



ANALYSIS OF THE IMPLEMENTATION OF THE LAW ON FREE LEGAL AID 2010 - 2012

**Macedonian Young Lawyers Association – Skopje
National Roma Centrum – Kumanovo
Youth Cultural Centre – Bitola
ROMA S.O.S. – Prilep
Foundation Open Society – Macedonia**

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For the publisher:

Martina Smilevska, President of MYLA

Developed by:

GoceKocevski, MYLA
Dance Danilovska – Bajdevska, FOSM

In cooperation with:

Oliver Mitov, NRC
Vera Gogu, MKC Bitola
Kiril Todorovski, Roma S.O.S

Editors:

GoceKocevski, MYLA
Dance Danilovska – Bajdevska, FOSM

Reviewed by:

Tatjana Zoroska – Kamiloska, PhD, associate professor at the Faculty of Law “Iustinianus Primus”
Neda Zdraveva, PhD, assistant professor at the Faculty of Law “Iustinianus Primus”

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Abakus

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CONTENTS

FOREWORD	6
INTRODUCTION	8
METHODOLOGY	11
CHAPTER I: FREE LEGAL AID SYSTEM ESTABLISHED BY THE LAW ON FREE LEGAL AID	17
1. Adoption of the Law on Free Legal Aid	17
2. Constitutional framework	18
3. Institutional framework	20
CHAPTER II: KEY FINDINGS ON LFLA'S IMPLEMENTATION	23
1. Small number of free legal aid applications submitted ...	23
2. Twice as many rejected versus approved free legal aid applications	29
3. Preliminary legal aid versus legal aid in administrative and court procedures!?	34
4. Property tenure issues are among the most frequent needs of free legal aid beneficiaries	42
5. Three-fold requirements result in decimated number of potential free legal aid beneficiaries	50
6. Long and thorny road to exercising free legal aid	58
7. Towards an effective legal remedy for persons whose free legal aid applications have been rejected	65
8. Free legal aid providers: a vital link in the system or nec- essary decor!?	70
9. State funds allocated for free legal aid are halved from year to year	82

10. Final conclusions	87
CHAPTER III: TOWARDS QUALITY AND EFFICIENT LAW ON FREE LEGAL AID IN THE REPUBLIC OF MACEDONIA	90
1. Need for Law on Free Legal Aid	91
2. Categories of citizens which must be covered with the amendments to LFLA	94
3. Procedure on amending LFLA	98
4. Final recommendations	102
CHAPTER IV: ANNEXES	106
1. Overview of legal texts referenced in the development of this analysis	106
2. Overview of relevant international documents in the field of free legal aid	108
3. Websites as resources on the right to free legal aid ..	110
4. Overview of rulings taken by the European Court of Human Rights related to the right to free legal aid in civil procedures	111
5. Bibliography	123

ABBREVIATIONS

LFLA	Law on Free Legal Aid
MYLA	Macedonian Young Lawyers Association
FOSM	Foundation Open Society - Macedonia
NRC	National Roma Center – Kumanovo
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
LCP	Law on Civil Procedure
LGAP	Law on General Administrative Procedure
LCP	Law on Criminal Procedure
LPDI	Law on Pension and Disability Insurance
LSP	Law on Social Protection
UN	United Nations
LA	Law on Attorneyship
LAF	Law on Associations and Foundations
LAD	Law on Administrative Disputes
LF	Law on Family
LATP	Law on Asylum and Temporary Protection

FOREWORD

"Providing legal aid is costly. So is not providing legal aid." Murray Gleeson (1938), former Chief Justice of High Court of Australia

Third year in a row, during the implementation of the Law on Free Legal Aid in Macedonia, the Foundation Open Society – Macedonia (FOSM) has provided financial and program support to six associations in order to obtain authorization from the Ministry of Justice to provide preliminary legal aid to citizens. These associations implemented the project "Monitoring the Implementation of the Law on Free Legal Aid" which resulted in the present Analysis of the Implementation of the Law on Free Legal Aid in the period 2010 – 2012.

In the period 2010-2012, FOSM, Macedonian Young Lawyers' Association (MYLA), National Roma Centrum from Kumanovo, Youth Cultural Centre from Bitola, association Roma SOS from Prilep, association EHO from Stip and association Izbor from Strumica made continuous efforts to enable effective implementation of the Law on Free Legal Aid, and to ensure the 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, FOSM and the associations were focused on building the capacity of associations as free legal aid providers and on improving the communication with other stakeholders in the free legal aid system in Macedonia.

The analysis addresses problems and challenges faced by associations in the provision of preliminary legal aid to citizens, i.e., in the implementation of the Law on Free Legal Aid. The analysis identified weaknesses in and obstacles to the free legal aid system encountered by both, citizens and associations that wish to ob-

tain authorization for preliminary legal aid provision. Finally, the analysis includes recommendations to overcome and eliminate obstacles and weaknesses in the free legal aid system in Macedonia with a view to build more efficient system where citizens can fully exercise their right to equal access to justice.

Therefore, this foreword concludes with the quote of the initiator of modern American legal aid system, *Reginald Heber Smith (1889-1966)*, which reads:

"Without equal access to the law, the system not only robs the poor of their only protection, but places in the hands of their oppressors the most powerful and ruthless weapon ever invented".

Foundation Open Society – Macedonia

INTRODUCTION

This analysis is the last in the series of three reports¹ analysing the implementation of the Law on Free Legal Aid,² developed by the Macedonian Young Lawyers Association (MYLA), in cooperation with and supported by the Foundation Open Society – Macedonia (FOSM). The analysis focuses on the implementation of LFLA in the period 2010–2012 and is performed as part of the project “*Monitoring the Implementation of the Law on Free Legal Aid*” which aims to make a contribution to development of an efficient and effective system on free legal aid that should be regulated by a quality Law on Free Legal Aid, adopted in a transparent procedure with involvement of all stakeholders thereby providing equal access to justice for all citizens.

The analysis is a product of joint efforts made by MYLA and FOSM and other associations-members of an informal network on free legal aid, those being: National Roma Centrum from Kumanovo, Youth Cultural Centre from Bitola, Roma SOS from Prilep, EHO from Stip and Izbor from Strumica. The analysis was developed in the period November 2012 – January 2013.

This analysis attempts to present the results from LFLA’s implementation³ in order to identify the problems and challenges faced by free legal aid applicants and assess the quality of LFLA’s provisions that directly affect the quality of the free legal aid system as a whole. In addition to monitoring findings, the analysis includes recommendations aimed to improve the efficiency of the free legal aid system. By monitoring LFLA’s implementation and direct in-

¹Previous two reports addressed LFLA’s implementation in 2010 (Report on Implementation of the Law on Free Legal Aid, FOSM, March 2011) and 2011 (Fairy Tale or Reality!? – Free Legal Aid in the Republic of Macedonia, MYLA, February 2012)

²“Official Gazette of the Republic of Macedonia”, no. 161 from 2009 and no. 185 from 2011.

³LFLA entered in effect on 7th July 2010.

vement of associations authorized for provision of legal aid, as well as by using relevant foreign literature, the goal of this analysis is to open a broad public debate on the need for adopting a Law on Free Legal Aid that is in line with international standards and that would actually facilitate access to justice for persons who, due to extreme poverty, are unable to exercise their law-stipulated and Constitution-guaranteed rights.

This document is divided in three chapters. The first chapter provides information on the legal and institutional framework governing LFLA's implementation. The second chapter includes a description and analysis of key findings on LFLA's implementation in 2012 and concerns: 1) number of free legal aid applications submitted; 2) ratio of approved versus rejected free legal aid applications; 3) structure of legal issues for which free legal aid has been requested and approved; 4) structure of free legal aid beneficiaries; 5) procedure on exercising the right to free legal aid; 6) legal remedies made available to applicants whose free legal aid applications have been rejected; 7) free legal aid providers; and 8) issues related to financing free legal aid. The analysis of monitoring findings includes comparison of 2012 results with those recorded for the previous two years, as well as comparison with other countries in the region that have adopted laws on free legal aid in civil and administrative procedures. The third and final chapter provides a description of the procedure on amending LFLA, key findings from LFLA's three-year implementation, as well as recommendations aimed to improve the quality and efficiency of the free legal aid system in the Republic of Macedonia.

In the end, annexes are attached to the analysis and aim to serve as baseline for future research in the field of free legal aid and are intended for researchers and policy makers. The annexes include a list of regulations that were used in the analysis, relevant international documents on the right to free legal aid, abstracts from rulings taken by ECtHR in cases related to the right to free legal aid,

with embedded links. The annexes also provide links to so-called resource websites that contain scientific papers, public policy papers and description of international standards on free legal aid. Finally, they include proposed amendments to the Law on Free Legal Aid and the Law on Court Administrative Fees.

