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Models for early access to legal aid in criminal justice in Georgia

Consultant: George Burjanadze



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Introduction

In Georgia legal aid service operates since 2006. In the light of the development of the legal aid systems in the world, Georgia is one of the countries which managed to fully implement this mechanism. Nowadays, Legal Aid Service is an independent entity which is accountable to the Parliament of Georgia. It has an independent Council, which is composed of members appointed/selected by different branches of government and independent institutions. Financial resources are one of the main challenges of legal aid service today. While legislative framework and the system is fully operational, additional budgetary resources are required in order to mobilize more staff. The purpose of the present research is to outline the views on the expansion of the scope of legal aid. The research concentrates on the implementation of early access of legal aid in criminal justice.

Early access to legal aid in criminal justice is defined as the provision of legal service by public defender from the moment of arrest or charge of the person to (whichever comes first) his first appearance in court.¹ However, the research only focuses on the cases when the suspect is arrested and it does not cover all other cases, where the persons are charged. This is conditioned by the lack of resources and the necessity of incremental development.

The present research does not provide justification why early access to legal aid is important and necessary in Georgia. This has been discussed in multiple reports and documents and part of them shall be referenced in this report.

The research methodology was defined and agreed with the representatives of UNDP and it consisted of several components.

- The analysis of the Constitution and the Legislation of Georgia.
- The collection and analysis of the relevant statistics.
- Study of international experience and comparative research.
- Interview with the participants of the criminal procedure (lawyers, public defenders, prosecutors, judges).
- Recommendation of the model appropriate for Georgia based on the analysis of relevant data and international practice.

In the framework of the research, the statistical information has been obtained from the Ministry of Internal Affairs of Georgia and Legal Aid Service.

¹ Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners“, UNITED NATIONS OFFICE ON DRUGS AND CRIME, New York, 2014.

In the course of the research interviews were conducted with: 5 lawyers from Legal Aid Service, 5 private practitioners, 4 prosecutors and 4 judges. Part of them were interviewed face-to-face, while the others were interviewed through telephone. At the beginning of the research an interview was conducted with the director of Legal Aid Service, who provided detailed information as well as his views on the expansion of the Legal Aid Service.

The research discusses the financial resources, which shall be needed for further implementation of the reform. All assumptions in this respect are grounded on certain empirical data and calculations.

Where necessary, the report provides relevant legislative drafts. The findings of the report have been shared in advance with the representatives of UNDP which made comments after which final recommendations will be provided.

The report concentrates on criminal procedure and does not cover the cases of arrest envisaged by administrative violations code.²

I would like to thank everyone who has devoted time for the interview, as well as the representatives of chief prosecutors office of Georgia, Legal Aid Service and Tbilisi City Court who have provided assistance in organizational matters.

² At this stage a concept paper is being discussed according to which all articles of the administrative violations code envisaging the administrative detention should be moved to special chapter of the criminal code. If this model is really implemented, the finding and recommendations in this research shall be revised accordingly.

1. Analysis of Georgian legislation

According to par. 3 of art. 42 of the Constitution of Georgia, the right to the defense is guaranteed. Par. 5 of art. 18 of the Constitution states that “arrested or imprisoned person should be informed of his/her rights upon the arrest. He may request the assistance of the counsel upon arrest or imprisonment. His request should be granted”. The Constitution of Georgia does not contain direct reference on the obligation of the State to provide free legal aid, neither the relevant criteria or applicable procedure. As of January 2018, the Constitutional Court of Georgia has not interpreted any norm of the Constitution, which would directly establish such guarantee. New version of the Constitution which was adopted in October 2017 does not contain any reference in this respect.

On June 19, 2017, the Parliament of Georgia adopted the law on Free Legal Aid, the art. 1 of which states: “The goal of this law is to create a sustainable and reliable legal aid system oriented to social demand, which is necessary to ensure the right of protection guaranteed by the Constitution of Georgia and international agreements, as well as efficient legal aid administration system for transparent and effective spending of budget funds”.

According to current system, the legal aid is implemented by the Legal Aid Service. This is an independent entity which is created by law in the form of Legal Person of Public Law. Legal Aid Service neither depends on or is supervised by any State agency. It is accountable only towards the Parliament, which implies the obligation of LAS to report to the Parliament once a year about its activities. In the framework of accountability the Parliament also collects information about LAS from other sources. After hearing the report, the Parliament adopts the decree, either approving or disproving the operation of Legal Aid Service and addressing recommendations for improvement. On the basis of this decree, the Parliament may decide to discharge the director of Legal Aid Service.

Legal Aid Service is managed by the Director which is elected for 5 year period. He may be reelected only once. The Director is the chief executive officer and manages the entire organisation. The director may be dismissed prior to the termination of his/her term of office through decision of Legal Aid Council or in exceptional case, by Parliament (If Parliament determines that the Director violated or failed to comply with its duties).

Legal Aid Service has its advisory body decides on all important issues. The goal of the Counsel is to ensure the independence, transparency and effective functioning of LAS. The Counsel is composed of 9 members of which 3 are elected by Executive Board of Georgian Bar Association, 3 are selected by Public Defender, 1 member is elected from Legal Aid Bureaus from their attorneys. The Minister of

Justice selects one member from the staff of the Ministry of Justice. One member is elected by High Council of Justice by its non judge members. The member of Legal Aid Council is independent in performing his/her functions. The Public Defender may not withdraw the member selected through open competition. On the one hand, the Council performs regulatory function and adopts internal regulations, also approves strategy, opens new bureaus or terminates the existing ones, approves salary ranks, etc. In addition, the Council has a certain countersignature function, which balances the executive vertical (for example, the head of the Bureau, lawyers and consultants may be dismissed only with the approval of the Council).

Legal Aid Service needs to obtain permission from Ministry of Finance and Economics, on the issues related to the acquisition of the property, loans and other technical and financial matters.

Service and subjects

The legal aid service ensures the availability of free legal advice and legal aid. Art. 2 of the Law on Legal Aid defines legal aid as “drafting of legal documents, representation in court on civil and administrative cases and in administrative agency, as well as in criminal proceedings at the expense of the State”. Legal consultation is defined as “legal advice accessible for everyone on any legal issue”.

According to the art. 1 of the same law, legal consultation is provided on any legal issue, while legal aid is ensured on criminal, civil and administrative proceedings, if the conditions defined by the law are present.

The subjects of legal aid are the citizens of Georgia, stateless persons and foreign nationals.³

Accused, convict or acquitted person have the right to obtain legal aid in criminal proceedings in the conditions stipulated by law.⁴

1.1. Structure of LAS

Legal Aid Service is composed by the 1. Staff 2. Bureaus 3. Consultation centers. The law also envisages the provision of legal aid in certain framework (on certain territory) by private providers, which can be legal persons or private lawyers.⁵ In addition, the law enables the bureaus and consultation centers to have a roster of registered lawyers, which can be used for the provision of service. The law on legal aid uses the term “public defender”, which implies staff lawyer of legal aid bureau, lawyers registered

³ Art. 3 of the charter.

⁴ Paragraph 1, of art. 21 of the law.

⁵ Art. 18 of the law.

in the roster or legal aid providers. As of December 2017, 75 lawyers are enrolled in roster of invited lawyers (51 specialized in criminal law, 3 in civil law and 21 in general specialization).⁶

Staff

Staff of Legal Aid Service is managed by the Director of LAS. The director has a deputy, which carries out supervisory function in the framework defined by the director and in his/her absence fulfills the duties of the director.

The staff of the legal aid service provides organizational and technical support to the functioning of the legal aid service.⁷ It consists of administrative and technical units which provide support functions.

