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Ensuring the right to defence through the system of free legal aid in Ukraine

Abstract. The relevance of this study stems from the need for a comprehensive analysis of the realisation of the right to defence through the system of free legal aid in Ukraine, which is an important administrative and legal institution, but still insufficiently studied in terms of accessibility and efficiency. The study aimed to identify the key aspects that contribute to ensuring access to justice, human rights protection, equality before the law, raising legal awareness of the population and social stability. The study used sources of various scientific significance, but their analysis in combination allowed for maximum processing of factual data and proper reasoning and weight of the conclusions drawn. The research confirms the position that the right to legal aid is an integral part of the guarantee of a fair trial in the context of the concept of access to justice, an integral part of an effective and fair legal system, which is not only based on the rule of law, but also an integral guarantee of public confidence in the judicial process. The generalisation of research and results of the legal aid system's activities during its operation allowed the identification of certain aspects that emphasise the importance of the system's activities, including: ensuring access to justice, protecting human rights, ensuring equality before the law, promoting the effectiveness of justice, preventing social injustice, empowering vulnerable groups of the population, ensuring social stability and raising the level of legal awareness of the population. The summarised results and provisions will be an important element for choosing ways and methods to improve the development and operation of the legal aid system and will help to avoid negative situations and patterns in its activities. The results of the study can be used by government agencies to reform the legal system, educational institutions to educate future lawyers, and human rights organisations to improve the effectiveness of protecting the rights of citizens

Keywords: exercise of the right; right to legal aid; legal aid centre; legal aid bureau; access to justice; non-governmental organisations

INTRODUCTION

The relevance of studying the exercise of the right to defence through the system of free legal aid is due to the complexity and dynamism of the subject matter, which is explained by the complex nature of the issues of free legal aid and the exercise of the right to defence, which is often interpreted as an element of another,

even broader one – the establishment and guarantee of human rights and freedoms, the legal profession, social assistance, decentralisation, development of the legal capacity of territorial communities, etc. This topic should be studied at the present time, since the realisation of the right to defence is an integral part of the right

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to a fair trial, the consolidation, real implementation and inadmissibility of violation of which is an important factor in Ukraine's European integration prospects.

The full exercise of the human right to legal aid, enshrined in the Constitution of Ukraine¹, cannot be realised without the work of a specialised structure. Its creation in Ukraine is a significant progress in the vision of the country's European integration and in the vision of ensuring access to justice. The choice of the form and the person who will provide such assistance depends on the desire of the person applying for it. In situations specified in the legislation, such as protection of the rights and interests of minors or juveniles, defence against charges, the relevant state institutions and their responsible employees must ensure the provision of the necessary legal aid. Thus, the government is faced with the task of providing individuals with legal aid of a high quality². However, given the difficult economic situation in Ukraine, not everyone can afford to pay for professional legal aid. Therefore, there is a need for state support, which manifested itself in the creation of such an institution as the system of free legal aid. This fact is fully consistent with the concept of "human-centred" legal aid. Social and democratic state and the development of the norms of the Basic Law of Ukraine. In particular, Art. 3 of the Constitution of Ukraine enshrines the principle that "a person, his life and health, honor and dignity, inviolability and security are recognised as the highest social value"³.

The author O. Lytvyn (2022) noted that the main categories of citizens in need of free legal aid in the state are low-income persons, vulnerable groups, large families, the elderly, children, and war veterans. V. Sakhniuk (2022) noted that the system of subjects of public administration of free legal aid is organised at the proper level and fulfils its tasks of ensuring the right to free legal aid. O. Balatska (2020) rightly notes that the existence of actual or legal obstacles due to the state's failure to provide any element of access to court will make it impossible for a person to have access to justice, and therefore will be a violation of the right to a fair trial.

At the same time, A.G. Garkusha (2019) concluded that the mandatory elements of legal aid should be considered assistance provided only in cases of defence against charges in criminal proceedings by lawyers, as well as free of charge on the grounds clearly defined by law and by the subjects provided for in the law. At the same time, V. Ganyuk & Z. Gbur (2021) stated that the introduction of a system of free legal aid is an important

factor in building a constitutional state with basic social values. The provision of professional legal aid to socially vulnerable groups of the population mark the beginning of the transition from the Soviet judicial system, which was enshrined in the minds of citizens, which was more likely to punish than to justify.

