

УДК 347.96:347.919.2(477+430)

**M. KOLKUTINA,**  
National University «Odessa Law Academy»

## **LEGAL AID LEGISLATION IN UKRAINE AND GERMANY: COMPARATIVE CHARACTER**

**Summary.** The article is devoted to a comparative analysis of the legal aid provision in Ukraine and Germany. It's proved, that the process of formation of free provision hasn't finished yet, but, taking into account enacting of the new legal acts, some progress was traced. Common and distinctive features were considered.

**Key words:** free legal aid, legislation, advice, initial legal aid, secondary legal aid, comparative reference.

**Actuality of the problem.** Sometimes people fall into the clutches of complex and unpredictable circumstances, that are difficult to overcome alone. To solve them, men apply to a specialist. Everybody knows that services of a lawyer are not cheap, thus not every citizen can afford them. Often there are cases when people abandon their rights and don't defend themselves only because they are not notified about the rights, sometimes even don't apply to a private solicitor for advice, fearing that they could not pay for his services [3].

Thus, it is extremely important that readers know that they are able to get legal aid absolutely free, it's a right guaranteed both by the Constitution of Ukraine and governed by its laws. Moreover, such a right is granted to the citizens of Ukraine and foreigners and stateless people, including refugees and those who need extra protection. And according to Article 4 of the Law of Ukraine "On free civil legal aid" (further — the Law) is not permitted to use the privileges or restrictions to people based on race, colour of skin, political,

religious and other beliefs, sex, ethnic or social origin, place of residence, language or other characteristics.

The legislator took care that the citizen would always feel convenient to solve the question of a legal nature, without ordering a service of a lawyer at his own expense. Therefore, to get some consultation and advice, to draft legal documents a person can apply to the specialized agencies that are non-commercial organizations. In addition, local governments are competent to conclude with legal entities of private law the contracts on the primary professional aid on a permanent or temporary basis and involve lawyers or other experts in the corresponding field of law. The latter ones, in their turn, are required to provide high-quality aid based on the concluded contract or agreement.

As we can see, in our legal state this required service is effectively regulated and assured by the authorities. However, as the German philosopher Friedrich Nietzsche mentioned, cognition comes through comparison. Currently, there

is a need by examining the sphere of free legal aid (later — FLA), to raise the question of the regulation this type of government guarantee in the other developed country of the world among people with different mentality, and hence the perception of the surrounding world and its their own solutions of urgent problems. Therefore, it is reasonable to compare some aspects of FLA in Ukraine and Germany.

**Analysis of recent research and publications.** There were scientific works by Thomas Puc, Julia Kunin, Maxim Schlossberg, Benjamin Tolstonoh (Valdershtadt) devoted to this topic during the past three years. However, despite of the recent emergence of this institution in Ukraine, some aspects are scarcely explored.

**The main material.** It is appropriate to begin a comparison with the mentioned of the observable institution, that is to say, that legal acts that regulate it. In Ukraine, this process is carried out by the Constitution of Ukraine, by already mentioned Act of June 2, 2011, and other laws and international treaties of Ukraine ratified by the Parliament. The Government of Germany has also provided its citizens, regardless of their financial state, the ability to obtain not only legal advice, but if necessary, to accomplish a trial. Preeminently for this the Legal Advice and Assistance Act of Germany (Beratungshilfegesetz) from 18 June 1980 was developed and entered into force. According to this law §1 people, who are unable to pay for representation or advice of a lawyer and who have no other way to get legal assistance (for example through legal insurance) may apply about FLA to the trial court (Amtsgericht) [5]. The issue of payment of court procedural action (Prozesskostenhilfe) is regulated by the Code of Civil Procedure of Germany

(Zivilprozessordnung der BRD), exactly §115, in case this takes place when the net monthly profit (einzusetzende Monatseinkommen) of the applicant does not exceed ten euros. In Ukraine both informing of the person and representation of his interests are carried out by common regulatory legal act — the Law.

According to the first paragraph of the second article of the Legal Advice and Assistance Act it's possible to claim that legal aid in Germany consists of both consultation as well as a representation. However, the representation is necessary if the applicant taking into account the circumstances and complexity of the case, can not protect his own rights, and it is implemented in all legal cases except criminal and administrative and in case of violation of public order. For criminal law only legal advice is applied. There are possible only two scenarios: a) if the case is already under judicial treat, or you have already received the judge's verdict on the case or conviction, then the legal advice is closed for you; b) if you receive a summon to the examination, then consultations can take place.