Bureau

Art. 17 of the law of Legal Aid contains provisions about legal aid bureau. According to this article, bureau is an integral unit of the Legal aid service, which provides legal aid within its premises. Bureau consists of

1. The chief of the bureau
2. Lawyers
3. Consultants
4. administrative personnel.

Each bureau additionally has the roster of invited lawyers.⁸ The lawyer registered in the roster operates upon assignment of the director, head of the bureau.⁹

Together with the roster, art. 18 stipulates the institution of the service provider – “legal person of private law or a lawyer selected through tender, which provides legal aid based on this law and within the territory defined by the contract”.

As of November 2017, Legal Aid Bureaus exist on the whole territory of Georgia A) Tbilisi B) Mtskheta-Mtianeti C) Shida Kartli D) Qyemo Kartli E) Kakheti F) Kakheti (Signagi) G) Imereti (Kutaisi) H) Imereti (Zestafoni) I) Samegrelo (Zugdidi) J). Samegrelo (Foti) K) Samtshke Javakheti M) Ajara.

Chief of the Bureau, which is accountable before the director of Legal Aid Service and which supervises the bureau, also assigns cases to the lawyers of the bureau, gives them instructions and assignments,

⁶ Information is available on the webpage: < <http://www.legalaid.ge/ka/c/2/register> >

⁷ Charter, art. 7.

⁸ Subparagraph “b” of art. 2 of the law, the roster is defined as “ list of lawyers composed by Legal Aid Service upon data of lawyers provided by GBA”.

⁹ The list of lawyers enrolled in roster is accessible at < <http://www.legalaid.ge/ka/c/2/register/members> >

ensures the proper performance of duties by lawyers, consultants and administrative staff.¹⁰ The bureaus are independent and any interference with their work is prohibited.

Number of staff in legal aid bureaus¹¹

Tbilisi Legal Aid Bureau	39 Public defense lawyers;
	4 consultants
Mtskheta Mtianeti Legal Aid Bureau	6 Public defense lawyers;
	1 consultants
Samtskhe_Javakheti Legal Aid Bureau	6 Public defense lawyers;
	1 consultants
Shida Kartli Legal Aid Bureau	7 Public defense lawyers;
	1 consultants
Kvemo Kartli Legal Aid Bureau	12 Public defense lawyers;
	1 consultants
Telavi Legal Aid Bureau¹²	7 Public defense lawyers;
	1 consultants
Signagi Legal Aid Bureau	4 Public defense lawyers;
	1 consultants
Zestafoni Legal Aid Bureau	6 Public defense lawyers;
	1 consultants
Kutasi Legal Aid Bureau	12 Public defense lawyers;
	2 consultants
Zugdidi Legal Aid Bureau	9 Public defense lawyers;
	1 consultants
Foti Legal Aid Bureau	6 Public defense lawyers;
	1 consultants
Adjara Legal Aid Bureau	11 Public defense lawyers;
	1 consultants
Legal Aid Bureaus throughout Georgia	125 Public defense lawyers
	16 consultants

¹⁰ Art. 16 of the Charter of Legal Aid Service.

¹¹ The information is available at the official webpage of legal aid service: < www.legalaid.ge >

¹² The information has been provided by LAS and is now kept by author of the research in paper form.

Number of provided legal aid according to Bureaus	2015	2016
Tbilisi Bureau	3667	3588
Mtskheta-Mtianeti Bureau	259	261
Telavi Bureau ¹³	465	501
Signagi Bureau		139
Shida Kartli Bureau	430	442
Kvemo Kartli Bureau	908	1042
Samtskhe Javakheti Bureau	398	347
Zestafoni Bureau	239	195
Kutaisi Bureau	1384	917
Zugdidi Bureau	597	420
Foti Bureau	264	275
Ajara Bureau	1049	1106

Consultation centers

Consultation centers do not provide legal aid directly and their work is limited only by Legal advice, the duration of which may not exceed 1 hour.¹⁴ Legal consultations include face-to-face as well as on-sight consultations and drafting of legal documents. The consultation center also organizes the assignment of the cases to the lawyers registered in the Roster of public lawyers.¹⁵

As of November 2017, following consultation centers operate throughout Georgia a) Ozurgeti b) Ambrolauri c) Mestia d) Sachkhere e) Akhalkalaki f) Tsalka g) Marneuli.

Number of staff employed in consultation centers¹⁶

Ozurgeti Consultation Center	2 consultants
Ambrolauri Consultation Center	1 consultant
Mestia Consultation Center	1 consultant
Sachkhere Consultation Center	1 consultant
Akhalkalaki Consultation Center	1 consultant
Tsalka Consultation Center	1 consultant
Marneuli Consultation Center	1 consultant
Overall number of consultants in consultation centres	8 consultants

¹³ The information has been provided by LAS and is now kept by author of the research in paper form.

¹⁴ Art. 17 of the regulation.

¹⁵ Art. 17 of the regulation.

¹⁶ The information is available at the official webpage of legal aid service: < www.legalaid.ge >

1.2. Legal Aid in Criminal Proceedings

According to Georgian criminal procedure code, defense lawyers can be involved in the case in three ways:

- a) lawyer by agreement
- b) Mandatory defense
- c) Defense of insolvent person

Defense by agreement is conducted on contractual bases. Mandatory defense implied mandatory participation of defense lawyer in the case. If the person does not have a lawyer by agreement, he shall be appointed a legal aid lawyer by Legal Aid Service.¹⁷ It is obligatory for the defendant to have the lawyer if¹⁸:

- a. She or he is juvenile;
- b. She or he is not familiar with the language of the criminal proceedings;
- c. She or he suffers physical or mental disorder preventing him/her from conducting self-defense;
- d. If the court has made a decision on psychiatric-forensic testing;
- e. If defendant faces a life term under the Criminal Code of Georgia;
- f. If she or he is engaged in negotiations on plea bargaining;
- g. If the criminal case is heard by jury;
- h. The defendant does not show up before law enforcement body;
- i. The defendant has been expelled from the courtroom;
- j. If the defendant is a non-identified person;
- k. If the lawyer refrains from appearing at the trial without valid excuse and the judge believes that the postponement of the trial shall linger the case.¹⁹

If an insolvent person is asking for the appointment of the lawyer the LAS shall assign him the lawyer and the State shall bear the expenses of the defense.

According to art. 20, par. 2 of the juvenile justice code “a permanent unit of lawyers specialized in juvenile justice is operating within Legal Aid Service, which immediately upon the very first request provides legal aid to the juvenile”.

1.3. Provision of legal aid in criminal justice process

If an insolvent person is asking for the appointment of the lawyer or any ground of mandatory defense is present, prosecuting side (prosecutor or investigator) or judge are obliged to immediately apply to the legal aid service for the appointment of the lawyer at the expense of the State. In addition, the

¹⁷ Subparagraph “b” of art. 1 of the CCP.

¹⁸ Art. 45 of CCP.

¹⁹ Art. 42, paragraph 3

defendant is also entitled to apply to LAS in person.²⁰ According to art. 21 of the Charter of Legal Aid Service, the representative of the defendant and his/her close relative also have the right to apply. Even though this is not clearly stated in the law, the right of legal representatives or close relatives to apply to Legal Aid Service also extends to the defense of insolvent persons.²¹

Legal Aid Bureaus, Consultation centers or legal aid providers ensure the involvement of the Counsel in the case upon relevant request.

According to art. 21 of the Law on Legal Aid, the procedure of involvement of legal aid counsel in the case is defined by the Statute of Legal Aid Service. According to art. 21, par. 5 of the Statute of the Legal Aid Service:

- If the case processing agency applies to the Bureau with the request of appointment of the counsel on a mandatory defense case, the head of the bureau immediately assigns the counsel.²²
- If the case processing agency or physical person applies to the head of the bureau with the request of the appointment of the counsel to an insolvent person, the head of the bureau shall assign the counsel if the grounds for the appointment of the counsel are present.²³ In such case, the counsel should be appointed within 2 days.²⁴

The refusal of the appointment of the counsel can be complained of only once to the director of the Legal Aid Service and later to the court.²⁵

A decree adopted by the director of LAS regulates the issue of the distribution of cases among bureaus, including during non working hours.²⁶

1.4. Number of arrested persons in Georgia per month

According to the data obtained from the Ministry of Internal Affairs, 7546 persons have been arrested throughout Georgia during 2015.²⁷ In 2016, this amounted to 6251. Average figure from this two years data is 6900. It seems that these amount of people should be provided with legal aid throughout Georgia

²⁰ Art. 46, paragraph 3.