Ensuring the rule of justice is essential for the well-being of society. It is with this conviction that international, regional and national legal systems unequivocally recognise the right to access to justice as one of the pillars of human rights and the human rights system. Free legal aid is one of the main tools that can be used to address and remedy violations in the justice system, in particular for the poor and vulnerable segments of society. The regional practice of providing free legal aid, although subject to governmental restrictions, can still be seen as one of the region's opportunities in providing free legal aid services. The existing legal framework at least recognises the right to access to justice and tries to pave the way for free legal aid services for poor and vulnerable community members. In this study, one of the main problems observed is the lack of awareness among the community (Etansa & Yimer, 2023).

Separate studies of scholars on this topic do not negate the relevance of the topic and do not reduce the opportunities for a full and comprehensive study and analysis of a wide range of issues related to the realisation of the right to defence through the free legal aid system. The scientific novelty of this study is to identify previously unexamined aspects of the importance of the free legal aid system in Ukraine, to analyse potential obstacles to the effective exercise of the right to defence, and to develop strategies to reduce their impact. It also expands the understanding of the impact of non-governmental organisations on this process. The purpose of the article is to provide a theoretical justification for the realisation of the right to defence through the activities of the free legal aid system and, on this basis, to formulate proposals and recommendations for its development, taking into account Ukrainian and foreign experience.

To successfully achieve this goal, the author sets the following tasks:

1. To highlight certain aspects that emphasise the importance of the legal aid system in Ukraine;
2. To explore possible challenges and obstacles to the realisation of the right to defence through the system of free legal aid in Ukraine, to analyse them and to propose options for reducing their impact;

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.

³ The Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

3. To study the role of the state and non-governmental organisations in the realisation of the right to defence through the system of free legal aid in Ukraine.

MATERIALS AND METHODS

The theoretical basis of the article was the works of Ukrainian and foreign researchers on criminal or administrative law, as well as topical issues of functioning and development of free legal aid systems and the right to defence, as well as Ukrainian and international legal acts.

The methodological basis was a combination of general scientific and special scientific and philosophical methods, approaches, and principles that meet the objectives and purpose of this study. In the course of the study, the principles of objectivity, dialectic of systematicity and validity were followed. The system of cognitive methods included axiological, sociological systemic-structural, comparative, semantic, formal-dogmatic, and epistemological, as well as systemic-structural, statistical and logical methods, including analysis and synthesis.

The study of the concepts and features of the right to defence, accessibility of free professional legal aid, organisational, administrative and legal frameworks, as well as the operational structure of the free legal aid system was conducted using axiological, epistemological, formal dogmatic and systemic methods. The comparative legal method was useful for conducting a comparative analysis of international and national experience in organising the work processes of bodies providing access to the right to professional legal aid, legal regulation of the activities of institutions providing professional free legal aid and the right to defence, as well as for researching and comparing the sources of funding for the free legal aid system in Ukraine. The article examined the role of institutions providing access to free legal aid and non-governmental organisations in shaping a high legal culture, consciousness and education of the population using the approaches of institutional and structural analysis. The method of semantics was used to clarify the interpretation of legislative, research and regulatory terms and concepts that are the basis for a correct understanding of the concepts of “free legal aid system”, “right to defence”, “primary legal aid” and “secondary legal aid”, “legal aid bureau”, “right to a fair trial”, “access to justice” in both legislation and science. The axiological method was used to study and identify promising areas for the development of the system of free legal aid in Ukraine as an institution ensuring the realisation of the right to defence. The approach to the phenomena and processes of realisation of the right to defence was

carried out taking into account the legal framework of law enforcement, as well as real life situations. The empirical basis of the work was the practical experience of the institution ensuring the right to defence – the system of free legal aid.

