system, in which only 5 percent of legal aid applicants actually qualify for aid, but 50 percent of applicants in fact receive legal aid through judges' exercise of discretionary power. Even those nominally required to contribute to their legal aid expenses are often exempted by judges, in order to avoid court delays. In an effort to rectify these conditions, a new eligibility system has been proposed, under which eligibility requirements would become more flexible, allowing a larger number of applicants to qualify for some kind of legal aid. At the same time, a comprehensive progressive contribution system would be implemented, under which the poorest applicants receive full coverage, and others pay fees on a sliding scale according to financial need. Discretionary provisions would be curtailed, imposing strict limits on judges' ability to grant legal aid to otherwise ineligible applicants, and eliminating judges' power to grant full exemption from legal aid costs.

Holistic representation broadens the concept of quality legal aid by aiming to prevent the return of the client to the criminal law system.

* * *

By way of introduction to the concept of holistic representation, **Robin Steinberg** related the story of a client, "Wendy". In addition to her criminal legal troubles, Wendy, a 33-year-old mother of five, was addicted to drugs, had no job, had no permanent shelter, and had lost her children to state foster care. At The Bronx Defenders, in addition to providing the legal representation in her criminal case, Wendy's case workers were able to help her get her children back, to get stable housing, and eventually, after drug treatment and later job training, to become a counselor for people in the community who are suffering from AIDS.

Ms. Steinberg noted that the traditional approach to legal aid focuses only on the criminal case, rather than on the client. However, experience shows that this kind of approach is too narrow, and fails both clients and society: clients' problems often go beyond their criminal cases, extending to a broad set of poor social circumstances (such as poverty, drug addiction, homelessness, etc.). In some cases, from the point of view of the client, the criminal case may not even be the most pressing problem. If clients do not also receive help for these other troubles, they typically will end up back in the criminal system. Thus, Ms. Steinberg asserted, the definition of what constitutes quality legal aid must be broadened: One of the goals of legal aid

should be to prevent the return of the client to the criminal law system.

Holistic representation, then, is not just about what happens in the court room; it is about the client's entire life. Ms. Steinberg acknowledged that this is a revolutionary concept, but nevertheless it is being recognized more and more that clients need more than just legal assistance in their criminal cases. Holistic representation is client-centered – it empowers clients to face the challenges that life puts before them.

Ms. Steinberg outlined two major components of holistic representation. First is the cooperation of professionals in interdisciplinary groups, in which paralegals, social workers, child and family advocates, immigration specialists, etc., work together to address clients' problems. This arrangement allows service providers from different professional backgrounds to share their diverse expertise and collaborate with lawyers in defining the client's needs – a radical approach for lawyers who have been taught to focus only on legal issues. Second, it is essential that the advocates have a presence in the community. In the case of The Bronx Defenders, not only is the office located in the center of the community it serves, but also its staff are always present in other ways, doing needs assessments and creating community and school projects.

The holistic approach itself cannot resolve poverty, but it can help to address the needs of impoverished communities. It changes the way the justice system is seen in the community – when clients feel that their voices are heard, the credibility of the criminal justice system also increases. Lawyers also become more effective advocates for their clients: If they are aware of and sensitive to the living conditions and problems of their clients, lawyers can argue more powerfully for their clients in court. And taking a holistic approach reduces the possibility of clients' return to the criminal justice system, which is a useful point when advocating for government support.

* * *

Discussion

In discussion, the first responses were to Ms. Steinberg's description of holistic representation, and the role of the lawyer defending indigent clients. One commenter objected that lawyers should be lawyers, not social workers. Ms. Steinberg countered that being aware of the client's other problems makes the lawyer's work easier, by providing a context. Ms. Steinberg emphasized, however, that this does not mean that the lawyer herself should take up the social worker's or psychologist's role, but rather that the lawyer needs to be sensitive to the other issues in the client's life, and help get other appropriate specialists involved as well. Sometimes the clients themselves are resistant to such broad-based intervention, but it is always the client's choice: If the client prefers, The Bronx Defenders will concentrate only on the legal services.

When participants sought advice on how to set up such holistic representation arrangements, it was noted that various models exist in different countries. In the United Kingdom, there are also interdisciplinary workgroups that bring lawyers together with other specialists such as psychologists and social workers, but these are organized through alliances formed outside the office. In the Netherlands, clients go first to social workers, and only then to lawyers. At The Bronx Defenders, it was considered preferable to have all the specialists under the same roof because it is easier for a client to go to one place rather than to a few different locations. Also, it reduces

the risk of clients being "lost" in the system – there is no real guarantee that they will go through all stages of the process when the offices are spread out.

One difficulty that will likely need to be overcome in order to establish holistic representation arrangements is the reluctance of government to fund anything other than costs directly related to legal representation. In the case of The Bronx Defenders, their contract with the New York City government covers the costs of legal representation. They were also successful in lobbying for extra funds for some non-legal work, based on the understanding that some services help to prevent crime and address immigration problems. However, the city government does not fund a number of other services, including those relating to civil matters, family law, housing, and education. The Bronx Defenders tries to find support for these kinds of services from other sources and in other ways, such as partnering with educational institutions who provide social work interns.

A second set of comments during discussion focused on cost management strategies. Some discussion focused on the relative advantages and disadvantages of recovery of costs from clients, whether through progressive contribution arrangements or post-conviction reimbursement requirements. Attempts at post-trial reimbursement in both the US and the UK did not function well and were abandoned. Partial contribution systems, on the other hand, have been more successful, and have the advantage of building confidence in the system – both from the perspective of clients, who may presume that "free" service means lower-quality service, and from the perspective of funders, because it maintains the market principle.

A significant question from the perspective of countries just beginning to establish legal aid systems is how to determine the financial needs of a legal aid system that has yet to be constructed, and how to advocate for funding. Unfortunately, there is no formula for assessing legal aid needs and/or costs per capita. It will depend on many financial and legislative factors, and will vary considerably from country to country. For instance, in South Africa the cost of the system works out to about $1.6 per capita; in the UK, it is €30 per capita. One strategy is to establish a small pilot program, which will help assess needs in a particular setting. It is also useful to draw on the experience of other countries. For example, in Lithuania, a preliminary assessment was made based on figures from the pilot public defenders offices and the indices used for legal aid needs and costs assessment in South Africa and Israel.

Legal aid costs depend on the model of legal aid delivery that is chosen. In many countries the current model is *ex officio* appointment of defense counsel in criminal cases. On its face, this model seems inexpensive, as *ex officio* lawyers are paid very little by the state. However, it proves to be much more costly than the public defenders office model when one does an honest assessment of the costs of minimum legal actions that lawyers must

Robin Steinberg (The Bronx Defenders, New York), seated next to Moshe Hacohen (Public Defenders Office, Jerusalem) responds to a question.

take (and which *ex officio* lawyers typically do not take) to provide a quality defense. Thus, financial assessment – and advocating for government support of one system or another – should be done from the point of view of quality: that is, how to achieve minimum or better quality legal aid services at a lower cost. Other quality-based arguments that can be advanced include ensuring constitutional standards, decreasing disaffection and improving public trust in the justice system, and – particularly in the case of holistic representation – reducing crime.