²¹ This is based on the assumption that in case of mandatory defense stipulated by CCP, the body in charge of the proceedings shall apply to the legal aid bureau on its own.

²² Par. 5.

²³ Par. 6.

²⁴ Par. 4.

²⁵ Par. 5 of the art. 22 of the regulation.

²⁶ Decree n. 01/03/1316 of December 30, of 2015 of the director of LAS.

²⁷ Based on the information provided by MIA, these data reflects the number of persons transferred to the temporary detention facilities of MIA > T(his data does not include those persons who were arrested but have not been transferred to temporary detention facilities). They have been released within first few hours from the arrest based on different grounds. See annex .

every year. It is difficult to say how many suspects out of these 6900 are provided with legal aid.²⁸ The Ministry of interior does not analyse and process the information whether the arrested persons are defended by lawyers, therefore it will be difficult to tell precision how many people shall need legal aid within first few hours from the arrest.

1.5. Summary

According to Georgian legislation, free legal aid implies the participation of the defense counsel in criminal justice in cases and according to the procedure determined by law. In addition, this also includes the assignment of the counsel to the insolvent persons who are left without defense. All other persons are excluded from legal aid and they have to bear the costs of the defense by themselves.

Early access to legal aid should be extended exactly to those persons who do not meet with existing criteria and therefore are not provided with legal aid.

According to the survey published in 2016, the interviewed lawyers pointed out that 75 percent of the criminal defendants do not have a lawyer upon their first questioning and they prefer to engage an attorney for the first appearance in court.²⁹ The survey explained this data by the fact that defendants do not have a good understanding of the role of the lawyer which additionally enables the police to obtain the desired testimony. By failing to engage the lawyer, the defendants try to avert financial burdain to their families and also not to irritate investigators which may worsen their situation.³⁰

Due to the existing legislating framework, many people are left without lawyer within first few hours from the arrest. The manadatory defense is stipulated only in cases envisaged by the law. In other cases an arrested person is left alone with the police and the participation of the lawyer depends only on his financial means. Even those who have enough financial resource to hire a lawyer often refuse to do so. This can be a significant defect from the perspective of the right of the fair trial, because the committed procedural errors may not be corrected at the later stage.

²⁸ The legal aid may be provided to the arrested persons as well as to those who have not been subjected to this type of coercive measure.

²⁹ Besarion Bokhashvili, Giorgi Mshvenieradze, Irakli Kandashvili “Procedural Rights of the Suspects in Georgia”, 2016, p. 4. Available at < <https://goo.gl/k7w168> > (last accessed on Nov. 26, 2017).

³⁰ Supra note, 48.

2. International standards on early access to legal aid

2.5. Right to legal aid

Principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems adopted by UN³¹ stipulate that the States should define the right to legal aid in their legislation at highest possible level. They also require the creation of legislative framework which shall enable the functioning of accessible, effective, sustainable and credible legal aid system.

Early access to legal aid implies early access for the criminal defendants who were arrested and criminally charged. Early access implies that the arrested person should have access to the lawyer as early as possible and this period lasts until the first appearance in court. The international standards deal with the entire criminal process and early access deals only with the initial period.³² A particular focus on early access is conditioned by following factors:

- The procedural decisions adopted at this stage are particularly important for the further processing of the criminal case. If the arrested person pleads guilty then the subsequent process acquires almost formal character.
- At this stage, the risk of prisoner abuse is particularly grave because the confession and the disclosure of the name of other accomplices “facilitates” the investigative process.
- All those persons who do not have relevant legal education and experience may be easily subjected to manipulation from investigative agency due to the lack of information.

In addition to legislatively regulating and funding early access to legal aid, following pre-requisites must also be present:

- Adoption of regulations defining access to legal aid, financial criteria, providing information to defendants and enforcement, legal aid provider, procedure for taking of decision.
- Procedures and records for practical implementation (issue of informing the suspects, keeping of information, summoning of legal aid provider).

³¹ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN General Assembly, 67/187.

³² See *supra*.

- Professional culture and approaches – this can ensure effective implementation of legal aid and full compliance with the legislation by relevant actors.

It must be observed that early access to legal aid does not derive from any binding international treaty. Legal basis for early access is defined by domestic legislation of relevant country. Different countries provide examples of best practices of early access.

Principle 3 of UN Principles and Guidelines for the Access to Legal Aid in Criminal Justice System states that every person who is suspected or charged with a criminal offence, which is punishable by imprisonment or capital sentence should have access to legal aid in every stage of the proceedings. This right is disposable and the person may waive it in certain situations, but the waiver must be informed, voluntary and relevant procedural guarantees must be observed. On the other side, many countries are familiar with the cases of mandatory defense in the course of which the defendant may not waive legal assistance. These are the cases, for example, when the serious crime is committed or investigator is questioning the suspect (Argentina, Italia, Columbia, Peru) or the person belongs to certain vulnerable category.³³

As it is supported by multiple research and study, the police sometimes uses ambiguous provisions and flexible norms defining the legal status of the person in order to deny the arrested suspect the enjoyment of certain rights.³⁴ Therefore, any legal provision should be as clear and non ambiguous as possible.

Also, it is necessary to provide the arrested person the oral as well as written clarification of his rights. The information should be delivered to the person in consideration of his special needs. Simultaneously the information should be publicly displayed in police stations.

Before questioning, the arrested person should have the possibility to invite lawyer or have access to free legal aid. He/she must not be questioned before obtaining legal advice. For this purpose, the legislation of several countries defines specific time period in which the lawyer must come to the place of detention. Simultaneously, the legal aid providers are obliged to appear on time and comply with their obligations.

The investigative agencies should keep records of all information in the frames of possible including the data reflecting the initial contact between the police and arrested person, the moment of informing the lawyer, time of lawyer's appearance and departure.

³³ Supra, p. 48.

³⁴ Effective Criminal Defence in Europe, Ed Cape and others, 584-585; Effective Criminal Defence in Eastern Europe, Ed Cape and Zaza Namoradze, 446-448.

2.6. ECtHR standards

Effective defense is one of the most important and fundamental guarantees of the fair trial. Timely and proper access to the counsel often determines the fairness of the proceedings because the defendant statements or testimony given at the initial stage of the criminal procedure may have irreversible impact on the effective conduct of the defense. In order to avoid this, universal and regional human right supervisory bodies attach a crucial importance to the participation of the defense counsel in the initial stages of the proceedings before the first questioning of the suspect after the formal charges are made or the person is arrested.

Art. 6 of ECHR in the whole ensures the defendant's right to effectively participate in criminal procedure personally or through assistance of the counsel. The right to defense in the first place implies the possibility of the defendant to have a counsel of his choice or to benefit from free legal aid if he is unable to afford the counsel and interests of justice so require.

According to art. 14 of the covenant of the civil and political rights as well as art. 6 of ECHR, all defendants charged with the crime have the right to the counsel as well as proper legal consultation and this right is one of the fundamental principles of the fair trial.

According to the caselaw of UN Human Rights Committee and ECHR, the holder of such right can be any person who:

1. Was arrested on the suspicion of having committed the crime³⁵
2. Any person/suspect who was interrogated for the purpose of finding out whether he/she has any connection with the conduct that constitutes the crime³⁶
3. Any person, who was officially charged according to national legislation for any conduct which is punishable by imprisonment.³⁷

Access to the legal consultation is particularly important for a criminal defendant in early stages of the criminal proceedings even before the first questioning to prevent the confession of the crime that defendant has not committed or not charged with for the specific moment. In such case, the access to the legal advice is fundamentally important not only for the purposes of art. 6 (fair trial) but also art. 5 (right to liberty and security of the person)

Thus, according to the interpretation of universal and regional human right supervisory bodies, an arrested person should have access to the legal advice immediately. Immediate access implies following:

³⁵ Heaney and McGuinness v. Ireland, no. [34720/97](#), § 42, ECHR 2000-XII, *vs* Brusco v. France, no. [1466/07](#), §§ 47-50, Decision of 14 October 2010.