RESULTS AND DISCUSSION

According to the Universal Declaration of Human Rights, legal aid is a fundamental human right and an essential component of a fair, humane and effective justice system based on the rule of law. It serves as a basis for the realisation of other rights, including the right to a fair trial, and is a key guarantee of fundamental fairness and public confidence in the judicial process¹. With respect to the views of E.V. Maharramli (2021), one can logically support his position on free legal aid. According to his definition, free legal aid covers the provision of legal services aimed at ensuring compliance with legal obligations and the exercise of citizens' rights and freedoms, protection of these rights and freedoms, as well as their restoration in case of violation, which is guaranteed by the state and financed in whole or in part from the State Budget of Ukraine, local budgets and other sources.

In each country, the systems of assistance to the poor have their own uniqueness, determined by local, cultural and historical features, even within the same system of law. For example, the American system is much more extensive than the British system. In the United States, attorneys working on the basis of an employment relationship with the legal aid service and public defenders are widely used. On the other hand, the British system is dominated by lawyers working on a private basis. It is worth noting that the functioning of legal aid services in civil and administrative cases in the United States is, in part, highly politicised, which differs from the British approach (Reznichenko, 2004).

Legal systems for providing assistance differ not only at the level of different countries, but may also vary within a single country. D. Honchar (2019) noted that each US state may have its own model of legal aid provision, as the methods of providing such assistance are determined by the states themselves. For example, some states have different approaches to organising assistance in criminal and civil or administrative disputes (as in the United States and Ukraine), while in other countries it may be a single program (for example, in the Netherlands or France). The European approach to the provision of free legal aid is determined by sustainability, as well as the interrelation of the accessible right to legal aid and the accessible right to a fair trial. This approach is carried out

¹ Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.

through a number of established principles, of which the most important are those laid down in Resolution 78(8) of the Council of Europe's Consultative Assembly on legal aid and advice, adopted on March 2, 1978¹.

No one shall be deprived of the possibility of exercising or defending his or her rights on account of economic obstacles in any court of law, whether civil, commercial, administrative, tax or social. For this reason, everyone has the right to professional legal assistance in court. This activity is carried out by a professional lawyer, in particular, there is a requirement that such a person must be a lawyer in accordance with the rules established by the legislation of the country (Karyi, 2023). However, this statement cannot be fully agreed with, as well as the statement of V. Dobrovolska (2019) that "a lawyer is the main subject of free legal aid", at least in view of the fact that primary legal aid is provided by all local governments as representative bodies of communities, as well as by state executive authorities, and secondary legal aid can also be provided by lawyers of free legal aid centres who are not lawyers. The possibility of free choice of a representative other than a lawyer is also mentioned by S.I. Shuliatytskyi (2019).

Ensuring the right to defence is a fundamental aspect of any legal system, and it involves providing individuals with the means to access legal representation, especially if they cannot afford it. In Ukraine, the system of free legal aid is designed to meet this need and ensure that people, regardless of their financial situation, have access to legal aid. The main features of the free legal aid system in Ukraine include the activities of secondary legal aid centres: Ukraine has established a network of legal aid centres and bureaus throughout the country that are responsible for providing free legal aid to those in need. The network of centres and bureaus covers the entire territory of the state (taking into account that some of them do not work due to the temporary occupation of part of Ukraine's territories by Russia). Individuals seeking free legal aid usually have to meet certain eligibility criteria, such as low income or a disability group. The criteria are designed to ensure that assistance is directed to those who cannot afford private legal representation. As for the property criterion, it is applied in civil and administrative proceedings, while in criminal proceedings and in matters of administrative detention and arrest, this indicator is unconditional and the right to free legal aid at all levels is granted to everyone. Types of legal aid: Free legal aid in Ukraine can cover a range of legal services, including consultations, representation in court,

provision of legal information and assistance with legal documents, and defence. State funding: the legal aid system is exclusively funded by the state in terms of payment for lawyers and administration of the system, which has a positive impact on its sustainability and effectiveness. Other types of financial resources, such as local budgets or grants, can be used to carry out the functions of the system that are not related to the provision of secondary legal aid. The opinion that the state should provide an adequate level of funding and staff support for the legal aid system is also shared by M.O. Semko (2022). In addition to the previous point, it is worth highlighting such a separate feature as the involvement of non-governmental organisations, which also play a role in the functioning of the free legal aid system in cooperation with government initiatives. Forms of such cooperation include methodological support, funding for training of specialists and lawyers of the system, organisation of legal education events and a number of other areas. Non-governmental organisations can also be involved in the search, training and remuneration of paralegals and community advisers, and they, as rightly emphasised by A.A. Shovkun (2022), have global potential and are an integral subjective component of the free legal aid system.