REPORT METHODOLOGY

Analysis of the implementation of the Law on Free Legal Aid in the period 2010 – 2012 is a result of monitoring activities taken by MYLA, in cooperation with authorized associations,⁴ pursuant to a pre-defined monitoring methodology.

1. Research issue

The main research question of this analysis is: **Do provisions from LFLA provide equal access for citizens and other entities to institutions in compliance with the principle of equal access to justice two and half years from the law's entry in effect?** This question was defined on the basis of the purpose for adopting LFLA⁵ and the monitoring efforts were focused on assessing whether LFLA fulfils the purpose for which it was adopted. In the course of monitoring activities an additional research question emerged: Can provisions from LFLA contribute to **establishment of an efficient national system on free legal aid in civil and administrative procedures that facilitates access to justice for all citizens?**

2. Research timeframe

The analysis covers the period from the LFLA's entry in effect to present (7 July 2010 – 31 December 2012).

⁴National Roma Centrum – Kumanovo, Youth Cultural Centre – Bitola, and Roma SOS - Prilep.

⁵Article 2 of the LFLA reads: "The present Law shall aim to ensure equal access for citizens and other persons, as stipulated under this Law, to state institutions, notably in regard to familiarization, exercise and provision of effective legal aid, pursuant to the principle of equal access to justice."

3. Data collection

For the purpose of this analysis, a combined analytical and methodological approach was used, which includes both qualitative and quantitative methods.

1. Quantitative data collection methods

- *Insight in and statistical analysis of numerical data concerning the number of free legal aid applications, as well as the number of approved versus rejected applications in the reporting period, by means of submitting Freedom of Information (FOI) applications;*⁶
- *Insight in numerical data published by state authorities of the Republic of Macedonia relevant to the subject matter of this analysis;*⁷
- *Insight in and statistical analysis of numerical data on the number of cases in which preliminary legal aid was provided by authorized associations;*⁸
- *Insight in numerical data on free legal aid in other countries, published in the national reports of relevant competent authorities and in relevant international reports and databases.*

2. Qualitative data collection methods

- *Monitoring cases in which free legal aid was approved.* Hearings organized as part of lawsuits in cases in which free

⁶A total of 35 FOI applications were submitted. Most of them (32 applications) were addressed to the Ministry of Justice, 2 applications were addressed to the Administrative Court of the Republic of Macedonia, and 1 application was addressed to the Legislation Secretariat at the Government of the Republic of Macedonia.

⁷Ministry of Justice; State Statistical Office; Ministry of Labour and Social Policy; Pension and Disability Insurance Fund; Ministry of Interior.

⁸See Chapter II, Section 8: Free legal aid providers: vital link in the system or necessary decor!?

legal aid was approved were monitored, and also included survey performed by filling-in questionnaires developed for attorneys-at-law, judges and free legal aid beneficiaries, which inquired about the outcomes in individual lawsuits. A total of 24 lawsuits in which free legal aid was approved were subject of monitoring. Data were collected on efficiency, effectiveness and quality of legal aid provided in lawsuits in which free legal aid was approved;

- *Strategic litigation in cases on legal remedy for persons whose free legal aid applications have been rejected.* MYLA and FOSM provided legal aid to persons whose free legal aid applications have been rejected, which included legal representation in front of the Administrative Court of the Republic of Macedonia. This activity also enabled data on the availability and efficiency of legal remedies in cases where free legal aid applications have been rejected. As part of this effort, a total of 15 administrative lawsuits were initiated;
- *Direct involvement in the free legal aid system, by obtaining authorization for provision of legal aid.* Macedonian Young Lawyers Association from Skopje, National Roma Centrum from Kumanovo, Youth Cultural Centre from Bitola and Roma SOS from Prilep, with FOSM's support, obtained the authorisation to provide preliminary legal aid pursuant to LFLA, which also enabled inside information from the system and access to data on law's implementation;
- *Insight in the decisions taken by the Ministry of Justice upon free legal aid applications, granted by means of FOI application;*
- *Qualitative analysis of the decisions taken by the Ministry of Justice upon free legal aid applications, as well as of rulings taken by the Administrative Court of the Republic of Macedonia upon appeals lodged by the applicants whose free legal aid applications have been rejected.* In this manner, data were collected on LFLA's implementation, as well as on LFLA's interpretation on the part of state authorities in specific cases that are part of LFLA's institutional framework.

4. Areas targeted by the analysis

This analysis targets key areas of the free legal aid system, and each of them is addressed under a separate section.

- **Number of free legal aid applications submitted-** How many free legal aid applications have been submitted to the regional offices? Is their number too high or too low? Is the number of submitted free legal aid applications increasing? If not, why? Is there a balanced distribution of free legal aid applications throughout the territory of the Republic of Macedonia or are there locations where the number of submitted applications is higher?
- **Approved versus rejected free legal aid applications -** Does the Ministry tend to approve or reject free legal aid applications? What is the reason behind that? What is the ratio of approved versus rejected free legal aid applications? Why were free legal aid applications rejected?
- **Structure of legal issues for which free legal aid has been approved –** What are the legal issues for which free legal aid has been requested? Are the legal issues for which free legal aid can be approved defined in broad manner? Are types of legal aid as stipulated in LFLA the most important ones for the citizens, or are there other, equally important, legal issues that are of interest for people who need free legal aid, but are not covered by the free legal aid system?
- **Free legal aid beneficiaries –** Does the Law cover the entire population that is unable to cover the costs for exercising their rights, or are some categories of people excluded from the Law's scope, regardless of their inability to cover these costs?
- **Procedure on exercising the right to free legal aid –** Does the procedure guarantee provision of prompt and efficient legal aid, i.e., to what extent is the principle of urgency, stip-

ulated in Article 2, paragraph 2 of LFLA, complied with?

- **Legal remedies in theprocedure on exercising the right to free legal aid** – Do persons whose free legal aid applications have been rejected have access to efficient and affordable legal remedies?
- **Free legal aid providers** - What is the role of free legal aid providers? What are the problems they face in providing free legal aid?
- **Financing the free legal aid** - What is the rate of utilization of funds allocated for free legal aid? Are the allocated funds sufficient?

5. Assessment criteria for analysis findings

Assessment of findings and formulation of conclusions related to LFLA's implementation is based on following pre-defined criteria:

1. Whether and to what extent certain provisions from LFLA and their enforcement in practice contribute to facilitated access to justice for all persons who, due to poverty, are unable to exercise and protect their rights?
2. Whether and to what extent certain provisions from LFLA and their enforcement in practice comply with the so-called *Airey criteria*⁹ established by the jurisprudence of the European Court of Human Rights and related to the right to access to court referred to in Article 6 (1) of ECHR?
3. Comparison with the countries in the region that have adopted laws on free legal aid.

6. Limitations related to the subject of analysis

Subject of this analysis is LFLA's implementation in the period 2010 – 2012. Systems on free legal aid and facilitating access to

⁹See pg. 12;

justice are complex and are commonly regulated under several laws; however, having in mind the need to precisely define the subject matter, this analysis exclusively focuses on LFLA.

Legal aid that is provided to suspects and defendants in criminal procedures is not subject of this analysis, because it is governed by the Law on Criminal Procedure and is not covered by LFLA. In addition, the new Law on Criminal Procedure provides the possibility for the so-called *defence of the poor*¹⁰, whereby if the defendant cannot cover the defence procedure-related costs he/she, regardless of the possible sentence anticipated for the crime in question, may request to be appointed a defence attorney-at-law when that is considered necessary in the light of the interests of justice, and in particular when that is considered necessary due to the severity of the criminal act in question and the complexity of the court procedure.

Also, this analysis does not address petitions for exemption from payment of court administrative fees and exemption from payment of procedure-related costs governed by the Law on Court Administrative Fees or the Law on Litigation Procedure. Although these mechanisms were established for the purpose of facilitating access to justice for the poor, LFLA in effect does not stipulate such exemptions and therefore they will not be discussed in this analysis.

Moreover, there are special forms of legal aid that are regulated under special laws (legal aid for asylum seekers, pursuant to the Law on Asylum, and legal aid for victims of domestic violence, pursuant to the Law on Family) the analysis of which would require access to extensive data that are not available at this moment despite the fact that these forms of legal aid are superficially referred to in LFLA.

¹⁰Article 75 of the Law on Criminal Procedure "Official Gazette of the Republic of Macedonia" no. 150 from 2010.

CHAPTER I

FREE LEGAL AID SYSTEM ESTABLISHED BY THE LAW ON FREE LEGAL AID

1. Adoption of Law on Free Legal Aid

The Law on Free Legal Aid (LFLA) was adopted in December 2009, and as a relatively complex law, its' implementation started six months later, i.e., in July 2010. LFLA was adopted *for the purpose of ensuring equal access for citizens and other persons, as stipulated under LFLA, to state institutions*, especially in regard to familiarization with, exercise and provision of effective legal aid pursuant to the *principle of equal access to justice*. LFLA guarantees equal access to justice by means of provision of free legal aid in certain civil and administrative procedures for persons who are financially disadvantaged and who fulfil the criteria/requirements laid down in the Law.¹¹ In that, LFLA introduced a novelty in the Macedonian legal system, while at the same time it challenged the state authorities and other stakeholders to contribute to the development of a coherent system on free legal aid.