³⁶ Aleksandr Zaichenko v. Russia, no. [39660/02](#), §§ 41-43, Decision of February 18, 2010; Yankov and Others v. Bulgaria, no. [4570/05](#), § 23, Decision of February 23, 2010.

³⁷ Pélissier and Sassi v. France [GC], no. [25444/94](#), § 66, ECHR 1999-II, *vs* Pedersen and Baadsgaard v. Denmark [GC], no. [49017/99](#), § 44, ECHR 2004-XI.

an arrested person must be informed of his right to consult with the lawyer. The person should be allowed to contact his lawyer and ask an appointment after his arrest. All this should be done before his first questioning. A lawyer should be able to talk to his client in confidential setting, discuss the existing situation and plan the defense strategy, attend the questioning and other investigative measures. In cases where the person confesses to the law-enforcement bodies without access to the counsel/legal advice and this confession is later used for the conviction and the negative consequence for the defendant may not be remedied in later stages of the procedure, the European Court often concludes upon the violation of art. 6 of ECHR.³⁸ However, for sometime, ECtHR used to conclude upon the violation of right to fair trial due to the restriction of timely access to the counsel only in cases when this violation had negative and irreversible impact on the case proceedings as a whole. Consequently, the fact of restriction the access to the counsel alone could not be found as violation of art. 6 of European Convention.

In 2008, on the case *Salduz v. Turkey* the European Court altered the caselaw and attached more importance to the timely and effective access to the counsel. The court highlighted the importance of the access to the counsel and timely and effective legal advice in trial as well as in investigation for the fairness of the whole proceedings and the outcome of the case. According to the European Court, the evidence obtained in preliminary investigation determines the course of the trial. In the given case, the court emphasized that in order to make the right to fair trial a practical and effective, art. 6.1 as a rule requires the access to the counsel of the arrested suspect at the first questioning. The failure to comply with this obligation from law enforcement bodies may entail the violation of art. 6.3 alone or in conjunction with art. 6.1 of European Convention. From the caselaw of the European Court it can be seen that, the court used to find violation of art. 6.1 and 6.3 not only in cases when the suspect gave testimony without prior consultation with the counsel and later this was used as evidence for conviction (*Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008), but also in the case when the arrested persons applied the right to silence (*Dayanan v. Turkey*) or when they denied participation in the crime charged (*Yeşilkaya v. Turkey*, no. 59780/00). While affirming this standard, the European Court highlighted that the right to immediate access to the lawyer does not bear an absolute nature. However, the restriction must be limited in time and justified by compelling and serious reasons.

It is important to identify what these serious and compelling reasons could be. The European Court gave an exhausting answer to this question on the case *Ibrahim and others v. UK*. The court clarified the meaning of “serious and compelling reasons” necessary for the restriction. Namely, according to the court the restriction of the access to the counsel of arrested/charged defendant, which must be justified by urgent and serious reasons should bear temporary nature and the respective decision should be founded on the specific circumstances of the case. The restriction to the legal advice on the specific case may be justified only with the risk to human life, freedom or physical integrity (torture or inhuman treatment). In such cases, the immediate obligation of the State to protect above-mentioned values shall

³⁸ *Inter alia*, Leonid Lazarenko v. Ukraine no. 22313/04, § 57, 2010 წლის 28 ოქტომბრის გადაწყვეტილება.

outweigh the guarantee of immediate access to the legal advice. The persons arrested in these cases were charged with the preparation and execution of terrorist acts. UK legislation allowed the authorities to restrict the rights of the arrested person to a lawyer/legal advice for maximum 48 hours. In the given case, with regard to three applicants who were denied the access to the counsel within 8 hours from the arrest and who applied the right to silence, the European Court did not find that there was a violation because the restriction of the right to lawyer/legal advice was justified by urgent circumstances (fight against terrorism and prevention of possible terrorist acts). However, the European Court found the violation with regard to the 4th applicant who, while being questioned as a witness corroborated his connection to the executed terrorist acts. However, the investigators, upon questioning did not explain to him the right to silence or privilege against self incrimination. In the given case, because the access to the lawyer/legal consultation was restricted, the court held that there was a violation of art. 6.

In the case of Ibrahim and others, even though the court did not detect the violation of fair trial rights with regard to three applicants, the court still highlighted that the restriction to legal advice should have temporary nature and should be maximally limited in time. The court also particularly focused on the question whether the applicable national legislation enables the restriction of access to the legal advice and to what extent. While restricting the timely and effective access to legal advice, States bear the burden to justify such measure and failure from their side to present significant and compelling reasons may result in finding the breach of art. 6.³⁹

2.7. Early access to legal aid

Development of the system of accessible legal aid is particularly important in early stages of the criminal process. Arrested or imprisoned person is unprotected because is separated from his usual environment and finds himself in control of other persons. Police and other law enforcement agencies are bound by certain restrictions and rules, for example, such as detention time limit. Delay in access to legal aid increases the vulnerability of the arrested person and enables the police to linger the procedure against the suspect and defendant who is left to legal advice.

The effectiveness of early access to legal aid depends on certain factors:

- Level of demand and predictability as the number of arrested persons varies between police stations
- Number of legal aid providers with enough experience and expertise in providing legal aid in early stages of criminal process.
- Willingness of the legal aid providers to provide assistance to the arrested persons in compliance with the standard.

³⁹ Ibrahim and others v. the United Kingdom, პუნქტი 262.

- Whether the law enables the paralegals⁴⁰ to provide legal advice in police stations and other detention facilities.
- Whether the mechanisms of early access to legal aid are adequately implemented in practice.

There are three schemes of early access to legal aid applied worldwide: call-in, embedded and visitor schemes.

Call-in scheme

The success of the call-in scheme depends on the timely contact of the law-enforcement agencies with legal aid providers. Legal aid providers should give their contact details to the police and be ready to provide legal aid in non-working hours. In such cases, a lot of countries have created a duty-lawyer programme according to which this person is always accessible to provide legal aid in police stations or courts.

The examples of duty lawyer schemes are encountered in Moldova, South Africa, Ukraine, England and Wales and Israel. According to the regulations existing in Moldova, the police should apply to National Legal Aid Council immediately within one hour and the Council should appoint the lawyer immediately within 2 hours from receiving the notification. In non working hours and beyond those 5 cities where the council lawyers are operating, the police should directly contact the “duty lawyer” according to the schedule established by the Council. South Africa Legal Aid Service utilizes the telephone consultation system through the paralegals operating under the supervision of qualified lawyers. In Ukraine the police and the law enforcement have a legal duty to inform the regional legal aid center, which must subsequently provide legal aid to the arrested person within two hours. In England and Wales the police has the duty to call the call center which later contacts the lawyer on duty.

The call-in scheme may be relevant for those countries where all arrested persons have the right to legal aid or the criteria for granting the legal aid are too wide. This variation applies to the provision of initial consultation by telephone and in case of necessity, considering the gravity of the crime or personal situation of the defendant, the visit of the lawyer to the police station. These types of models should be implemented with caution because the telephone consultations may not prevent the risk of illegal action from the police.

⁴⁰ The term “paralegal” has different meaning in different countries. In some systems they are required to have legal education, while in others they are not. Therever, the legal education is not mandatory, these persons play the role of mediators between the Legal Aid Service and population. They have particular role in legal empowerment. In the countries where legal education is mandatory, this term implies the persons who are at the initial stages of the legal carrier and work as junior lawyers. In some cases they should be affiliated to professional association and have license. Paralegals are also authorized to plead in court.