Also, the system of non-governmental organisations that provide legal aid must include legal clinics, which often have the organisational capacity not only to provide advice, but also to provide secondary legal aid and conduct educational work, and A. Bezhevets (2023) agrees with this opinion. Awareness programs: efforts are usually made to raise awareness of the availability of legal aid services so that those in need are aware of their rights and can receive assistance when needed. The system of free legal aid in Ukraine plays a fundamental role in upholding the principles of justice, ensuring access to legal representation and protecting the rights of individuals, especially those who may be disadvantaged. The study of this topic has identified key aspects that emphasise the importance of the system, including: ensuring access to justice, protecting human rights, ensuring equality before the law, promoting the effectiveness of justice, preventing social injustice, empowering vulnerable groups, ensuring social stability and raising legal awareness.

The provision of free legal aid ensures equal access to justice for all persons, regardless of their financial situation. It helps to prevent discrimination based on economic status and promotes the idea that everyone should be able to defend their rights in court, while

¹ Resolution of the Committee of Ministers of the Council of Europe No. 78(29) "On Harmonization of Legislations of Member States Relating to Removal, Grafting and Transplantation of Human Substances". (1978, May). Retrieved from <https://rm.coe.int/09000016804bd0a8>.

access to legal representation is fundamental to the protection of human rights, and free legal aid helps people navigate the legal process and protects their rights by ensuring fair and just treatment under the law. By providing free legal aid, Ukraine promotes the principle of equality before the law, which in turn ensures that individuals facing legal challenges have equal opportunities to present their position in a legal conflict and receive professional assistance, regardless of their financial means. In the context of the criteria for determining the categories of persons entitled to free secondary legal aid, it is difficult to disagree with the opinion of B.P. Ratushna (2019), who notes that the restrictions established by the current legislation cannot be called significant and they in no way offset the right to defence and access to justice. In criminal justice, the provision of free legal aid is essential to ensure a fair trial. Detainees, suspects, or accused persons who cannot afford their own legal representation are provided with defenders at the expense of the state budget, which helps to balance the judicial process and maintain the integrity of the criminal justice system. Without access to legal representation, people may face social injustice as they may not be able to resolve legal issues affecting their lives, such as housing disputes, employment issues or family matters, while access to free legal aid helps prevent such injustices, which in turn contributes to community stability by resolving legal issues and disputes fairly and equitably and helps maintain social cohesion and order. At the same time, it should be noted that vulnerable populations, such as low-income individuals, minorities and marginalised groups, may be at greater risk of facing legal problems, and access to free legal aid empowers these groups by providing them with the necessary support to navigate complex legal mechanisms.

The legal aid system often creates educational initiatives to raise awareness of the rights and responsibilities of members of society, which helps people make informed decisions and understand how to obtain legal aid when needed. Thus, the system of free legal aid in Ukraine contributes to the overall fairness, equality and efficiency of the legal system by ensuring that justice is accessible to all members of society. It helps to create a legal framework that upholds human rights and promotes a just and equitable society. As rightly noted by L. Ryabovol & O.A. Tymofiienko (2020), legal education is one of the main activities of the free legal aid system aimed at raising the level of legal awareness and culture of the population of Ukraine, which is a prerequisite for the development of the rule of law and civil society, but it should be noted that legal education, although it remains among the tasks of the free legal aid system, its actual implementation is significantly complicated by the

liquidation of specialised structural units in the Regional Centers, which The importance of this aspect is also emphasised by foreign scholars, in particular S. Sood (2019) notes that “Legal education of the public is the most frequent topic on which legal aid efforts are converging”. Although the system of free legal aid in Ukraine is designed to ensure access to justice for all, the full realisation of the right to defence may be hampered by a number of challenges and obstacles. The first and most common problem among state-funded initiatives is limited and untimely funding. The effective functioning of the legal aid system requires adequate funding, and insufficient financial resources can lead to a lack of qualified staff, limited outreach programs, and an inability to meet the growing demand for legal aid. In this regard, it is reasonable to agree with the opinion of V. Tsymbaliuk (2023), who emphasises the importance of timely funding of secondary legal aid lawyers.