Panel V.
Legal Aid Provision in Non-criminal Matters

- Country practices on legal aid delivery in non-criminal matters. Traditional and non-traditional models of delivery (state, private, role of pro bono networks).
  Daniel S. Manning
  Director of Litigation, Greater Boston Legal Services, United States
- The Union of Citizens Advice Bureaux in Poland.
  Hanna Gorska
  Union of Citizens Advice Bureaux, Poland
- South African models of legal aid delivery in non-criminal cases.
  Prof. David McQuoid-Mason
  University of KwaZulu-Natal, South Africa
- Legal aid and combating discrimination.
  Dick Houtzager
  National Bureau against Racial Discrimination, The Netherlands

Moderator: *Atanas Politov, Program Director, Public Interest Law Initiative*

This panel addressed legal aid in the non-criminal context from a variety of perspectives. The first presentation discussed issues that should be considered when developing a civil legal aid system, and the following presentations gave an overview of some civil legal aid programs currently in operation, including one directed specifically at providing remedies for discrimination.

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Daniel S. Manning began by providing a short background to civil legal aid in the United States. The legal aid system in the US is clearly divided between the criminal and civil spheres. Legal aid in civil matters is primarily provided by legal aid NGOs in which lawyers are employed as staff attorneys on a full-time basis to provide legal services. These are effectively law firms, and the lawyers have the full ability to practice law, just as any other lawyer would. Though the NGOs receive government funding, they are independent organizations. They set their own priorities, decide what services to provide, determine eligibility, and select clients.

Civil legal services in the US developed out of the particular history of the urban riots of the 1960s, when Black Americans rebelled against the oppressive conditions

under which they were living. Civil legal aid services were introduced at that time, as an explicit part of President Johnson's so-called "war on poverty". It was a conscious decision to promote systemic legal advocacy in neighborhoods. Though the system has since changed considerably, this history still informs the approach taken by civil legal services NGOs in the US. In order to be able to define civil legal aid, Mr. Manning suggested, it is important to know its purposes. In the US, the purpose was to serve an anti-poverty agenda – it was framed not in civil or human rights terms, but rather almost exclusively in economic terms. In Europe, the discussion emerges out of a human rights agenda.

Daniel S. Manning (Greater Boston Legal Services, Boston) in a coffee-break discussion.

"Access to justice" is usually taken to mean access to courts. This may be appropriate framing for criminal legal aid, but it is not sufficient to cover the civil legal aid field, as many of the issues affecting the poor and disadvantaged never come to court, and many do not come before a government body at all. In civil legal aid, practitioners must be able to provide advice to people about a range of legal matters that affect their lives. Mr. Manning emphasized that when setting up a civil legal aid program, it is important to be as clear as possible about what the program is meant to accomplish.

Civil legal aid practitioners must be able to provide advice to people about a range of legal matters that affect their lives.

Civil legal aid organizations need to make choices about the types of cases to work on, the range of services to offer, and the population to be served. Also important is the question of who makes these decisions – there can be tightly defined criteria decided by the government on the state level, or there can be a more open-ended system where criteria are defined at the local level based on local needs. For example, one civil legal aid NGO in Bangladesh includes a street theatre group because in rural areas that it is a highly effective way to deliver their message to the population they serve. One question is who is available to provide services, particularly in rural areas. Also, should legal aid be available only to individuals, or may groups also receive aid? At Greater Boston Legal Services, Mr. Manning's organization, many cases deal with groups – tenants' groups, advocacy groups, etc. In some organizations in the US, public interest advocacy groups can also get legal aid in environmental pollution cases.

With regards to funding, Mr. Manning noted that the premise is that there is an essential public obligation to fund legal aid, but direct government appropriation for legal aid should be a base, supplemented by other sources. Civil legal aid groups need

to be creative when looking for funding. There are many other ways in which NGOs can make government functions more efficient, so in the US, civil legal aid is not limited to receiving funds from the justice budget. Other possible forms that "public funding" could take include surcharges on filing fees, interest on lawyer trust accounts, EU support, and other grants.

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In the introduction to her remarks on the Polish Union of Citizens Advice Bureaux, **Hanna Gorska** briefly commented on the discussion of "paralegals" during the Forum. Ms. Gorska noted that she was there as a paralegal herself, though she had not known before the Forum that this was the name for the work that she does, nor that there were so many others serving as paralegals in so many other countries of the world.

The Union of Citizens Advice Bureaux consists of NGOs based on the same model in approximately 20 countries, which provide free advice to people in need. Citizens Advice Bureaux were first established in Poland in 1996, in the midst of transition from the socialist regime.

Access to justice means not only access to courts, but access to information and advice as well.

Ms. Gorska explained that 60 years of socialism, with no importance given to civil rights, generated a tendency to apathy and inaction among the population in Poland. Because of this heritage, trust in information and advice from official sources is still very limited for many Poles, who often do not know their rights or how to exercise them. Even today people know little of the legal system and of the civil services, partly because of constant legal changes. Legal changes are made very quickly, statutes are drafted in a hurry, executive regulations do not keep up with the statutes, and all this is done in language that is incomprehensible for most people. Together, these conditions create a critical need for information and advice, given in a clear and comprehensible manner.

The foundation of institutions such as Citizens Advice Bureaux rests on a provocative question: Do we always need jurists' assistance in difficult situations? Ms. Gorska pointed out that in many situations advice can be given by adequately trained advisers who are not lawyers. In Poland, they do not interpret law as they are not legally permitted to do so, but with other skills and information they can help individuals understand what solutions are available and what institutions may be approached for assistance. Access to justice means not only access to courts, but access to information and advice as well. In Poland, the government and church organizations provide some information, but this is not enough. Citizen advising, especially for indigent people, is left to NGOs.

The Citizen Advice Bureaux adhere to several main principles: independence, confidentiality, impartiality, openness, provision of services free of charge, facilitation of self-defense, and relevance and reliability of information. Each center is independent, which is a strength – the centers have no ties to any government agency and are able to give impartial advice. Every client can expect to be carefully listened to, and that the staff will explore options for solving the presented problem and explain the consequences of various options a way the client can understand.

Most people working in the centers are volunteers and are not paid for their work. The solutions offered to clients vary widely, and may involve other NGOs in particular fields such as social welfare or psychology. Cases may also be passed on to the office of the Ombudsman, with whom the centers operate closely. The most typical clients are often middle-aged women with some secondary or vocational education, and some source of income, though not usually salary. Usually, the clients come from among the most poor, those subsisting on disability or pensions. Advisers also go into prisons and farm cooperatives to reach clients as well.