Embedded scheme

This model implies that legal aid provider is permanently located in police station or other detention facility, which means that legal aid is available at any time.

For example, Criminal Justice Center, which is located in KwaZulu Natal University in South Africa, implements the program according to which paralegals are located in the offices close to the police stations in order to ensure the legal aid to women and children who are criminal defendants or victims of crime.

The advantage of embedded scheme is that legal aid is provided to any imprisoned or arrested person, who requests legal assistance and usually there are no problems of delay. A negative aspect of this model is the cost of permanent dislocation of legal aid provider near the place of arrest. This problem may be overcome by employment of paralegal or regular rotation of legal aid staff in the offices located next to police stations (in order to prevent formation of corporate ties) and back up plan for the cases when the demand for the legal aid is too high.

“Visitor” scheme

According to this model, legal aid provider regularly visits police station. Frequency of the visits depends on the nature of the place of detention, number of detainees, the rate of their release or transfer to other institutions and duration of the detention, etc. For example, in some police station, daily visit might be required, whereas the other place of detention may be visited once in two days or in a week.

For example, paralegals in Sierra Leone visit police stations every day and provide legal aid to the arrested suspects. 10 paralegals could manage to visit 70 person of the persons detained in the police stations. Moreover, they could play a key role in dismissing the charges in 1/3 of cases.

Visitor scheme is particularly relevant for those cases, when the legal aid is provided by public defenders or paralegals who have enough resources and organizational capacity to conduct regular visits. One positive aspect of the visitor scheme is the improvement of the prisons/detention facility standards through regular visits because the time of the visit is not known in advance. Potentially negative side is that some suspects or arrested persons may be left without assistance in the meantime between the visits. However, this problem may be solved if the visitor scheme is complemented by call-in scheme.

2.8. Models for the provision of legal aid

UN documents bind the states to ensure early access to legal aid but they do not specify which model should be used. Below, we shall outline 5 potential models of the administration of legal aid: Public Defender, private lawyer, paralegal, legal aid centers and specialists and also university clinics. The recommended schemes may be implemented through these models.

Public defender model

In public defender model, the legal aid is mainly provided by jurists. However, the paralegals and law students may also be involved. There are two ways of creation/financing of public defender office: one by public authority and another by civil society and non/governmental organisations.

Public defender model as a form of provision of legal aid is more cost-effective than the administration of legal aid by private service provider. Also, timewise and from organizational point of view, this model has advantages over the others because public defenders have more resources to quickly respond to the demand and carry out early legal aid.

It is important to note that public defenders may provide additional services by use of private lawyers. For example, in San Paulo, public defender has the memorandum with San Paulo lawyers association according to which private lawyers have a duty to provide legal aid on individual cases. In Israel, public defenders office has 100 lawyers but it also uses 900 private lawyers who provide legal aid.

Studies conducted in the US reveal that public defender offices did not have enough resources (financial, administrative) in order to deal with the multitude of cases. In South Africa, the budget of State funded legal aid services (among them the public defender service) was increased from 9.5 million to 100 million dollars from 1994 to 2013.

It is evident that for smooth functioning of public defenders office adequate resources are required because this model is particularly important in ensuring early access to legal aid.

Public defender model is the best model for developing specialized services for children, socially vulnerable suspects and defendants. Public defender system has the potential to develop the culture of “diligent defense”, which is missing in many countries providing legal aid through private lawyers.

Private practitioner model

In many countries the legal aid is provided by the practitioners working in private lawfirms. This model is presented in following variations: the contract, ex-officio and pro bono models

A. contract model

This model employs lawyers who are providing legal aid upon contract. Usually, the contract is signed with the legal aid providing organization or public defender office. This model of administration of legal aid requires considerable funding because the private lawyers are usually paid case by case.

The rate of payment is determined by agreement between the organization and private lawyer or by the system of tendering. In the first case, the problem is the lack of adequate control mechanism, because some cases may be overly paid while others may be underpaid. While tendering system focuses on the low price, in the given case the problem is created by the lack of professionalism because the qualified lawyers do not agree on low paid job.

The contract model has the advantage of being effective because the lawyers have contractual obligations that they need to comply. The disadvantage of contract model is the weak control mechanism. That is why the independence of the legal service provider is problematic.

B. The ex officio model

This model envisages the appointment of lawyers on individual cases by prosecutors or judges. The rate of compensation of legal aid provider is determined by national regulation or upon agreement. In this model, the lawyers are appointed only if the need of legal aid arises, therefore, this model is problematic for the purpose of early access to legal aid. It is important to note that judges are not involved in early stages of criminal procedure, therefore the lawyers are appointed by prosecutors which negatively affects the control mechanisms and reduces the guarantee of independence of legal aid provider. Weak control also implies that legal aid providers are poorly informed about the processes related to the legal aid administration. However, the major drawback of this model is that it does not ensure early access to legal aid.

C. Pro Bono

This model implies two types of legal aid: in the first type, the lawyers based on professional obligations provide services free of charge. The second type implies working on similar cases by the lawyers who pass trainings in the bureau of the legal aid provider.

This model is particularly relevant for the system which doesn't have adequate resources to compensate the work of private lawyers. The major disadvantage of pro bono model is the lack of relevant professional experience and knowledge which does not ensure proper safeguards against the risks in the course of provision of legal services, particularly in early stages of criminal proceedings.

D. Paralegal

the potential of the system of paralegals in the administration of the system of legal aid is recognized in many countries. The system of paralegals contributes to the development and accessibility of legal aid. The system gathers two types of schemes: in the first scheme, the paralegal works with the lawyer providing the legal aid and in the second scheme the paralegals may provide legal aid on their own.

In the US the paralegals have a duty to be involved in the investigation and also serve as public defenders. The "Principles and Guidelines on the Access of Legal Aid in Criminal Justice Systems" defines the role and function of the paralegals. It is important that the paralegals have the right to participate in the court hearing when the lawyer is unable to do so. The training and accreditation of paralegals is also very important issue as it contributes to the professional development.

In Malawi, paralegals are required to visit the police stations, act as observers and provide information to the defendants, also attend the court hearings, but they are not authorized to provide independent legal advice.

The paralegal model is valuable for early access to legal aid. Like duty lawyers, this model can be successfully applied because the paralegals are always ready to visit relevant facilities and provide legal assistance.

Paralegal model shall be particularly successful for those countries where the qualified lawyers wish to provide early legal aid, but lack adequate resources. The paralegal system is particularly effective in criminal proceedings for the purposes of obtaining the information.

Legal Aid Centers and specialist model

In the countries where this model is used, legal aid centers are usually managed by non governmental organisations. This model is particularly characteristic to those countries, which do not have a fully functioning system of legal aid. The centers play a considerable role in forming the system of legal aid, they ensure early access and stimulate similar activities.

The goal of the justice center in Jordan is to provide legal aid. This is a non governmental organization, which provides the legal services to those persons who do not have adequate resources. This also implies the services of the lawyer. The center has additionally created a network of pro bono lawyers in order to more effectively administer the legal aid.

This model is particularly relevant for vulnerable groups. For example UNDP and UNICEF provide support to women, children and arrested persons suffering chronic illnesses. Similar to paralegal model, this model also has great importance for the countries who do not have a well developed legal aid system.

University Legal Clinics

UN principles call upon the States to ensure the operation of the University legal clinics. In USA, there is a memorandum between Legal Aid Centers and University legal clinics, calling upon them to cooperating in the process of delivery of legal aid. In the US there are 147 law schools in different universities and 1/3 of them ensure the administration of criminal legal aid.

This model is a useful tool for the provision of legal aid because in many cases it ensures the free legal advice but it cannot ensure the early access to legal aid and this problem may be solved if legal clinics are applied for “visitor scheme”.