Geographical differences also have a significant impact on the availability of legal aid, which may differ in different regions of Ukraine, rural areas and small towns may face problems in providing the same level of services as urban centres, leading to geographical differences in access to legal representation. The main geographical feature is the remoteness of some settlements, especially in mountainous areas (typical for Ivano-Frankivsk, partly Lviv, Chernivtsi and Zakarpattia regions). Despite the extensive information and awareness-raising campaign that is continuously conducted, many persons entitled to free legal aid may not be aware of its existence or how to access these services, and as a result, lack of awareness combined with information gaps may prevent people from seeking the necessary assistance. In addition, bureaucratic barriers have a significant impact, and complex administrative procedures can deter people from seeking legal aid. As rightly noted by N.O. Kudriavtseva (2022), effective public awareness of its activities and a large-scale information campaign in this area will improve the existing system of free primary legal aid and contribute to the implementation of promising tasks of the system development. A separate circumstance that can be attributed to the obstacles to the realisation of the right to professional legal aid is stigmatisation and social barriers; some people may avoid applying for free legal aid due to social stigma or fear of judgment. Efforts to reduce stigma and promote inclusiveness are important to ensure that all persons whose rights have been violated feel comfortable seeking legal aid.

Given the specific political coloration of government initiatives in Ukraine, attention should be paid to the risk of changes in the political and legal landscape that may affect the funding and overall stability of the legal aid system. Political will and legal support are needed

to address any problems that may arise. Overcoming these obstacles requires a comprehensive approach that includes government commitments, legal reforms, awareness campaigns, and ongoing efforts to improve the efficiency and effectiveness of the legal aid system in Ukraine, and regular policy evaluations and adjustments can help to overcome these challenges, ensure the stability of the institution, and increase access to justice and the right to defence for all segments of the population. Both the state and non-governmental organisations can offer mechanisms that can help solve problems in access to professional legal aid and the exercise of the right to defence. The state allocates funds, ensuring the financial stability of the legal aid system and the expansion of its services, and also shapes the policy and legal framework, adapting to changing social and legal dynamics. By controlling quality, the state sets standards for representation, promoting the professionalism of providers. Cooperation between the state and civil society organisations increases resources and improves the efficiency of the legal aid system (Sood, 2019). Geographical disparities are addressed through the creation of new legal aid centres in underserved regions (however, there is no problem with the geographical location of access points to professional legal aid in the territory where no hostilities are taking place and in the territories that are not temporarily occupied, and the horizontal structure of the system allows covering the needs of the population, while this problem is only actualised by the war). The state's responsibility extends to overcoming bureaucratic barriers, simplifying administrative processes to ensure accessibility, while non-governmental organisations play an important role in capacity building by offering training programs for lawyers and conducting research, providing evidence-based recommendations for ongoing reforms of access to legal aid. Civil society organisations directly promote access to legal aid by filling capacity gaps where necessary and advocating for inclusiveness. Publicly and non-governmentally funded information campaigns can provide citizens with knowledge on how to access the services of the legal aid system. The state maintains a stable legal framework that ensures the protection of human rights. In this context, it is important to mention that the relevant legal act, the Law of Ukraine No. 3460-VI "On Free Legal Aid" (2011, June) is constantly being amended¹, including in terms of expanding the categories of persons entitled to free legal aid. This undoubtedly contributes to the expansion of access to it, and the very fact that the foundations of the system are enshrined in a legal act with the highest legal force,

rather than in any bylaw, indicates that the state pays special attention to the institutional stability of the FLA system. Civil society organisations, on the other hand, through advocacy, overcome social stigmas associated with legal aid and empower communities by providing legal education and necessary resources.

To summarise, the state and non-governmental organisations are working together to shape and improve the landscape of access to free legal aid and the exercise of the right to defence in Ukraine. At the same time, the system of free legal aid, which is funded differentially from different sources (local, state budget and at the expense of non-governmental organisations), ensures one of the fundamental aspects of the functioning of a democratic state – the exercise of the right to defence, which ensures equal access to justice for all.

