



Fairy Tale or Reality!?

Free
Legal Aid in the
Republic
of Macedonia

March, 2012

FOOM

Law Program at the Foundation Open Society Institute - Macedonia aims to promote transparency and accountability on the part of institutions; human right protection and support for legal reforms in the Republic of Macedonia. It focuses on the attainment of following goals:

- (1) guaranteeing transparency and accountability, by means of support for strategic advocacy aimed to curtail corruptive behavior and action in the field of political parties financing, and aimed to increase free access to public information;
- (2) human right protection, by monitoring the implementation of newly introduced human right protection mechanism and identifying weaknesses therein; and
- (3) supporting transparent approximation of legislation in line with the EU acquis, by informing and involving the civil sector in monitoring activities targeting non-enacted legislative acts.



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Free Legal Aid in the Republic of Macedonia

„Analysis on the
Implementation of the
Law on Free Legal Aid in 2011“

March, 2012

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ABBREVIATIONS

ECHR	European Convention of Human Rights
ECTHR	European Court of Human Rights
LFLA	Law on Free Legal Aid
LGAP	Law on General and Administrative Procedure
LLP	Law on Litigation Procedure
LCP	Law on Criminal Procedure
LCAF	Law on Court Administrative Fees
LSP	Law on Social Protection
LPDI	Law on Pension and Disability Insurance
MYLA	Macedonian Young Lawyers' Association
FOSM	Foundation Open Society - Macedonia
FAPI	Free Access to Public Information
MJ	Ministry of Justice
MLSP	Ministry of Labour and Social Policy

FOREWORD

The present publication titled “Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia” contains the analysis on the implementation of the Law on Free Legal Aid in Macedonia in the course of 2011. The analysis is result of continuous work performed by the Macedonian Young Lawyers Association (MYLA) and the Law Program at the Foundation Open Society – Macedonia (FOSM) within the project “Monitoring the Implementation of the Law on Free Legal Aid”. The project aims to contribute to efficient implementation of the Law on Free Legal Aid and exercise of the right to equal and efficient access to justice for citizens and persons residing in the Republic of Macedonia. At the same time, it aims to build capacities of citizens’ associations that assumed the role of free legal aid providers. Thus, this year’s analysis includes direct contributions from citizens’ associations authorized to provide preliminary legal aid and supported by FOSM, those being: *National Roma Centre* from Kumanovo, *ROMA S.O.S* from Prilep, *Youth Cultural Centre* from Bitola, *Izbor* from Strumica and *EHO* from Stip.

The present analysis, which builds upon the 2010 research published in the Report on Implementation of the Law on Free Legal Aid, addresses issues and challenges faced in exercising the right to free legal aid and implementation of the Law on Free Legal Aid. The analysis identifies weaknesses and obstacles in the free legal aid system faced by both, citizens and associations that wish to obtain authorization on preliminary legal aid provision. The Chapter “A Look from Outside – Macedonian Free Legal Aid System” provides additional comparison against provisions contained in the Croatian Legal Aid Act, emphasizes good examples from their practices, and includes examples from decisions taken by the European Court of Human Rights.

Finally, the analysis provides recommendations to overcome and remove obstacles and weaknesses identified in the free legal aid system in Macedonia, in order to build efficient system that would enable citizens to fully exercise their right to equal access to justice.

Foundation Open Society – Macedonia

Free Legal Aid from A to Z

Report on Implementation of the Law on Free Legal Aid in 2011

1. Report Methodology

I. Data collection

Several methods on direct and indirect data collection, processing and analysis were used for the purpose of developing this report. Given the nature of monitoring efforts and goals defined, following methods were used to collect relevant information:

- FREE ACCESS TO PUBLIC INFORMATION

Submission of Freedom of Information (FOI) applications to state bodies competent in the field of free legal aid;

- MONITORING

Monitoring of cases where free legal aid has been approved by means of decision, in particular by attending court hearings;

- QUESTIONNAIRE

Questionnaires targeting attorneys-at-law who provide free legal aid, judges who act in cases of approved free legal aid and free legal aid beneficiaries.

Questionnaires provided data on the quality, efficiency and effectiveness in free legal aid provision per specific case;

- INTERVIEW

Meetings with attorneys-at-law who provide free legal aid;

- DIRECT INVOLVEMENT AND STRATEGIC LITIGATION

Involvement in the preliminary legal aid system by means of enlisting six associations in the Registry of Citizens' Associations Providing Preliminary Legal Aid;

- COORDINATION WITH EXPERTS

Working meetings of the team tasked with report preparation;

1. With a view to obtain timely and relevant information on the implementation of the Law on Free Legal Aid by competent authorities and institutions, Macedonian Young Lawyers Association (MYLA) submitted 35 FOI applications. FOI applications primarily targeted the Ministry of Justice, which is responsible for decision-taking on free legal aid applications, but also the State Statistical Office, the Pension and Disability Insurance Fund, and the Administrative Court of the Republic of Macedonia. The Ministry of Justice was requested to disclose information on the number of free legal aid applications submitted and approved and was requested to provide insight in decisions on approving or rejecting free legal aid applications, fiscal implications arising from the law's enforcement and other relevant information. The present report analyses responses to FOI applications submitted in 2010.
2. The process on legal aid provision upon approved decision for free legal aid was monitored by means of organized attendance at court hearings, as well as by questionnaires developed for attorneys-at-law, judges and free legal aid beneficiaries and inquired about the outcomes per specific case. In 2011, a total of 23 cases were monitored where free legal aid was approved. For these cases we organized monitoring of 42 hearings in different basic courts throughout the Republic of Macedonia, which is covered by individual reports. During the preparation of this report, we received completed questionnaires from 15 completed cases.
3. During the monitoring process, we regularly communicated and organized meetings with attorneys-at-law who are enlisted in the Registry of Attorneys-At-Law Providing Free Legal Aid.

4. Monitoring the law's implementation in terms of associations' involvement in the free legal aid system was performed by testing the system, i.e., MYLA was enlisted in the Registry of Associations Authorized to Provide Preliminary Legal Aid. In this manner, MYLA and other authorized associations were able to perform monitoring of free legal aid system from inside. By providing legal aid in specific cases, submission of free legal aid applications and submission of price lists for free legal aid, MYLA obtained data on the law's implementation in regard to these provisions.
5. In addition to its engagement, MYLA maintained regular communication with other associations authorized to provide preliminary legal aid.

II. Subject of monitoring

The report is focused on individual vital sections from the Law on Free Legal Aid. Due to methodology reasons, fields subject to monitoring and analysis include:

- **Legal issues for which free legal aid can be approved;**
- **Types of legal aid stipulated in LFLA;**
- **Eligibility requirements for free legal aid;**
- **Free legal aid providers;**
- **Procedure and deadlines for exercising the right to free legal aid;**
- **Funding free legal aid and remuneration for and costs refunded to free legal aid providers.**

By focusing on these fields, we want to infer conclusions on the question whether the initial implementation of LFLA in the past 18 months is full or partial and whether steps are need to improve the legislation in effect and change current practices related to its implementation.

III. Report's structure

The report contains monitoring findings and analyses. All chapters therein are accompanied with conclusions and recommendations aimed to improve the free legal aid system.

2. For what types of legal issues free legal aid can be provided?

LFLA stipulates the possibility for free legal aid approval in all judicial and administrative procedures, provided they *resolve issue of interest for the legal aid applicant*¹. However, paragraph 2 from the same article specifies the legal issues which – according to LFLA – are of interest for applicants and which qualify for free legal aid approval. They include:

- rights in field of social, health, pension or disability insurance;
- rights in the field of labour relations;
- child and juvenile protection;
- protection of victims of domestic violence;
- protection of victims of criminal acts;
- protection of victims of human trafficking; and
- property tenure issues.

LFLA stipulates a closed list of legal areas and is not conducive to legal aid approval in other cases, regardless of the fact whether they are of immediate interest for the applicant and thereby directly evades Article 8, paragraph 1, which stipulates the applicant's immediate interest as an eligibility criterion for taking the decision on free legal aid approval in the specific case. According to LFLA, examples of legal issues that do not qualify for free legal aid include:

- status issues (revoking person's legal capacity, appointment of guardians);
- consumers protection;
- family relations (cases which do not include domestic violence, or child and juvenile protection);
- insurance-based reimbursement of damages caused;
- misdemeanour procedures;
- legal aid in criminal procedures for criminal acts that are subject

¹ Article 8 of the Law on Free Legal Aid.

to sanctions with imprisonment for up to five years, i.e., for cases in which mandatory legal aid is not stipulated, in compliance with the Law on Criminal Procedure.

The closed method applied in terms of defining legal issues eligible for free legal aid implies that many potential free legal aid beneficiaries will be prevented to benefit from free legal aid and will be forced to seek other ways to solve their problems.

According to previous implementation of LFLA, most applications are related to solving so-called *property tenure issues*², followed by *child and juvenile protection* and *protection of victims of domestic violence*, while other legal areas such as *labour relations* and *social, health, pension and disability insurance*, are less present. As for the *protection of victims of human trafficking*, only one application was submitted and it was rejected.

FOI application was submitted to the Ministry of Justice, which was requested to provide precise statistics on the structure of approved free legal aid applications per specific legal issues. After the FOI application was submitted, the Ministry of Justice adopted a Conclusion³ on discontinuing the procedure and explained that it does not dispose with information requested, in that disregarding its obligation⁴ to keep records on decisions taken in relation to free legal aid. With this in mind, the question is raised: if the Ministry of Justice does not dispose with such information, which other institution is competent for such records keeping, in particular knowing that the Ministry of Justice is responsible for implementation of LFLA, primarily due to the fact that it is obliged to refund costs for free legal aid provided to authorized legal aid providers.

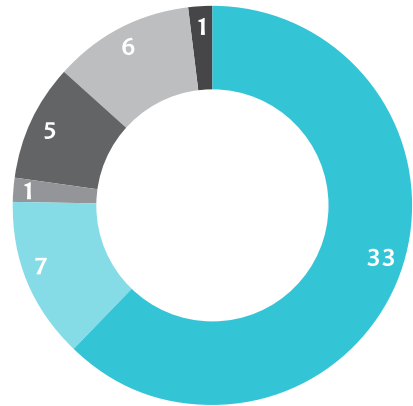
² These data are obtained from the insight granted in decisions taken on free legal aid applications.

³ Conclusion on discontinuing the procedure initiated upon the FOI application no. 19-9824/2 from 14.11.2011.

⁴ Article 35, paragraph 3, line 4 of the Law on Free Legal Aid.

Overview of legal issues that qualify for free legal aid approval⁵

- Property tenure issues
- Child and juvenile protection
- Protection of victims of criminal acts
- Labour relations
- Protection of victims of domestic violence
- Social, health, pension or disability insurance



Property tenure issues

As shown on the chart above, in most cases legal aid was requested to solve so-called property tenure issues that usually imply procedures on: determining property rights, issues related to probate proceedings, division of property acquired in wedlock, physical division of property, fulfilment of contractual obligations and initiation of procedures to declare contracts null and void. Due to the broad scope of property tenure issues and the absence of legal definition for individual matters included under property tenure issues, the decision-taking process on such applications is subject to discretionary rights.

Child and juvenile protection

Child and juvenile protection as a legal issue that is eligible for free legal aid is usually related to **procedures on determining child support, or arrears collection for unsettled child support for juveniles**. LFLA does not specify and does not clarify the array of matters included under child and juvenile protection, thus leaving space for the Ministry of Justice to

take individual decision per case, depending on the circumstances. This legal solution implies legal uncertainty since **child and juvenile protection** is a very broad term that covers several segments: exercise of the right to child allowance, protection of children of single parents, and protection of victims of domestic violence. Particularly characteristic is the protection of children and juveniles

⁵ Abstract from the speech of Minister of Justice, Mihajlo Manevski, given at the Regional Conference on Free Legal Aid, Skopje, 7.7.2011.

in the course of divorce litigations. From the insight performed into decisions on application rejection, particularly worrying is the decision⁶ on rejecting free legal aid application in the procedure on establishing paternity line and child recognition, and alimony payments for minor child. The explanation provided in this case was that establishing paternity line is not stipulated under Article 8 of the LFLA, i.e., it does not fall under child and juvenile protection. LFLA needs to clarify the term child and juvenile protection so as to clearly define procedures in which legal aid can be awarded on these grounds. Moreover, in addition to the claim that this term is not sufficiently clear, due consideration should be made of the decision no.11-2752 on rejecting free legal aid application related to initiation of alimony lawsuit, where the explanation provided indicated that this legal basis is not stipulated in Article 8 of the LFLA.

Protection of victims of domestic violence

According to decisions taken on approving free legal aid for issues related to protection of victims of domestic violence, individual matters in this legal area usually concern *divorce procedures and alimony payment-setting*. Unclear is whether this legal area also covers legal representation of victims in the capacity of plaintiffs in criminal procedures initiated against domestic violence perpetrators. If the legislator's initial intention was to provide free legal aid to victims of domestic violence in criminal procedure, then this legal area should be covered under the already defined legal area on protection of victims of criminal acts.

Protection of victims of criminal acts

As is the case with other legal areas, protection of victims of criminal acts is a broad term that covers different procedures on protection of victims of criminal acts. Free legal aid granted on this ground is usually required and approved for legal aid in procedures on settlement of property tenure claims that arise from criminal acts committed. However, contradictions and inconsistent approach pursued in abovementioned legal areas are seen also in this legal area. Current practices show that competent authorities work in an inconsistent manner, notably because in some cases they have taken decisions to approve free legal aid in property-tenure claims initiated by victims of crime⁷, while in others they have taken two decisions⁸

⁶ No. 11-2752/218 from 12.1.2011.

⁷ No. 11-144 from 28.3.2011 and no. 11-283 from 10.5.2011.

⁸ No. 11-450 and no. 11 – 410.

on rejecting free legal aid in matters related to identical claims. The explanation given in the two decisions reads: “Given that the application for procedure initiation in front of the Basic Court of Strumica, i.e., Kumanovo and related to indemnity claim for damages inflicted to a victim of criminal act is not in compliance with Article 8 of the Law, the free legal application is rejected as ungrounded”. This situation can be duly addressed by defining the scope of protection of victims of criminal acts, whereby procedures that qualify for free legal aid approval will be clearly specified.

Rights in the field of labour relations

This legal area usually includes disputes that originate from labour relations, as well as indemnity claims for injuries caused on the job. In principle, the legal area defined in this manner covers almost all problems that would arise from labour relations and in essence is considered to be a good solution, but concerns are raised when its applicability is associated with other provisions. Resolving labour-related problems assumes that the applicant is employed, thereby making it almost impossible for him/her to meet LFLA-stipulated eligibility requirements, which define categories of citizens entitled to free legal aid. Rare are cases where an employed person can fulfil the eligibility requirements for free legal aid, which brings under question the applicability of this provision. In addition, labour relation rights are resolved under procedures which, as a rule, imply very short deadlines (8 days to lodge a complaint, 15 days to initiate a lawsuit, and like⁹), whereas the law-stipulated deadline for free legal aid approval, which is not observed in most case, is set at 20 days.

It is recommended for employees to be entitled to free legal aid and to accelerate adoption of free legal aid decisions in labour-related procedures.

Rights in field of social, health, pension or disability insurance

This legal area covers social protection and pension insurance. The small number of approved applications in this field renders the analysis of specific legal relations on free legal aid applications impossible. The single

⁹ Article 181 of the Law on Labour Relations and Articles 405 and 409 of the Law on Litigation Procedure.

decision taken to approve free legal aid in this field concerns the exercise of the right to social insurance. As was the case with labour-related rights, this area also stipulates short deadlines for actions in order to avoid losing the right (deadlines to lodge appeals range from 8 to 15 days, administrative dispute - 30 days, and like).

Given that citizens often seek legal aid after they were rejected in the initial procedure, the existing deadlines on exercising the right to free legal aid prevent efficient and prompt legal aid in such cases.

Protection of victims of human trafficking

LFLA includes human trafficking as legal issue eligible for free legal aid approval. Same as previous areas (child and juvenile protection and protection of victims of domestic violence, etc.), this area also fails to specify the matters included under protection of victims of human trafficking and what is covered by protection provided at shelter centres until the initiation of criminal procedures against perpetrators. Up to present, only one free legal aid application was submitted on these grounds and concerns private lawsuit on solicited prostitution. The application was rejected with the explanation that the applicant has not been registered as victim of human trafficking. Such explanations penetrate matters that are not subject to free legal aid, i.e., whether a person is or is not victim of human trafficking. Free legal aid should be provided in all cases that imply existence of human trafficking, notably due to the great social risks related to this type of crimes. The fact whether the victim in this specific case was registered in the register of victims of human trafficking kept by the Ministry of Interior cannot and must not be a crucial factor in decision-taking on approval of free legal aid.

Conclusion

Article 2 of the LFLA stipulates equal access to justice for all persons on the territory of the Republic of Macedonia. Nevertheless, by means of further provisions from the Law the legislator limited the Law's scope of application to certain legal areas, which is contrary to the provisions that stipulate that the Law's aim is to provide unhindered access to justice for all. This contradiction in the legal text creates legal uncertainty for potential beneficiaries, as well as for entities that implement LFLA, which will be explained in detailed later in this report under the analysis of the phenomenon related to competent institutions' inconsistent operation.