Adoption of LFLA was marked by a relatively long procedure (more than two years), non-transparency and lack of broad consultations with the stakeholders.¹² These circumstances have

¹¹Detailed overview of the legal framework established by LFLA is given in Section 2.

¹²On 23 November 2009, MYLA - in cooperation with several associations -presented the Parliament of the Republic of Macedonia with draft amendments to LFLA and indicated the weaknesses of the Draft Law and non-transparency in the procedure for its adoption. Proposed amendments were not accepted by the Parliament of the Republic of Macedonia.

brought under questioned the quality of the Law prior to its enforcement, especially because of the strict eligibility criteria to be fulfilled by the applicants, non-alignment of LFLA's provisions with other specific laws, as well as the vague and imprecise provisions from the Law. Nevertheless, in spite of reactions on the part of the civil society, LFLA was enacted and its implementation started in July 2010.

From its adoption, the Law was subject to only one amendment in December 2011,¹³ which enabled free legal aid for asylum seekers in the procedure on exercising the right to asylum.

2. Constitutional framework¹⁴

As is the case with other laws, LFLA must be aligned with the *Constitution of the Republic of Macedonia* and the international agreements and treaties ratified by the Republic of Macedonia. Although the Constitution does not anticipate the right to free legal aid as a special right, by guaranteeing the right to equality, it has established the state's obligation to take measures for exercise and protection of this right. LFLA's alignment with the Constitution is of great importance for protection of human rights, because free legal aid is an instrument that enables exercise and protection of the constitutionally-guaranteed right to equality for citizens and other persons who, due to poor financial situation, are unable to exercise and protect their rights. On this account, possible problems related to LFLA's implementation directly affect the right to equality of citizens before the Constitution and the laws.

A more precise image on the constitutional framework that should govern free legal aid is provided in the *European Convention on Hu-*

¹³"Official Gazette of the Republic of Macedonia" no. 185 from 2011

¹⁴For more details on the constitutional framework for free legal aid, see the Report on the Implementation of the Law on Free Legal Aid, FOSM and MYLA, 2011, pg. 54.

*man Rights*¹⁵, which is also part of the legal order in the Republic of Macedonia.¹⁶ The Convention is one of the most effective international instruments for respect and protection of human rights, primarily due to the work of the European Court of Human Rights. The Convention guarantees the **right to fair trial** and provides a range of procedural guarantees for protection and exercise of this right, some of which are contained in the relevant article, while the others are further specified in ECtHR's case law. The Convention does not include a specific provision on the right to free legal aid in civil and administrative¹⁷ procedures, however in its ruling taken in the case *Airey v. Ireland* (Series A no. 32, 1979) ECtHR established a violation of the "**effective right**" to access to court on the grounds of failure to provide free legal aid in a particular case.¹⁸ This decision sets a precedent that obliges the states to provide free legal aid when necessary, taking into account the so-called *Airey criteria*, validated and developed in other cases:¹⁹

- **importance of the case for the individual;**
- **complexity of the case;**
- **individual's ability for self-representation;**
- **procedure-related costs and party's ability for self-representation.**

These criteria must be taken into account when regulating free legal aid. Later in this analysis, an assessment is made whether LFLA in effect is aligned with these criteria.

¹⁵European Convention on Human Rights and Fundamental Freedoms from 1950, ratified by the Parliament of the Republic of Macedonia on 10 April 1997.

¹⁶Pursuant to Article 118 of the Constitution of the Republic of Macedonia, international treaties that are ratified in compliance with the Constitution are part of the domestic legal order and cannot be changed by law.

¹⁷Unlike the right to free legal aid in criminal procedures which is explicitly stipulated in Article 6(3).

¹⁸Pursuing the Public Interest - A Handbook for Legal Professionals and Activists, PILI NET, Columbia Law School, New York, USA, 2001, page 220.

¹⁹Steel and Morris v. the United Kingdom 2005, App. No. 64186/01; Mc Vicar v. UK 46311/99, (Munro v. UK) 10594/83, Antonicelli v. Poljske from 2009.

Airey v Ireland, Series A no. 32, 1979 – Case summary

Mrs Airey sought judicial separation from her physically abusive husband. As she was unable to conclude a separation agreement with her husband, she sought a judicially ordered separation. She was unable to obtain such an order since she lacked the financial means, in the absence of legal aid, to retain a solicitor. The European Court of Human Rights held this was a violation of her right to access a court for determination of her civil rights and obligations (Article 6). Citing international law and the Convention's intention they said that remedies must be effective not illusory. They noted that many civil and political rights had social and economic implications involving positive obligations. Accordingly, there was a right to legal assistance if it was indispensable for effective access to the courts. In this case, self-representation was ineffective given the complex procedure of the Irish High Court (at that time, divorce did not exist as institute in the Republic of Ireland, so the only way to end a marriage was the so-called court separation as ordered by a higher instance court, which implied a complex procedure), the relevant Irish law, the emotional dimension of marital disputes and the possibility that her husband may be represented.

Obligation for states: (paragraph 26 of the ruling)

However, despite the fact that the ECHR contains no provision on legal aid for civil disputes, Article 6 para. 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.

3. Institutional framework

The institutional framework of the free legal aid system is comprised of: (1) regional offices of the Ministry of Justice; (2) Ministry of Justice; (3) Administrative Court of the Republic of Macedonia; and (4) Higher Administrative Court of the Republic of Macedonia.

(1) Regional offices of the Ministry of Justice

The Ministry of Justice's regional offices are independent organization units²⁰, which – pursuant to LFLA- are tasked to perform the following actions:²¹

- receive free legal aid applications, collect relevant data from the information holders and forward the applications to the Ministry of Justice for decision-taking;
- provision of preliminary legal aid.

(2) Ministry of Justice of the Republic of Macedonia

The Ministry of Justice is the central body in the free legal aid system that performs its competencesstemming from LFLAthrough the Office for Free Legal Aid.²²Competences of the Ministry of Justice include:

- decision-taking on free legal aid applications, in the capacity of first-instance administrative body,
- keeping the Registry of Attorneys-At-Law and Citizens' Associations Providing Free Legal Aid;
- decision-taking on payment of remuneration for attorneys-at-law for provision of free legal aid;
- supervision over the performance of attorneys-at-law and authorized associations;
- supervision over the Law's enforcement;
- implementation of promotional activities.²³

²⁰At the moment, there are 35 regional offices of the Ministry of Justice.

²¹Articles 18, 20 and Article 21 of the LFLA.

²²Article 6, item 5 of the Rulebook on the Internal Organization of the Ministry of Justice, Skopje, January 2012.

²³Articles 10, 11, 22, 27, 33, 35, and 39 of the LFLA.

(3) Administrative Court of the Republic of Macedonia

The Administrative Court takes rulings in lawsuits motioned against the decisions of the Ministry of Justice on rejecting free legal aid applications.²⁴

(4) Higher Administrative Court of the Republic of Macedonia

The Higher Administrative Court decides upon appeals lodged against the rulings made by the Administrative Court in lawsuits motioned against decisions on rejecting free legal aid applications.²⁵

²⁴Article 23 of the LFLA.

²⁵Article 42-a of the Law on Administrative Dispute (LAD)

II KEY FINDINGS ON LFLA'S IMPLEMENTATION IN 2012

1. Small number of submitted free legal aid applications

- number of submitted free legal aid applications -

LFLA stipulates that all persons who need free legal aid to resolve certain legal issue in civil or administrative procedure are entitled to request free legal aid by submitting an application for free legal aid to the competent regional office of the Ministry of Justice.¹

(1) The annual number of submitted free legal aid applications is an indicator on the access to free legal aid and its availability to the citizens of the Republic of Macedonia, as well as the effectiveness of promotional activities aimed to inform citizens about their right to free legal aid.

(2) In 2012, by the cut-off date for this report, a total of 111 free legal aid applications were submitted to all regional offices of the Ministry of Justice. Broken down in quarters, a total of 21 applications were submitted in the first quarter²⁶, 33 applications in the second quarter²⁷, 33 applications in the third quarter²⁸ and 24 applications in the fourth quarter. Comparison of these results against data from previous monitoring years provides the conclusion on **modest decrease in the number of submitted free legal aid applications**. The number of submitted applications is not increasing, although that would be expected considering that free legal

²⁶Source: FOI response from the Ministry of Justice no. 19-2135/2 from 21.6.2012.