Ms. Gorska reiterated that the Citizen Advice Bureaux workers give information and advice but do not act on behalf of the client. The Citizen Advice Bureaux never represent clients – they give the client the tools to be active on his or her own behalf.

Regarding state-provided legal aid in Poland, so far only lawyers working pro bono or with law clinics have provided free legal aid, an arrangement which does not meet the needs of the population. However, quite recently a draft bill was elaborated within the Ministry of Justice which would provide for legal aid for the indigent. It would establish up to 42 legal aid centers in the coming years. Ms. Gorska expressed the hope that having legal aid bureaus in regional courts would significantly extend legal aid for the very poor. Ms. Gorska also raised some concern that those who live far from regional courts would not benefit from the new law, but observed that this is an important first step.

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David McQuoid-Mason's presentation addressed South African models of legal aid delivery, giving participants a short introduction and background to the system, and providing a view into the role of paralegals in civil legal aid.

The right to civil legal aid is formalized in the South African Constitution; however, the constitution only addresses legal aid in criminal cases, and for children in civil cases. The test for the appointment of a lawyer is whether a substantial injustice would result if a person who cannot afford a lawyer is not appointed one. Apart from these requirements, the constitution does not make any specific provision for civil legal aid (though, Mr. McQuoid-Mason speculated, the right to a fair public hearing in a court may possibly apply if it may be interpreted to require equality of arms). The Civil Procedure Act also provides for *in forma pauperis* proceedings for people who cannot afford an attorney in civil matters such as divorce. The legal aid board receives about $1.36 per capita for legal aid, 85 percent of which, according to the constitution, is allocated for criminal legal aid.

Beyond these general legal provisions, there are also different methods and practices available in particular circumstances, including special courts in which no legal representation is required. For example, there is the small claims court, and chief's or headman's courts for tribal people in rural areas. Some other approaches include the recently introduced use of contingency fees (in which the lawyer is not paid if the case is lost, but receives a percentage of the damages if the client wins), and the option to engage pre-paid legal services (in which clients are covered up to a certain amount of legal expenses, based on payment of a monthly premium).

The main vehicle of legal aid delivery in South Africa is the Legal Aid Board, set up in 1971 and made up mostly of non-governmental representatives. The Board is independent and has full discretion

over implementation of the legal aid program according to the terms of the constitution. It originally began operating on a judicare model, but the volume of cases was such that this approach was not at all cost-effective, and service provision is now done on more of a public defender/justice center model. Still, there are a long list of exclusions defining cases in which civil legal aid is not available.

Pro bono legal aid work is growing in South Africa, although Prof. McQuoid-Mason cautioned that pro bono cannot be expected to replace the national aid system, as the state obligation remains. Also, there are still judicare referrals to private lawyers, as well as public defender systems. Another useful delivery system relies on law intern public defenders, typically law graduates doing their apprenticeships. Some law interns work in rural law offices, under the agreement that a certain proportion of interns' work must be legal-aid focused, though this requires monitoring. A separate recent development is consolidated justice centers, one-stop-shops that provide comprehensive services. One-stop-shop systems have high start-up costs, but if there are a large number of cases they can do very well. Working together with justice centers may be paralegal advice offices, which receive support from the Legal Aid Board. Public interest law firms and university law clinics are also involved in the provision of legal aid, through cooperation agreements with the Legal Aid Board. Lastly, as regards impact litigation, the legal aid board maintains a special fund to deal with cases in which a larger number of people are involved.

In conclusion, Prof. McQuoid-Mason remarked that there are many alternatives for providing legal aid – there is no real single model. Often countries will begin with a judicare model, but then find that judicare systems get very unwieldy in a short time. A legal aid system should be individualized – countries must determine which of many models suit them best. As a final comment, Prof. McQuoid-Mason suggested that if there is an apprenticeship requirement for new attorneys, a country should look to that system for legal aid provision. It is a way to use an oversupply of lawyers while at the same time giving them access to the profession. Also, law students and paralegals need to be brought in as well.

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Dick Houtzager's remarks focused on access to justice in practice, drawing on the experience of the Netherlands' National Bureau against Racial Discrimination (LBR). LBR, in existence for 20 years, works to counter racial discrimination in a multitude of ways, not only dealing with legal issues, but also working on education projects, labor market projects, and the fair portrayal of minorities in the media.

A legal aid system should be individualized – countries must determine which of many models suit them best.

The Netherlands employs a system of paralegals to provide support to victims of discrimination, with the work carried out mostly by 30 anti-discrimination agencies around the country. The agencies have a number of ways of solving discrimination complaints. The first approach is to attempt to find a non-legal solution, often by negotiating directly with the employer or institution where the discrimination took place. The agency can also initiate a legal proceeding before a specialized body, the Equal Treatment Commission (ETC), or take a case to court.

The ETC procedure is meant to be simple and accessible and begins with a written request from the complainant, which is followed by a request for a reply from the respondent. The Commission holds public hearings and concludes the procedure with a written opinion. The procedure is informal, designed for access without legal counsel. Since it is not a court, the ETC can adopt a proactive posture and actively seek out information. However, because of the low-threshold procedure, ETC opinions are non-binding. If the offending party does not comply with the decision, or if the complainant wishes to seek damages, he or she must take a case to court, where a new appraisal of the facts will be done. However, the majority of the ETC's opinions are followed – in most cases, the body that committed the discrimination does what it is asked to do in the ETC opinion.

The Netherlands' Equal Treatment Commission procedure is simple and informal, designed for access without legal counsel.

If a discrimination case is handled in a court, then legal aid is conditionally available (means and merits tests apply). In the ETC, no legal aid is available, because the procedure is easy and informal. There are very few discrimination cases in courts of law. In the last five years, only about 40 ETC cases, out of approximately one thousand opinions, subsequently came into the court system.

There are a number of reasons for the small number of discrimination cases in courts. First, it can be considered a result of the efficient procedure at the ETC – people are happy with ETC arrangements and the legal costs involved in going to court are still a major hurdle for many individuals. At the same time, there is a limited knowledge among intermediaries in the legal field – for example, trade union lawyers often know about labor law but not about discrimination law, legal aid offices have other competencies, etc. It is impossible to know how many potential discrimination cases are missed by lawyers who do not translate the issues in front of them in discrimination terms (for instance, they may identify the labor problem, but not the discrimination issue). So there may be a number of discrimination cases that do not come up before either the ETC or the courts, simply because they are not being recognized.

Mr. Houtzager concluded by saying that, overall, the ETC procedure has provided for efficient remedies in discrimination cases, even though no legal aid is available. However, there are also a few disadvantages. So far there has been very little experience with the ETC in the judicial system, no sanctions are applied, and the case law of the ETC, its body of opinions, is never tested in a court of law.