In the absence of previous analysis of legal issues and problems that affect citizens, law's provisions that regulate legal areas of interest to the free legal aid applicant and eligible for free legal aid approval do

not include significant portion of legal issues and problems faced by citizens and thereby leave them outside the free legal aid system.

When adopting the LFLA, the legislator pursued an illogical selection of legal areas where the state will provide free legal aid. Due to this restrictive approach, the analysis of monitored cases brings under question the principle of equal access to justice, notably because the need for justice is not focused on and limited to areas defined in LFLA. For example, the legal text cannot precisely and in advance stipulate legal issues of interest to the free legal aid applicant. Sometimes problems in the field of consumer protection can be very serious and can affect the household, maybe to a greater extent than legal issues eligible for free legal aid approval.

Scope and definition of eligible legal areas are insufficiently clear, notably because at the time LFLA was enacted due consideration was not made in regard to existing terminology and definitions of terms which are particularly important for LFLA, but terms contained therein are given in arbitrary manner, without clear and unambiguous definitions thereof, which would have avoided legal uncertainty both, for entities implementing the Law and for free legal aid beneficiaries. Given the absence of legal definitions on legal issues covered by the Law, obvious is the arbitrariness and inconsistency in decision-taking on free legal aid approval, which results in different decisions taken for almost identical situations.

Recommendations

- Citizens' legal needs need to be researched and analysed. Such findings will provide material for in-depth analysis of types of legal problems faced by citizens, their importance, and manners to resolve problems and reasons behind failure to resolve problems. The analysis will bring to light the most common legal problems that affect citizens and will provide a solid basis for legal amendments in this regard;
- The scope of individual legal areas eligible for free legal aid approval should be accurately defined, and thus avoid legal uncertainty and potential arbitrariness and inconsistency in proceeding with free legal aid applications;
- Free legal aid should be an instrument that guarantees equal access to justice for all persons residing on the territory of the Republic of Macedonia;

- Another problem is identified in the definition applied for legal areas, such as property tenure issues. In this regard, we would like to emphasize the need for application of practices pursued by the European Convention on Human Rights and established by the European Court of Human Rights. Notably, ECtHR uses a broad definition of the term “property” in its rulings.

3. What types of legal aid are provided in Republic of Macedonia?

According to LFLA, free legal aid in the Republic of Macedonia is exercised as *preliminary legal aid* and legal aid in *judicial and administrative procedures*. The Law also stipulates the forms in which these two types of legal aid are provided. **Preliminary legal aid** includes:

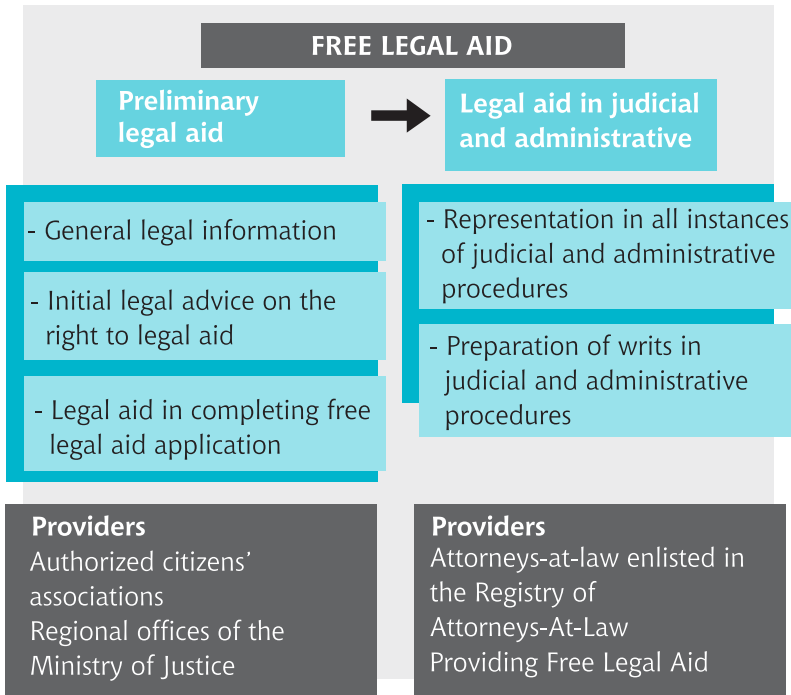
- initial legal advice on the right to legal aid;
- general legal information¹⁰; and
- legal aid in completing free legal aid application.

Legal aid in administrative and judicial procedures covers representation and preparation of writs in all instances of judicial and administrative procedures, however the Law on Free Legal Aid does not stipulate legal aid for legal representation in front of the Constitutional Court of the Republic of Macedonia¹¹, the Supreme Court of the Republic of Macedonia, the European Court of Human Rights and other relevant international bodies.

¹⁰ General and main guidelines for legal regulation of certain areas

¹¹ No. 11 – 59 from 18.4.2011

Types of free legal aid, in compliance with LFLA



Preliminary legal aid stipulated under LFLA

Preliminary legal aid can be provided by **authorized citizens' associations** enlisted in the Registry of Citizens' Associations Authorized to Provide Preliminary Legal Aid and **authorized officers employed at regional offices of the Ministry of Justice**¹². The Law does not exclude the possibility free legal aid to be provided by attorneys-at-law enlisted in the Registry of Attorneys-at-Law Providing Free Legal Aid.

By the end of 2011, only four associations obtained authorizations on free legal aid provision, those being: Macedonian Young Lawyers' Association, National Roma Centre – Kumanovo, Roma SOS – Prilep, and Youth Cultural Centre - Bitola¹³. For most part, preliminary legal aid consisted of general legal information, usually related to issues in the field of social protection, health insurance, labour relations, family relations and property

¹² Provision of previous legal aid by regional offices of the Ministry of Justice is postponed to start from 1.1.2012.

¹³ Supported by the Foundation Open Society – Macedonia.

tenure relations. Smaller share thereof covers provision of initial legal advice on the right to free legal aid, while in few cases legal aid was provided in regard to completing free legal aid applications.

Current implementation of LFLA raises the dilemma as to whether provision of preliminary legal aid requires individual decision taking by the Ministry of Justice, i.e., initiation of separate procedure wherein the applicant requires certain form of preliminary legal aid. This dilemma and inconsistencies identified originate in LFLA's contradiction with bylaws adopted on its basis. While Article 37 of the LFLA stipulates individual decision-taking per application, the *Rulebook on the template and contents of the list of expenses for provision of legal aid by authorized associations*¹⁴ does not require previous decision on preliminary legal aid approval. In addition, the *Rulebook on the contents of the template of the list of expenses for provision of legal aid by attorneys-at-law*¹⁵ decisively and clearly requires indication of the number and date of the decision on approving legal aid.

Provoked by this insufficiently clarified issue under LFLA, and in order to examine the situation in practice and interpretation applied by the Ministry of Justice, the four associations authorized to provide preliminary legal aid submitted their lists of expenses to the Ministry of Justice and related to preliminary legal aid provided in specific cases. After they submitted their lists of expenses, all associations were presented with a notification¹⁶ from the Ministry of Justice, which reads: "*The Ministry of Justice should be presented with lists of expenses only for legal aid provided in cases for which the Ministry of Justice has adopted a decision on approving free legal aid*".

¹⁴ "Official Gazette of the Republic of Macedonia" no. 65/2010.

¹⁵ "Official Gazette of the Republic of Macedonia" no. 65/2010.

¹⁶ 11-3312 from 15.9.2011

¹⁷ See also Chapter: Procedure on exercising the right to free legal aid

This interpretation provided by the Ministry of Justice raises several questions related to the purpose of the preliminary legal aid in general. Given that preliminary legal aid is very limited and primarily pertains to information provision rather than legal advice, the question raised here is whether it is necessary to burden the procedure that in average lasts for 30 to 50 working days,¹⁷ so that a person will be given the most general legal advice on how to obtain the right to free legal aid? Particularly worrying is legal aid provision in completing free legal aid application as a form of preliminary legal aid. According to the interpretation applied by the Ministry

of Justice, individual decision is required for provision of preliminary legal aid in all cases related to preliminary legal aid. Hence, the question is who will assist the applicant in preparing the initial application on preliminary legal aid, i.e., whether this application will actually be “free-of-charge” service provided by citizens’ association and whether citizens’ associations will be prevented to charge these services on any grounds.

Disputable is also the scope of the term “preliminary legal aid”. Basically, preliminary legal aid implies provision of general legal information, and information and advice on the right to free legal aid. Defined in this manner, preliminary legal aid cannot address citizens’ growing need for quality legal information that would include specific legal advice and guidance on resolving certain legal issues.

Legal aid in judicial and administrative procedures

Legal aid in judicial and administrative procedures can be provided by attorneys-at-law enlisted in the Registry of Attorneys-At-Law Providing Free Legal Aid (at the moment 213 attorneys-at-law are registered)¹⁸. Legal aid includes all court proceeding actions stemming from legal representation, such as preparation and submission of lawsuits, complaints and other submissions, legal representation at court hearings, counselling and other actions related to court proceedings.

Conclusion

Distinction made between preliminary legal aid and legal aid in judicial and administrative procedures follows the trends noted in national free legal aid systems of European countries. Existence of preliminary legal aid is justified by the need to improve information provision for citizens on legal issues in legal areas where they benefit or not from free legal aid provided by attorneys-at-law. Preliminary legal aid is also important because it is conducive to improving the status of vulnerable categories of citizens who – due to ignorance and unequal treatment – are unable to obtain legal or other expert aid elsewhere.

Preliminary legal aid, as stipulated by the Law, does not contribute to attainment of the goal defined, notably because it is defined in narrow terms, covers very small portion of citizens’ actual legal needs and is burdened with long and complicated

¹⁸ www.justice.gov.mk

procedure that defers citizens from utilizing preliminary legal aid. In the account of narrow scope for preliminary legal aid, LFLA cannot contribute to reducing legal alienation of citizens and their mistrust in the legal system.

Closely related to these problems is the inability for preparation of writs in administrative procedures. There are categories of citizens who, due to alienation, ignorance and unequal treatment, are not able to compose submissions required for exercise of their constitutional and law-stipulated right. These include filling-in of applications for identification documents, writing appeals and complaints on the grounds of revoked social allowance and like. This is especially important in regard to appeals that need to be lodged within short deadlines, notably because they can never be observed under the regular procedure on exercising the right to free legal aid.

Preliminary legal aid is unnecessarily burdened with an identical procedure that is applied in cases of legal aid in judicial and administrative disputes. Given the difference in legal issues covered by different types of legal aid, the procedure on provision of preliminary legal aid needs to be simplified and accelerated. According to the procedure in effect, citizens who wish to submit legal aid applications are deferred from submitting them and are unable to obtain access to justice. Moreover, one of the key problems that hinder the process on free legal aid provision is a result of the unreasonable behaviour on the part of the Ministry of Justice as regards the procedure on provision of preliminary legal aid. Notably, the Ministry reimburses the costs only for activities taken by authorized associations in cases where the Minister of Justice has taken a decision on approving the free legal aid application. In that, the question is raised whether the person wishing to obtain legal information or initial legal advice should submit an application and wait for its approval by the Ministry of Justice. These complications are due to the fact that institutions responsible for implementation of LFLA do not trust and are sceptical in associations authorized to provide preliminary legal aid, and therefore they believe that decisions on rejecting free legal aid applications will guarantee that authorized associations do not “pillage” the budget for free legal aid.

- Legal aid should be provided in cases where persons seek protection in front of the Constitutional Court and the Supreme Court of the Republic of Macedonia, or even in front of international tribunals and courts to which the Republic of Macedonia is State Party, in compliance with signed and ratified international treaties;
- Procedure on provision of preliminary legal aid should be simplified, and preparation of writs in administrative procedures and provision of legal advice should be included in preliminary legal aid;
- As regards provision of preliminary legal aid, enhanced coordination is needed between associations authorized to provide preliminary legal aid, on one hand, and the Ministry of Justice, on the other hand, in order to present the wrong position and to achieve general agreement that will provide the basis for building positive practices and abandon double procedures in front of the Ministry of Justice. This communication and resolution of the issue on double procedures will contribute to promptness, efficiency, effectiveness and cost-effectiveness of procedures on preliminary legal aid, notably because it will simplify the entire procedure and reduce procedure-related costs. In this manner, the associations will become “filters” in free legal aid provision. The reason for this is the fact that in most cases where persons seek free legal aid, they first address authorized or unauthorized associations which, by rule, refer them to an authorized association. Authorized association instructs the person as to whether it can or cannot seek free legal aid, i.e., whether it meets the eligibility requirements for free legal aid. This means that authorized citizens’ associations will filter the applications and thus prevent possible unnecessary costs, time and efforts spent in cases where obvious is that the person concerned does not fulfil law-stipulated requirements.

4. Requirement, Additional Requirement, and Then Another Requirement

Law on Free Legal Aid provides a general definition of the category of persons entitled to free legal aid, i.e., these include persons (citizens of the Republic of Macedonia with permanent residence on its territory) who - on the grounds of their financial status - are unable to exercise their law-guaranteed rights without endangering their own sustenance and the sustenance of their family members from the household. However, the Law provides three additional limitations for this general requirement. The first limitation requires the persons to hold a law-stipulated status, i.e., they should be (1) *beneficiaries of social allowance*; (2) *beneficiaries of disability allowance, who do not generate other earning based on income or property revenue*; (3) *beneficiaries of the lowest pension allowance, who live in households with two or more dependents*, and (4) *families or single parents with one or more minors and are entitled to child support allowance*. The second limitation concerns the total monthly income generated by the applicant and his/her household members, and the third limitation concerns total property owned by the applicant and his/her household members. Thus, sustenance of free legal aid applicant and sustenance of his/her household members is considered to be endangered when the income of the person in question and his/her family household members does not exceed 50% of the average salary paid in the Republic of Macedonia for the previous month at the time the free legal aid application was submitted (average salary paid in the Republic of Macedonia in October 2011 amounted to 30,680 MKD, which means that the applicant who submitted free legal aid application in November 2011 should have monthly income in the maximum amount of 15,340 MKD).

Moreover, as regards the property owned by the free legal aid applicant, free legal aid will be approved when the applicant or his/her household members dispose with property equal to or not exceeding five average monthly gross salaries paid in the Republic of Macedonia for the previous month (for example, average salary paid in the Republic of Macedonia in October 2011 amounted to 30,680 MKD, which means that the applicant who submitted free legal aid application in November 2011 should own property in the value of 153,400 MKD).

These limitations are cumulative, i.e., the applicant must fulfil all conditions in order to acquire the right to free legal aid.

1. Limitations related to applicants' status¹⁹

Citizens of the Republic of Macedonia shall be entitled to free legal aid provided they are:

1. beneficiaries of **social allowance**;
2. beneficiaries of **disability allowance** who do not generate other earnings based on income or property revenue;
3. beneficiaries of the **lowest pension allowance** who live in household with two or more dependents; and
4. families or single parents with one or more minors and are entitled to **child support allowance**.

The requirement that free legal aid applicants should hold certain law-stipulated status constitutes the first level of limitation to the right to free legal aid. In addition to its restrictiveness, this limitation is also non-compliant with laws that govern the indicated legal statuses, as discussed further in the report.

In the Republic of Macedonia there is no right entitled as **social allowance**. Such right is not stipulated under the Law on Social Protection²⁰. According to this law, citizens are entitled to *social protection, which includes several measures such as: social prevention, extra-institutional protection, institutional protection and rights to financial allowance under social protection*. This solution creates legal uncertainty because LFLA is insufficiently precise as to whether all social protection beneficiaries can also be beneficiaries of free legal aid. Current practices show that in majority cases where the free legal aid application was approved, applicants are usually beneficiaries of social allowance, and some of them are beneficiaries of standing financial assistance.

The Law is insufficiently clear also in regard to the **right to disability allowance**. Such right is stipulated only under the Law on the Rights of Disabled Veterans, Members of their Families, and Family Members of Deceased

¹⁹ Article 12, paragraph 2 of the LFLA.

²⁰ "Official Gazette of the Republic of Macedonia" no. 79 from 2009.

Veterans²¹. Unclear is whether at the time this law was drafted it covered this right or other rights extended on the grounds of disability. According to current implementation of the Law, there are no approved free legal aid applications submitted by beneficiaries of disability allowance, and thus we were unable to analyse the scope of this right in practice.