3. Implementing early access to legal aid in Georgia

3.1. Views of LAS representatives and lawyers

5 representatives of LAS have been interviewed in the framework of this research. Among them were the LAS director, head of Tbilisi Bureau and three lawyers. All of them noted the importance of the early access to legal aid but at the same time underlined the lack of resources of LAS.

According to the representatives of LAS, the resources of LAS should be roughly tripled in order to provide all arrested persons with free legal aid. These shall be the cases in which the lawyers have physical contact with the client.

The representatives of LAS were additionally asked about telephone consultations. All of them stated that it is possible to implement such kind of mechanism in LAS by mobilizing comparatively few resources. This shall necessitate only the technical architecture (setting up call center and telephone in all police stations and temporary detention facilities) and adding up a few lawyers. However, the lawyers emphasized several issues which could be problematic:

- Building the trust between the lawyer and client is very difficult and in the system of telephone consultations this will be even more challenging.
- The telephone consultations do not enable the delivery of full legal aid and only general legal advice can be possible. For the lawyers, it shall be difficult to examine the charging documents or other papers via telephone.
- The arrested persons may have a feeling that the conversations are illegally intercepted and therefore they may be reluctant to provide full information.

The representatives of LAS were asked additional questions about so called “mixed model”,⁴¹ according to which it is possible to remedy the defects of telephone consultation by visitor scheme. This model was considered to be realistic but three possible drawbacks were pointed out. 1. The resource of LAS

⁴¹ When, along with telephone consultation, the lawyers also operate under “visitor scheme”, and randomly or through predefined schedule visit police stations and places of temporary detention, and provide legal aid to the arrested persons.

may be spent on the persons who do not request legal assistance.⁴² 2. GBA may increase pressure on LAS 3. The mixed model resembles more to human rights monitoring and less to legal aid.

The representatives of LAS were also interviewed about the participation of the interns/lawyers assistants in the process. Of course, this possibility was positively evaluated but it was stressed that only technical support is possible in this respect and this can alleviate the lawyers workload only to a small degree. Based on the fact that the lawyer shall remain responsible for any document or action, in some cases the workload of the lawyer shall remain the same.

Representatives of LAS underlined the fact that the public defenders cost cheaper than roster lawyers for the same amount of work. The same applies to the legal service provider, therefore for the purpose of saving resources, roster lawyers or legal aid provider may not be considered as alternatives to public defenders.

According to one of the lawyers of LAS, it is important to keep a certain balance and introduce restrictions for the pilot project, for example the access to early legal aid should be possible only for the grave and exceptionally grave crimes.

3.2. Views of lawyers of GBA

Some professional association of lawyers actively operate to implement pro bono services. For example the Association of Law firms of Georgia has adopted a declaration, where its members expressed willingness to conduct pro bono service.⁴³ The same entity and LAS have signed a memorandum according to which law firms expressed willingness to provide probono services to the insolvent persons on civil and administrative cases.⁴⁴

Simultaneously, several organisations funded by local or international donors actively operate in Georgia provide legal aid. For example, Georgian Young Lawyers Association processes about 40 criminal cases a year.⁴⁵

Legal clinics of HEI's are worth to be mentioned separately. According to the research conducted in 2015, lot of work has been done in this direction. However, the legal clinics have a number of defects and problems today, which require to be addressed. For example, such as the issues of financial

⁴² According to the statement of LAS lawyers, very often the detained persons do not wish to be assisted by lawyer and they refuse to meet the lawyer.

⁴³ Accessible on the website: < http://alfg.ge/archives/portfolio_page/declaration > [last accessed on December 10, 2017 10].

⁴⁴ Accessible at the website: < http://alfg.ge/archives/portfolio_page/საქართველოს-იურიდიული-ფ-2 > (last accessed on Dec. 10, 2017].

⁴⁵ Information provided by email from Georgian Young Lawyers Association is kept by author.

sustainability, lack of regulations, lack of relevant contacts with legal service providers, lack of guidelines, etc.⁴⁶

According to the lawyers, early access to the lawyer is generally very important. This may have positive impact not only on the legal status of the suspect, but it can also be in the interest of the investigative agencies, because the lawyers shall have to explain important procedural regulations to the clients. The representatives of GBA have in the first place underlined the fact that if all arrested suspects are given primary legal aid, this may create a non competitive environment with regard to the Bar and reduce the demand on the legal profession. This may trigger certain institutional tension between legal aid and Georgian Bar Association.

According to the opinion of the lawyers, in order to minimize this risk, it is important to clarify to the Bar that the need for private lawyers shall still exist and early access to legal aid shall only cover the first few hours of arrest and the time period before preliminary hearing and later the need for engagement of private lawyers shall continue to exist, as it exists today. On the other side, a position was expressed that the mechanism envisaged by the law on legal aid – the institution of legal aid provider, which implies the involvement of private lawyers in the delivery of legal aid (selected by way of tender) should be activated. This can minimize the dissatisfaction of Georgian Bar Association and their opposition to early access to legal aid. A third opinion was expressed by one of the interviewed lawyers, according to which GBA should be well explained that in case of early access the lawyers shall receive cases which will be well prepared from the start.

According to the opinion of the lawyers, in some cases, the telephone consultations may not be effective. Legal aid often requires personal communication and this is important for obtaining the trust of the defendant.

The lawyers believe that a much better system shall be the visitor scheme which will work along with telephone conversations. This may reduce the risks and defects which characterize the telephone consultation system in general.

3.3. The views of the prosecutors

The prosecutors generally expressed a positive attitude towards early access to legal aid. They believe that the lawyers may provide significant assistance to the defendants. This is particularly important due to the low legal awareness of the general public in the country. Part of the prosecutors believe that telephone consultations shall not be effective because personal communication and the trust is important. Also in some cases it is important and necessary to personally deliver specific documents.

⁴⁶ PILNET, Judicial Independence and Legal Empowerment Project (JILEP): Component Three – Improving Legal Education Final Project Report Submitted to: East-West Management Institute Grant Period: December 2010-February 2015.

According to the view of one prosecutor, the telephone consultations can also be effective because they shall enable the communication of essential information and clarifications.

Prosecutors believe that visitor scheme shall have the disadvantage of excluding multiple defendants from appropriate legal aid.

Prosecutors were specifically asked whether they shall be able to supervise the process of informing the defendant of his right to early legal advice, in other words, whether the investigators appropriately clarify to the defendants their rights. The prosecutors pointed to the existing procedural rules and noted in addition that the defendants themselves can write the text of the waiver instead of signing the pre-printed text.

The prosecutors pointed out that sometimes, due to the conduct of the lawyer, certain investigative actions get complicated, which is a natural procedural burden. However, this is not a justification for denial of early access to the lawyer. In some cases, the lawyers purposely obstruct investigative actions in order to help their clients. The prosecutors underline that the control of the quality of the lawyers participation in the process is important.

3.4. Views of the judges

The judges underlined the importance of the legal aid. They pointed out that in some cases, the current system of legal aid does not meet with the existing demand. For this reason the judges sometimes exceptionally apply to legal aid service with the request of appointment of the lawyer, when this is important for ensuring the right to the fair trial. The judges underlined the need for the extension of the scope of legal aid for the insolvent persons (Sometimes a person may not be registered in the database of socially vulnerable population, but still may lack any practical means to engage a private lawyer). The judges underlined that the presence of the lawyer in the cases is important because it enables the defense side to effectively participate in the adversarial process. To illustrate, judges have brought an example of the collection of the evidence by defense which becomes fictional if the arrested defendant is not assisted by the lawyer.

The judges believe that most effective way of ensuring the early access to legal aid is to give this function to the legal aid service. However, they understand that this can be problematic due to the lack of the resources. The telephone consultation is believed to be the less effective way of communication because in most cases the physical presence of the lawyer on the spot is necessary.