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Discussion

A number of participants sought more specific recommendations regarding the process of establishing the types of legal aid and paralegal systems the speakers had described. For example, how can advocates go about setting up a legal aid system where the government is supportive in principle of a legal aid system, but has very few resources to support one? Ms. Gorska noted that in her experience in Poland, it was always very difficult talking with government authorities about financial support, as there were never enough funds. It is always easier when an NGO has begun work before asking for government funds, and therefore has concrete results to point

to. So far, the Citizens Advice Bureaux have not received any funding from the national government.

Mr. Manning suggested that groups attempting to set up a new legal aid organization should begin by reaching out to the local community and finding out what the most pressing needs are. The new system should be as flexible as possible at the start, instead of trying to anticipate exactly what services are needed and how to provide them. By involving people from the community in the initial outreach and eliciting their views on what problems need to be addressed, a new legal aid organization can prioritize by focusing on the most serious needs. Prof. McQuoid-Mason agreed that it was important to look to the typical legal problems in a particular country, and to take into account what kind of coverage is already provided by the existing legal framework. Prof. McQuoid-Mason also emphasized that where apprenticeships are a part of the professional qualification process, organizations should involve apprentice lawyers in their work. It provides young lawyers with an incentive to do legal aid work, especially where apprenticeships are difficult to get, while giving them access to the legal profession. Another option can be to have the state allocate funding to NGOs to take all the cases on a certain topic, for instance.

Where apprenticeships are part of the professional qualification process, legal aid organizations should involve apprentice lawyers in their work.

Breakout Group #1:
Legal Aid Policy-making and Management

facilitated by Roger Smith, Director, JUSTICE

To begin the session, facilitator Roger Smith identified four necessary elements to consider in any discussion of legal aid policy:

Scope of legal aid and legal aid providers. Should legal aid be granted in criminal cases only, or should it be extended to civil cases also? Should legal aid mean only legal representation, or should the phrase encompass legal advice and information as well? How should eligibility criteria be defined? Who will the providers be? Will they include paralegals, trainee lawyers, or others?

Management structures. What role should the state play in the legal aid system? In particular, what should the role of the Ministry of Justice be? Who will make decisions on legal aid policy and management? Is there any need for an intermediate body between the state and the individual receiving legal aid?

Quality control. How will the system ensure the quality of legal aid? How will quality be monitored?

Delivery models. What factors go into the selection of legal aid delivery model? What does the decision depend on? How does the choice of legal aid delivery model impact on these three issues?

Over the course of the breakout group discussions, the participants focused on legal aid management and quality control.

The first issue for discussion was the independence of the legal system. If the body managing legal aid is to be independent from whom should it be independent? The state? The Bar? Suppose there is an intermediate body managing legal aid – such as, for example, a Legal Services Council or Legal Aid Board. Should this body be independent from the government? How will the government be able to monitor how eligibility tests are administered, and how money is being spent within the system?

In exploring these questions, participants compared the different systems in place in various countries. For example, in the UK, the top appointments to the Legal Services Commission are made by the government, with the Commission responsible for policies and priorities. By comparison, the legal aid board in Australia has more discretion. In Bulgaria, the proposed Legal Aid Council will be controlled by lawyers. In Bulgaria this was an important question of viability: the Bar is very influential in Parliament, and would only agree to the draft legal aid law if they were adequately represented on the Legal Aid Council. Two more seats on the Council will be controlled by the Ministry of Justice.

Questions of organizational efficiency may also come into play, however, possibly changing the composition or functioning of legal aid management. For example, in Lithuania the task of coordinating the appointment of legal aid lawyers was initially granted to the Bar, but in practice this function is handled by investigation authorities, as it was discovered over the course of 3 years in practice that the planned system of regional coordinators appointed by the Bar did not function well. In general, the group agreed that however responsibility is allocated, it is very important that there

be a clear distribution of functions, such as what tasks the government will be responsible for, and what functions will be delegated to the legal aid management body.

The group also discussed the possible roles that NGOs could serve in the legal aid system. In some cases they may participate in decision-making. Also, they may serve as legal aid providers, becoming the recipients of state funds. A participant noted that in Georgia, an NGO (the Georgian Young Lawyers Association), was a major initiator of legal aid reform, developing a concept paper and draft law, and will be represented on the overseeing board. In Lithuania, NGOs are providers of primary legal aid, and are also involved in decision-making, as NGO members will sit on the legal aid coordination council. The Legal Aid Coordination Board in Poland will include NGO members, though it is only an advisory body. NGOs may be funded for legal aid work, and can work in collaboration with lawyers.

A discussion on quality control brought up some questions with respect to how the legal aid system can assert quality control over private practitioners. In the salaried system, there is a bureaucracy with a built-in system of control. In private practice, the provision of good quality service may be motivated by the demands of professional ethics. Also, whatever body is managing legal aid can make participation in the system contingent on external quality assessment requirements. In Bulgaria, for instance, it was felt that better quality control could be exercised over private practitioners, because they participate based on yearly contracts that can be terminated if the lawyers' work is of unsatisfactory quality. With salaried lawyers, conversely, labor legislation makes it more difficult to terminate poor performers. Generally speaking, the question of whether salaried legal aid lawyers or private practitioners are more likely to provide better quality legal aid is highly culturally determined. For example, in some jurisdictions in the US, salaried lawyers working within the legal aid system are more highly regarded than private attorneys taking legal aid cases.

In the Lithuanian example, full-time lawyers working in the state legal aid offices will be obliged to meet minimum performance standards. The capacity and qualification of private practitioners will be assessed during the bidding process. There is also a need for ongoing quality control, either by reviewing files in completed cases, or possibly even during the course of a criminal case. This latter option is available in Israel, where public defenders can even replace lawyers who are not doing their jobs properly. In the Netherlands, private lawyers must meet criteria set by the local Bar in order to participate in the legal aid system.

This discussion of quality control methods led into a more detailed discussion on the use of contracts in a legal aid system – if a country wishes to introduce contracts, what are the options? First, the contract has to be long enough for lawyers to justify their participation: the general opinion was that a one-year contract would not be long enough; three years seems more reasonable.

The scope of the contract can be defined in various ways, each with its own potential disadvantages. For example, the contract can be devised to cover a set number of hours, such as 200 hours of work per month. The risk of this approach is that practitioners will say they need to take longer on their cases. Alternatively, the contract can be for a fixed number of cases in a month; the risk here is that lawyers will strive to choose "easy" cases that will allow them to fulfill their obligations more quickly. Another possible option is to focus on categories of cases, making a contract for "Dubrovnik district court

criminal cases," for example. The disadvantage here is that there is no limit on the number of cases that might be involved, leaving the risk that lawyers would be overwhelmed by too many cases.