The term “**lowest pension allowance**” refers to persons who benefit from the lowest amount from the three groups of pension allowances. The total number of beneficiaries of lowest pension allowances in the country is 87,702, while the lowest pension allowance amounts to 5,795.50 MKD²². In such cases, problems arise due to the fact that all groups of pension allowance stipulate the lowest threshold in varying amounts. Example thereof is seen in pension allowances paid after 1.1.2002. Thus, in the first group the lowest pension allowance amounts to 7,157.50 MKD, in the second group it amounts to 6,633.50 MKD, and in the third group it amounts to 6,109.50 MKD. In hypothetical terms, a free legal aid application submitted by beneficiary of the third group of pension allowance whose amount is slightly higher than the lowest threshold in that group may be denied, whereas the application of the beneficiary of the first group of pension allowances whose amount is higher than the actual lowest threshold for the group may be approved, although in formal terms he/she may be a beneficiary of the lowest pension allowance. In addition, LFLA stipulates that beneficiaries of the lowest pension allowance should live in households with two or more dependents. In other words, single person or beneficiary of pension allowance in the amount of 5,795.00 MKD will be denied free legal aid because they do not fulfil the law-stipulated requirement.

As regards the **right to child support allowance**, this criterion is stipulated in satisfactory manner and does not impose unnecessary burdens compared to other criteria.

²¹ “Official Gazette of the Republic of Macedonia” no. 13/96, stipulated in Article 18.

²² PDIF’s notification no. 02-5778/2 from 27.10.2011. legal aid

2. Limitation related to total monthly earnings generated by the applicant and his/her household members

Free legal aid cannot be approved for households of 8 and more members whose total earnings exceed 10,500 MKD.

The second level of limitations imposed by LFLA on potential free legal aid beneficiaries is related to *maximum monthly earnings generated by the applicant's household in the amount of 50% of average salary paid in the Republic of Macedonia for the previous month at the time the free legal aid application was submitted*. Given that average salary paid in October 2011 amounted to 20,902 MKD²³, total monthly income of the applicant and his/her household members must not exceed 10,451 MKD.

This limitation is actually a criterion that provides the basis for determining endangered substance of the household. This solution's shortfall lies in its failure to make due consideration of the number of household members. Sustainance of single persons or households comprised of two members who earn 10,000 MKD is not endangered to same extent as large families who generate the same amount of earnings. Evidence in support of this statement is the communication published by the State Statistical Office²⁴, according to which 47.3% of poor population live in households comprised of 5 or more members. In this way, large households are put in unequal and inferior position and their right to equal access to justice is directly restricted.

3. Limitation related to household property

Free legal aid cannot be approved to citizen whose household owns any type of immovable property.

The third condition stipulated by the Law and considered a limitation to the right to free legal aid includes setting the maximum amount of total property owned by the applicant and his/her household members. According to this criterion, the right to free legal aid can be exercised only by a person whose household's movable and immovable property does not exceed more than five average gross salaries, i.e., 152,955.00 MKD²⁵. Hence, all citizens who own any type of immovable property,

²³ SSO's Communication no. 4.1.11.89 from 28.12.2011.

²⁴ SSO's Communication no. 4.1.1.48 from 11.7.2011.

²⁵ Average gross salary paid in the Republic of Macedonia in November amounted to 30,591.00 MKD. (Source: State Statistical Office's Communication no. 4.1.12.06 from 27.1.2012)

regardless if this property includes house, apartment, garage, field, meadow, etc., are not entitled to free legal aid, i.e., LFLA assumes that their sustenance is not endangered and they can cover the costs of legal aid.

Namely, this provision from the LFLA does not correspond with the tradition of people from this region to own certain immovable property. In Macedonia, property is usually inherited and it cannot be considered an indicator on whether a person's sustenance is endangered and whether the person can cover costs incurred in relation to exercise of his/her rights. In addition to abovementioned, restrictions related to property tenure do not correspond with other laws that stipulate the rights of persons with endangered sustenance. According to the Law on Social Protection, the right to social allowance is given to persons who own immovable property, the value of which - in most cases - exceeds the maximum amount stipulated by LFLA. LFLA does not envisage the possibility of minimum residential premises that would be exempt from calculation of the total property value, despite the fact that the methodology on setting minimum residential premises is already stipulated under other laws and bylaws.

Conclusion

Again, this section of the Law includes inappropriate terminology that is inconsistent with laws that govern the relevant matters. LFLA's inconsistent terminology and lack of methodology on setting financial indicators to be used for determining the applicant's fulfilment of law-stipulated requirements create legal confusion, which – in turn - results in legal uncertainty for potential beneficiaries of free legal aid.

Requirements stipulated by LFLA are too restrictive and limiting and are not conducive to enabling equal access to justice for the entire poor population, which in our country accounts for approximately 30% of all population, i.e., LFLA does not reflect the reality in the Macedonian society, which is also evident in statistical data presented in this analysis. Hence, one can say that for large share of citizens access to justice is "*legal mirage*", i.e., it appears easily accessible, but almost never helpful.

As regards fulfilment of law-stipulated requirements on the applicant's status, the is question raised whether LFLA was adopted only for the benefit of people who already enjoy certain status in the field of social protection or it is intended for all persons in need of justice in order to protect or

reinstitute a certain right that could be or is violated by another person or institution. This issue should be considered also in relation to the principle of equality established in the Constitution of the Republic of Macedonia, which stipulates that all citizens are equal before the Constitution and the laws.

The cumulative nature of law-stipulated requirements complicates the procedure on determining their fulfilment prior to free legal aid approval and thereby results in a situation where instead of collecting all data from one institution the Ministry of Justice requests data from several institutions at the same time.

Recommendations

- The law must stipulate categories of persons entitled to free legal aid in all cases and without additional requirements (beneficiaries of social allowances, child support allowances, disabled veterans, children of single parents, beneficiaries of lowest pension allowance, etc.), and the category of citizens who fulfil the requirements to obtain the status as the one held by above-referred persons;
- The right to free legal aid should be provided to all persons whose sustenance may be endangered due to provision of legal aid, which would overcome the obstacle imposed by the restrictive requirements stipulated under LFLA;
- The right to free legal aid should be given to all persons whose total monthly income does not exceed a pre-determined amount, notably by adding the number of household members as additional criterion;
- Minimum residential premises per person should be exempted from the calculation of applicant's total property value.

5. Now I know who can be beneficiary of Legal Aid, but who provides it?

In compliance with LFLA, free legal aid is provided by: regional offices of the Ministry of Justice, authorized citizens' associations and attorneys-at-law.

1. Regional offices of the Ministry of Justice of the Republic of Macedonia as free legal aid providers

LFLA stipulates that regional offices of the Ministry of Justice can act as *preliminary legal aid providers*²⁶. In order to provide preliminary legal aid, the regional office should employ a person with passed Bar Exam. Given that at the time when the law was enacted most regional offices did not meet this requirement, application of these provisions was postponed and will start from 1.1.2012²⁷. In the meantime, regional offices need to recruit lawyers with passed Bar Exam or employees at the office should pass the Bar Exam.

At this moment, given that this requirement is not fulfilled, we cannot perform a thorough analysis on the authorization of regional offices to provide preliminary legal aid, however there are reasons that raise doubts in that regard. Having in mind that legal aid providers should be independent, impartial and objective, the question is raised on the extent to which the body acting upon free legal aid applications is able to meet above-referred requirements, especially in cases where requested legal aid is related to actions initiated against state authorities²⁸.

2. Citizens' associations as free legal aid providers

²⁶Article 6, paragraph 2 of the LFLA.

²⁷ Article 49, paragraph 1 of the LFLA.

²⁸ See pg. 48.
²⁹ Article 6, paragraph 2 of the LFLA.

³⁰ Article 37 of the LFLA.

For the first time in the history of the Macedonian legal system, the LFLA provides associations with the possibility to provide preliminary legal aid²⁹ funded by the state³⁰. Legal aid can be provided only by associations that fulfil requirements stipulated under LFLA and enlisted in the Registry of Citizens' Associations Providing Preliminary Legal Aid, which is kept by the Ministry of Justice of the Republic of Macedonia. LFLA also governs the status of associations as authorized legal aid providers, introduces

prohibitions on associations' advertising and authorizes the Ministry of Justice to supervise their operation.

Requirements that citizens' associations must fulfil in order to obtain authorization on preliminary legal aid provision are:

1. They should be enlisted in the Registry of Citizens' Associations kept by the Central Register of the Republic of Macedonia;
2. They should have at least one employed lawyer with passed Bar Exam;
3. Association's founding act and statute should include a goal on provision of preliminary legal aid in the field of their operation; and
4. They have to sign liability insurance on possible redress claims stemming from legal advice provided, in the amount of the minimum insurance policy/insurance premium;

Current practices related to the Law's enforcement raise a number of dilemmas, especially in regard to the second requirement. The fact that citizens' associations are required to have at least one employed lawyer with passed Bar Exam is unjustified and prevents associations to obtain authorization for free legal aid provision. LFLA is very rigid on this issue and does not provide the possibility for alternative outsourcing of persons who will provide legal assistance (under task contract or temporary service contract). Regular employment status entails additional and relatively high costs which the association must secure in advance and which could not be reimbursed by the state on the basis of preliminary legal aid provided³¹. The unjustifiability of this criterion is underlined by the *analysis of the subject of preliminary legal aid*, which implies provision of general legal information and legal advice on the right to free legal aid, which *per se* are legal actions that do not necessitate high level of expertise, as implied by Bar Exam taking.

Specific is the third criterion, which requires that the association's founding act and statute should include a goal on *provision of preliminary legal assistance in the field of their operation*. The problem raised here is of terminological and substantial nature. In Macedonia, the term "preliminary legal aid" was first introduced by LFLA in 2009 and there is no association established prior to this

³¹ See Chapter 2: Preliminary Legal Aid.

date that included this term in its relevant acts. However, practices show that the Ministry of Justice applies a flexible interpretation to this article and accepts the term “legal assistance” as sufficient to meet the criterion. The same problem is raised in regard to the cumulative requirement that this term should be contained in the association’s founding act and statute. This legal solution is completely unjustified, notably because the founding act is a statement of founders’ will to establish an association and it cannot be changed. Goals pursued by the association are contained in the statute. Current provisions in effect prevent associations to amend or expand their goals. The issue raised in regard to association’s founding act does not concern only the statement of founders’ will, but rather the fact that the association’s founding act should be amended if the association did not state that it will provide free legal aid and now its wishes to do obtain an authorization for preliminary legal aid provision in compliance with LFLA. These amendments do not raise problems in cases of associations registered after LFLA was adopted, however in cases of associations established in the early nineties or later, or in cases when association’s founders do not reside in the Republic of Macedonia, the decisive factor would be their will to provide free legal aid, instead of the will of persons who currently manage and work at the citizens’ association in question.

This criterion’s key problem lies in the inconsistent application and possibility for arbitrariness in decision-making. Applications submitted by *EHO* from Stip and *Izbor* from Strumica and concerning enlistment in the relevant Register were rejected by the Ministry of Justice, whereby the explanation provided indicated that they did not include legal aid provision as part of their goals, although the Statutes adopted by both associations clearly include provision of legal assistance to their respective beneficiaries.

The fact that requirements are too difficult to fulfil (in particular the one related to employment of person with passed Bar Exam), unless certain preferences are provided, is also confirmed by the fact that during the first

³² These citizens’ associations were supported by the Foundation Open Society – Macedonia, in the absence of which they would not have been part of the free legal aid system

year of LFLA’s implementation there were no citizens’ associations enlisted in the Registry of Authorized Associations Providing Legal Aid. *National Roma Centre* from Kumanovo was the first association enlisted therein with effect from 3.6.2011. Then followed the enlistment of *Macedonian Young Lawyers’ Association* (15.6.2011), *Youth Cultural Centre* from Bitola and *Roma SOS* from Prilep (11.7.2011)³². In October 2011, *EHO* from Stip

and *Izbor* from Strumica submitted their authorization applications, but they were rejected and at the moment a procedure is led in front of the Administrative Court of the Republic of Macedonia.

The manner in which these criteria are defined discourages other associations, who have long-standing experience and expertise in provision of various types of legal services to vulnerable citizens, to pursue authorization and get involved in the national free legal aid system.

Procedure on enlistment in the Registry of Citizen's Associations Providing Preliminary Legal Aid

Associations that do fulfil the law-stipulated requirements submit their applications³³ on preliminary legal aid provision. Attached to the application, they submit also evidence on the fulfilment of law-stipulated requirements. The application is submitted to the Ministry of Justice, which takes a decision thereupon within a period of 30 days from the application's submission. Administrative and legal remedies are provided in cases of rejected applications, i.e., the decision on application's rejection can be appealed in front of the Administrative Court of the Republic of Macedonia. The decision on application's approval holds an effect whereby the association is enlisted in the Registry of Citizens' Associations Providing Preliminary Legal Aid.

Associations cannot advertise provision of preliminary legal aid

The Law directly limits associations' operation by *stipulating prohibition to use any form of advertising* for preliminary legal aid provision. In that, the Law does not define what does the term "*any form of advertising*" imply. If promotion and information distribution constitute unauthorized advertising, the question is raised on how associations are supposed to inform citizens that they provide preliminary legal aid, and like. The Law goes as far as to stipulate that failure to observe the prohibition will result in revoked authorization and association's deletion from the Registry.

This legal solution does not answer the question on *how citizens will be informed on the providers of free legal aid*. LFLA stipulates that every three months the Ministry of Justice is obliged to publish an updated list of associations authorized to provide preliminary legal

³³ Applications are submitted on the template stipulated in the Rulebook on the template and contents of the application for authorization to provide preliminary legal aid.

aid. Although almost 5 months have passed from the enlistment of above-indicated associations, the Ministry did not publish any list. Such practices bring under question transparency in competent authorities' operation and their willingness to cooperate with citizens' associations.

LFLA must enable citizens' associations to use their existing channels for promotion and information, with a view to inform as many citizens as possible on the legal aid providers.

3. Attorneys-at-law as free legal aid providers

Attorneys-at-law provide free legal aid that is comprised of representation in judicial and administrative procedures and preparation of writs as part of these procedures. In principle, all attorneys-at-law can provide legal aid, provided that they are enlisted in the Registry of Attorneys-At-Law Providing Legal Aid kept by the Ministry of Justice. Once enlisted, they are authorized to provide free legal aid. As regards the selection of attorney-at-law, LFLA provides for respect of the free legal aid applicant's preference. This is a positive approach in regard to respecting the will of free legal aid beneficiaries.

From the date when the Law on Free Legal Aid entered into effect until the preparation of the present analysis, the Registry of Attorneys-At-Law Providing Legal Aid kept by the Ministry of Justice enlisted a total of 212 attorneys³⁴.

Large share of attorneys enlisted in the Registry are from Skopje. They are followed by attorneys from Bitola, Kumanovo and Prilep.

³⁴ Source <http://www.justice.gov.mk/PravnaPomos/Advokati.aspx>.

Table – Geographical distribution of enlisted attorneys-at-law

Town	Number of enlisted attorneys-at-law	Town	Number of enlisted attorneys-at-law
Bitola	26	Negotino	7
Valandovo	1	Ohrid	10
Veles	9	Prilep	13
Vinica	3	Radovis	3
Gostivar	1	Resen	4
Delcevo	1	Sveti Nikole	2
Kavadarci	4	Skopje	62
Kicevo	8	Strumica	20
Kocani	3	Tetovo	6
Kumanovo	24	Stip	3
Kriva Palanka	1		

Unequal distribution of attorneys-at-law per different regions is obvious. There are towns with high number of enlisted attorneys-at-law (Bitola, Kumanovo, Prilep, Ohrid, Skopje, Strumica), and, on the other hand, there are towns with more or less the same number of population, but with very few enlisted attorneys-at-law (Stip, Tetovo, Gostivar). Particularly striking is the situation noted in the Polog region, which has a total population of 304,125 inhabitants and only 7 attorneys-at-law enlisted for free legal aid provision, compared to, for example, the twice less populated north-eastern region (173,814 inhabitants) with 25 enlisted attorneys-at-law. Characteristic is also the case of Struga (municipality with around 63,376 inhabitants), where not a single attorney-at-law was enlisted in the Registry of Attorneys-At-Law Providing Free Legal Aid.

Attorneys-at-law who acted in cases with approved free legal aid

By 17.8.2011, a total of **39 attorneys-at-law** from those enlisted in the Registry obtained decisions by means of which they were appointed as legal aid providers in specific cases where free legal aid has been approved.

List of attorneys-at-law who were awarded cases with approved free legal aid, per towns

Bitola	5	Negotino	2
Valandovo	1	Ohrid	2
Veles	1	Prilep	0
Vinica	0	Radovis	1
Gostivar	0	Resen	1
Delcevo	0	Sveti Nikole	0
Kavadarci	2	Skopje	9
Kicevo	2	Strumica	3
Kocani	1	Tetovo	0
Kumanovo	7	Stip	2
Kriva Palanka	0		

The Law provides the possibility for respecting the free legal aid applicant's preference in regard to the specific attorney-at-law from the Registry. This is a quality legal solution that enables applicants to choose an attorney-at-law who they believe will be able to provide the requested legal aid.

Nevertheless, the problem remains in regard to this provision's operationalization. Free legal aid applications are submitted on a written template³⁵, which does not include a graph or section where the applicant can propose the attorney-at-law. It is up to the resourcefulness of the applicant or the person who fills-in the template to find a place thereon where he/she can indicate the preferred attorney-at-law in legible manner.