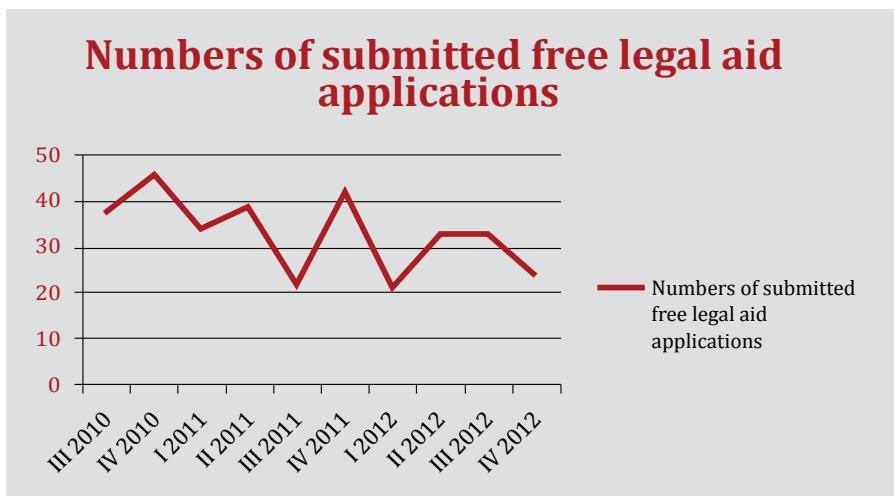
²⁷Source: FOI response from the Ministry of Justice no. 19-2755/2 from 26.7.2012.

²⁸Source: FOI response from the Ministry of Justice no. 19-3960/2 from 14.12.2012.

aid is a new instrument in the country and it takes time to set up the system and implement the promotional activities.

Table 1 – Overview on the number of submitted free legal aid applications, per quarter

Period	2010	2011	2012
I quarter	/	34	21
II quarter	/	39	33
III quarter	38	22	33
IV quarter	46	42	24
TOTAL	84 ²	137 ³	111



(3) At the level of regional offices, obvious is the **significant difference in the number of free legal aid applications submitted to individual offices**. While some municipalities have been presented with around 40 free legal aid applications (Kumanovo), other municipalities with approximate number of inhabitants (Gostivar) have not been presented with a single application, even though there is no significant difference in regard to the poverty and unemployment rates, as well as the number of

social allowance beneficiaries, because they are similar in both municipalities. This regional imbalance is further emphasized in terms of human resources at the respective regional offices. Regional offices with one authorized officer (Kavadarci) receive more applications compared to regional offices with more than 5 employees/authorized officers (Tetovo and Gostivar). These data suggest great imbalance in terms of (un)utilized capacity of the regional offices related to implementation of promotional activities for free legal aid, as well as unequal access to free legal aid for citizens from different municipalities.

Table 2 – Overview on the number of submitted free legal aid applications, per regional office, for the period from Law's entry in effect until May 2012²⁹

Regional office	Number of submitted free legal aid applications	Number of employees with higher education	Regional office	Number of submitted free legal aid applications	Number of employees with higher education
Kumanovo	39	2	Ohrid	7	2
Gazi Baba	31	3	Resen	7	2
Bitola	31	1	Stip	6	0
Kicevo	22	1	Valandovo	5	1
Karpos	17	3	Tetovo	4	10
Kratovo	15	2	Struga	4	2
Centar	12	2	Gevgelija	4	/
Negotino	12	2	Makedonski Brod	3	/
Radovis	11	1	Probistip	3	2
Kavadarci	10	/	Kocani	3	1
Strumica	10	3	Demir Hisar	1	1
Berovo	10	1	Gostivar	/	5
KiselaVoda	9	1	Vinica	/	1
Kriva Palanka	9	1	SvetiNikole	/	1
Cair	8	2			

(4) When comparing the number of submitted free legal aid

²⁹Source: Report on the Implementation of the Law on Free Legal Aid, JasnaButurac.

applications with the relevant figures from the countries in the neighbourhood that have adopted laws on free legal aid in civil and administrative procedures,³⁰the conclusion is inferred that the Republic of Macedonia is on the bottom, although it is on the top of the list according to the percentage of people living in poverty.

Table 3 – Comparison of the number of free legal aid applications submitted per 100,000 citizens with the countries in the region for 2011³¹

	Number of applications submitted per 100,000 citizens
Macedonia	6.7 applications
Croatia	125.8 applications ⁴
Bulgaria	538 applications ⁵
Kosovo	250.9 applications ⁶

(5) The small number of free legal aid applications submitted in 2012 is primarily a result of the absence of any activities for promotion and popularization of LFLA.With the exception of the Day of Legal Advice³²organized by the Ministry of Justice, whose promotional effect is highly questionable, there were no other activities implemented with a view to provide more information for the citizens. Given the Ministry of Justice's legal obligation³³to promotion the Law, a conclusion is inferred that some regional offices that have a higher number of employees were significantly underperforming in regard to LFLA's promotion. In addition to absence of promotional activities, an important factor that contributed to the small number of submitted applications

³⁰The comparison is based on the indicator defined as the number of free legal aid applications submitted per 100,000 citizens.

³¹Data for Bulgaria concern the year 2010, due to lack of access to 2011 data.

³²In the Municipalities of Petrovec and Aracinovo on 26 March 2012.

³³Article 19, paragraph 2 of the LFLA.

are the stringent criteria³⁴ and the procedure's duration,³⁵ which discourage citizens to submit free legal aid applications. These factors will be analysed in detail later in this document, especially in terms of their impact and effect on the Law's implementation.

Recommendations

- 1. To implement a continuous public campaign on promoting free legal aid.** Dissemination of information on the right to free legal aid among citizens could be achieved by planning and organizing an on-going public campaign that would include: (1) printing and distribution at state institutions of clear and user-friendly guidelines on the right to free legal aid; and (2) organizing regular info-days by the regional offices of the Ministry of Justice in the towns countrywide, especially in rural areas.
- 2. To use the Internet to promote the right to free legal aid, by means of a specially designed web-portal and manuals on the right to free legal aid uploaded on the websites of state authorities.** Internet's increased role in society should be utilized by the Ministry of Justice and by other actors as an effective medium for promotion of free legal aid. Special web-portal dedicated to free legal aid should be developed, together with the mandatory manuals on free legal aid, uploaded on the official websites of line ministries, courts and other state authorities.
- 3. To remove the prohibition for authorized associations to advertise themselves as free legal aid providers and to use their potential to promote the law.** Associations have developed communication channels with the

³⁴See Section 4 and 5.

³⁵See Section 6.

vulnerable categories of citizens (people living in extreme poverty, homeless persons, victims of domestic violence, marginalized groups, etc.) that could be used for promotion of free legal aid.

4. To establish cooperation and information exchange between all stakeholders at local level (regional office, attorneys-at-law, local government, courts, state administration bodies and institutions and associations, local media). Establishing regular communication at local level could improve free legal aid and information exchange among stakeholders and in turn it would improve LFLA's promotion.

2. Twice as many rejected versus approved free legal aid applications

- types of decisions taken upon free legal aid applications -

After the receipt of the free legal aid application, and based on data obtained, the Ministry of Justice determines whether the applicant fulfils the law-stipulated requirements in terms of the *type of legal issue* for which he/she applies for free legal aid, as well as his/her *material status*. Depending on the established facts, the Ministry of Justice adopts a decision on rejecting or approving the free legal aid application.⁷

(1) Decisions taken by the Ministry of Justice upon free legal aid applications provide an opportunity to assess the law-stipulated requirements, i.e., whether the criteria on applicants' material status enable access to legal aid for the poor citizens and whether the types of legal issues that qualify for free legal aid reflect citizens' actual needs for legal aid. Higher number of approved applications means easier access to free legal aid and vice versa, higher number of rejected applications indicates unattainable and stringent criteria. In addition to the ratio of approved versus rejected applications, this section will provide an assessment of procedure's duration for approving free legal aid applications.³⁶

(2) As regards the free legal aid applications submitted in 2012, the Ministry of Justice adopted a total of **147** decisions, **44** of which on approving free legal aid and **103** decisions on rejecting free legal aid. As regards the entire period from the onset of Law's implementation, the Ministry of Justice adopted a total of **332** decisions, 120 of which on approving free legal aid and 192 decisions on rejecting free legal aid. The decision-making procedure was discontinued in total of 20 cases.

³⁶For more information on the procedure's duration, see Section 5.

Table 4 – Share of decisions taken upon free legal aid applications submitted in 2012³⁷.