4. Proposed models for early access to legal aid

First model

The most appropriate model for ensuring the access to legal aid shall be the extension of mandate of legal aid service in Georgia. In such case all persons shall be automatically entitled to legal aid. All arrested persons shall be assisted by the lawyer within 48 hours from the arrest and later upon the first appearance in court. As the director of legal aid service stated the implementation of that system shall require the current resources to be tripled, which means that the budget of LAS should be twice as much as it is today.⁴⁷

According to the data provided by LAS, 9660 criminal cases were processed by LAS countrywide in 2015 and 9233 in 2016. Approximately 6900 persons shall benefit from early access to legal aid (average number of the arrested defendants). If the legal aid service processes 9445 criminal cases on average each year, this number shall increase by approximately 75 percent in order to ensure the legal aid to all arrested persons. Overall funding of LAS in 2016 was 4,848,561.00 GEL.⁴⁸ Therefore, the budget of LAS should be increased approximately 3.5 million GEL in order to implement the system of early access.

One interesting way to reduce that cost would be the implementation of “intern lawyer” in criminal justice, which can be similar to paralegal. He should be empowered to act like lawyer. According to art. 16 of the law of the Bar, the intern-lawyer operates only upon instructions of the lawyer. Instead, it would be better to make intern lawyers fully functional, spending the initial years of their carrier in legal aid service ensuring the early access to legal aid to arrested persons. They shall receive compensation for their work, which shall be less than the salary paid to public defenders. If the reform takes this direction, than significant resources may be economized. However, the relevant amendments need to be made in the law on the Bar, in the Law on Legal Aid and Criminal Procedure Code.

Simultaneously, the law should be amended in a way that all arrested persons can be entitled to the mandatory defense. Accordingly, par. L of art. 45 of the acting criminal procedure force should become paragraph “M” while paragraph “L” should be read as follows:

⁴⁷ Besarion Bokhashvili, Giorgi Mshvenieradze, Irakli Kandashvili “Procedural Rights of the Suspects in Georgia”, 2016, p. 4.

⁴⁸ 2016 report of LAS, p. 75.

“If he/she is arrested”. At the same time the second part should be added to art. 45, which should read as follows: “In cases defined by paragraph “L” of the part 1 of this article, the person shall be subjected to mandatory defense before the termination of the first hearing in court or in case of appeal of the application of coercive measure, before the end of the appellate hearing”

In such case, the early access to legal aid shall continue in following stages and time-limits:

Arrest – 48 hours max.

Initial appearance in court – 24 hours max.

Time-limit for filing an appeal against coercive measure – 48 hours max.

Time limit for the hearing the appellate complaint – 72 hours max.

In the framework of early access to legal aid, the legal assistance may be provided to the defendant in the course of 8 days. For the later stages the person may be provided with the legal assistance if he/she is insolvent or there is the case of mandatory defense.

Second model

Based on the fact that the extension of LAS mandate is related to significant expenses, a second option may be the implementation of early access to legal aid through telephone consultations. Of course the final goal is to ensure the provision of legal aid countrywise, but in the first stage it is important to implement the project in two pilot regions to identify the practical gaps before the final introduction of the system.

After the consultation with UNDP, two pilot locations were selected based on the workload (according to the number of arrests as well as the workload of LAS)- Zestaphoni and Gori.

234 persons were arrested in Gori in 2015 and 153 were arrested in 2016. In Zestaphoni the respective figures were 131 for 2015 and 76 for 2016. For the implementation of the project we should target the maximum number of consultations. This number should be increased by 20 percent in order to include those persons who were arrested but released for a variety of reasons prior to their transfer to temporary detention facilities. Consequently, in pilot regions, on average 450 telephone consultations shall be required every year.

This workload could be handled by 2 consultants who could work in shift within 24 hours. They can be located anywhere in Georgia even in Tbilisi. However, a fast internet and good telephone communication shall be required. Up to 50 mobile telephones should be purchased for the start in order to equip each station, division or temporary detention facility and also have a technical back up. The mobile phone should be branded with LAS logos and should be able to connect only with the call center. Subsequently, each police unit shall be responsible for smooth functioning of the phone and its timely charging.

Mobile phones should be equipped with video camera and teleconferencing possibility. In this condition the risks which generally accompany this model (lack of trust, difficulty to communicate information about injuries, difficulty to review the case-files, etc) shall be mitigated. These mobile phones should be barred from contacting any other phone beyond call center of LAS. This technology should be audited by relevant State services for the proper observance of security.

In the framework of the telephone consultation, investigating agencies should timely provide LAS call center with electronic case-files.

In order to implement the pilot project of telephone consultations for the period of 1 year, following expenses shall be necessary.⁴⁹

<i>Item</i>	<i>Number of units</i>	<i>Unit price (in GEL)</i>	<i>Total cost for one month (GEL)</i>	<i>Total cost for 2 months (GEL)</i>
Telephone consultant ⁵⁰	2	1,300.00	2,600.00	31,200.00
Cost for telephone consultant increment of the salary and remuneration ⁵¹				9,360.00
Setting up the call center ⁵²	1			4,000.00
Call center daily operation expenses	1 month	150	150	1,800.00
Price for purchasing mobile phones ⁵³	50	300		15,000.00
Cost for using mobile phones	50 ⁵⁴	20 ⁵⁵	1,000.00	12,000.00
Cost for initial trainings of lawyers and consultants	1	5,000.00		5,000.00
Administrative cost (10% of total cost)	7,836.00			
Total cost	86,196.00			

⁴⁹ These amounts shall be updated taken into account the relevant tender procedures.

⁵⁰ For the basedine we have applied the salary coefficient of first category senior specialist defined by annex 1 of the law on “Remuneration of work in public service”.

⁵¹ According to annex 1 of the law on “Remuneration of work in public service” the total amount of salary increment should not exceed 20 percent of salary and in case of bonuses, 10 percent. We have presented maximal amounts.

⁵² This data based on call center expenses for telephone consultations in civil and administrative law provided from UNDP.

⁵³ Unit price is based on current market prices of the cheapest mobile equipped with front and back camera, minimum 1 GB of operating memory, LTE support, and 1 year warranty (<www.zoommer.ge> <www.altaok.ge> <www.ee.ge>).

⁵⁴ Maximum 200 telephones shall be switched in the network.

⁵⁵ Today in Georgia unlimited mobile service per mobile costs 20 GEL minimum. It shall be possible to obtain cheaper prices through tender.

For the implementation of telephone consultation scheme, following legislative amendments should be introduced.

After the art. 4² of the Law on Legal Aid, the art. 4³ should be added which reads as follows: “1. All arrested persons shall be entitled to obtain telephone consultation in a criminal case 2. All facilities where the arrested persons are placed should be equipped with the telephone of LAS which can be used by the arrested persons 3. The duration of legal consultation shall be limited by 1 hour. 4. The investigative agency should provide the call center of LAS with relevant case materials electronically”. Transitional provisions of the law should specify that this article shall be applicable only to the persons arrested in Zestaphoni and Gori for the transitional period.

Summing up

The existence of effective mechanism of the early access to legal aid is an important safeguard of the fair trial. All arrested persons shall have the guarantee that they shall be assisted by the lawyer within first hours from the arrest irrespective of their financial means.

It is important to implement in Georgia a mechanism, which shall be effective for dealing with the existing challenges. Simultaneously the existing financial capacities should be taken into account.

The study has identified two models. The adoption of the first model requires more resources, however, is more sustainable and systemic response to existing challenges. The second approach is cheaper and more flexible and focuses on the use of modern technologies.

First model

This model of legal aid extends to all arrested persons. It covers the whole period of arrest including the first appearance in court and examination of an appeal against a coercive measure. Maximum time limit is 8 days. The legal aid shall also continue later if the person satisfies the criteria of mandatory defense or is insolvent.

Early access to legal aid should be implemented by legal aid service. This is the most effective way of solving the problem. However, it requires a significant increase of currently available financial resources. This cost can be minimized by effective application of intern-lawyers which shall have the same rights as lawyers.