Conclusion

Free legal aid providers are an important link in the free legal aid system. The organizational set-up and regulations in place that govern them and condition the quality of legal services they provide, which in turn directly affects the efficiency and effectiveness of the system.

³⁵ Rulebook on the template and contents of free legal aid applications.

Current organizational set-up of providers in our free legal aid system puts preliminary legal aid providers (regional offices of the Ministry of Justice and authorized

associations) in an unequal position. While one group thereof is managed by the state and authorized to receive and act upon applications, on one hand, and to provide legal aid, on the other hand, associations are limited in their operation, notably by very strict criteria, the inability to advertise and approach potential applicants, long procedure on legal information provision and tariff for reimbursement of costs which are in discrepancy with organizations' sustainability.

As regards the authorization for preliminary legal aid provision, association's inclusion in the free legal aid system is not justified in economic terms, notably because the applied methodology for reimbursement of costs does not allow recovery of costs incurred by associations and related to employment of graduated lawyer with passed Bar Exam. In this case it is not a matter of entrepreneurship, but assistance to vulnerable people and thus costs related to legal aid provision to such persons cannot be subject of approval based on the application's success, but are actual costs incurred in relation to preliminary legal aid provided. Again, this brings under question the trust between state and associations, as the methodology developed aims to prevent "pillaging"³⁶ the budget available for free legal aid. This is pursued on the detriment of potential beneficiaries, because according to current practices, the beneficiaries first address associations and then state institutions. Such regulation of relations undermines the role of associations, which is especially important in Macedonia, since many associations have long-standing experiences and capacity in provision of various forms of legal aid to vulnerable citizens³⁷. These associations have achieved significant results in their operation and take actions when the state fails to deliver. Under the current legal solution, the associations will remain outside the national system for free legal aid.

Evident in this segment is the fact that attorneys-at-law and associations authorized by the state are subject to different treatment, notably because associations are required to demonstrate success in their work, whereas attorneys-at-law are not required to provide any evidence on successful outcome. Such practices pursued on the part of the state undermine the principle of equality.

³⁶ See page 49.

³⁷ Report on forms and capacities of free legal aid in the Republic of Macedonia, MYLA, February 2008.

- The legal provision from LFLA that stipulated the requirement whereby the associations should include legal aid provisions as one of their goals in their founding acts needs to be removed, in particular because it does not provide possibility for future change of association's goals and thereby represents an unnecessary restriction. Inclusion of legal aid provision in the association's Statute should suffice in that regard;
- Considering the requirements imposed to associations and related to their enlistment in the Registry of Associations Providing Preliminary Legal Aid, logical is to increase the scope of competences in taking legal actions of lesser weight, especially in the field of the administrative law (preparation and submission of applications in administrative procedures, lodging submissions and complaints, lodging appeals in administrative procedures and other legal remedies). This is in line with LGAP's provisions that do not require parties in administrative procedures to be represented by attorneys-at-law³⁸.
- Requirements should be simplified and more flexible, especially those related to outsourcing experts, lawyers with or without passed Bar Exam through different legal institutes. In this manner, lawyers with extensive experience in legal aid provision within associations will be included and not excluded from the overall process.
- Another key issue raised in this regard is the one whose weight was significant at the start of LFLA's implementation and concerns the requirement that citizens' association should guarantee expertise, i.e., they have to employ a lawyer with passed Bar Exam. The requirement for citizens' associations to demonstrate expertise in preliminary legal aid provision is utterly unreasonable and incomprehensible, given that preliminary legal aid does not justify the title or the severity of this law-stipulated requirement.

³⁸ See Article 35, paragraph 1 of the LGAP.

6. Procedure for granting Free Legal Aid – Labyrinth or Walk in the Park!?

The procedure on exercising the right of free legal aid is a special administrative procedure and competences related to this procedure are shared between the regional offices of the Ministry of Justice, charged to receive and complete free legal aid applications and the Minister of Justice, who decides upon the applications submitted. LFLA stipulates this procedure as urgent, having in mind the character of free legal aid. The procedure aims to investigate the fulfilment of law-stipulated requirements for free legal aid, notably by determining the applicant's family and financial status and the type of legal issue for which free legal aid was requested.

Submission of free legal aid applications

The procedure is initiated by submitting free legal aid application³⁹ – in person or by mail - to the competent regional office of the Ministry of Justice. Attached to the application, the applicant must submit a written statement signed by him/her and members of his/her family who live in the same household. By means of the statement, the applicant enables insight in his/her family and property status.

During the first year of LFLA's implementation, regional offices of the Ministry of Justice were presented with a total of **172** free legal aid applications⁴⁰, most of which were submitted on the territory of the City of Skopje.

³⁹ The application is composed and submitted on the template stipulated under the "Rulebook on the template and content for free legal aid applications" adopted by the Minister of Justice ("Official Gazette of the Republic of Macedonia" no. 65/2010).

⁴⁰ Source: Ministry of Justice's Announcement no. 19-2840/2 from 10.08.2011.

Free legal aid applications submitted per town⁴¹

Town	Number	Town	Number
Berovo	4	Kriva Palanka	3
Bitola	12	Krusevo	/
Makedonski Brod	1	Kumanovo	7
Valandovo	4	Negotino	6
Vinica	/	Ohrid	3
Gevgelija	2	Prilep	1
Gositvar	/	Probistip	2
Debar	/	Radovis	4
Delcevo	/	Resen	2
Demir Hisar	/	Sveti Nikole	/
Kavadarci	3	Struga	/
Kicevo	9	Strumica	3
Kocani	2	Tetovo	2
Kratovo	2	Veles	3
Skopje	37	Stip	6

In comparison, during the first year of LFLA's implementation in Croatia, whose population is twice the number of Macedonia, a total of 4,983 applications⁴² were submitted, which indicates that Macedonian citizens lack knowledge and information on the possibilities to benefit from free legal aid.

Actions taken upon applications by the regional office of the Ministry of Justice

Regional office of the Ministry of Justice is obliged to immediately start the procedure upon submitted application and within a period of 12 days to gather all necessary documents⁴³ in relation to the applicant's property status and submit them to the Minister of Justice, who takes a decision

⁴¹ Source: Annual Report on LFLA Implementation, Ministry of Justice, May 2011.

⁴² Assessment of the Croatian Legal Aid Act and its implementation in practice (pg. 54).

⁴³ Information on applicant's financial status can be obtained from: the Public Revenue Office, in relation to the applicant's income; the Real Estate Cadastre, in relation to property owned by the applicant; Social Work Centre, in relation to exercise of the right to social protection; the Employment Agency, in relation to the applicant's employment status, as well as other state bodies and institutions that hold information on applicant's financial status.

in the matter. In order to observe the procedure's urgency, state bodies that hold information on the applicant's property status (PRO, Social Work Centres, etc.) are obliged to provide documents requested by the regional office and submit them within a period of 3 working days. In other words, the obligation to complete the application falls under the obligations of regional offices.

Shortcomings and inconsistencies were identified in actions taken by employees at certain regional offices. They are related to requests for submission of other documents in addition to those stipulated under LFLA. Usually, these requests imply submission of photocopies of applicant's ID, certificate that the applicant is beneficiary of social allowance, certificate on his/her property status, as well as documents and data needed for the procedure for which free legal aid is requested. These additional requests put the applicants in a position which is in contrary to the Law on General and Administrative Procedure and LFLA. Thus, fearing that their application may be rejected, applicants comply with these requests and gather the documents themselves, although this is the legal obligation of regional offices, i.e., the administrative body in front of which the procedure is led. These shortcomings noted in the operation of certain regional offices⁴⁴ have been corrected in part in the course of law's implementation. Nevertheless, it should be noted that the existing trend on bureaucratization of proceedings taken by competent authorities complicate citizens' access to justice.

Decision-taking on applications submitted

After the application has been completed with all documents needed, it is forwarded to the Minister of Justice, who decides upon the application. The Minister is obliged to take relevant action upon the application within a period of 8 days from its receipt. The Minister takes action upon the application by adopting a decision.

In the first year of LFLA's implementation, a total of 127 decisions were taken upon free legal aid applications, 58 of which approved free legal aid, 63 decisions were taken on rejecting free legal aid and 6 decisions were taken to discontinue the procedure⁴⁵. By exercising the right to free access to public information, MYLA addressed the

⁴⁴ Cair and Bitola.

⁴⁵ These data were presented in the introductory speech of the Minister of Justice, Mihajlo Manevski, given at the Regional Conference on Law on Free Legal Aid and organized on the occasion of the first year from its implementation, Skopje 7.7.2011.

Ministry of Justice with FOI applications and requested official data on the number of free legal aid applications submitted and decisions taken. On the basis of data obtained, MYLA developed the table below:

Breakdown of decisions taken upon free legal aid applications submitted

	Applications submitted	Unresolved applications from the previous quarter	Resolved applications	Application pending decision
January – March 2011	34	/	15	19
April – June 2011	39	19	16	42
July – September 2011	22	42	25	39
October – December 2011	42	39	37	44

	Share of decisions taken	Applications denied	Applications denied	Discontinued procedure
January–March 2011	44.12%	7	8	0
April – June 2011	27.59%	7	8	1
July – September 2011	39.06%	7	18	0
October – December 2011	45.68%	7	30	0

⁴⁶ Share of decisions taken upon free legal aid applications = decisions taken/ applications submitted* 100%.

Data obtained by the Ministry of Justice shows that it succeeds to decide on approving or rejecting free legal aid for hardly half of applications submitted. The low share of decisions taken upon applications is obvious⁴⁶ and indicates that competent authorities do not act upon applications within the law-stipulated deadline. For

comparison, in the Republic of Croatia the share of decisions taken upon free legal aid applications in 2010 was 97.69%, and the average time for decision-taking was 8.64 days⁴⁷.

(Non)compliance with the principle on procedure's urgency

LFLA stipulates that the procedure on exercising free legal aid is urgent⁴⁸. Thus, short deadlines are stipulated for the regional offices and the Ministry of Justice wherein they have to take a decision. The regional office is obliged to complete the application with documents needed and forward it to the Ministry within a period of 12 days. Deadline stipulated for competent authorities to provide requested data is three days. The Ministry takes a decision upon the free legal aid application within a period of 8 days. In other words, LFLA stipulates that the procedure on exercising the right to free legal aid should be completed within 20 days. However, past practices show that the situation in reality is different. On the basis of insight granted in 14 decisions on approving free legal aid in the period from 1.1.2011 to 30.6.2011, no decision in procedures on exercising the right to free legal aid was taken within the law-stipulated deadline of 20 days. The shortest procedure lasted 32 days, whereas the longest was 107 days. In average, procedures last for 58 days. For comparison purposes, the average time on decision-taking upon application in Croatia was 15.22 days in 2009, and was reduced to 8.64 days in 2010.

Efficiency of administrative and judicial remedies for rejected applicants

Applicants whose free legal aid application has been rejected are entitled to legal remedy, i.e., they can motion an administrative dispute. LFLA does not stipulate free legal aid for applicants whose application was denied, which means that the free legal aid applicant must initiate an administrative dispute with individual funds. Taking into consideration that almost all free legal aid applicants are people who live in extreme poverty, the Ministry of Justice's decision puts them in an unequal position. Namely, the decision on rejecting the free legal aid application taken by the Ministry of Justice is the "final" decision for applicants because they do not have sufficient funds to initiate court procedure and re-examine its legitimacy.

⁴⁷ Assessment of the Croatian Legal Aid Act and its implementation in practice.

⁴⁸ Article 2, paragraph 2 from the LFLA.

From the start of LFLA's implementation, administrative and court remedies were sought by 10 applicants whose applications on free legal aid were rejected, by initiating a lawsuit in front of the Administrative Court. 9 of them are pending decision, and one lawsuit was rejected as ungrounded⁴⁹. Shortcoming of administrative and court remedies in cases of rejected application is the procedure's duration, which can last from one to two years. On this account, the said legal remedies become pointless, represent waste of time and prevent the applicant's exercise of his/her right to free legal aid, especially in cases when the free legal aid was requested for matters where deadlines play a crucial role.

Conclusion

Despite the fact that procedure on exercising the right to free legal aid is stipulated as urgent, legal aid gets lost in the administration's labyrinth. The illusion created about the two-instance division of competences in regard to receipt of applications and decision-taking, as well as the lack of clear methodology and system for easy access to information on citizens' financial status, preferably at one place, result in slow and centralized system on decision-making, unnecessary delays in procedure and low share of decisions taken.

As an instrument for equal access to justice, free legal aid should be provided under timely and efficient procedure. Often, exercise of rights is related to taking actions in preclusive deadlines, whose duration, in most cases, is shorter than the average duration of a procedure for which free legal aid was requested. In other words, free legal aid provided under the Law on Free Legal Aid is neither timely nor efficient, and raises the question on whether belated approval of free legal aid can be of use to anyone.

⁴⁹ Source: Information disclosed in response to FOI application submitted to the Administrative Court of the Republic of Macedonia no. 03-40/4 from 17.11.2011.

Recommendations:

- Efficient system on checking the financial status of free legal aid applicants should be established, and should rely on existing databases (Social Work Centre, PRO). Moreover, the methodology for data collection should be amended and lower eligibility requirements should be stipulated for free legal aid applicants;
- Considering the differences between preliminary legal aid and legal aid provided in administrative and judicial procedures, two separate procedures should be established for determining applicants' eligibility. The procedure for preliminary legal aid should be streamlined and regional offices of the Ministry of Justice should be entrusted with all actions related to these applications;
- The decision-making system for free legal aid applications should be de-concentrated, notably with a view to provide greater competences for regional offices of the Ministry of Justice (for example, in cases of preliminary legal aid and in urgent cases);
- Mechanisms are needed to improve communication between the Ministry of Justice and free legal aid providers, with a view to enable efficient, timely and expedite procedure on free legal aid.

6. Free Legal Aid Funding

Free legal aid in the Republic of Macedonia is financed under a separate account in the Budget of the Republic of Macedonia, i.e., under the budget of the Ministry of Justice, as well as by donations and other revenue, in compliance with the Law. The budget account is proposed by the Minister of Justice and is approved by the Government of the Republic of Macedonia. Funds are intended to cover remunerations and costs incurred by attorneys-at-law for free legal aid provided, as well as to compensate costs of authorized citizens associations incurred in relation to provision of preliminary legal aid.

Funds allocated to support free legal aid provision

Funds intended for free legal aid are allocated under the 2010 and 2011 budgets of the Ministry of Justice. Ministry's 2010 budget allocated a total of 12,000,000.00 MKD (196,187.75 EUR⁵⁰) for financing the free legal aid system, while in 2011 this amount was halved and accounted for 6,000,000.00 MKD (97,545.12 EUR⁵¹).⁵²

Table 1 – Overview of 2010 and 2011 budgets allocated for free legal aid in the Republic of Macedonia

	Total budget for free legal aid (EUR)	Total budget for free legal aid (per capita)
	12,000,000 MKD	5.83 MKD
2010	(196,187.75 EUR)	(0.095 EUR)
	6,000,000 MKD	2.92 MKD
2011	(97,545.12 EUR)	(0.047 EUR)

⁵⁰ According the middle exchange rate published by the NBRM on 1.1.2010.

⁵¹ According the middle exchange rate published by the NBRM on 1.1.2011.

⁵² Source: Ministry of Justice's Announcement no. 19-1578/2 from 15.6.2011.

⁵³ Source: Efficiency and Quality of Justice Report, edition 2010 (data2008), CEPEJ.

Total budget for free legal aid per capita is an indicator that enables comparison against other states and their national free legal aid systems. European Commission's Report on Efficiency and Quality of Justice from 2010⁵³

contains an overview of Council of Europe's Member-States according to their budgets allocated to finance the free legal aid system.

According to the budget share allocated for free legal aid, United Kingdom is on the top of the list with 49.5 EUR per capita. Countries that allocate high shares of funds for free legal aid include the Scandinavian countries and the Netherlands, whose budget indicator is more than 10 EUR per capita. Albania, Hungary, Azerbaijan and Ukraine are on the bottom of the list, with less than 0.04 EUR per capita.

Average amount per capita allocated for free legal aid funding in Europe is 7.2 EUR. However, considering the great differences in economic potential among the countries, realistic basis for comparison and analysis is identified in the mean value thereof (1.7 EUR per capita).

Republic of Macedonia is at the bottom of the list or below the average amount calculated, notably because it spent 0.095 EUR per capita in 2010 and 0.047 EUR per capita in 2011 on free legal aid. Nevertheless, any analysis and comparison must make due consideration of countries' economic power. This means that comparisons should be pursued against countries which have similar GDP per capita as Macedonia. The table below shows that only Albania allocates lower amount of funds to finance free legal aid system than Macedonia.