	Applications submitted	Unresolved applications from the previous quarter	Resolved applications	Applications pending decision	Share of decisions taken ⁸
I quarter	21	44	35	30	53.85%
II quarter	33	30	35	28	55.55%
III quarter	33	28	51	10	83.60%
IV quarter	24	10	34	0	100.00%

Prior to analysing the types of decisions taken, it should be noted that the **low share of decisions taken** upon free legal aid applications in 2011³⁸, i.e.,the backlog of cases that contributed to prolonged decision-taking beyond the law-stipulated deadline (20 days), was partially resolved in 2012. In the second half of 2012, the share of decisions taken was marked by an increase, which shows that the decision-taking procedure has been accelerated. However, this trend is proportional to the increased number of rejected applications.

³⁷Source: FOI responses no. 19-2135/2 and 19-2138/2 from 21.6.2012, 19-2755/2 and 19-2754/2 from 26.7.2012 and 19-3960/2 from 14.12.2012

³⁸See: Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia, pg. 44

Share of decision in free legal aid application



(3) As regards the type of decisions, the trend identified in 2011 continued in 2012 and therefore the number of rejected applications is almost twice as higher than the number of approved free legal aid applications. This is a highly negative feature of the free legal aid system in Macedonia, as it distinguishes it from the systems established in the neighbouring countries where, in average, the ratio of approved versus rejected applications is 9 to 1.³⁹

Table 5 – Ratio of approved versus rejected free legal aid applications in 2012⁴⁰

	Number of decisions taken	Approved applications	Rejected applications	Ratio of approved versus rejected applications
I quarter	35	13	22	1/1.7
II quarter	35	11	24	1/2.18
III quarter	51	16	35	1/2.19
IV quarter	26	14	22	1/1.6

³⁹See below, paragraph 5 in this section.

⁴⁰Source: FOI response from the Ministry of Justice, referred to in footnote 32.

(4) Reasons for the higher number of rejected applications can be identified by analysing the decisions taken by the Ministry of Justice on rejecting free legal aid applications and the rationale provided in the individual decisions. MYLAs was granted insight in 37 decisions on rejecting free legal aid in 2012, 15 of which were rejected because **the legal issue for which legal aid has been requested is not anticipated under LFLA**; because the **applicant** owned property (residential apartment or house) whose value exceeds **five** average monthly gross salaries; while in **6 cases** the free legal aid applications were rejected because the applicant did not fall under the categories of persons eligible for free legal aid. Four free legal aid applications were rejected because legal aid has been requested in matters that are clearly unreasonable or for which there are no legal facts, while two applications were rejected on the grounds that the applicant generated income in an amount higher than the law-stipulated upper threshold.

Accordingly, the conclusion is reached that reasons behind the twice as many rejected versus approved applications are identified in the restrictive approach pursued under LFLA in regard to the legal issues for which free legal aid can be approved and the requirements on applicants' material status. It is obvious that the list of legal issues anticipated under LFLA does not correspond to citizens' actual needs and fails to include certain legal issues for which citizens need legal aid, such as legal and family relations that are very specific and directly affect the citizens. As regards the property criteria, the requirement whereby the value of the property is limited to 5 average monthly salaries, without exempting the applicants' residence, is completely unacceptable, unjustifiable and contrary to the existing legal regulations, which means that LFLA pursues a more restrictive approach compared to the one pursued by the Law on Social Protection.

(5) For comparison purposes, in Croatia, from a total of 5,541 free legal aid applications submitted in 2011,⁴¹ decisions on approving legal aid were taken in as many as 4,634 cases, decision on rejecting

⁴¹2011 Report on the Exercise of the Right to Legal Aid and Funds Spent, Croatia

legal aid were taken in only 492 cases, while in regard to the remaining number of cases, 146 applications were denied, 215 applications were withdrawn and 54 applications are still pending decision.

(6) Low share of decisions taken upon free legal aid applications submitted and twice as high number of rejected versus approved applications are serious indicators about the inefficiency of the national system on free legal aid. On the one hand, inability to comply with the law-stipulated deadline of 20 days in the decision-taking procedure⁴² and the higher number of rejected versus approved applications clearly indicate the serious shortfalls in LFLA, as analysed in the previous reports, which continue to generate negative results in 2012. This practice will further demotivate citizens to apply for free legal aid (Section 1: Number of submitted free legal aid applications) and will gradually reduce the share of submitted applications, which will ultimately bring under question the need for LFLA in its current form.

Note:

Recommendations concerning the analysis findings from this section are included in the recommendations for the sections on types of legal issues, free legal aid beneficiaries and procedure on exercising the right to free legal aid.

⁴²For more details, see Section 4.

3. Preliminary legal aid versus legal aid in court and administrative procedures!?

- types of legal aid anticipated under LFLA -

Free legal aid is exercised as (1) *preliminary legal aid* and (2) *legal aid in all court and administrative procedures*. Preliminary legal aid includes the following types of legal aid: 1. initial legal advice on the right to legal aid; 2. general legal information; and 3. legal aid in completing free legal aid application. Preliminary legal aid is provided by authorized citizens' associations and authorized officers at the regional offices of the Ministry of Justice of the Republic of Macedonia. Legal aid in court and administrative procedures includes representation and preparation of writs in court and administrative procedures and is provided by attorneys-at-law. Free legal aid *covers procedure-related costs* that occurred following the day when free legal aid application was approved and legal aid actions taken following the day when free legal aid was approved.⁹

(1) Types of legal services anticipated under LFLA are very important factor for the efficiency of free legal aid, because they are the mechanism used by the state, i.e., free legal aid provides, to provide legal aid and facilitate access to justice for beneficiaries of free legal aid. Criterion for evaluating the effectiveness of legal services anticipated under LFLA is their complementarity and the possibility to impact the exercise of rights.

1. Preliminary legal aid

(2) In this reporting period, preliminary legal aid was provided by authorized associations and some regional offices. Due to lack of data on preliminary legal aid provided by regional offices, which is

a result of absence of a unified methodology⁴³ for records-keeping on submitted applications, this report is based only on information concerning preliminary legal aid provided by authorized associations, those being: Macedonian Young Lawyers Association, National Roma Centrum, Youth Cultural Centre and ROMA SOS. In 2012, preliminary legal aid was provided to 632 persons, in a variety of legal issues, primarily related to social protection, health insurance and property tenure issues.

Table 6 - Preliminary legal aid provided by authorized associations in 2012

<u>Associations</u>	National Roma Centrum - Kumanovo	Roma SOS - Prilep	Youth Cultural Centre - Bitola	Macedonian Young Lawyers Association - Skopje
<u>Types of legal aid</u>				
General legal information	260	169	120	64
Initial legal advice	7	0	4	10
Legal aid in completing free legal aid application	6	6	11	9
Number of citizens benefiting from legal aid	259	175	130	68
TOTAL: 632				

(3) Preliminary legal aid covers a narrow scope of legal services that are insufficient to enable provision of essential legal advice to citizens needed to exercise the right for which legal aid is requested. With the exception of general legal infor-

⁴³Report on the Implementation of the Law on Free Legal Aid, JasnaButurac, Skopje, pg. 23

mation,⁴⁴ preliminary legal aid is reduced to promotion of LFLA (*initial legal advice*) or administrative completion of free legal aid application (*legal aid in completing free legal aid application*). According to the legal provisions in effect, preliminary legal aid does not address the needs of citizens for legal information and advice prior to initiating certain administrative or court procedure, which is the main goal of this type of legal aid. Existing forms of preliminary legal aid are not conducive to dealing with specific circumstances in the case (legal advice is not anticipated as a form of preliminary legal aid), which is of key importance in reconsidering the options available for citizens with a view to exercise or protect their rights. On the contrary, citizens' associations can only provide "general and principle-based guidance about the legal regulations in effect" (which is far from sufficient for legally illiterate parties) and to submit free legal aid application without instructing the party in advance about the case, which is possible only if they provide legal advice. In addition to the need for legal advice, citizens, and especially the legally illiterate parties, often need to write simple statements, fill out forms and compile submissions for certain administrative procedures (social protection, pension and disability insurance, health insurance), which is not secured under the existing forms of legal aid.

(4) Reimbursement of costs for associations that provide preliminary legal aid is difficult and slow. Authorized associations are entitled to reimbursement of costs incurred for provision of preliminary legal aid. However, based on previous experiences with LFLA's implementation, the associations face serious problems related to reimbursement of costs for the legal aid provided. The Law on Free Legal Aid is unclear in regard to this issue,⁴⁵ while the Ministry of Justice is entrusted with the detailed regulation of this essential aspect on the basis of its pre-

⁴⁴General legal information is also of narrow scope and is defined as a form of *free legal aid comprised of general and principle-based guidance related to legal regulation under particular area*.

⁴⁵See: Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia, pg. 21 and 22.

vious practices. Based on associations' previous experiences, it was established that the Ministry of Justice reimburses their costs only in cases when the free legal aid application is submitted and approved.⁴⁶ In this manner, legal services provided in cases where a free legal aid application is not submitted (because the citizen's legal issue was resolved by means of general legal information), or when the application is rejected, are not valued and the Ministry of Justice does not reimburse the costs, despite the fact that associations did provide legal aid. This practice pursued by the Ministry of Justice could have counter-productive effects, whereby the associations would submit free legal aid applications even though there are no legal grounds for certain legal matters, in order to have their costs related to provision of legal services reimbursed.