CONCLUSIONS

The system of free legal aid in Ukraine is a pivotal pillar in upholding the principles of justice and human rights protection. The state plays a key role, not only by providing the necessary financial support, but also by actively shaping policy and addressing systemic challenges that may impede the effectiveness of the institution's structure. By allocating funds and creating a comprehensive legislative framework, the state ensures not only the financial stability of legal aid services, but also their accessibility and maintenance of high-quality standards. Collaboration with non-governmental organisations extends these efforts by providing additional resources, advocating for policy improvements, and increasing outreach results. NGOs play a significant role in capacity building initiatives, research, and legal aid delivery, effectively complementing and supporting the state legal aid system and addressing potential gaps in public outreach.

Correction of geographical disparities is possible only after the end of martial law and the cessation of hostilities. Both government agencies and non-governmental organisations are cooperating to remove bureaucratic barriers, simplify administrative processes, and promote inclusiveness in the provision of legal aid services. An effective means of Correction of geographical disparities will only be possible after the end of martial law and the cessation of hostilities. Both state institutions and non-governmental organisations cooperate to remove bureaucratic barriers, simplify administrative processes and promote inclusiveness in the provision of legal aid services. Joint information campaigns are an effective means of informing citizens about their rights

¹ Law of Ukraine No. 3460-VI "On Free Legal Aid". (2011, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3460-17#Text>.

and the availability of free legal aid services. Ongoing monitoring, research and feedback mechanisms are carefully maintained to ensure the adaptability and continued effectiveness of the legal aid system. In essence, the combined efforts of the state and civil society organisations contribute to the development of a legal aid system in Ukraine that is not only more equitable, but also inherently responsive to the changing needs of society, thereby strengthening the fundamental principles of justice. At the same time, it is worth emphasising the

prospects for further research on this topic, which are to expand the potential recipients of the right to free secondary legal aid and to ensure the institutional stability of the free legal aid system in Ukraine.

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CONFLICT OF INTEREST

None.

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Присвоєння поведінки міжнародній організації: теорія та практика застосування

Анотація. Актуальність даного дослідження випливає з необхідності комплексного аналізу реалізації права на захист через систему безоплатної правничої допомоги в Україні, яка є важливою адміністративно-правовою інституцією, але досі недостатньо вивченою з точки зору доступності та ефективності. Дослідження було спрямоване на визначення ключових аспектів, які сприяють забезпеченню доступу до правосуддя, захисту прав людини, рівності перед законом, підвищенню правової свідомості населення та соціальної стабільності. У дослідженні використані джерела різного наукового значення, але аналіз їх в комплексі дозволив забезпечити максимальне опрацювання фактичних даних та належну аргументованість і вагомість зроблених висновків. Наукова робота підтверджує позицію, що право на правничу допомогу є невід'ємною частиною гарантії на справедливий суд у контексті концепції доступу до правосуддя, невід'ємним частину ефективної та справедливої правової системи, яка не тільки ґрунтується на принципі верховенства права, а й є невід'ємною гарантією довіри громадян до процесу судочинства. Узагальнення досліджень та підсумків діяльності системи безоплатної правничої допомоги за час її роботи, дозволило встановити окремі аспекти, що підкреслюють важливість діяльності системи, серед них зокрема: забезпечення доступу до правосуддя, захист прав людини, забезпечення рівності перед законом, сприяння ефективності правосуддя, запобігання соціальної несправедливості, розширення можливостей вразливих верств населення, забезпечення соціальної стабільності та підвищення рівня правової свідомості населення. Виокремлені підсумки та положення будуть важливим елементом для обрання способів та методів покращення напрямків розвитку і роботи системи безоплатної правничої допомоги та відкриють змогу уникнути виникнення негативних ситуацій та закономірностей у її діяльності. Результати дослідження можуть бути використані урядовими органами для реформування правової системи, навчальними закладами для освіти майбутніх юристів, а також правозахисними організаціями для підвищення ефективності захисту прав громадян

Ключові слова: реалізація права; право на правничу допомогу; центр з надання правничої допомоги; бюро правничої допомоги; доступ до правосуддя; неурядові організації