Comparison against states with similar GDP per capita

State	GDP per capita ⁵⁴	Population ⁵⁵	Budget per capita (EUR) ⁵⁶
Macedonia	4,425 EUR	2,060,563	0.095
Bosnia and Herzegovina	4,491 EUR	3,760,149	1.3
Albania	3,678 EUR	3,204,284	0.04
Bulgaria	6,325 EUR	7,543,325	0.6
Romania	7,538 EUR	21,442,012	0.2
Montenegro	6,340 EUR	631,490	0.2

⁵⁴ Source: World Bank - <http://data.worldbank.org/>

⁵⁵ Source: World Bank - <http://data.worldbank.org/>

⁵⁶ Source: Efficiency and Quality of Justice Report, edition 2010 (data2008), CEPEJ.

Funds secured for free legal aid are intended for payment of **remuneration** for attorneys-at-law who provided legal aid to free legal aid beneficiaries, as well as for **reimbursement of costs** incurred by associations that provided preliminary legal aid.

Utilization of funds allocated for free legal aid

Funds allocated in the **2010** budget, in the total amount of 12,000,000 MKD, and intended to remunerate attorneys-at-law or reimburse costs incurred by associations remained unspent. This was due to the fact that LFLA's implementation started in July 2010 and free legal aid providers did not submit any Tariff Codes. As a result of this, the 2011 budget for free legal aid was halved and amounted to 6,000,000.00 MKD. By September only 0.1% of budget funds were spent and accounted for a total of 5,152.00 MKD⁵⁷. They were disbursed as remunerations to attorneys-at-law who provided free legal aid and submitted Tariff Codes to the Ministry of Justice.

Such underutilization of funds allocated for provision of free legal aid provision is concerning. Low number of applications approved, long duration of court proceedings and lack of information on the part of attorneys-at-law resulted in low number of Tariff Codes submitted and low amount of funds disbursed. As regards to the reimbursement of costs incurred by associations, due to reasons explained in the chapters above, no funds were disbursed to settle the total of 578 Tariff Codes submitted in compliance with the Law.

Conclusion

Efficiency of the free legal aid funding system is directly connected to the efficiency of the general system. The low number of applications approved and even lower number of cases finished result in low amount of funds disbursed.

The enormous amount of unutilized funds indicates that the system is not functioning in proper manner. This becomes obvious with the halved 2011 budget, which may be a result of the 100% non-utilisation of funds allocated in the previous year. However, if that is the reason, likely is the fact that next year's budget will also be reduced, notably because this year's budget will be marked by a low utilization rate.

Obvious is the absence of an analysis on the financial implications from LFLA's implementation, notably because the initially stipulated parameters provided the conclusion that initial financial implications were set in high

⁵⁷ Ministry of Justice's Announcement no. 19-2835/3 from 21.9.2011.

amounts and thus the 2011 budget for free legal aid was reduced without any explanation on the decision taken to half the budget funds.

- LFLA's *economic effects* and *financial implications* should be analysed, whereas annual planning of budget funds should be based on actual needs for legal aid;
- Funds should be allocated in an amount that enables more comprehensive and more efficient promotion of the Law;
- Budget funds for free legal aid in the initial years of LFLA's implementation should be re-allocated and intended to cover all procedure-related costs, in particular costs that do not imply significant financial implications on the budget. In cases that require greater funds, coordinated efforts are needed with a view to exempt and provide partial coverage of procedure-related costs.

7. What Types of Procedure-Related Costs are Covered by Free Legal Aid

Article 15 of LFLA defines the scope of free legal aid in regard to procedure costs. According to this article, free legal aid covers **procedure-related costs** that have occurred following the day when the free legal aid application was approved and **legal aid actions** that have not been taken prior to the approval of free legal aid. In other words, LFLA includes procedure-related costs and legal aid actions.

7.1. Procedure-related costs under LFLA

LFLA does not contain further explanation or definition on what procedure-related costs cover. Given that legal aid is approved in court and administrative procedures, the definition of procedure-related costs is identified in relevant procedural laws. Under the LLP, procedure-related costs imply expenses incurred in the course of or in relation to the procedure, as well as the remuneration for attorneys-at-law and other persons whose right to remuneration is recognized by the Law, while the LGAP stipulates the following as procedure-related costs: travel costs of officers, expenses for witnesses, forensics, interpreters, insight, advertisements, attendance costs, waste of time, expenses for administrative fees, legal representation, expert assistance, and like.

Additional problem is identified in the fact that LFLA does not contain provisions that would regulate, i.e., operationalize coverage of abovementioned costs in specific procedures, especially since LFLA includes provisions which in detail stipulate the reimbursement for legal aid provided by attorneys-at-law and associations⁵⁸. LFLA is not aligned with separate laws that regulate individual costs and there is no mechanism in place for free legal aid beneficiaries to be exempt from these costs. Consequently, free legal aid beneficiaries must settle other costs or seek exemption therefrom, in compliance with relevant procedural laws. Otherwise, beneficiaries will have to waive their right to justice, given the fact that their endangered financial status is demonstrated by the mere fact of being free legal aid beneficiary.

⁵⁸ Chapter 5 of LFLA.

Significant procedure-related costs which are not covered in compliance with the LFLA, i.e., the decision on approving free legal aid, include: court fees, remuneration for forensic experts, costs related to securing of evidence and remuneration for translators and interpreters.

Court fees are significant procedure-related costs and their amount ranges from 480 MKD to 96,000 MKD. These costs are regulated under the special Law on Court Administrative Fees. Court fees are not covered by the free legal aid approved by means of a decision taken by the Ministry, due to the fact that courts do not act upon lawsuits or other procedural motions for which the relevant court fees are not settled⁵⁹. The decision on approving free legal aid does not exempt the free legal aid beneficiary from the obligation to settle court fees whose exemption is only possible upon a submission of separate application on exemption from court fees, in compliance with Articles 13 and 14 of the LCAF.

Costs incurred for securing of evidence, remuneration for forensic experts, translators and interpreters are regulated under the Law on Litigation Procedure. They must be determined in advance in order to present required evidence, but the LLP does not contain a provision that stipulates the possibility to regulate this matter under different law. Exemption from the payment of procedure-related costs is possible only through the institute “*poverty law*”.

“**Poverty law**” covers exemption from settlement of procedure-related costs for people whose financial status does not allow them to cover these costs. This exemption from procedure-related costs is granted on the proposal motioned by the concerned party. In order to qualify for this exemption, the applicant thereof must fulfil certain criteria that are different from those stipulated for free legal aid. Hence, the existence of two sets of criteria may result in free legal aid beneficiaries’ application on exemption from procedure-related costs to be rejected and vice-versa. Moreover, the procedure is unnecessarily complicated and postponed, and in reality results in two separate procedures being led with a view to attain one goal, i.e., to exercise the right to free legal aid.

During the interviews conducted with attorneys-at-law who provide legal aid on the basis of decisions to approve free legal aid, we were informed that when initiating

⁵⁹ Article 146, paragraph 2 of the LLP.

the relevant procedure, they also motion a proposal on exemption from settlement of procedure-related costs, which in some case may greatly postpone the core hearings in the procedure matter.

As a result of their inability to cover required costs, in many case free legal aid beneficiaries (people living below the poverty line) waive the procedure wherein they request the exercise of certain right.

Exercising rights is a process that is often burdened with high costs, which for majority of citizens are so high that their payment endangers their sustenance and the sustenance of their household members. Costs can be of different nature, but they equally concern all citizens. Law on Free Legal Aid provides a good solution in terms of remuneration for attorneys-at-law, which - in principle – is feasible and provides the basis for development of complementary and efficient free legal aid system. Although other procedure-related costs are referred under the Law, they are not operationalized in practice. This means that relevant LFLA provisions need to be adjusted and aligned with other laws that govern procedure-related costs. On this account, free legal aid beneficiaries must initiate parallel procedures on exemption from payment of procedure-related costs, which postpones their access to justice and, in some cases, results in their waiver of rights sought under the relevant procedure due to their inability to cover these costs.

7.2. Legal aid actions

Legal aid actions stipulated under LFLA include legal aid provided as preliminary legal aid and legal aid provided in judicial and administrative procedures. LFLA stipulates the right to remuneration, i.e., reimbursement of costs for legal aid actions taken.

7.2.1. Right to remuneration for attorneys-at-law

⁶⁰ The list of expenses should be submitted on the template stipulated under the *Rulebook on the template and contents of the list of expenses for provision of legal aid by attorneys-at-law*.

Attorneys-at-law and associations enlisted as free legal aid providers in the relevant Registries are entitled to reimbursements for legal aid actions taken.

Attorneys-at-law exercise their right to remuneration by submitting their list of expenses⁶⁰ to the Ministry of Justice. Attorneys-at-law list legal aid actions taken in a particular case and charge them in compliance with the

Tariff Code established for reimbursement of fees and costs incurred by attorneys-at-law reduced by 30%. After the submission of list of expenses, the Ministry reconsiders them and should it determine that there was no irresponsible, incompetent and unprofessional behaviour on the part of the attorney-at-law in the provision of legal aid, it disburses the indicated remunerations. Should the Ministry determine the opposite, the Ministry takes a decision whereby it indicates the non-disbursement of remunerations indicated in the specific case.

From the start of LFLA's implementation until 30.9.2011, the Ministry was presented with only five lists of expenses from attorneys-at-law who provided legal aid in cases of approved free legal aid applications. Two of them were reimbursed in a total amount of 5,152.00 MKD, and the reimbursement procedure for three attorneys-at-law is underway⁶¹.

The small number of submitted lists of expenses compared against the number of approved free legal aid applications is a result of the fact that lists of expenses are submitted upon the completion of cases, which can sometimes last for several years.

LFLA does not stipulate a deadline for the Ministry wherein it is obliged to settle the amount due according to the list of expenses submitted. This could create uncertainty on the part of attorneys-at-law as to when they will be reimbursed and may affect the quality of legal aid they provide.

7.2.2 Right to reimbursement of costs for associations

Associations are entitled to reimbursement of costs incurred in relation to preliminary legal aid provided. They exercise this right by submitting relevant list of expenses⁶² for actions taken in the course of preliminary legal aid provision. The list of expenses is comprised for actions taken in individual cases of approved preliminary legal aid. Preliminary legal aid actions are charged in compliance with the *Tariff Code established for reimbursement of fees and costs incurred by citizens' associations in preliminary legal aid provision*. The Tariff Code sets the amounts due per specific legal aid actions.

Fees established for preliminary legal aid actions, in compliance with the Tariff Code on reimbursement of fees and costs incurred by citizens' associations in preliminary legal aid provision

⁶¹ Source: Ministry of Justice's Notifications no. 19-2834/3 from 21.9, no. 19-2835/3 from 21.9 and 19-3825/2 from 14.11.2011.

⁶² The list of expenses is stipulated under the *Rulebook on the template and contents of the list of expenses for provision of legal aid by authorized citizens' associations*.

Preliminary legal aid action	Amount
General legal information	200 MKD
Initial legal advice on the right to legal aid	300 MKD
legal aid in completing free legal aid application	600 MKD

As was the case with remunerations for attorneys-at-law, citizens' associations submit their list of expenses to the Ministry of Justice. Should the Ministry determine that the association had acted in irresponsible, incompetent and unprofessional manner when providing preliminary legal aid, it will not reimburse the costs. An administrative dispute can be motioned against the decision on rejecting costs reimbursement for associations.

From the start of LFLA's implementation until 31.10.2011, a total of 578 lists of expenses were submitted by four associations authorized to provide free legal aid. Due to reasons explained in chapters above, submitted lists of expenses were not reimbursed. Associations received notification from the Ministry, wherein it was indicated that their costs will be reimbursed only for cases in which the Ministry had taken a decision to approve preliminary legal aid provision. Ministry's notification was not developed as a legal act and did not include notice on legal remedy.

Considering the major shortfall identified in regard to preliminary legal aid, i.e., the long procedure led prior to its provision, the number of lists of expenses eligible for reimbursement will be insignificant, if any.

This legal solution, supported by the Ministry's practices, will result in very low interest on the part of enlisted associations to secure funds and be part of the national free legal aid system.

Conclusion

Resolving legal issues implies several types of costs. Free legal aid that does not cover all costs cannot be considered sufficient in regard to enabling equal access to justice.

Low number of free legal aid applications approved and long duration of individual procedures result in insignificant number of submitted and disbursed lists of expenses for legal aid in court and administrative procedures. Additional problem is the absence of deadlines for disbursement of attorney-at-law's remuneration.

As regards citizens' associations, current provisions from the Law related to settlement of their costs are meaningless. Enforcement of these provisions in practice can be analysed only after essential reforms are taken in regard to preliminary legal aid.

Free legal aid providers are important and perhaps the most crucial part of the free legal aid system. Their interest in getting involved in the system, in addition to the humanitarian and philanthropic character, also has a financial motive. Utterly rare and difficult reimbursement of remunerations and costs will result in poor commitment on the part of free legal aid providers, which – in turn – will affect the quality and efficiency of legal aid provided for the final beneficiaries.

Recommendations

- Law on Free Legal Aid should define and enlist procedure-related costs and costs related to free legal aid provision, which in addition to remunerations for attorneys-at-law should also include: court fees, costs for securing evidence, remuneration for forensic experts, translators and interpreters and other expenses incurred in the course of court procedure;
- Provisions on exemption from payment of procedure-related costs need to be unified and together with relevant provisions from the Law on Free Legal Aid, they should be defined within a single free legal aid system;

- Training and meetings need to be organized for judges and employees at state administrative bodies, in order to introduce them with LFLA provision. This would lead to more efficient and effective access to justice for persons entitled to free legal aid;
- Mechanism should be established whereby the decision on approving free legal aid will cover all procedure-related costs;
- Deadlines should be stipulated for the Ministry on disbursing funds for remunerations and reimbursement of costs.
- The overall system on preliminary legal aid needs to be reformed, with a view to simplify the system on reimbursement of costs incurred by authorized associations;
- Tariff Code on preliminary legal aid provided should be established and should guarantee sustainability of associations that provide free legal aid.

FINAL RECOMMENDATIONS

Key recommendations indicated in this Report are intended to contribute towards a more efficient and more effective national free legal aid system, which would provide guarantees on exercising the right to equal access to justice for citizens who due to their financial status are unable to exercise their rights guaranteed by the Constitution and the laws.

Considerable improvement of the national free legal aid system and simplified access to justice necessitates significant amendments to the Law on Free Legal Aid in the following areas:

1. Legal issues eligible for free legal aid

When regulating legal areas eligible for free legal aid, one must make due consideration of the following: relevant research and analyses on citizens' legal needs, legal problems faced by the citizens, manners in which they can be resolved and their effect on citizens' everyday life. There are relevant international researches that can be used for that purpose, but a research should be conducted also in the Republic of Macedonia, notably because it will provide quality data on types of legal problems faced by Macedonian citizens.

In addition to researching citizens' legal needs, quality nomotechnical definitions are needed for the legal areas covered and LFLA's terminology needs to be aligned with other relevant legislation, in order to avoid legal uncertainty and arbitrariness in decision-taking on whether a certain legal situation is eligible or not for free legal aid.

Clearly-defined terms and definitions will prevent further ambiguities and inconsistencies related to LFLA's implementation and its implementing entities (Ministry of Justice, regional offices, authorized citizens' associations and attorneys-at-law), as well as in relation to potential free legal aid beneficiaries.

2. Types of legal aid

The final aim is to establish a coherent legal system wherein preliminary legal aid and legal aid in administrative and judicial procedures will be two parts of one whole. Preliminary legal aid will contribute to addressing legal alienation of citizens, will increase citizens' legal culture and prepare them to initiate relevant judicial or administrative procedures. Legal aid in judicial and administrative procedures will concern provision of quality legal representation in court proceedings. Preliminary legal aid should be used as so-called "filter" of free legal aid, i.e., by providing general legal information and initial legal advice authorized citizens' associations will be able to identify persons who fulfil the eligibility requirements for free legal aid.

Expanding the scope of preliminary legal aid and inclusion of legal representation for free legal aid beneficiaries in administrative procedures will increase the efficiency and effectiveness of free legal aid, in particular because citizens' associations are fully trained and specialized in provision of such free legal aid, unlike the attorneys-at-law who are focused on legal aid provision in judicial procedures. Evidence in support of this recommendation is the fact that parties in administrative procedures are not required to be represented by attorneys-at-law, i.e., other persons can also appear as legal representatives in these cases⁶³.

In this regard, essential changes are needed in preliminary legal aid provisions. In addition to existing types of legal actions, preliminary legal aid should also include provision of legal advice and preparation of writs for administrative procedures. Provision of general legal information, as an initial legal advice on exercising the right to free legal aid should be enabled for all interested citizens, while other types should be conditioned with a so-called referral/order issued by regional offices of the Ministry of Justice. This referral should be issued within a deadline of 3 days, under a simplified procedure that is different from the procedure on approving free legal aid in judicial and administrative procedures.

3. Eligibility requirements for exercising the right to free legal aid

Defining categories of persons eligible to free legal aid in all cases, without having to meet additional requirements (beneficiaries of social allowance, child support allowances, disabled veterans, children of single parents, beneficiaries of lowest pension allowance), and category of citizens who fulfil the requirements to obtain the status of abovementioned persons.

⁶³ Article 55, paragraph 1 of the LGAP

Right to free legal aid should be given to all persons whose total monthly income does not exceed a previously set amount, by adding the number of household members as an additional criterion.