If a citizen of Germany or a foreigner needs free legal aid, he must submit an intercession composed orally or in a written form, which disclose the matter of the case, personal and economic circumstances of the applicant. Necessary to point that advice can be given only once according to the particular case, which was never pending in court. The application submitted to the trial court (Amtsgericht) and may be cancelled if the applicant has provided false testimony or if it doesn't suit to the time. A request for the provision of primary legal aid is sent in Ukraine directly to the central and local authorities, and the services themselves, according to

the law, are provided within 30 calendar days from the day, when the appeal was received.

We should pay attention to the fact, that under Ukrainian law legal aid is divided into two types: primary and secondary. Primary aid includes rendering of legal information, advice, explanation of legal issues, drafting applications, complaints and other legal documents (except documents of a procedural nature) that may be applied by all persons under the jurisdiction of Ukraine. However, secondary legal aid (defense and representation of the interests of drafting and procedural documents) may be obtained by only certain categories of people, who are mentioned in the law and people whose average total family income is below the minimum subsistence level.

Considering the process of rendering of FLA in Germany, the question appears: what happens after the court accepts the petition? After it a specially authorized court officer checks the personal and economic state of the applicant and decides about the beginning of FLA [7]. According to the article 6 of the Law "On providing advisory legal aid", when a statement from the trial court (*Berechtigungsschein*) is received, the applicant may apply, by his own choice, to a lawyer. Moreover, under the German law legal aid is provided not only by lawyers and attorneys that are members of the Chamber, but also by tax consultants, financial experts, auditor and adviser on pension issues.

To obtain some legal advice regarding a criminal case a person needs just to fill the special form (intersession) as in other law cases and to send it to the trial court with documents proving the insolvency of individuals. If the consent is given to the intersession, the person must find a lawyer who specializes in

criminal cases and agree with him upon the registration to the appointment.

Speaking about our country, we can consider, that even the people against whom the criminal proceeding was initiated and those people, who have already received a legal counsel for the implementation of protection and realization of individual proceeding are entitled to free secondary legal aid, namely representation of the the person's interests and defense from prosecution.

The bodies of the executive and local self-government are vested an obligation to receive people who need primary legal aid in Ukraine. Secondary legal aid may be implemented by special centers. They are formed by the Ministry of Justice of Ukraine and during their activities interact with the courts, bodies of procuracy and other law enforcement agencies. The center of free secondary legal aid provision also concludes arguments and contracts with attorneys, who are included to the Register of barristers. Moreover, the Law defines procedures for submitting applications to the establishment according to which the Center shall within ten days decide on the secondary legal aid provision or its termination.

The coordination of the central authorities' activity about the realisation of the governmental policy and general management in the field of free primary and secondary legal aid provision is implemented by the Ministry of Justice of Ukraine. To its authority it's also related rendering of methodical assistance to the Executive bodies and local self-government authority in matters of free primary legal aid. The Ministry is responsible for the implementation and functioning of secondary legal aid (article 28 of the Law).

The authority of the Federal Ministry of Justice of Germany includes insertion and support of the use of forms for agreement conclusion in legal aid provision and payment of remuneration to adviser (Beratungsperson) after aid completion. It is required to simplify and unify the process and happens with the consent of the Bundesrat and it is regulated by article 11 of the Legal Advice and Assistance Act.

The issue of remuneration of the adviser in Germany is contained in several legal acts. For example, in accordance with paragraph 1 of article 8 of the Law "On consultative legal aid provision" payment of the activity does not depend on whether the adviser is a lawyer or not. Moreover, in paragraph 2 of this article, aid provision is unrequired excuse for the fee payment from applicant. However, the adviser shall be competent to require the applicant to pay for his services by generally accepted prescriptions in case if he does not receive funds from the state treasury. According to the same law, if the defendant is obliged to reimburse the costs of the applicant for protection of his rights, he pays also for the activities of the consultant.

The procedure of payment costs of the process is regulated by the Civil Procedure Code of Germany (Zivilprozessordnung). We emphasize that help is available to everyone, by his wish, who are not able to pay the costs because of their personal or financial condition. Also, the services of an advisor are regulated by The Lawyer's Compensation Act and Section 2, Chapter 7 of the Civil Procedure Code of Germany.