The second model

The research identified the second alternative model, which implies the telephone consultations and which shall be implemented as a pilot project in Zestaphoni and Gori in the first stage (later in the whole country). Legal Aid Service, which should be in charge of implementing this scheme shall set up the call center, equip with relevant police stations with mobile phones and provide legal assistance through consultants. In this scheme, the investigative agencies shall provide the call center with the procedural documents electronically.

Annex

Number of persons placed in temporary detention facilities in 2015 based to criminal procedure code

N	Name of the temporary detention facility (TDF)	January	February	March	April	May	June	July	August	September	October	November	December	Total
1	Tbilisi N. 1. TDF	53	65	41	63	47	0	0	0	12	44	37	54	416
2	Tbilisi and Mtskheta TDF	196	223	232	263	243	277	233	259	311	296	232	215	2980
3	Mtsk. Main TDF	0	24	18	28	10	16	25	22	18	22	18	7	208
4	Dusheti TDF	1	0	0	2	2	5	3	3	0	3	0	0	19
5	Telavi TDF	8	8	11	11	18	30	23	14	20	10	10	8	171
6	Sagarejo TDF	7	0	9	4	6	8	3	10	4	4	13	3	71
7	Signagi TDF	7	3	5	7	8	11	7	2	10	6	7	2	75
8	Kvareli TDF	12	17	12	10	12	26	4	7	6	10	7	5	128
9	Gori TDF	6	13	19	27	16	20	25	29	15	27	26	11	234
10	Khashuri TDF	29	2	9	11	4	14	4	11	16	13	6	4	123
11	Borjomi TDF	4	3	5	6	2	0	6	7	17	9	18	4	81
12	Akhaltzikhe TDF	6	16	13	7	8	10	9	6	24	16	12	21	148
13	Akhalkalaki TDF	1	3	1	1	1	0	0	0	2	4	2	0	15
14	Rustavi TDF	34	31	36	28	34	30	20	35	35	35	22	16	356
15	Tetritskaro TDF	0	0	0	0	1	0	2	3	2	1	0	5	14
16	Tsalka TDF	0	0	3	0	0	0	0	0	0	2	4	1	10
17	Gardabani TDF	0	0	0	0	0	0	0	0	0	0	0	0	0
18	Marneuli TDF	9	13	12	7	5	6	8	17	18	13	10	8	126
19	Kutaisi TDF	55	52	33	21	20	44	33	37	31	33	31	31	421
20	Lentekhi TDF	3	2	0	0	0	0	2	2	2	0	0	0	11
21	Zestafoni TDF	15	18	6	5	8	20	14	11	10	15	4	5	131
22	Bagdati TDF	2	3	1	6	1	2	5	1	0	0	0	0	21
23	Chiatura TDF	2	4	0	0	3	4	2	2	2	2	2	3	26
24	Samtredia TDF	13	11	14	4	9	15	7	12	7	11	7	7	117
25	Amrolauri TDF	0	0	0	0	0	0	0	5	4	3	0	1	13
26	Zugdidi reg. TDF	12	15	21	12	12	22	14	20	16	14	10	2	170
27	Zugdidi TDF	5	13	9	5	12	9	16	18	17	22	16	7	149
28	Senaki TDF	7		6	8	11	11	15	7	11	5	5	1	91
29	Khobi TDF	3	7	4	6	5	4	1	0	3	7	5	1	46

30	Foti TDF	2	4	8	4	5	5	5	1	5	7	5	6	57
31	Chkhorotsku TDF	4	3	2	1	6	4	3	7	8	8	2	0	48
32	Mestia TDF	0	0	0	0	0	0	1	2	4	1	0	0	8
33	Batumi TDF	58	32	53	61	70	79	82	93	80	67	76	38	789
34	Kobuleti TDF	7	10	11	6	11	7	13	19	22	29	14	5	154
35	Ozurgeti TDF	11	8	5	2	4	3	4	17	10	9	9	2	84
36	Lanchkhuti TDF	1	1	1	0	1	3	6	5	1	0	1	0	20
37	Chokhatauri TDF	4	0	2	0	1	2	0	2	3	1	0	0	15
	Total:	577	608	602	616	596	687	595	686	746	749	611	473	7546

**Number of persons placed in temporary detention facilities
in 2016 based to criminal procedure code**

N	Name of the facility	January	February	March	April	May	June	July	August	September	October	November	December	Total
1	Tbilisi N. 1. TDF	37	50	81	92	45	49	63	44	48	38	78	64	689
2	Tbilisi and Mtskheta TDF	170	246	313	299	259	143	197	180	234	190	283	294	2808
3	Mtsk. Main TDF	9	20	14	20	16	6	11	5	5	4	11	9	130
4	Dusheti TDF	3	1	1	1	2	2	1	2	1	1	1	1	17
5	Telavi TDF	11	14	17	18	15	0	11	2	13	11	6	10	128
6	Sagarejo TDF	1	7	7	4	1	1	5	3	3	1	5	5	43
7	Signagi TDF	5	3	3	3	3	1	5	2	1	3	4	4	37
8	Kvareli TDF	5	14	12	4	5	13	6	14	1	7	17	14	112
9	Gori TDF	5	1	28	15	11	10	13	13	12	11	23	11	153
10	Khashuri TDF	9	11	10	6	6	3	9	3	3	1	4	5	70
11	Borjomi TDF	7	2	5	3	0	0	0	0	0	0	0	0	17
12	Akhaltzikhe TDF	14	13	3	5	10	6	14	7	9	8	14	8	111
13	Akhalkalaki TDF	2	1	3	3	0	0	0	0	1	2	3	4	19
14	Rustavi TDF	15	25	11	31	24	3	0	0	0	0	0	0	109
15	Tetritskaro TDF	0	0	0	0	0	0	0	0	0	0	0	0	0
16	Tsalka TDF	0	0	0	0	1	1	2	0	0	0	1	0	5
17	Gardabani TDF	0	0	0	0	0	0	0	0	0	0	0	0	0
18	Marneuli TDF	9	22	6	8	7	14	28	17	20	26	47	44	248
19	Kutaisi TDF	26	34	23	7	0	0	0	0	0	9	28	39	166
20	Lentekhi TDF	0	1	0	0	1	0	0	0	0	0	0	0	2

21	Zestafoni TDF	5	8	6	5	0	7	5	6	5	7	17	5	76
22	Bagdati TDF	0	0	0	4	9	15	13	9	7	2	1	0	60
23	Chiatura TDF	0	5	2	0	1	3	2	0	1	0	0	2	16
24	Samtredia TDF	2	3	7	10	8	8	20	14	4	2	11	4	93
25	Amrolauri TDF	1	0	0	2	0	1	0	0	2	1	2	1	10
26	Zugdidi reg. TDF	6	11	14	20	2	2	24	16	17	10	20	14	156
27	Zugdidi TDF	7	8	8	0	0	0	0	0	0	0	0	0	23
28	Senaki TDF	6	9	10	4	4	17	9	14	8	5	7	7	100
29	Khobi TDF	1	0	6	3	11	10	7	0	0	0	0	0	38
30	Foti TDF	2	5	14	5	3	11	5	8	6	4	11	16	90
31	Chkhorotsku TDF	0	0	3	1	4	4	2	6	3	2	1	0	26
32	Mestia TDF	0	2	2	2	2	1	0	0	1	1	1	0	12
33	Batumi TDF	31	35	51	47	36	19	55	57	47	53	43	50	524
34	Kobuleti TDF	3	9	14	24	16	12	13	1	3	1	1	0	97
35	Ozurgeti TDF	5	2	6	5	3	4	7	4	3	5	3	6	53
36	Lanchkhuti TDF	0	1	0	0	1	0	0	1	2	1	0	0	6
37	Chokhatauri TDF	0	0	2	0	0	4	1	0	0	0	0	0	7
	Total:	397	563	682	651	506	370	528	428	460	406	643	617	6251