Residential property owned by free legal aid applicants should be exempted from the calculation of total property owned by the applicant, which means that only one requirement should be established for free legal aid applicants: applicant's income or the family members' income. This is proposed due to the fact that eligibility requirements under the Law on Social Protection can be regulated in the same manner. This means that persons can possess immovable property, but do not generate income on that basis, and therefore the requirements will concern income generated and not immovable property owned.

4. Free legal aid providers

Associations interested in providing free legal aid should have the possibility to recruit individuals as legal aid providers by means of outsourcing on the basis of temporary services contract or employment contract. If this recommendation is deemed unacceptable by the state, then certain benefits should be stipulated for citizens' associations that want to obtain authorization on preliminary legal aid provision, in particular benefits related to employment of lawyer with passed Bar Exam.

The Ministry of Justice should work on improving the trust in citizens' associations and abandoning the declarative commitment on involving citizens' associations in the free legal aid system.

Associations should be allowed to implement awareness campaigns on preliminary legal aid they provide, which can be done by removing the prohibition for advertising and enabling financial support thereto.

Existing systems on equal access to justice need to be aligned with LFLA and single national free legal aid system should be established. In particular, this concerns the alignment of procedural laws, the Law on Court Administrative Fees and the Law on Administrative Taxes with the Law on Free Legal Aid.

Different free legal aid providers should be treated equally and unified methodology on reimbursement of costs incurred by attorneys-at-law

and authorized citizens' associations that provide preliminary legal aid should be established, i.e., the principle on reimbursement of costs on the basis of successful procedure outcome should be abandoned.

5. Procedure on approving free legal aid

Efficient and unified system is needed for verifying free legal aid applicants' financial status, and it should rely on existing databases (Social Work Centre, PRO).

Decision-making system on free legal aid applications must be de-concentrated with a view to providing greater competences to regional offices of the Ministry of Justice (for example, in cases of preliminary legal aid and in urgent cases).

Ministry of Justice must increase its transparency in the procedure on approving free legal aid, covering procedure-related costs, number of applications approved and rejected, etc.

Mechanisms should be established to improve communication between the Ministry of Justice and free legal aid providers, with a view to provide efficient, timely and urgent procedure on free legal aid.

6. Free legal aid funding

The budget planning for free legal aid should be based on the analysis of LFLA's financial implications and citizens' needs for legal aid.

7. Procedure-related costs covered by the free legal aid

Deadlines must be defined for the Ministry, within which it will be obliged to settle the remuneration and reimbursement costs.

Reforms are needed in the overall system on preliminary legal aid, with a view to simplify the reimbursement system for costs incurred by authorized associations.

Tariff Code for reimbursement of preliminary legal aid provided needs to be developed and it should make due consideration of economic justifiability and sustainability of associations that provide free legal aid.

Analysis:

“The Free Legal Aid in Republic of Macedonia – A look from outside”

Introductory Remarks

The right to access to justice is one of the fundamental human rights. The key to establishing good system on free legal aid requires proper understanding of the state’s role in it and acceptance of the obligation to respect, protect and enable exercise of human rights. This entails development of legislative framework that regulates this area and consistent implementation of the law in practice, as stipulated under relevant international treaties and supreme legal acts in all countries.

Access to legal aid is part of the entitlement to fair trial, which stems from Article 6 of the ECHR. Article 6/3c on minimum rights in criminal cases stipulates that legal aid should be provided „*when the interests of justice so require.*” Pursuant to Article 6(1), similar standard is applied to other types of cases. The case of *Airy vs. Ireland*⁶⁴ from 1979 provides the main principles thereof. The above-mentioned decision by ECtHR sets a precedent which obliges governments to provide legal aid where needed, in that making due consideration of the following criteria:

⁶⁴ The European Court of Human Rights delivered the judgment in September 1979, the full text is available at: <http://legislationline.org/documents/action/popup/id/8314>.

- importance of the case to the individual (applicant);
- complexity of the case;
- individual's capacity to represent himself;
- costs and individual's capacity to cover them.

The principles established in the case *Airy vs. Ireland* have been confirmed in several judgements. ECtHR applies the criteria to concrete circumstances related to the complaint. Access to courts is meant to be *effective* for all citizens, independent of their financial situation. A violation will be established if costs appear as an actual barrier to access to court.

Since the findings of ECtHR relate to individual complaints and are usually made long after the alleged violation has taken place, its case law contains challenges for national law-makers. Legislation as such is not found to be in violation to the Convention, although the Court has said that member states have an obligation to organize their legal systems in a way that prevents repeated violations to Article 6. It is mainly left to the states to find out how to best establish sufficient access, in compliance with their system in place and legal tradition.

Comments and analyses given below are aimed to enable understanding of implementation challenges that can occur if access to justice facilitated through legal aid for impoverished groups is not properly implemented/understood.

Who provides it, what type and how much?

Article 1 of the LFLA stipulates the general provision that LFLA shall govern the right to free legal aid, procedure wherein exercised, beneficiaries, terms and conditions and manner of its exercise, free legal aid providers, decision-making bodies, protection of the right to free legal aid, financing and supervision over its exercise, organization of free legal advice days, free legal aid in cross-border disputes, as well as monitoring the implementation of provisions contained in the law. LFLA aims to ensure equal access to state institutions for citizens and other persons determined by the Law, for the purpose of meeting, exercising and ensuring effective legal aid, in accordance with the principle on equal access to justice. LFLA stipulates the procedure for free legal aid as an urgent procedure (Article 2 of the LFLA).

Article 3 of the LFLA gives broad explanation of terms used in the Law, stipulating that they have the meaning as follows: “*family members*” mean spouses or unwed partners, children and relatives four time removed from direct bloodline or twice removed from indirect bloodline, who live in the same household with the free legal aid applicant and bear joint costs of living; “*property*” of the free legal aid applicant means the entire movable and immovable property, property rights, cash flow in domestic or foreign currency, funds deposited on personal account or savings account, gifts, securities, stocks, capital shares and other property disposed by the applicant or any adult member of the joint household in the country or abroad; “*free legal aid beneficiary*” means any natural person who benefits from legal aid forms as stipulated under the present Law; “*general legal information*” means free legal aid comprised of general and principle-based guidance related to legal regulation in a particular area; “*authorized citizens’ association*” means an association which, in compliance with the provisions of this Law, fulfils the terms and conditions for provision of preliminary legal aid and which, based on a decision taken by the Minister of Justice (hereinafter: the Minister), is authorized to provide preliminary legal aid pursuant to this Law and is registered in the Registry of Citizen’s Associations Providing Preliminary Legal Aid, and “*legal advice*” means any information on the manner and possibilities available to resolve a particular legal matter/issue.

According to Article 4, free legal aid in Republic of Macedonia is rendered by three different providers:

- Ministry of Justice;
- attorneys-at-law; and
- authorized citizens' associations.

Key principle for provision of free legal aid (and also a standard requirement) is the independence of free legal aid providers. In regard to providers' independence, attorneys-at-law, and authorized citizens' associations are much more likely to meet this requirement. General practices established in the neighbouring countries have shown a great reluctance on the part of individual beneficiaries to entrust their case to governmental or institutional providers (Ministry of Justice), especially in cases where the state appears as the confronting/opponent party. This is highly likely to occur in administrative procedures or administrative disputes where institutions' administrative acts are brought under judicial scrutiny.

In this context, it would be much appropriate for the Ministry of Justice to be given a general monitoring, supervision and coordination role, rather than to be directly involved as legal aid provider.

According to the legislation in effect, the Ministry of Justice has full authority and responsibility in the free legal aid system⁶⁵.

One of the essential characteristics of an effective system for access to justice is provision of attorneys-at-law who are independent and can freely

⁶⁵ Article 11 stipulates that matters pertaining to the field of free legal aid shall be carried out by the Ministry, in cooperation with the Bar Chamber, judicial authorities, state administration bodies, Centres for Social Work, citizens' associations and other bodies.

advocate for their clients' interests. In cases of publicly funded legal aid, there is always potential for conflict of interest because the state pays attorneys-at-law. However, that conflict can be avoided or minimized by ensuring that free legal aid system has a degree of independence.

According to LFLA, Ministry of Justice's independence in the capacity of free legal aid provider is also disputable. The Ministry is completely subordinated to the State, because it combines two significant duties that can barely be achieved within the same institution, they are assessment of applicant's eligibility and provision of legal

aid. For the purpose of ensuring successful provision of legal aid in the future, it is of crucial importance that LFLA distinguishes between Ministry of Justice's duties and responsibilities.

This is typically done by establishing a Legal Aid Board or other governing body, tasked to oversee the actual operation of the system. Establishment of such system should be considered for the Macedonian free legal aid program.

For that purpose, a variety of free legal aid delivery models can be identified: **private attorney programs** (also known as judiciary for civil cases), **staff attorney programs** (also known as public defender programs), and contracting programs. In the first model, legal aid is provided by private attorneys-at-law, who are appointed by the court on *ad hoc* basis from the list of attorneys. The staff attorney (or public defender) program is a legal aid delivery model wherein attorneys-at-law are employed as full-time staff members at a special institution and are tasked to provide legal aid services. Under the third model (contracting system), law firms, non-governmental organization (NGO) or university-based legal clinics, after having submitted their bids, enter into contract with the state agency authorized to spend legal aid funds and responsible to provide legal representation to specific category of defendants in a given jurisdiction.

You have to know the Rules of the Game to be eligible

Law on Free Legal Aid in the Republic of Macedonia stipulates different types of legal aid, those being: 1) *preliminary legal aid* rendered by authorized officers at regional offices of the Ministry and by authorized citizens' associations and 2) *legal aid* in procedure. Preliminary legal aid includes: initial legal advice on the right to free legal aid; general legal information and legal aid in completing free legal aid applications; whereas *legal aid in procedures* led in front of competent bodies and organizations and provided by attorneys-at-law includes representation at all instances in judicial and administrative procedures, and preparation of writs in judicial and administrative procedures.

Notably, NGOs are given the possibility to provide only preliminary legal aid (*often seen as "insignificant" legal aid cases*), whereby they are entitled to serve as bridge between the free legal aid system and beneficiaries. NGOs long-standing experience and competences are often underestimated and ignored, despite their capacities and eagerness to contribute to the pool of legal aid providers.

Neglected is also the fact that NGOs can perform complex legal matter as well. It seems that the Macedonian free legal aid policy does not fully understand the importance of an efficient legal advice system in everyday legal problems. The biggest concern is the burden levied to and requirements that NGOs have to fulfil in order to obtain the status of legal aid providers. Considering the specific historical and present situation in the country, the role of NGOs that provide legal aid in general and to specific groups of society must not be overseen or undermined.

Also, when defining legal aid providers and types of legal aid they provide, due consideration should be made of the social context and certain practical circumstances. The emphasis is on NGOs' role in this process. In the past twenty years, it was the NGOs that carried the most, if not the entire, burden in the area of free legal aid in Macedonia (which is most probably true for the entire region). Regardless of the possible negative perception held by the general public in regard to NGOs' role, it should be recognized that NGOs have played a crucial role in protecting interests of disenfranchised social groups and individuals. In fact, NGOs continue to play a dominant role in protection of refugees, internally displaced persons, victims of domestic violence, victims of discrimination,

victims of human trafficking, asylum seekers, disabled individuals and senior citizens, Roma and members of other minority ethnic groups.

In order to support NGOs efforts to provide legal aid by representing beneficiaries in front of courts and administrative bodies beyond the scope of preliminary legal aid, and for the purpose of diversifying the pool of legal aid providers, the legislator needs to consider studies on clustered needs of certain social groups⁶⁶. The studies show that needs of disenfranchised groups, such as the groups listed above, are grouped in clusters and intertwined. Consequently, it is sometimes impossible to separate these groups' needs for psychological and social support from their legal aid needs, for example. In fact, sometimes their legal aid needs are masked by their need for other forms of support and aid. For the purpose of providing legal aid under those circumstances, it is necessary to first identify and resolve other outstanding issues. It is exactly NGOs that have accumulated experience and expertise in dealing with clustered needs of disadvantaged social groups⁶⁷.

Comparison of experiences from other countries in the region provides a good example thereof. In Hungary, NGOs and legal clinics are included in the pool of legal aid providers⁶⁸. Free Legal Aid Laws in Bosnia and Herzegovina and Croatia⁶⁹ also include NGOs as legal aid providers.⁷⁰

Most legal aid needs of citizens can be easily met with information, brief assistance, help in filling out forms, drafting various submissions, etc. Legal aid NGOs are often in the best position to provide these services in an efficient and effective manner, notably because all of their work involves assisting low income and disadvantaged individuals.

⁶⁶ See Richard Moorhead, Cardiff University "Coping with Clusters? Legal Problems Clusters in Solicitors and Advice Agencies" published in *Legal Aid: A New Beginning - The International legal Aid Group*, 6-8 June 2007, Antwerpen, The University of Antwerpen.

⁶⁷ See the document presented at Review Conference 2010, Warsaw, 30 September - 8 October 2010. Side Event called "Free Legal Aid for Refugees and Displaced Persons on the Territory of Bosnia and Herzegovina, Montenegro, Croatia and Serbia" brief document, October 2010.

⁶⁸ See, Legal Aid Law www.kih.gov.hu/alaptev/nepugyvvedje/jogszabalyok/2003eviLXXXtv.html;

⁶⁹ In Croatia, legal aid is also divided in two forms, primary and secondary legal aid. Primary legal aid includes legal advice, written submissions in administrative proceedings and representation in administrative proceedings, legal aid in out of court proceedings, and representation before the European Court of Human Rights and international organizations. Primary legal aid is rendered by attorneys-at-law, authorized NGOs, trade unions and legal clinics. Secondary legal aid includes in court representation, legal aid for peaceful resolution of disputes before courts (mediation) and written submissions in court proceedings. Secondary legal aid is solely rendered by attorneys-at-law.

⁷⁰ www.vasaprava.org;

Finding a balance between preliminary legal aid and (secondary) legal aid is almost always problematic. Distinguishing between preliminary legal aid and (secondary) legal aid is sometimes challenging, notably because their implementation in reality will be a problem. According to legal provisions in effect, legal aid beneficiaries are entitled to preliminary legal aid from legal aid NGOs, and should their case require follow-up actions, they are referred to private attorneys-at-law.

The idea is that legal aid providers that are initially acquainted with beneficiary's case should be allowed to follow-up the case and perform all legal actions on his/her behalf, including submissions and legal representation.

What will happen if some beneficiaries request legal aid NGOs to complete an application, for example in an administrative procedure on social allowances and later need legal representation before the institution? Will his/hers case be transferred to a private attorney-at-law?

Having in mind the previously said, in some cases it is expected that legal aid NGOs will be writing different kind of submissions (for example, lawsuits, complaints etc.), especially in the area of their expertise. According to the current wording in Article 6 of the LFLA, unclear is whether in such cases the legal aid authorized associations will be compensated for their services, notably because the current wording and understanding of Article 6 indicates that these services are beyond the scope of *preliminary legal aid*, or they will refer the beneficiary to another legal aid provider.

It is therefore recommended for legislators to recognize legal aid NGOs as providers of full range of legal aid actions, as required by international standards⁷¹.

Free legal aid anticipated under LFLA does not apply in cases of mandatory defence as stipulated in the Criminal Procedure Code and the Law on Juvenile Justice, and it does not imply exemption from payment of procedure-related costs stipulated in the Law on Litigation Procedure and the Law on General and Administrative Procedure.

⁷¹ For example, Council of Europe's Committee of Ministers requires states to progressively implement legal aid systems by targeting all relevant individuals, natural persons that cannot afford to pay for legal assistance; targeting all types of relevant cases (that is social welfare, fiscal, civil matters, administrative matters, according to the respective procedure; and requesting legal aid to be rendered by independent legal professionals and/or organizations, that should be encouraged to provide legal aid services to persons in disadvantaged situation with financial support and assistance provided by the State, including NGOs and bar chambers.

LFLA stipulates a single procedure on free legal aid application, but excludes criminal cases and other cases. Proposed procedure neglects the facts that there is significant number of criminal case defendants who seek legal aid and who should be included in LFLA's provisions.

While the described procedure is adequate for non-criminal matters, one should have in mind that should the Law enable legal aid in criminal cases, it will not be effective enough to secure legal aid for suspects and accused. Obviously, promptness is of essential importance in criminal investigations. Absence of legal aid in criminal cases could lead to contradictory principles of fair trial. Therefore, it is necessary to consider the possibility for designing special procedures on reconsidering free legal aid applications submitted by suspects and accused.

Furthermore, Article 7 stipulates that right to free legal aid does not include the right to exemption from payment of court or administrative fees. This restriction may prevent access to judicial and other procedures for impoverished individuals and therefore limits free legal aid program's positive social impact, unless the legislation of Republic of Macedonia does not contain specific provisions that enable exemption from payment of court or administrative fees for categories of applicants who will be free legal aid beneficiaries, in compliance with LFLA. Thus, the approach applied by responsible authorities should verify that existing legislation provides exemptions from payment of court or administrative fees and determine whether such exemptions will be applicable to possible beneficiaries of free legal aid. When granted free legal aid, beneficiaries thereof should be exempted from payment of court or administrative fees.