Returning to the issue of quality control, the group explored concrete ways of measuring legal aid quality in practice. Should specific designations be given (such as unsatisfactory, good, very good, excellent)? How can one go about deciding whether to award something like a "quality mark"? These questions elicited various suggestions. One index of quality is the number complaints that have been registered against a lawyer – participating lawyers should be checked for negative history. Also, qualification and accreditation processes – either existing processes that all lawyers must pass in order to practice professionally, or extra certifications in specialized areas – can help ensure quality.

Some specific methods of quality assessment include: practice management standards created by the bar association to set requirements on how practices are organized; direct supervision, in which legal aid providers meet regularly with supervisors, as often as every week; file assessment, a more obtrusive means of monitoring in which an evaluator reviews clients' files; and peer review, in which involves respected, expert lawyers are hired to assess participating lawyers' performance, though this is hard to do in small jurisdictions. Other methods were discussed as well, such as the practice established in the new Estonian law, in which the Bar's evaluation committees may invite private practitioners for personal interviews as a part of the evaluation process, or the establishment of an academic study to evaluate the quality of the system more broadly, such as the research being done into the quality of legal aid in Croatia. Also, participants raised the possibility of finding ways to measure client satisfaction.

Part of the discussion on quality control dealt with the issue of how to balance the quality of legal aid with tight budgetary limitations. One opinion was that when there are too many cases and not enough lawyers to work on them, questions of quality should be secondary to quantity, suggesting that quality can only improve when the financing of the system increases. There was strong disagreement with this opinion, as many participants felt that there is no point in establishing bad quality services.

Strategies that were raised for addressing quality issues in a limited budget involved focusing on diverse non-monetary benefits and incentives for lawyers participating in the system – for example promoting the idea that a legal aid organization will bring together elite lawyers, or using students and young lawyers as low-cost service providers. One concern raised was that in societies where the judicial system is highly corrupt, with so-called "elite" lawyers largely reaping the benefits, the conception of legal aid lawyers as elite lawyers may be taken to mean that corruption has been built in to the legal aid system from the outset. As for bringing in young lawyers, the benefit is that they are very motivated and can develop strong professional skills by working on legal aid cases, but it was emphasized that young lawyers should work in teams with more experienced lawyers. There was also some resistance to the idea of using students to provide services, as they are too inexperienced. However, the experience of some well-functioning legal aid systems has shown that use of law

Strategies for assuring quality within a limited budget can involve diverse incentives for legal aid lawyers.

students is beneficial for various reasons. Firstly, it is a less expensive solution compared to hiring private lawyers. Secondly, it provides students with practical skills. The quality of services is a concern, but law students can be a valuable addition to the legal aid scheme if properly supervised by experienced legal aid lawyers.

Overall, the group agreed that money was not the only issue, as high remuneration for legal aid lawyers cannot alone solve the problem of quality. It is important that committed and enthusiastic people are attracted to work in the legal aid system, and that corrupt lawyers are kept away from it.

Breakout Group #2:
Models of criminal legal aid delivery: public defenders, judicare/ex officio, contracts
facilitated by Valerie Wattenberg, Senior Legal Advisor, Open Society Justice Initiative

The first half of the breakout group's work was devoted to presentations on some innovations in the criminal legal aid delivery systems in three countries, Bulgaria, Lithuania, and Kazakhstan. The Bulgarian and Lithuanian systems are based on a Public Defenders Office model, with pilot projects involving attorneys working as a team in a single office to provide legal aid in criminal cases. The Kazakhstan presentation centered on a juvenile justice project in which practicing attorneys provide legal aid to juveniles on a part-time basis. The lawyers work out of their individual offices, but they meet regularly with other attorneys in the project to discuss cases, and they work in collaboration with social workers.

In introducing the presentations, facilitator Valerie Wattenberg asked the panelists to focus on two points: the advantages of teamwork versus individual work by single lawyers, and the impact that their work has had on other criminal justice actors in their countries.

Lithuania
Presenter: Rymvidas Petrauskas, Vilnius Public Defenders Office

In Lithuania, the Vilnius Public Defenders Office has been functioning for three years, with six attorneys working in a team. Effective teamwork developed in the office over time, as the lawyers became more comfortable exchanging opinions. They have found that a great advantage of teamwork is the ability of a team to achieve a tangible result where a single lawyer working on his own would be unable. Some of the challenges in establishing a teamwork office stem out of the fact that in the initial set-up of an office, it is not always the best lawyers who come forward to offer their services. At the same time, sometimes well-skilled lawyers are nevertheless resistant to consulting with others or sharing experience, which creates tensions in the office.

With regards to the impact of their work, Mr. Petrauskas noted that at the beginning, the Public Defenders Office faced negative reactions and suspicion from law enforcement officials. For instance, law enforcement officials, vested by law with the power to assign cases, initially ignored the public defenders and did not assign cases to them. It was not until other agencies intervened that the coordination framework was changed, and the public defenders started to receive cases. Also, it took time for the police and other authorities to accept the degree to which public defenders were struggling to secure their clients' release from detention.

Bulgaria
Presenter: Alexander Penchev, pilot public defenders office (Legal Aid Bureau)

The pilot public defenders office, consisting of five lawyers and an administrator, has been working in Bulgaria for two years, during which time they have discovered some of the advantages of working in a team. Lawyers can spread out the burden of a complex

case, and they can share their thoughts with their colleagues and receive a quick response. At the same time, if they are competitive they can compare their work with others, but before investigators and the court they act as a single unified entity.

Mr. Penchev stated that they have received positive feedback from courts and other institutions, which consider he public defenders office a high-quality service provider, and often say that the public defenders are better than *ex officio* lawyers. However, they are attacked by other practicing lawyers – and particularly by *ex officio* lawyers, their fiercest critics – because public defenders are seen as dangerous competitors. This too, though, says much about the quality of work of their office.

Kazakhstan

Presenter: Svetlana Bekmambetova, head of the Juvenile Justice Project lawyers' group

The Juvenile Justice Project is made up of sixteen lawyers working out of their individual offices, who meet to consult together once every one or two weeks. For them, one of the benefits of teamwork has been that the team brings together lawyers of different ages and backgrounds who complement each other. Older colleagues bring experience and common sense, while young people bring enthusiasm – they can be more determined and very often are able to get their way through difficult situations. Another advantage of teamwork is collective decision-making. Individual lawyers may fear making very public or damaging mistakes, but in a team, decisions are taken by the group and all members share equal responsibility for any mistakes. Lawyers participating in the group have also discovered that group work creates a friendly, cooperative environment. All the lawyers taking part in the project have said that it is much better then their full-time jobs, where there is a lack of trust among colleagues and no one to turn to if they have doubts. In the juvenile justice group, by contrast, they feel more comfortable and can easily find help.