(5) Nevertheless, almost one year after they provided the preliminary legal aid, in 2012, the authorized associations were presented with the first decisions on reimbursement of costs for provision of legal aid in an amount of 4,200.00 MKD, which is insufficient to cover the actual costs incurred by these associations.

Recommendations:

1. To broaden the scope of preliminary legal aid with provision of legal advice and preparation of writs in certain administrative procedures. According to the legal provisions in effect, preliminary legal aid covers a narrow scope of legal services. In order to transform it into an institute that would facilitate information and guidance for free legal aid beneficiaries, as well as access to justice, its scope should be broadened and should include legal advice and preparation of writs in certain administrative procedures that are of particular importance for poor citizens (social allowance, health insurance, pension and disability insurance, citizenship, etc.)

⁴⁶Notification no. 11 – 3312/2 from 15.9.2011

2. To streamline reimbursement of costs by establishing an efficient system of data verification and stipulating a deadline for the Ministry of Justice in terms of reimbursing the costs. In order to overcome these difficulties related to reimbursement of costs for provision of legal aid, the existing procedure should be corrected and should allow the associations to provide preliminary legal aid to all persons, who upon previous advice about the consequences, would make a statement that they fulfil the requirements stipulated in LFLA. This should be followed by submission of filled-in form, as regulated in the guidelines and including all necessary data, to the regional office for collection of relevant information and completion of the case file. If the person fulfils the requirements, reimbursement of association's costs will be approved.

2. Legal aid in court and administrative procedures

(6) Legal aid in court and administrative procedures is provided by attorneys-at-law enlisted in the Registry of Attorneys-At-Law Providing Free Legal Aid. All decisions taken on approving free legal aid concern legal aid in court and administrative procedures and include preparation of writs (lawsuits, submissions and complaints) and legal representation in lawsuits. Having in mind that this type of legal aid is provided only by authorized attorneys-at-law, the problems they face will be analysed in details in the relevant section of this report.

3. Other procedure-related costs

(7) LFLA defines the scope of free legal aid and covers the costs related to the procedure and the legal aid actions. However, *LFLA does not include provisions that would provide additional explanation or definition on what the procedure-related costs actually mean.* Having in mind that legal aid is approved in court and administrative procedures, the definition of procedure-related

costs is found in the relevant procedural laws. According to the Law on Litigation Procedure, procedure-related costs *shall mean costs incurred during or in relation to the procedure, including the remuneration for attorneys-at-law and other persons whose right to remuneration is acknowledged by the Law.* On the other hand, the Law on General Administrative Procedure provides a list of these costs. Given the fact that procedure-related costs is a relatively broad term, these costs include court administrative fees, remuneration for forensic experts, costs related to interpretation and translation services and costs incurred for securing evidence.

Examples from the work of authorized associations

Person N.N. addressed the association for legal information needed to resolve his issue in a divorce procedure initiated upon a lawsuit motioned by him. The person is not able to work due to illness (epilepsy and diabetes in advanced stage), and therefore he does not have funds to cover the procedure-related costs or settle the court administrative fees and other costs. He and his divorcing spouse have not lived in the same household for more than 17 years, and therefore he is unable to exercise the right to social allowance.

The applicant has motioned a lawsuit, compiled by him and submitted to the Basic Court in his hometown, whereby he petitioned for a divorce. The association advised the applicant about the right to petition for exemption from paying court administrative fees. After several months, the applicant was notified that the petition for exemption from paying court administrative fees is rejected and that he is obliged to pay the court administrative fees within a given deadline. Since he was unable to pay the court administrative fee, the court considered that his lawsuit is withdrawn.

This case indicates the shortfalls in LFLA. On one hand, the person is not entitled to free legal aid because he is not a social allowance beneficiary despite his obvious social vulnerability, while on the other hand, due to the fact that free legal aid does not include exemption from payment of court administrative fees, situations emerge when a person who benefits from free legal aid is not exempted from paying court administrative fees.

(8) According to LFLA, although they are anticipated, the procedure-related costs cannot be covered by the free legal aid. With the exception of legal aid actions, LFLA does not anticipate mechanisms on exempting the applicant from paying these costs because they are regulated under specific laws, to which LFLA is not aligned. This represents a significant barrier for free legal aid beneficiaries as they are persons with disadvantaged financial status and cannot cover these costs. As a result, these persons are forced to either petition for exemption from payment of procedure-related costs pursuant to the special laws (LCAF and LLP), or to waive the free legal aid application. The outcome of the procedure on exempting the applicant from paying the procedure-related costs is highly uncertain and thus significantly delays the court hearings in the relevant case. On the other hand, in cases when the applicant is not approved exemption from paying the procedure-related costs, he/she often waives the exercise and protection of the given right.

Recommendations:

1. To include free legal aid beneficiaries as a category of persons exempted from paying court administrative fees. The Law on Court Administrative Fees regulates the manner of calculation, payment of court administrative fees and exemption therefrom. The Law enlists certain categories of persons and entities that are exempted from paying court administrative fees.⁴⁷ Free legal aid beneficiaries are a category of persons whose sustenance is endangered, as determined by the competent state authority, and accordingly additional verification of their status by the court is considered unnecessary.

2. To reconsider the possibilities for including costs incurred for services provided by forensic experts (findings and opin-

⁴⁷ Articles 9 and 10 from the LCAF.

(ions) within LFLA's scope. According to LLP, findings and opinions delivered by forensic experts in order to serve as evidence in support of certain facts must be submitted together with the lawsuit petition as preliminary legal action. The person concerned must remunerate the forensic expert for his/her services, but persons whose sustenance is endangered can find these costs significantly high, which will ultimately prevent them to exercise and protect their rights in front of the court. Therefore, remuneration for services provided by forensic experts should be included in LFLA, in a manner similar to remuneration for attorneys-at-law.

4. Property tenure issues are among the most frequent needs of free legal aid beneficiaries

- types of legal issues that qualify for approval of free legal aid -

Free legal aid can be approved in all court and administrative procedures initiated to resolve *issues of interest for the free legal aid applicant*, and concern the rights in the field of social, health, pension or disability insurance, 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. Free legal aid will not be approved in matters that are clearly *unreasonable or are not supported by legal facts* on the basis of which legal actions can be taken.¹⁰

(1) Types of legal issues for which free legal aid has been requested and approved provide an insight in the legal problems faced by citizens in difficult economic and financial situation and are an indicator of specific legal needs of this category of persons whose access to justice is burdened by the poverty they live in. In addition, this section includes an analysis of the types of legal issues for which legal aid has been requested but was not approved with the explanation that LFLA does not stipulate legal aid for the given types of legal issues. This was done for the purpose of determining whether the list of legal issues that qualify for approval of free legal aid corresponds with citizens' actual needs and whether it should be expanded or narrowed. In the absence of official statistics developed by the Ministry of Justice⁴⁸ and concerning the structure of legal issues for which legal aid was approved, MYLA obtained data by requesting insight in a number of decisions adopted upon free legal aid applications submitted in 2011 and 2012.

⁴⁸Conclusion adopted by the Ministry of Justice on terminating the procedure on free access to public information no. 19-1154/2 from 9.4.2012.

(2) The most numerous legal issues for which free legal aid was approved in the first half of 2012 include property tenure issues.⁴⁹ Legal aid was approved for property tenure issues in a total of 8 cases, and included: *inheritance procedure, division of property acquired in marriage, regulation of ownership relations and termination of contract on property gift*. Next group of legal issues concerned **protection of victims of criminal acts**, i.e., free legal aid was approved in 3 cases related to *legal representation for victims of crime in the procedure on property tenure claims*. In 2 cases legal aid was approved to **victims of domestic violence**, notably for the purpose of initiating measures in front the Social Work Centre(SWC) and first-instance courts. In 1 case legal aid was approved for issues related to **labour relations** (*procedure on reimbursement of unpaid salaries and salary contributions*), **child and juvenile protection** (*procedure on establishing paternity*) and **rights in the field of social protection, health, pension and disability insurance** (*procedure on exercising the right to social protection*⁵⁰). Legal aid was not approved in legal issues concerning **protection of victims of human trafficking**, or in legal issues concerning the exercise of the **right to asylum**. In 2011, one free legal aid application was submitted for the purpose of protecting victims of human trafficking, but it was rejected on the grounds that, according to MOI, the applicant has not been registered as victim of human trafficking. On the other hand, no applications were submitted in regard to exercising the right to asylum, which is mainly due to LFLA's non-alignment with the Law on Asylum and Temporary Protection.⁵¹

⁴⁹Source: Insight granted in 18 decisions on approving free legal aid adopted in the first half of 2012.