According to LFLA provision, the free legal aid application will be approved in all judicial and administrative procedures, provided that it resolves an issue of interest for the legal aid applicant (Article 8). LFLA also stipulates possible cases eligible for free legal aid (rights in the field of social, health, pension or disability insurance, labour relations, protection of children and juveniles, victims of domestic violence, protection of victims of criminal acts, protection of victims of human-trafficking and property tenure issues). LFLA's list of cases eligible for free legal aid should be expanded to include various court and administrative procedures, depending on the case, but also enforcement of procedural law and non-litigation procedure (for example, probate procedure, procedure on waiving person's legal capacity and other non-litigation procedures). This should be clearly stipulated and explained in detail.

If legal aid is not limited only to judicial procedures, it would result in increased positive social outcomes of the free legal aid program, notably because enforcement of judgments is an integral part of the right to fair trial, while non-litigation proceedings may be of crucial importance in regard to determining rights and obligations of individuals.

The Law does not refer to cases on indemnity claims. For example, obvious is that public funds will not be spent on extending legal aid in cases related to defamation. However, the possibility for indemnity in certain cases is very important for the individual and his/her family and for the purpose of maintaining justice and the rule of law. For example, indemnity payment for damages inflicted to an employee in a labour-related accident could serve as tool to prevent impoverishment of the injured individual and his/her family. Failure to stipulate these cases or exemption of such cases from the free legal aid program's scope may have negative social consequences. The mechanism in place is not sufficient to secure access to justice for all individuals seeking legal aid in cases other than those stipulated under LFLA. Therefore, it is recommended to consider the possibility for inclusion of impoverished victims of crimes in the list of free legal aid beneficiaries, as well as to redefine the list of cases, grounds and proceedings in which poor people are eligible for legal aid.

While LFLA stipulates that free legal aid will not be approved in matters which are clearly unreasonable or do not imply legal grounds on whose basis legal actions can be taken, this - on the other hand - can become a real challenge. While those may be good reasons not to take a case, it is often hard to determine the chances of success or the purpose thereof in an eligibility interview. In addition, people reviewing eligibility of applicants may not have the skills to assess legal merits of a certain case. Except in the clearest cases, the person requesting legal aid should be given chance to review the case with an attorney-at-law. Proof of criterion on obvious justifiability may be problematic for applicants, since it is unclear what type of evidence they need to present in order to pass this test. This article should however be more accurately defined in order to provide guaranties that beneficiary's case will be thoroughly assessed before the free legal aid application is approved or rejected. Further stipulation of the broad meaning of "clearly unreasonable or are not supported by legal facts on the basis of which a legal actions can be taken" (Article 9) is recommended to avoid any abuse of this provision for the purpose of rejecting free legal aid for potential beneficiaries.

Legal aid beneficiaries and eligibility criteria

In compliance with LFLA, the right to free legal aid is granted to a person who due to his/her financial situation is unable to exercise the rights guaranteed by the Constitution and the laws, without endangering their own sustenance and the sustenance of their household members.

Citizens of the Republic of Macedonia with permanent residence on its territory have the right to free legal aid, those being: beneficiaries of social allowance, beneficiaries of disability allowance who do not generate other income based on earnings or property revenue, beneficiaries of the lowest pension allowance who live in household with two or more dependants, and families or single parents with one or more minors entitled to child support allowance.

LFLA stipulates that right to free legal aid is also granted to: persons whose asylum application has been approved, internally displaced person, as well as displaced or exiled persons with temporary residence on the territory of the Republic of Macedonia; foreign nationals, who in accordance with the international agreements and regardless of their permanent or temporary residence on the territory of the Republic of Macedonia exercises their rights falling under the competences of state authorities in the Republic of Macedonia; stateless people with legal residence in the Republic of Macedonia; and citizens of EU Member States, under terms and conditions and in manner stipulated by LFLA.

This provision is similar to the provision from the Croatian Legal Aid Act⁷² and Bosnia and Herzegovina's draft proposal for the Law on Legal Aid. Macedonian LFLA somewhat resembles the Croatian Legal Aid Act, but the Croatian system cannot be taken as replication model for established national or international legal aid system. It is quite unique, especially insofar that it encompasses a complex filtering mechanism that uses vouchers for simple and inexpensive forms of legal assistance, such as legal advice and other forms of preliminary legal aid. This may also be one of its unique weaknesses.⁷³

⁷² Legal aid beneficiaries in Croatia include: citizens of Croatia, aliens with temporary residence permit, aliens with permanent residence permit, asylum seekers, aliens under subsidiary international protection, and aliens under temporary protection, alien minors who are found on the territory of Croatia, with or without parental escort or legal representative.

⁷³ Document "Evaluation of the Croatian Legal Aid Act and Its Implementation", October-December 2010.

According to the Macedonian LFLA, it is considered that the free legal aid applicant's sustenance and the sustenance of his/her household members is endangered when the income generated by the person and his/her household members do not exceed 50% of the average monthly salary paid in the Republic of Macedonia for the previous month, at the time when the free legal aid application was submitted.

The income of the free legal aid applicant can be assessed individually, provided there are conflicting family interests in a dispute for which free legal aid was requested.

The Ministry of justice is tasked to obtain information from the Centre for Social Work, in particular related to beneficiaries of social allowance or disability allowance who do not generate income on the basis of earnings or in relation to beneficiaries of child support allowance.

Free legal aid applicant's financial status is determined on the basis of evidence issued by an authority competent thereof, pursuant to data on the person's income earned on all grounds, as well as data for his/her household members and the declarations on his/her material and social status for a period of six months before the application's submission.

This provision is unclear, because it does not stipulate whether the free legal aid applicant is responsible to provide information and evidence (evidence issued by competent authority on the person's financial status) that would confirm his/her eligibility for free legal aid. Apparently, applicants may face serious difficulties in their attempt to demonstrate their indigent status, for example, securing evidence on their household's living costs. Moreover, applicants are held materially and criminally accountable for the accuracy of data indicated in the free legal aid application⁷⁴.

In the absence of clear instructions on the type of evidence that will be considered, the use of complicated financial test and obvious justifiability test may prevent access to the free legal aid program for most vulnerable applicants (low level of education and like) or provoke arbitrariness in approval of free legal aid applications.

According to the Macedonian LFLA, exceptions from the entire movable and immovable property considered as income of free legal aid applicants, or his/her household members include: child support allowance, disability allowance, care provider allowance, scholarships

⁷⁴ See Article 20 of the LFLA.

and other allowances disbursed for education and professional training, funds disbursed as assistance to overcome consequences from natural disasters, redress disbursed for reduced life activity, redress disbursed on the grounds of previously unjustified convictions or unlawfully detention and funds approved by competent institution and intended for medical treatment abroad.

In addition, free legal aid is not approved if the applicant or his/her family members from the joint household dispose with property equal to or exceeding five average monthly gross salaries paid in the Republic of Macedonia for the previous month.

Items which in compliance with the Execution Law are exempted therefrom and motor vehicles whose value does not exceed five average gross monthly salaries in the Republic of Macedonia for the previous month are not considered property in the sense of the previous paragraph.

As regards property allowed in line with the number of average salaries, a methodology needs to be established and the legislative text needs to be harmonized, because the average gross salary is used as basis to determine the value of property owned, while the total monthly income is calculated on the basis of net salary. If relevant interventions are not pursued in this regard, the current text of the Law will lose the purpose for which it was adopted and will be applied only in cases of extreme poverty⁷⁵.

As explained in the text above, financial eligibility criteria for free legal aid are extensive and too detailed. While all the criteria may be valid, obvious is that there are many people with very low incomes and no property, but who are clearly eligible for free legal aid.

The decision-taking process on approving free legal aid provisions should be as simple as possible and recognize the reality that in many cases there will be no real doubt about the applicant's eligibility.

Establishing a system whereby regional offices of the Ministry of Justice are tasked to verify applicants' eligibility will be costly and will unduly postpone the process.

Thus, due consideration should be made on establishing a simplified system, such as a system that will include legal aid NGOs or perhaps private attorneys-at-law, who will obtain the information needed on verifying

⁷⁵ Report on Implementation of the Law on Free Legal Aid implementation in Macedonia, March 2011.

applicants' eligibility, while the Ministry of Justice would perform regular supervision over legal aid providers' operation.

Regardless of the system established for applicants' eligibility, the decision-making process on whether applicants can benefit from information or assistance in completing documents needed for a procedure should be much simpler than the decision-making process on applicants' eligibility to benefit from assistance provided by attorney-at-law in court procedures.

Some systems distinguish between legal aid services and divide them into primary and secondary legal aid, where primary legal aid includes information and legal advice. Often, these services are provided to all applicants and are not subject to fulfilment of eligibility criteria.

In particular, LFLA stipulates access to applicant's financial status and the financial status of his/her household. This approach is in the line with best practices applied by legal aid programs in other countries.

Additional guarantees on legal aid provision for those in need would be additionally secured by LFLA, provided it includes a specific article that will stipulate that the decision on approving free legal aid depends not only on the applicant family's income and property, but also on his/her costs of living and liabilities.

Thus, a person should be entitled to free legal aid if it has been determined that his/her liabilities exceed his/her total income or that his/her income insignificantly exceeds the amount due as liabilities. This seems to be appropriate given the poverty rate, unemployment rate and total average income in Macedonia⁷⁶.

With this in mind, LFLA does not contain a provision that would allow for exempting portion of legal aid costs for those individuals who have certain means of sustenance, but not enough to cover all expenses related to legal representation and advice. Such approach is effective, since it helps "save"

⁷⁶http://siteresources.worldbank.org/INTMACEDONIA/Resources/Macedonia_Country_Snapshot_September_2011.pdf - **Poverty and Social Protection**. Although the impact of the global economic crisis was less severe compared with most countries in the region, living conditions were impacted by reduced access to finance and stagnating labour markets. According to the 2009 Household Budget Survey (the most recent available), the absolute poverty rate increased to 26.6 percent. The increase was driven by increases in rural poverty (from 27.5 to 36.4 percent), reflecting declining employment in agriculture and food prices. The 2009 HBS also shows extreme poverty increasing to 8 percent. Although the official unemployment rate fell slightly from 34 percent in 2008 to 32.4 percent in 2009, newly created jobs were predominantly low-paid. Significant improvements are not likely to have taken place in 2010 given the sluggish personal consumption and non-improving labour markets. With a somewhat stronger recovery in 2011 and higher spending on decently performing social transfers (CCT, extreme poverty), the poverty rate may decline.

public funds without excluding from the free legal aid program families with certain means of sustenance, but insufficient to cover all legal aid costs.

Several European legal aid schemes use contribution systems⁷⁷. People who dispose with certain assets are covered by the legal aid program, but have to settle portion of costs themselves. Different types of contributions are used: basic contributions must be paid in advance and the scheme usually covers expenses that exceed these basic contributions. Percentage contributions mean that the applicant has to pay a share of total costs. These percentages can be progressive, in the sense that people with more assets will pay higher share of costs compared to applicants with less assets. Third type is maximum contributions. They define the upper limit for percentage contributions. All costs that exceed the maximum contribution defined are covered by the government.

Contributions mean that economic criteria become more complex, notably because separate economic limits must be established for contributions. The poorest portion of the population does not pay contributions or pays only basic contributions, while the most affluent of those who qualify might pay almost all ordinary costs themselves. For them, legal aid mainly functions as protection against exorbitant legal costs, as demonstrated in the case *Steel and Morris*⁷⁸. Since the contribution system lowers average costs per legal aid case, it makes it possible for larger part of the population to be included in the scheme, rather than to allow all beneficiaries to receive free services, without increasing costs.

In addition, the above-indicated problem with eligibility criteria can be best demonstrated in the Croatian legal aid system, wherein eligibility requirements for free legal aid are not in line with population's difficult economic status, social status and current living condition. If respective provisions from the Croatian Legal Aid Act that concern evidence on house or flat ownership are implemented in strict manner and if it has been determined that the property is m² bigger than the minimum prescribed, disadvantaged or poor people will be disqualified to benefit from legal aid at the very start.

For example, people whose house or flat exceeds the stipulated limit (according to the Law, sufficient living space is 35m² for the legal aid applicant, plus additional 10m² for every household member) will not fulfil requirements on legal aid approval, irrespective of the fact whether they earn income or their income is low and insufficient to settle all living costs.

⁷⁷ Document
**“Evaluation of
 Croatian Legal
 Aid Act and Its
 Implementation”,
 October-
 December 2010.**

⁷⁸ <http://www.statewatch.org/news/2005/feb/case-of-steel-and-morris.pdf>

Exercising the right to free legal aid

Free legal aid covers procedure-related costs that occurred after the day when the free legal aid application was approved and legal aid actions taken after the day when free legal aid was approved.

This provision needs to be aligned with the reality, wherein applicants/potential beneficiaries of legal aid seek such services in urgent matters or in cases with short deadlines for legal actions (most often, these include submissions of writs, complaints, appeals, lawsuits in civil procedures or in administrative dispute). In these cases if the applicant is provided legal aid before the day when his/her free legal aid application is approved, he/she would not be entitled to reclaim expenses incurred for the legal aid provided.

If such cases occur, and they will, then the legal provision should stipulate that under such circumstances legal aid providers are entitled to provide the legal aid requested upon examining the applicant/beneficiary's case and his/her fulfilment of eligibility criteria.

Preliminary legal aid is provided by authorized officers at regional offices of the Ministry and authorized citizens' associations enlisted in the Registry of Citizens' Associations Providing Preliminary Legal Aid. Citizens' associations can render preliminary legal aid provided they meet terms and conditions stipulated under the Law, those being: to be enlisted in the Registry of Citizens' Associations at the Central Register of the Republic of Macedonia; to have at least one employed lawyer with passed Bar Exam; the association's founding act and statute to include a goal on provision of preliminary legal assistance in the field of their operation; and to have signed a liability insurance covering possible redress from advice provided under minimum insurance policy/insurance premium.

LFLA's provision on terms and conditions to be fulfilled by associations resembles the provision from the Croatian Legal Aid Act which establishes a legal aid delivery system. Croatian Legal Aid Act recognises three categories of legal aid providers: attorneys-at-law, authorized associations and higher education institutions, through their legal clinics. Associations that wish to provide legal aid must register with the Ministry of Justice. Lawyers hired by associations must hold a law degree, have passed the Bar Exam, have at least two years of professional experience and be insured against liability. They are obliged to provide preliminary legal aid. According to statistical data from the Ministry

of Justice in Croatia, in 2009, 30 associations and one legal clinic applied for registration and 22 associations and one legal clinic were approved as legal aid providers⁷⁹.

According to the Macedonian LFLA, regional offices of the Ministry of Justice can provide preliminary legal aid, provided they fulfil terms and conditions stipulated under the Law, which are similar to requirements stipulated for authorized citizens' associations.

As for the liability of the Ministry of Justice, LFLA stipulates (Article 18) that in cases of damages caused in the provision of preliminary legal aid the redress thereof falls on the burden of the Budget of the Republic of Macedonia. In terms of liability, this provision puts the two different legal aid providers (Ministry of Justice and authorized citizens' associations) in unfair and unreasonably justified position. Authorized citizens' associations must sign liability insurance that would cover possible redress for damages caused by legal advice in the minimum insurance policy/insurance premium and financed with their own funds. On the other hand, in cases of damages caused by the Ministry of Justice the redress amount will be fully covered by the Budget of the Republic of Macedonia.

The general idea behind insuring legal aid providers in cases of damages caused to third parties is welcomed, however, LFLA provisions in effect provide for serious favourable treatment of state institutions, notably because the state budget is a guarantee for damages caused, while in the case of other legal aid providers their liability depends on their financial power to buy the insurance policy.

Such favourable treatment of state institutions should be avoided and same rules should equally apply to all legal aid providers. Amendments to these provisions are seriously recommended with a view to establish equal liability for all legal

⁷⁹ Document “**Evaluation of Croatian Legal Aid Act and Its Implementation**”, **October-December 2010, page 35**. Authors of this evaluation document provide an interesting opinion when they ... „think that legal problems and legal alienation is widespread in Croatia as elsewhere and that the *capacity* of the legal aid system is highly insufficient also among the jurisdictions that have the highest numbers of legal aid cases per citizen. It is therefore important that eligibility criteria and other quality measures do not exclude possible providers that possess sufficient competence to provide reliable and cheap advice in specific areas of law -- for example consumer matters, health and welfare benefits, immigration issues, resettlement procedures, minority protection and anti-discrimination issues, ecology, matters regarding family violence and other family relations, typical problems of the witnesses and victims of crime etc. Especially in the UK, a variety of first line services staffed with non-lawyers exist and handle both legal and non-legal problems and refer the more complicated ones to the legal specialists. Associations usually focus their activities on certain issues according to their purpose and goals and deliver services to their members and the public within their field of work. In several European countries, they also deliver legal services, but usually limit them to legal issues that are within their field of work. We think it less fruitful to oblige the associations to provide service in all categories of cases covered by CLAA. They should be allowed to specialize in accordance with the working field of their organization, if they so wish.

aid providers. Given that all tax payers (NGOs included) are net contributors in the state budget, they should all enjoy budget returns in similar manner, without favouring certain groups of legal aid providers.