In Kazakhstan, the Juvenile Justice Project lawyers have been able to begin to work collaboratively with police and prosecutors to address general problems in the system. They organize discussions with prosecutors and the police once a month to discuss general negative trends in law enforcement. For instance, they have been working with authorities to reduce the unfounded taking of children into custody.

For the second half of the breakout group session, the facilitator shifted the focus to discuss clients and their needs. This involved some general discussion to attempt to describe the feelings of a client entering into a case. The facilitator posed the question by noting that if it is everyone's right to have a voice in the criminal justice system, it is the job of the lawyer to make sure the client is heard. What, then, does the client feel? Participants came up with a number of responses: clients are scared and need help; they may be holding out hope or, conversely, they may be on the verge of losing hope if they have gone through many authorities with no progress or resolution; they are unsure how much they can trust their lawyers and how much they should reveal; they may feel invisible and are likely under-informed, not knowing what their rights are or what they are entitled to; they can also be frustrated or feeling powerless because

If everyone has the right to have a voice in the criminal justice system, it is the job of the lawyer to make sure the client is heard.

they must rely on law enforcement authorities and lawyers.

What does the client need from the lawyer? As a starting point, if clients do not know what they are charged with, they will need basic information about what is going on. They will appreciate detailed information about the law and the defense strategy, and want their lawyers to be frank. While the lawyer should make no false promises, the client also needs hope for a good outcome. Lawyers need to be accessible to their clients, showing loyalty to their clients and encouraging trust in the justice system. Clients are looking for lawyers who care about their interests, and who will not judge them. And the client needs to know what choices he has, and which choices may be better. The lawyer must inform and advise the client about her options and their consequences, but the final decision rests with the client.

Participants listen to a question during a breakout group discussion.

When it comes to selecting a lawyer, participants felt that a client should have the right to choose a legal aid lawyer from among several private attorneys on duty. However, just having the right to choose is not enough, as a client may not be able to select the best-quality lawyer because of a lack of information. Thus, before granting clients the right to choose a legal aid lawyer, the state should make sure that there is sufficient information available to the client about his potential choices.

Lastly, the breakout group addressed questions of legal aid quality, an especially difficult issue in countries where legal aid lawyers are not paid enough. For one thing, participants felt that a lawyer's active representation of a client should be a good indicator of quality. In Lithuania, for example, public defenders chart the number of cases they have handled, making note of complexity, number of motions and consultations, and amount of earnings. Participants also felt that qualitative methods should not be the only means of assessing quality, and that elements such as the lawyers' passion and motivation should be taken into account. Outcomes, it was agreed, are not a useful indicator of quality. One suggestion was that one way to assess quality is the degree to which lawyers are advocating for their clients' basic rights such as the right to personal freedom, to remain silent, to be treated as an individual in an individual case, and the presumption of innocence.

Breakout Group #3:
Paralegals and non-traditional methods of legal aid delivery
facilitated by David McQuoid-Mason, Professor, University of KwaZulu-Natal, South Africa

Facilitator David McQuoid-Mason started the group's work by introducing the concept of paralegals. Paralegals are local people who know something about the practical side of the legal system and possess basic legal skills. They are *not* lawyers, though they may be individuals who have been through law schools, but have not become certified "advocates". Most paralegals, though, are just ordinary people, with no formal legal education, who have been trained in giving legal advice and information, as well as in administration and legal education skills. They do not provide actual legal aid, but they are able to educate the public about law and how it affects their lives.

Combining legal knowledge and local expertise, paralegals can step into the gap between ordinary people and lawyers.

Paralegals are mainly needed in rural areas, where people cannot afford private lawyers, or cannot travel to cities where lawyers are located. Paralegals live in the local villages and towns, and know the local problems, so they can help bring access to justice to rural people as well.

Paralegals may work for NGOs, law firms, public defenders offices or trade unions; they may be volunteers or law clinic students, or they may work directly for the government. They can provide primary legal aid, helping clients assess legal problems, and if necessary, refer them to lawyers. Those working with trade unions give advice about labor law, and can handle mediations and negotiations between parties. In other cases they can help indigent people present their cases and collect the evidence needed. They may work in prisons, as in a Malawi program where paralegals regularly go through files with prison authorities, helping to determine which prisoners are eligible to be released on bail. Paralegals also have an educational role, teaching locals about the legal system, producing informative pamphlets and booklets, and even training people to be able to teach other people about legal rights.

Getting lawyers and government officials to work with paralegals can be difficult at first, as they may take the position that paralegals are not qualified. However, paralegals help very poor people get access to justice. Paralegals do not take clients away from lawyers, and they do not solve clients' legal problems. Rather, they help bring clients to lawyers. Paralegals can help where lawyers and government officials are unable to.

Paralegals can also help lawyers talk to local people. Sometimes lawyers and government officials cannot explain legal things in simple terms, or are not interested in sharing information, or lack the time to travel to rural areas. As a result, rural people often do not know what is happening or how a case is going. Paralegals can step into the gap between ordinary people and lawyers, and, using their legal knowledge and their local

expertise, communicate information to the local community.

Paralegals need to have strong practical legal skills in order, for example, to help them interview people, take statements, and collect evidence. They need to be able to work with lawyers and government officials, as well as with local people. Also, they must have the skills to pass their knowledge to others, to educate people about the law. They will also need administrative skills, and knowledge of using media, pamphlets, booklets, and the like to communicate legal information to untrained people. Becoming a paralegal typically requires some specialized training, preferably with some in-service training that involves working with other paralegals, and there also needs to be a system of refresher courses or continuing education to keep up with changing law. However, it is possible for experienced qualified paralegals to be able to train others to become paralegals.

Professor McQuoid-Mason invited **Agnes Kover**, a professor at ELTE University Faculty of Law in Hungary, and director of the ELTE legal clinic, to give some more detail about what paralegal work really means. A new legal aid system came into effect in Hungary in 2004, but while it may have increased access for lower-middle class people, the poorest people – which in Hungary generally means the Roma community, about 8 percent of the population – are not being reached. The legal aid offices are located in cities or county centers, usually in a building of the court. This presents a major physical obstacle for the very poor, who likely cannot afford to travel to the city, as well as a psychological barrier, as disadvantaged people may find it difficult just to walk into the courthouse.

Another problem in the system is that even if the client manages to access a legal aid office, assistance is actually provided by private lawyers registered with the legal aid system, most of whom, again, are located in cities and towns too far, physically and culturally, from the people who need their help most. In practice, Romany people living 200km away from a city, in a segregated neighborhood, under incredible poverty, cannot really access legal assistance. In short, there is a missing link between the free legal aid offices and indigent people.