⁵⁰According to formal interpretation of legal provisions, *social protection* is not a legal issue that qualifies for approval of free legal aid because it is not enlisted Article 8, paragraph 2. The term *social insurance* is misleadingly implying social protection, as it is a matter of completely different institute regulated by the Law on Mandatory Social Insurance Contributions.

⁵¹Asylum seekers are accommodated in shelters and have no access to information on free legal aid and there is no mechanism for them to fill-in forms in Macedonian language and submit them to regional offices of the Ministry of Justice, pursuant to LFLA.

The situation in 2011 related to the structure of legal issues for which free legal aid was approved was almost identical⁵² and there are no significant differences and variations. More than 60% of decisions on approving free legal aid concern property tenure issues and to a great extent they are related to the above referred types of legal issues in the field of property law, contractual law and inheritance law.

(3) The structure of legal issues for which legal aid has been requested but **was not approved** can be divided into two groups. The first group includes **legal issues that are evidently not stipulated in LFLA** (*divorce procedure, representation in bankruptcy procedure, representation in procedures led in front of the Supreme Court and related to the right to trial in due course, representation in criminal procedures as a defendant*), while the second group includes **legal issues that according to the manner in which they are defined should be addressed under Article 8, paragraph 2.**⁵³ However, the Ministry of Justice has decided on the contrary, probably due to the imprecise provision from Article 8.

The legal issue that is not covered by LFLA, but for which the highest number of free legal aid applications were resubmitted includes family law matters, mainly divorce procedures in cases without an element of domestic violence. It is obvious that citizens need quality legal aid in these matters that are specific not only because of the legal consequences they imply, but primarily because of the complex consequences on the private lives of spouses and the children born in that marriage. Although the spouses are allowed to represent themselves in court, the marital disputes involve a

⁵²Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia, March 2012, pg. 13 and Annual Report on the Implementation of the Law on Free Legal Aid, Ministry of Justice of the Republic of Macedonia, March 2011, pg. 8.

⁵³This is particularly true for property tenure issues. The Ministry of Justice has adopted a number of decisions on rejecting free legal aid for *redress of immaterial damages, redress of material damages, representation and assistance in a procedure led before an executing officer* with an explanation that these issues are not stipulated under LFLA, although the legal theory is rather clear that they fall under property tenure issues.

strong emotional surge that is not compatible with the level of objectivity required for representation in court procedures.⁵⁴ On this account, it was established that people who do not have means to hire attorneys-at-law need to be granted free legal aid in marital disputes as well.

In this regard, more concerns are raised by *the inconsistent and contradictory practices and erroneous interpretation of certain legal issues⁵⁵ on the part of the Ministry of Justice*. Namely, free legal aid applications related to establishing paternity have been rejected, but on the other hand, in 2011 the Ministry of Justice approved free legal aid in several cases for the same legal issue. Moreover, free legal aid applications related to indemnity claims and physical division of property were also rejected, although it is clear that these two legal issues fall under property tenure issues and according to LFLA qualify for approval of free legal aid.⁵⁶ Reasons for such decisions can be identified in the general and vague formulations of legal issues stipulated under LFLA. “**Property tenure issues**” is a general formulation which, when interpreted through the prism of legal theory, includes all types of legal issues from the material and procedural civil law. This opens the possibility for arbitrary interpretation that results in their narrow scope established by means of case law and is in violation of LFLA. An example of the vague formulation in this regard is seen in “**protection of children and juveniles**”, a term that covers almost all issues: from exercising the right to child support allowance, protection of children’s property rights, to custody-related disputes.

(4) When comparing the Macedonian Law on Free Legal Aid with the relevant laws adopted by the countries in the region, dominant is the impression that LFLA in Macedonia is characterized by anarrow coverage of legal issues and failure to accommodate

⁵⁴See: Airey v. Ireland, App no. 6289/73, par. 24.

⁵⁵See: Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia, Chapter 1.

⁵⁶Source: Insight in Decisions no. 11-249 from June 2012 and

citizens' actual needs. In the Republic of Croatia there is obvious heterogeneity and clear coverage of legal issues that qualify for approval of free legal aid. While the free legal aid system in Macedonia covers 7 types of legal issues, the system in Croatia includes as many as 14 legal issues.⁵⁷ As regards the types of legal issues for which citizens can request free legal aid, dominant are family law matters. Montenegro, however, has adopted a different approach, i.e., free legal aid is approved for all legal issues, with the exception of several issues, as enlisted in the relevant law.⁵⁸

(5) The existing range of legal issues that qualify for free legal aid is not in line with ECHR and the so-called Airey criteria⁵⁹ laid down in the case law established by ECtHR, whereby the states are obliged to provide free legal aid in certain cases. These criteria do not distinguish between different legal areas and issues. A key requirement is **the problem's importance for the individual**, and not the legal category of the problem in question. These criteria were developed in ECtHR's ruling taken in the case *Steel and Morris v UK*⁶⁰ and concern the legal issues that qualify for free legal aid.

⁵⁷ 1. property relations; 2. residence and work of foreigners; 3. exercise of social protection rights; 4. family law matters; 5. labour relations; 6. procedures led in front of the Constitutional Court; 7. victims of domestic violence; 8. health insurance; 9. administrative procedures related to status; 10. pension and disability insurance; 11. extraordinary legal remedies; 12. procedures led in front of ECtHR; 13. enforcement procedure; 14. as exception, procedures related to the principle of fairness – Article 5, Law on Free Legal Aid, consolidated text (“Official Gazette of the Republic of Croatia” no. 63 from 30.5.2008 with integrated amendments from the Law on Amending the Law on Free Legal Aid, “Official Gazette of the Republic of Croatia” no. 81 from 15.7.2011)

⁵⁸ LAW ON FREE LEGAL AID (“Official Gazette of Montenegro”, no. 20/11 from 15.4.2011) Article 7.

⁵⁹ States are obliged to provide free legal aid when necessary, thereby taking into consideration the following criteria: (1) importance of the case for the individual (applicant); (2) complexity of the case; (3) ability of the individual for self-representation; and (4) costs and financial status of the individual to cover them.

⁶⁰ Application no. 64186/01

Steel, employed as a part-time bar worker, and *Moris*, a postal worker, uttered harsh criticism to *McDonalds* and its hamburgers and have been accused of defamation. The defamation procedure was considered one of the most voluminous procedures in the legal history of England, a trial in first instance that lasted 313 court days and included 23 appeal hearings, involving 40,000 pages of documentary evidence and 130 oral witnesses, including a number of expert witnesses on complicated scientific matters. The case included over 100 days of legal argument. The judgment ran in total to over 1,100 pages (paragraph 65).

Although the applicants (Steel and Morris) have passed the examination of property possession, legal aid was not available for defamation proceedings in England. As a result, they were forced to represent themselves, while McDonalds hired a team of experienced lawyers and spent 10 million GBP on legal expenses (paragraphs 58 and 68). ECtHR considered that neither the sporadic help given by the volunteer lawyers nor the extensive judicial assistance and latitude granted to the applicants as legally illiterate litigants in person, was any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel... therefore, it concluded that the denial of free legal aid was a violation of Article 6 (1) of the ECHR (paragraph 72)

(6) Although, in principle, the list of legal issues that qualify for free legal aid covers key civil and administrative procedures for which citizens need legal aid, omission of certain issues (family law matters), as well as the vague definition of existing legal issues (protection of children and juveniles, protection of victims of domestic violence) create difficulties in LFLA's implementation. Moreover, despite the fact that LFLA includes certain legal matters (labour relations, pension and disability insurance), their application is difficult because the protection of these rights is often conditioned with relatively short deadlines of 8, 15 and 30 days, which

do not correspond with the deadline of 20 days on taking a decision upon free legal aid applications, and ultimately makes it impossible for a timely decision to be taken. The Law on Free Legal Aid is not conducive to the exercise of the right to access to court as guaranteed by the European Convention on Human Rights, and consequently LFLA needs to be amended.

Recommendations

- 1. To expand the list of legal issues that qualify for free legal aid, by including family law matters.** LFLA must cover family law matters as legal issues for which free legal aid is approved, due to the citizens' needs and the need to comply with the above-referred Airey criteria. Above all, free legal aid must be approved in procedures on divorce and marriage annulment, as well as in procedures on custody and guardianship over children and juveniles, alimony disputes, and the like.
- 2. To clarify the legal issues for which free legal aid can be approved.** Having in mind the need for legal security, LFLA must include clear provisions on the procedures for which free legal aid can be approved, in that making sure there is no room for different interpretation on the part of the decision-making body.
- 3. To anticipate the possibility for free legal aid to be approved for issues that are not covered by LFLA, notably by means of an exception and when required by the interests of justice.** In order to prevent possible violation of ECHR, as described above, LFLA must anticipate a possibility for approving free legal aid for issues that are not stipulated in LFLA, in that making due consideration of the Airey criteria: importance of the case for the individual (the applicant), complexity of the case, the applicant's ability for self-representation, as well as his/her financial status in regard to covering procedure-related costs.