The amount and procedure of payment of the of secondary legal aid provision in Ukraine is established by the Cabinet of Ministers, in particular financing the

free primary legal aid is made at the expense of the State Budget of Ukraine (Article 29 of the Law). In addition, financing the institutions operating in this field and controlling over the use of finance by the institutions are under the jurisdiction of the executive bodies of village, settlement and borough councils.

Accomplishing the comparative analysis in the field of the legal consultation provision in Ukraine and Germany, it is necessary to notice some aspects that emerged due to the administrative structure of the country of the Western Europe. For example, in the federal states of Bremen and Hamburg public legal consultation (öffentliche Rechtsberatung) is in force, which is special, because it's rendered by qualified attorneys, lawyers and judges in all areas of law. A person with a very low income or property can obtain advice and it will cost between three to ten euros. Its main difference from legal aid (Beratungshilfe) is that it does not provide aid in the prosecution of the court process and can only prepare for it. If the trial is irrecusable, the reference and information department of public consultation will provide advice about payment of procedural judicial actions, explain how to find an attorney in each individual case, and will send an opinion of lawyers about a particular case to the opposite side of the substantiated, etc. [6].

During the analysis a number of differences between the systems providing FLA in Ukraine and Germany were revealed. For example, in Germany there is a kind of legal aid, as public legal consultation that acts only in a particular area and has its own sphere of activity. Though many similar aspects that generally underlied in the research object are noticed now. Accordingly, this is a division of legal aid into advice

and support during the prosecution of trial. Although in Germany the support procedure of the applicant in court is reduced to permission or adjudication in providing funds for the process and, therefore, attorneys' fees. By the way, the system of choosing people who have low income, is much more complicated and not limited to one regulatory legal act.

**Conclusions.** Therefore, we can conclude that the institution of FLA is extremely necessary because its research can not be limited to the borders of one particular country. Considering the above-mentioned on this issue, the legislation of Ukraine is more humane in ensuring the right to FLA.

## REFERENCE LIST

1. The Law of Ukraine "On free civil legal aid" from 02.06.2011 № 3460- V I. Retrieved from <http://zakon2.rada.gov.ua/laws/show/3460-17>
2. Legal Advice and Assistance Act of Germany from 18.06.1980. Retrieved from <http://www.gesetze-im-internet.de/berathig/BJNR006890980.html>
3. Site: Legal information. Retrieved from <http://recht.germany.ru/recht.db/items/22.html?op=>
4. Site of journal «Partner» №2 (197) 2014. Retrieved from <http://www.partner-inform.de/partner/detail/2014/2/324/6728/magazins?magazin=nord&select=1>
5. Site: Official Portal of Hamburg. Retrieved from <http://www.hamburg.de/oera/>
6. A. Popken (2011). Legal aid in criminal law. Retrieved from <http://www.strafverteidiger-berlin.info/kosten-strafverteidiger/beratungshilfe-strafrecht/>
7. Site: Chamber of lawyers in Berlin. Retrieved from [http://www.rak-berlin.de/site/DE/int/02\\_rechtsuchende/02\\_03a-beratungshilfe/container-beratungshilfe.php](http://www.rak-berlin.de/site/DE/int/02_rechtsuchende/02_03a-beratungshilfe/container-beratungshilfe.php)

**Колкутіна М.А.**

**Законодавство про безоплатну правову допомогу в Україні та Німеччині: порівняльна характеристика**

**Анотація.** Стаття присвячена порівняльному аналізу здійснення правової допомоги в Україні та Німеччині. Доведено, що процес формування надання безоплатної правової допомоги ще не закінчено, проте, зважаючи на ведення в дію нових нормативно-правових актів, простежено певні зрушення. Розглянуті спільні та відмінні риси в системі реалізації правової допомоги в обох країнах.

**Ключові слова:** безоплатна правова допомога, законодавство, консультація, первинна правова допомога, вторинна правова допомога, порівняльна характеристика.

**Колкутіна М.А.**

**Законодательство о бесплатной правовой помощи в Украине и Германии: сравнительная характеристика**

**Аннотация.** Статья посвящена сравнительному анализу осуществления правовой помощи в Украине и Германии. Доказано, что процесс формирования предоставления бесплатной правовой помощи еще не окончен, однако, несмотря на введение в действие новых нормативно-правовых актов, можно проследить определенные улучшения. Рассмотрены общие и отличительные черты в системе реализации правовой помощи в обеих странах.

**Ключевые слова:** бесплатная правовая помощь, законодательство, консультация, первичная правовая помощь, вторичная правовая помощь, сравнительная характеристика.