Paralegal education in Hungary was begun as a response to this problem. The program trains Romany law students from all law universities in Hungary to become legal and community consultants to help articulate the needs of the Roma. They do legal work, but also education and mediation, with a priority on working out solutions on the local level. There is a year-long intensive training, with 30 people already trained, and another 50 people in progress. Some of the practical challenges at the moment include funding a program to keep paralegals employed after training period.

After Prof. Kover's presentation, the presenters took questions from the group. Some sought more information about the legal framework for paralegals in the presenters' home countries, because in some countries paralegal programs would run up against laws prohibiting anyone but attorneys from providing legal aid. The facilitator noted that in his experience, a distinction in such laws is often made for free advice – that is, in some countries it is permitted for a non-lawyer to provide legal advice at no cost, whereas it would be against the law for a non-lawyer to charge for providing advice.

There was some concern that paralegals may hold themselves out as lawyers, something that can be a serious problem in rural areas, where many people will actually treat the paralegals as lawyers. Prof. McQuoid-Mason noted that such concerns can be addressed with the adoption of a Code of Conduct, which

introduces professional responsibility requirements. If paralegals violate the Code of Conduct, they will lose their right to practice.

Participants also had further questions with respect to the training of paralegals. Prof. McQuoid-Mason responded that training varies. For example, in South Africa three universities have a diploma in paralegal studies, in which students take a 6-month course and then spend 18 months practicing in the countryside, supervised by the village paralegal committee and monitored by regular visits by trained lawyers. Training may also be done by NGOs.

The second part of the breakout group began with a presentation by **Aladar Horvath**, president of the Roma Civil Rights Foundation. When the socialist economy collapsed in Hungary, prejudices and racist actions against Roma increased dramatically, and some of the

Small-group brainstorming in a breakout session.

most important work the Foundation did was to fight governmental exclusion policies and defend the right of Roma to a home. Currently the Foundation employs 5 lawyers, but most staff, such as Mr. Horvath himself, are teachers or social workers. Mr. Horvath explained he had thought of himself as a civil-rights activist, but realized through the conference that he could also be called a paralegal. The Foundation's most important duties include fact-finding, monitoring institutional practices, and using publicity to draw attention to the situation of the Roma. Their experience of the paralegal concept has demonstrated it to be a useful tool in assisting the most indigent people to access basic rights and to reach a level comparable to other citizens.

After Mr. Horvath's presentation, the group divided into five smaller groups, to discuss a list of questions regarding policy and practical questions in alternative legal service delivery.

In most countries, there is no framework for paralegals, and no legislation regarding the delivery of free legal aid. In the Central and Eastern European area, and particularly in the former Yugoslavia, there are a whole range of groups that need legal help – asylum seekers, victims of trafficking, international refugees, returnees or displaced people, the disabled, indigent persons, and children. As such there are many non-criminal legal issues that should be covered at state expense, such as human rights violations, pension cases, child support cases, land and property violations, labor law, consumer rights issues, and asylum and refugee cases. In some countries, customary courts – rural and traditional courts – can accommodate some of these types of cases, where there is no need for legal representation. In others, specialized courts such as consumer, family and juvenile courts could also help in accommodating other non-criminal legal aid cases of indigent people.

There was wide consensus on the idea that paralegals should be incorporated in and funded by national legal aid schemes. Paralegals could be crucial in delivering legal aid to target groups, and so should be supported by sustainable government funding. The participants' response was more hesitant, however, with respect to whether legal clinics should be incorporated and funded within the legal

aid system. It was felt that government funding might compromise legal clinics' independence, but if independence can be preserved, government funding will help keep legal clinics sustainable.

Lastly, the group briefly addressed some financial issues, such as what kind of fee structures could be used to enable lawyers to take non-criminal cases for poor people. One group suggested a state-administered insurance system, which works as an alternative to the traditional fully state-funded scheme. Prof. McQuoid-Mason remarked that there is an insurance system in existence in South Africa, through which people pay a monthly fee, which entitles them to a certain amount of free legal assistance, if needed.

Breakout Group #4:
Monitoring and research on performance on legal aid institutions

facilitated by Richard Moorhead, Professor, Cardiff University, Wales

This break-out group addressed the issue of how to assess the quality of legal aid delivery, regardless of which system of legal aid delivery has been adopted. Facilitator Richard Moorhead began by providing some background on his current and recent research projects, many of which focus on assessing the quality of the performance of legal aid providers in the United Kingdom. Several projects analytically compare one method of delivery versus another, such as lawyers versus non-lawyers, public defenders versus private practice, or specialists versus non-specialists. Some projects focus on management issues, e.g., Community Legal Service Partnerships and referral networks. Some focus on legal aid needs, such as identifying the legal problems that ordinary people regularly face.

Any research encounters two basic problems: which methods to use and what questions to ask. These are defined by the scope of the research and the balancing of available time and resources. If the goal is to prove something, researchers must be clear about whom they are trying to convince, and what the baselines and comparison factors will be. If the goal is to explain something, the researcher needs to know what kind of information will help explain: Will qualitative or quantitative information needed? If the goal is to generate solutions, one needs to allocate sufficient time and resources, and know with whom to engage.

Different methods of research on legal aid legal aid delivery include:

Data collection from files. Files are requested and carefully analyzed, often along with follow-up questions. Quantitative data are gathered on how much time was spent on cases and how cases ended. It is important to be aware, however, that files by themselves do not necessarily reflect the quality of the work, as the review is necessarily limited by how files are kept. Although a reviewer might note that some steps were missing, it does not necessarily follow that the legal aid provider performed poorly.

Observation. Researchers observe the conduct of legal aid lawyers by following them in their work and recording how they have spent their time. Observations are useful for getting information, but interpreting the information will always be crucial. For example, how may a subject modify his or her behavior when tape recorded?

Interviews. Interviews are useful for collecting qualitative information to clarify or supplement other observations. For more comprehensive information, interview data should be combined with data from case file review.

Surveys. Quantitative data on client satisfaction is gathered, along with clients' perspective on the service received. For such surveys, specifically designed questionnaires need to be developed. Although surveys can be inexpensive and seem an easy choice, they require specific technical knowledge, and carry the risk that those surveyed will misunderstand questions, provide inaccurate or incomplete responses, or fail to respond.

Focus groups. Group opinion gathering can help develop quality standards. The interactivity of the focus

group is an advantage over interviews, as it allows participants to respond to one another, but there is also a risk of individuals dominating discussion. Also, focus groups yield only about 60 percent of the information that interviews typically provide.

Peer review. Experienced attorneys, mostly drawn from outside the localities where the research is based, are employed to assess contractees' casework files. It is generally accepted in the legal profession that "peer review" conducted by persons with significant expertise in the relevant field is the best means of evaluating the quality of services. After reviewing files, peer reviewers can use their findings to talk directly to the legal aid lawyer about certain changes that need to be made. This method requires proper and consistent training for all reviewers, in order to ensure comparable understanding of the issues evaluated.