On the other hand, LFLA stipulates the prohibition for free legal aid advertising whereby authorized citizens' association cannot use any form of advertisement for their provision of preliminary legal aid.

For the purpose of publicising free legal aid among potential beneficiaries, this legal provision further stipulates the obligation of Ministry of Justice to inform citizens on the right to and manner of benefiting from preliminary legal aid through media outlets (printed and electronic), as well as to publish updated list of authorized citizens' associations providing free legal aid.

Many countries in the region prohibited advertising of professional attorneys-at-law's services, which is strictly implemented by Bar Chambers. LFLA's provision that stipulates prohibition of advertising for authorized citizens' association in relation to provision of free legal aid is likely routed in this practice. However, from practical point of view, prohibiting advertisement of legal aid and providers thereof often has negative effects on people targeted by the legal aid program. Research and experiences from other countries show that potential beneficiaries lack basic and practical information on the existence of legal aid schemes, eligibility criteria, where to seek legal aid, legal aid providers, etc.

When poor people lack knowledge of such important information, the decision on seeking legal services (and often bargaining with attorneys-at-law for prices lower than those set in Bar Associations' Tariff Codes) is based on their knowledge of market prices, which are often deemed unaffordable. Many poor people are afraid to approach attorneys-at-law, notably because they believe that the latter are not interested in their legal problems. As regards associations (NGOS), the risk of misleading advertising seems limited, since they are non-profit organizations⁸⁰. Thus, it is strongly proposed to amend this provision with a view to allow advertising of the Law on Free Legal Aid, notably by means of specifically tailored information sessions and awareness raising campaigns aimed to promote access to justice through legal aid.

According to LFLA, in order to benefit from fee legal aid, applicants need to submit free legal aid applications to competent regional office of the

⁸⁰ See "Evaluation of Croatian Legal Aid Act and Its Implementation", October-December 2010. In Croatia, the very low and uneven use of Croatian Legal Aid Act during its first year of implementation shows that those findings are applicable on Croatia. It is paramount to efficient use of Croatian Legal Aid Act that information campaigns are launched and that the SLOs, other information services and other instances that get in touch with potential users also inform them about legal aid. In this respect the prohibition on advertising seems counter-productive.

Ministry, in person or by mail, on a template stipulated by the Minister. In addition, the applicant attaches a written declaration signed by him/her and his/her family members from the joint household with whom he/she bears the costs of living for their total movable and immovable property, as well as a permit that allows insight in all data related to their property status. Exemption from this rule is granted in cases when the free legal aid applicant is victim of domestic violence, and thus the declaration referred above is submitted in person and need not to be signed by applicant's family members from the joint household, and immediate actions are taken upon the application.

Under the procedure on applying for free legal aid, authorized officers at the regional office of the Ministry of Justice are obliged to immediately deal the applications, making due consideration of the dispute's urgency in the respective procedure and to complete the application and submit it to the Ministry not later than 12 days from the application's receipt. On the request of the Ministry, the competent authority for property status is obliged to immediately and no later than three days provide requested data related to applicant's property status.

This provision additionally complicates and unreasonably delays the decision-making process. From practical reasons, due consideration should be made of the fact that some people (those living in major urban centres) might be able to easily access offices to apply for free legal aid, but not all people seeking legal aid live in vicinity of Ministry of Justice's regional offices. Many people who live in remote areas will always see visiting the offices as challenge and financial burden. Such distances and time necessary to decide on free legal aid applications, together with the bureaucratic referral mechanism at the Ministry that takes up to 20 days, is not going to work in reality. Upon the submission of free legal aid application, the Ministry is obligation to act upon it within a deadline of eight days from the application's receipt at Ministry's regional office, in that making due consideration of the dispute's urgency in the respective procedure. The Minister takes a decision on approving or rejecting the free legal aid application.

Establishment of the system of regional offices tasked to deal with free legal aid applications and referring them to head office at the Ministry of Justice for the purpose of determining the applicant's eligibility will be costly and will render the process time-consuming. As argued above, consideration should be made for establishing a simplified system, notably because

better effects would be achieved if legal aid providers are authorized to decide on applicant's eligibility, while the Ministry of Justice (or Legal Aid Board, if established) will be authorized to monitor and assess proper implementation of eligibility criteria.

The general proposal is to reconsider the idea on establishing a Legal Aid Board, which will be competent to monitor and supervise the overall performance of the free legal aid system. Subsequently, as argued under previous recommendations, exclusion of the Ministry of Justice from the lists of legal aid providers seems to be adequate. Moreover, it is recommended for legal aid providers to be allowed to perform field visits and decide on applicant's eligibility.

LFLA stipulates that unsatisfied legal aid applicants are entitled to motion an administrative dispute in front of the competent court against the decision on rejecting the free legal aid application.

Unclear is whether these applicants will be exempted from payment of court administrative fees when they motion an administrative dispute against the decision on rejecting the free legal aid application. Article 20 (6) of the LFLA stipulates that "no administrative fees will be levied" for the procedure on free legal aid. However, unclear is whether this applies also to procedures motioned against the decision on rejecting the application and therefore this provision needs to be further specified and explained. In most cases, the fact that people do not have the means to pay court fees to initiate an administrative procedure before a competent court against the decision on rejecting the free legal aid application poses an obstacle to further judicial review of rejected legal aid applications.

Establishment of different system for reviewing potential rejected applications is recommended, notably by introducing a second-instance review system for appealed applications in administrative procedures. Only after this system confirms the first-instance decision, the applicants should be entitled to motion an administrative dispute in front of the Administrative Court.

LFLA stipulates that in cases of approved legal aid, beneficiary's choice of attorney-at-law should be respected, when possible. The Ministry, in cooperation with the beneficiary, determines the attorney-at-law who will provide legal aid. In cases when the relevant Bar Association does not have enlisted attorneys-at-law in Registry of Attorneys-At-Law Providing Free

Legal Aid, the Ministry appoints an attorney-at-law from the nearest Bar Association and enlisted in the relevant Registry.

The free legal aid beneficiary should be given the right to choose the legal aid provider. In order to avoid subjective approach in appointing the legal aid provider, it is always better to have the beneficiary choose his/her own legal aid provider, the one he/she trust will provide the best legal services in the specific case. In this context, appropriate is for the body authorized to decide on free legal aid applications not to be given possibilities to influence the beneficiary's choice of legal aid provider. This can be avoided by providing the beneficiaries with a list of legal aid providers wherefrom they can freely choose their legal aid provider.

Croatian practices could serve as good example in this regard, notably because the Croatian Legal Aid Act advocates for free selection of legal aid providers once the free legal aid application is approved.⁸¹

After the free legal aid application is approved, the beneficiary must fulfil all requirements throughout the entire procedure for which the legal aid was granted and until its legally enforceable conclusion. Thus, beneficiaries are obliged to immediately inform the Ministry on any changes that have occurred and that can affect the exercise of that right within a period of eight days from the time the relevant changes have occurred the latest. If the beneficiary fails to inform the Ministry on changes that affect the exercise of this right within the stipulated deadline, the Ministry can decide to discontinue the provision of legal aid and to terminate the exercise of the right to free legal aid. Moreover, the Ministry can claim reimbursement of costs incurred for the legal aid in court procedure.

This provision should be completely revised with a view to stipulate that in cases when the beneficiary's financial status has improved to a certain extent, he/she will be obliged to refund small portion of legal aid costs related to court and administrative fees that fall on the burden of the budget, and only if the said amount has not been settled by the other party in the dispute.

⁸¹ See Article 30 of the Croatian Legal Aid Act. In general, Croatian system relies on so called orders (*uputnica*) that are certifying fulfilment of legal aid eligibility requirements. However, the issued order as such does not determine the legal aid provider: the beneficiary of legal aid should freely choose the legal aid provider, bearing in mind the provider's competences to offer specific forms of legal aid. This means that the applicant has to find herself/himself the appropriate attorney or other legal aid provider, without any reference by the State Administration Office or other body.

Additional problem related to decision-taking on discontinuing the exercise of the right to free legal aid is the absence of efficient legal protection in appeal procedure. Instead, applicants whose applications have been rejected are directed to seek exercise of their right under time-consuming administrative and judicial procedures.

Simple mechanism on legal remedy should be established, wherein applicants will be able to appeal such decisions. This would be a much better solution rather than the applicant's referral to administrative dispute in front of a competent court. Otherwise, courts that are generally overloaded will be burdened with relatively new type of cases that are not so difficult to be decided by, for example, the Legal Aid Board, which will act as second instance body. However, judicial review of decisions taken to terminate legal aid should not be fully excluded.

Article 26 (2) of the LFLA stipulates that if it has been established that the free legal aid applicant provided erroneous data for the purpose of exercising the right to free legal aid, by means of a decision he/she will not be allowed to exercise this right or submit a new application within a period of six months following the day the decision was adopted. This provision whereby applicants are denied the right to re-apply for free legal aid within a period of six month is contrary to the overall idea behind the legal aid concept, i.e., to secure access to justice.

GENERAL REMARKS

- LFLA should be amended with a view to accommodate citizens' needs for free legal aid

The Law provides a solid basis for the establishment of free legal aid in Republic of Macedonia. However, certain provisions therein should be amended and expanded, to the extent discussed above. Amendments imply establishment of efficient system on legal aid provision, accurate definition of legal aid providers, establishment of righteous eligibility criteria, and responsibility assignment for legal aid system management. Accompanied with sufficient changes in funding, this Law can make an important contribution to protection of citizens' rights in Macedonia.

- Establishment of Legal Aid Board as monitoring and governing body

At the moment, the Ministry of Justice is fully authorized and responsible for the entire free legal aid system. One of the primary characteristics of an effective system on access to justice is provision of independent attorneys-at-law who can freely advocate for their clients' interests. In cases of publicly funded legal aid, there is always potential for conflict of interest because the state pays attorneys-at-law. However, that conflict can be avoided or minimized by ensuring that free legal aid system has a degree of independence. This is typically done by establishing a Legal Aid Board, or other governing body, tasked to supervise the system's operation. The possibility for establishment of such system under the Macedonian free legal aid program should be reconsidered.

- Finances

In all countries, legal aid needs are greater than the scope thereof which can be met with available funding. In order to guarantee that legal aid is provided in administrative, civil and criminal matters, amendments

are needed under LFLA or budgeting regulations of relevant bodies, which will also necessitate the establishment of legal aid fund and utilization of certain portion of budget funds to support the free legal aid program. In order to make best use of funds available, any legal aid system must operate as efficiently as possible. One way to do that is to clearly authorize legal aid NGOs to provide such services.

- Preliminary legal aid associations

Associations are often able to provide services more effectively and at less cost than government or private attorneys-at-law. In addition, the process on verifying applicant's eligibility for legal aid should be as simple as possible, while still guaranteeing that legal aid is provided only to eligible individuals. Much of legal aid needs can be met with information, assistance in completing documents needed for the specific case, assistance in filling out forms and drafting letters. Due to the fact that their work involves assistance to low income and disadvantaged individuals, NGOs are often in the best position to provide these services in an efficient and effective manner.

- Eligibility criteria and decisions

Financial eligibility criteria for legal aid are too extensive and detailed. While all criteria may be valid, obvious is that there are many people with very low income and no property that are clearly eligible for free legal aid. The decision-taking process on approving free legal aid provisions should be as simple as possible and recognize the reality that in many cases there will be no real doubt about the applicant's eligibility. Establishing a system whereby regional offices of the Ministry of Justice are tasked to verify applicants' eligibility will be costly and will unduly postpone the process. Due consideration should be made on establishing a simplified system, such as a system that will include legal aid NGOs or perhaps private attorneys-at-law, who will obtain the information needed on verifying applicants' eligibility, while the Ministry of Justice would perform regular supervision over legal aid providers' operation to make sure the decisions are correct. Eligibility criteria should be in compliance with the general financial situation in the country, in order to provide legal aid for as many people in need as possible.

Annex:

Draft Amendments to the Law on Free Legal Aid

Article 1

In Article 3, paragraph 1, item 1, the word “four” shall be replaced by “three”. In Article 3, paragraph 1, item 2 the phrase “cash flow in domestic or foreign currency” shall be deleted.

In Article 3, paragraph 1, after item 2 new item 3 shall be added as follows: “3 . “Minimum residential area” shall mean apartment or house of 35m² floor area for one person, increased by 10m² for every additional person, and a possible concession of 10m²”.

Items 3, 4, 5 and 6 shall become items 4, 5, 6 and 7.

Article 2

In Article 6 paragraph 1, item 1, four new sub-items shall be added and shall read:

- legal advice;
- legal aid in preparation of writs submitted to state administration bodies and other state authorities, institutions and legal entities with public authorizations and in submission of appeals against decisions taken by above-referred bodies;
- submission of application for protection of human rights and freedoms in front of the Constitutional Court;
- submission of applications in front of the European Court of Human Rights.

In Article 6, item 4, lines 1 and 2, the words “and administrative procedures” shall be deleted.

Item 5 of the same article shall be amended and shall now read: “attorneys-at-law shall provide legal aid”.

Article 4

Paragraph 2 of Article 8 shall be deleted.

After paragraph 2, new paragraph 3 shall be added and shall read:

(1) In cases of domestic violence, free legal aid applicants shall not be obliged to fulfil the requirements stipulated in Article 12 paragraph 2 and Article 14 of this Law, when submitting their free legal aid applications.

Article 5

In Article 9, the words “are clearly unreasonable or” shall be deleted.

Article 6

In Article 10, the following shall be added after the word Ministry “and the regional offices of the Ministry of Justice, in urgent cases”.

Article 7

Paragraph 2 of Article 12 shall be amended and shall now read:

„(2) Pursuant to the present Law, citizens of the Republic of Macedonia with permanent residence on its territory shall be entitled to free legal aid provided they:

- fulfil criteria on benefiting from social allowance;
- fulfil criteria on benefiting from disability allowance and do not generate other income based on earnings or property revenue;
- fulfil criteria on benefiting from the lowest pension allowance and live in households with two or more dependents; and
- are families or single parents with one or more minors who are entitled to child support allowance.”

In Article 12, paragraph 4 the words “does not exceed 50%of” shall be deleted and the word “one” shall be added before the words “average monthly salary”.

Article 8

In Article 14, paragraph 1, after the words “joint household” the following words shall be added “except from the minimum residential area”.

Article 9

In Article 17, paragraph 1, item 2, the word “employed” shall be replaced by the word “contracted”, and in the final part of the sentence the full stop shall be deleted and the following words shall be added: “or a graduated lawyer, with at least three years working experience in the field of legal matters, by means of signing contract on legal aid provision.”

In Article 17, paragraph 1, item 3, words “founding act and” shall be deleted.

Article 10

Article 19, paragraph 1 shall be deleted and paragraphs 2 and 3 shall become paragraphs 1 and 2.

Article 11

In Article 20 paragraph 1, the number “12” shall be replaced by the number “8”.

After Article 20, paragraph 1, new paragraph 2 shall be added and shall read:

- (2) “In cases of domestic violence, the decision on approving free legal aid shall be adopted by the regional office of the Ministry of Justice, immediately or within 24 hours following the application’s submission”.

Paragraph 2 shall become paragraph 3.

Article 12

In Article 22, paragraph 1, the number “8” shall be replaced by the number “3”.

Article 13

In Article 30, paragraph 1, the words “founding act and” shall be deleted and the word “employed” shall be replaced by “contracted”.

Article 14

Article 32, paragraph 1, item 3 shall be deleted.

Article 15

In Article 36, paragraph 1, the words “reduced by 30%” shall be deleted.

Article 16

In Article 37, paragraph 1, the words “for which a decision was taken on approving the free legal aid application” shall be deleted.

After paragraph 1, new paragraph 2 shall be added and shall read:

“Ministry of Justice shall be obliged to settle the reimbursement of costs immediately or within 15 days the latest from the day the list of expenses was submitted by the authorized association.”



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MYLA

Macedonian Young Lawyers Association's mission is to unite the young lawyers and provide them continuous education with a view to improve the quality and professionalism of the legal community and promote the principle of the rule of law in the Republic of Macedonia. MYLA's strategic goals include:

- (1) professional guidance for young lawyers;
- (2) awareness raising among relevant actors in the legal community, notably in regard to young lawyers' potential;
- (3) familiarizing young lawyers with the underlying principles of professional code of conduct in regard to provision of high quality legal aid and legal services for citizens in the Republic of Macedonia;
- (4) establishing an integration system for young lawyers;
- (5) improving cooperation with relevant judicial institutions;
- (6) improved promotion of association's activities and work; and
- (7) establishing quality standards governing provision of legal aid and legal services offered by legal professionals to citizens in the Republic of Macedonia, in compliance with international and EU standards.



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