"Covert" research with "model" clients. Model clients are people specially trained to pretend they are clients seeking legal advice, in order to covertly determine how a selected lawyer performs. Because of concerns about consent and invasion of privacy, it is important to use such techniques with great care. Model clients are often used to test legal aid providers by presenting them with a legal issue that falls outside their area of specialization. In order to compare delivery systems, the same model client needs to be sent to test different systems.

Mr. Moorhead concluded this brief introduction to individual methods by advising those preparing to undertake legal aid research to consider carefully the purpose of the research, the methodology design, and the available sources.

The focus on a management approach to quality assurance has improved the quality of legal aid delivery in England and Wales.

Afterward, the participants separated into smaller groups to discuss various ways to assess quality. One group said that it would find experts to conduct the research for them. Another group said that the quality of the lawyer's performance should be defined by the client himself. A third group focused on defining quality. They suggested a two-part approach using two focus groups, one consisting of legal experts and the other of clients. Both focus groups would develop best practice guidelines and standards from their own perspectives and understanding, which could then be compared and synthesized in order to create optimal quality standards. The last group drew up relevant questions that need to be answered, such as: Do we want to research statics or dynamics? What are the costs of the method used? Is the outcome of a case an appropriate criterion to determine quality? The outcome of a trial does not depend only on the performance of the defense lawyer but also on things such as the performance of the judge and other factors. Should comparative research of private lawyers versus public defenders be done? Defendants' wealth or poverty may impact how they are treated by the respective lawyers.

In the second part of the breakout group, Mr. Moorhead discussed the UK experience with monitoring quality of legal aid delivery, starting from the question of what quality is. Is the notion of quality of an ethical nature? Ethical requirements may vary by roles, such as adversary, administrator or negotiator. What should the standard of quality be – should it be "excellence", or is "satisfactory" enough? What defines quality: the conduct of a case or its outcome? And lastly, what is the goal of measuring quality? Do we simply want

information, or is it for specific licensing purposes, or more generally for improving the system? Different goals suggest different methods of evaluation.

In the UK, Mr. Moorhead explained, several different methods of monitoring legal aid have been used. In one example, lawyers shadowed other lawyers during their visits to clients in prison, and evaluated them on those visits. Another monitoring exercise assessed lawyers on the particular ideology of active defense driven by zealous advocacy. Lawyers were judged based on the notion that the prosecution should be challenged wherever possible. However, it was questionable whether this system was in the best interests of the client.

One scheme that has proved effective in actually improving quality has been the process of accreditation. Accreditation was originally introduced on a voluntary basis for paralegal advisors who provided legal aid, and later became a requirement. The training teaches active defense techniques, as well as how to keep portfolios of work in which the lawyer has personally advised and assisted clients. This is followed by critical incident tests, interviews and advocacy assessment. Solicitors are now required to apply for accreditation. They take courses and are trained by providers approved by the Law Society and then sit a test at the end of the training. The introduction of the accreditation scheme has improved the quality of the work of legal aid providers – firms are better run, and file management improved – as well as the outcome of their work.

Another quality assessment came out of the British government's assumption of control over the legal aid system. In order to encourage legal aid providers to raise their standards, a uniform scheme was developed in which providers were assigned grades of quality such as "excellence", "competence plus", "threshold competence". However, the Legal Services Commission determined that only "threshold competence" would be required, as it would have been too expensive to guarantee anything above that level.

The Legal Services Commission has also addressed quality through the management system for legal aid lawyers' work. Overall, the focus on a management-type approach improved how law firms were run, and positively affected the outcome of their work as well. However, it was a bureaucratic and expensive undertaking to for the Legal Services Commission to establish and audit a desirable management system. Another downside of this approach is that it required a thorough and time-consuming two to three years of preparation.

Closing Session

- Zaza Namoradze
  Director, Budapest Office, Open Society Justice Initiative
- Edwin Rekosh
  Executive Director, Public Interest Law Initiative

During the closing session, rapporteurs from each breakout group presented highlights of the discussions that had occurred in the small groups, and offered any conclusions or recommendations that participants had agreed upon.

Afterwards, Zaza Namoradze and Edwin Rekosh, representing the organizations that hosted the Forum, shared observations about the two-day event. Both agreed that the discussions had advanced greatly from similar discussions held at the first European Forum on Access to Justice in 2002, reflecting the great degree of progress that has been made on access to justice, particularly in the countries of Central and Eastern Europe. For example, in 2002, discussions on public defenders may have seemed irrelevant to Continental legal culture, but now many countries are beginning to implement elements of public defender models. The notion of paralegals would have seemed even more removed, but now that there is an ever-widening understanding of the need for effective access to justice, several countries are experimenting with more non-traditional approaches in order to facilitate access as much as possible.

In all, the work accomplished during the second Forum resulted in an enormous exchange of information. The quality and importance of the practical discussions that occurred not just during presentations, but also on the margins of the conference, was extraordinary and impressive, and demonstrated the tremendous amount of energy behind ongoing access to justice reforms in the region.

About the Organizers

The Public Interest Law Initiative (PILI) is a center for learning and innovation that advances human rights principles by stimulating the development of a public interest law infrastructure in the countries of Central and Eastern Europe, the former Soviet Union, and Asia.

Founded at Columbia University in 1997 with the support of the Ford Foundation, PILI established its new headquarters in Budapest, Hungary, in 2002. PILI continues to maintain a small office at Columbia, and it opened an office in Moscow in 2004.

PILI uses the term "public interest law" to refer to a wide-ranging set of law-based activities designed to promote and protect the public interest. PILI's approach is to develop and support organizations and individuals who devote themselves to pursuing the public interest — an effort that is closely related to the development of civil society and the promotion and protection of human rights.

PILI conducts work in two principal areas: institutional reform, and training and education. In addition, PILI places a priority on the cross-cutting theme of combating discrimination, because of its fundamental importance to the very notion of public interest work.

The **Institutional Reform Department** supports the development of justice sector institutions that enhance the participation of a wide range of actors in pursuing the public interest. The Institutional Reform Program has three programs: Access to Justice, Law and Governance, and Legal Practice. In each case, institutional reform priorities, which address the greatest institutional impediments to public interest advocacy, are complemented by the capacity-building activities of the Training and Education Department.

The **Training and Education Department** aims to strengthen the community of legal professionals and activists who undertake public interest law activities, and through them, their respective organizations. The Training and Education Program also has three programs: Clinical Legal Education, NGO Advocacy Training, and Fellowship and Internship Programs. All Training and Education projects incorporate the input and expertise of professionals and activists from the countries in which PILI works.

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The Open Society Justice Initiative, an operational program of the Open Society Institute, pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship, and anticorruption. Its offices are in Abuja, Budapest, and New York.

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