4. To perform scientific-based analyses and research on citizens' legal needs and the manners to solve them. LFLA can successfully address citizens' need for legal aid only if it is developed on the basis of a preliminary analysis of legal problems affecting the citizens, their frequency and impact on citizens' lives, as well as the possible manners to solve them, which can be done only by means of through research and analyses.

5. Three-fold requirements result in decimated number of potential free legal aid beneficiaries

- free legal aid beneficiaries -

Right to free legal aid is given to persons who, considering their financial status, are unable to exercise their rights guaranteed by the Constitution and the laws without endangering their own sustenance and the sustenance of their family members from the joint household. In addition, LFLA divides beneficiaries into: (1) citizens of the Republic of Macedonian with permanent residence on its territory; and (2) certain categories of persons who are not citizens of the Republic of Macedonia.

(1) LFLA includes a so-called “three-fold eligibility test”, i.e., the applicants must fulfil three eligibility criteria.

First criterion (social status) – Right to free legal aid is given to: 1. beneficiaries of social allowance; 2. beneficiaries of disability allowance, who do not generate other income based on earnings 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 that and are entitled to child support allowance.

Second criterion (income) – Total income of the applicant and his/her household members must not exceed 50% of the average monthly salary paid in the Republic of Macedonia.

Third criterion (property) – The applicant or his/her family members from the joint household must not dispose with a property whose value is equal to or exceeds five average monthly gross salaries paid in the Republic of Macedonia.

(2) Right to free legal aid is given to persons who are not citizens of the Republic of Macedonia, but belong to one of the following categories:

- asylum applicants, persons whose asylum application has been approved, internally displaced persons, as well as displaced or exiled persons with temporary residence on the territory of the Republic of Macedonia,
- foreign nationals who, in compliance with the international agreements and regardless of their permanent or temporary residence on the territory of the Republic of Macedonia, exercise 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 under LFLA.¹¹

(1) One of the key issues that emerge when adopting and implementing a law on free legal aid concerns the beneficiary categories of this right. LFLA includes precise provisions on the criteria that free legal aid applicants must fulfil, by determining the categories of citizens entitled to free legal aid, and stipulates the requirements related to income earned and property owned by the applicant and his/her household members. This section provides an overview of the existing structure of free legal aid applicants and assesses whether LFLA can provide free legal aid for all persons who are unable to exercise their rights without endangering their own sustenance, or it includes certain restrictions in this regard. As was the case with the legal issues, the Ministry of Justice informed us that it does not keep statistics on the structure of free legal aid beneficiaries, as well as on persons whose free legal aid applications have been rejected.⁶¹ However, data used in this

⁶¹Notification no. 19 – 1154/2 from 9.4.2012.

analysis were obtained by an insight in decisions on approving or rejecting free legal aid applications.

(2) Practices noted in the previous two years are still present in 2012: the highest share of decisions on approving free legal aid concerned beneficiaries of *social allowance*, while a smaller share of them concern beneficiaries of *permanent social assistance*, both of which are rights in the field of social protection.⁶² Next category includes *beneficiaries of lowest pension allowance*,⁶³ while beneficiaries of *child support allowance* and *disability allowance*⁶⁴ appear as successful free legal aid applicants in only few decisions.

(3) From the onset of LFLA's implementation, there is not a single free legal aid application submitted by persons who are not citizens of the Republic of Macedonia.⁶⁵ The reasons behind this situation could be identified in the almost non-existent promotion of free legal aid among these specific categories of people who are most often accommodated in shelter centres, their poor knowledge of Macedonian language, as well as the incomplete legal pro-

⁶²Pursuant to the Law on Social Protection, the right defined as *social allowance*, as stipulated in Article 12, paragraph 2, item 1 of the LFLA does not exist. However, other rights indicated in the Law on Social Protection include social monetary assistance and permanent monetary assistance. LFLA creates confusion because it is not clear whether this term includes all beneficiaries of rights in the field of social protection, only beneficiaries of monetary allowances and assistance, or only beneficiaries of social allowance.

⁶³The *lowest pension allowance* is not a fixed amount, but is different for different categories of age retirement as well as in terms of the length of previous working service. Therefore, it would be more equitable to refer to the lowest pension allowances in plural. See: Analysis on the Scope of the Law on Free Legal Aid, Skopje 2010, pg. 32, and Annual Report of the Pension and Disability Insurance Fund of the Republic of Macedonia 2011, pg. 15.

⁶⁴Once again, choice of terms creates confusion. *Disability allowance* as a right is anticipated by the Law on Rights of Disabled Veterans, their family members and family members of deceased fighters, "Official Gazette of the Republic of Macedonia", no. 13/96, Article 18. However, the *Analysis of the Scope of the Law on Free Legal Aid, Skopje 2010*, pg. 31, interprets that this refers to *disability allowance issued by the Pension and Disability Insurance Fund*, which is a completely different right.

⁶⁵Annual Report on the Implementation of the Law on Free Legal Aid, Ministry of Justice of the Republic of Macedonia.

visions on free legal aid for these categories. With the exception of the procedure on *exercising the right to asylum*,⁶⁶ LFLA does not include other legal issues that are of interest for and affect these categories of persons (procedure on obtaining citizenship, regulating the status of foreign nationals, etc.).

(4) Two and a half years have passed from LFLA's entry in effect and can be considered a sufficient period of time to assess the coverage of persons eligible for free legal aid. From the very beginning warnings were made that "the right to free legal aid can be exercised only by a small number of citizens",⁶⁷ which was confirmed in the two reports that preceded this analysis. **LFLA pursues a restrictive access to free legal aid, which is limited only to given categories of beneficiaries, as discussed above.** The "*three-fold requirements*" leave other persons, regardless of their financial status, outside the free legal aid system, in that failing to take into account the possibility that some of them might fulfil the requirements to exercise certain rights stipulated in LFLA, but their rights have been denied due to absence of legal aid. **The requirement on persons' social status** leads to a situation when a person who has no property and does not earn income is unable to exercise the right to free legal aid, because he/she does not fall under the above-referred categories. **The requirement related to income** does not take into consideration the number of household members. Sustenance of single persons or households comprised of two members who earn 10,000.00 MKD is not endangered to the same extent as the sustenance of big families that generate the same level of income. Evidence in support of this statement is found in the Communication published by the State Statistical Office⁶⁸ according to which 47.3% of poor population live in households comprised of 5 or more members. As a result, the Law puts

⁶⁶ Anticipated with the amendments to LFLA ("Official Gazette of the Republic of Macedonia" no. 185/2011)

⁶⁷ See :Analysis on the Scope of the Law on Free Legal Aid, 2010, Stojanka Mirceva, PhD and Artid Memeti, MA, pg. 39.

⁶⁸SSO's Communication no. 4.1.1.48 from 11.7.2011.

large households in an unequal and subordinate position, and thus limits their right to equal access to justice. However, the analysis of decisions on rejecting free legal aid applications shows that the **requirement related to property** is the most indicated reason for rejecting the free legal aid application. It is exactly because of this requirement that all citizens who own any type of immovable property,⁶⁹ regardless of the property's condition and value, are not entitled to free legal aid. According to the concept of the free legal aid system, it has been assumed that the sustenance of these citizens is not endangered and they can cover the costs of legal assistance they need. However, this solution leads to an absurd situation in which persons who are beneficiaries of social allowance, *i.e., live in poverty, are unable to benefit from free legal aid* due to holding tenure over the property where they live and from which they do not earn income.

Examples from the work of authorized associations

Person N.N. is a single parent, mother of three minor children, who has lived in a civil partnership for many years at a house that is jointlyowned with her partner. The applicant is a victim of long-years of physical and psychological abuse by her partner, which culminated with her being expelled from her home.

Left on the street, she addressed the association where she was provided general legal information on her legal position and was informed about the possibility of free legal aid. Following her application for free legal concerning a procedure on division of property because she had nowhere to live, the applicant was presented with a decision taken by the Ministry of Justice on rejecting her free legal aid application due to the fact that she is registered as co-owner of the house from which she was expelled and to which she has no access.

⁶⁹Regardless of the fact whether it is a matter of house, apartment, garage, field, meadow.

(5) When compared to the countries in the region that have adopted laws on free legal aid, Republic of Macedonia can “praise itself” for having resoundingly the most stringent requirements related to applicants’ financial status. For example, in the **Republic of Croatia**⁷⁰ income is calculated per person in the household, and not as total amount, and the applicant is allowed to own an apartment or house where he/she resides. In addition, free legal aid is granted also to applicants who do not meet the abovementioned requirements, provided that the applicant’s financial status is such that payment of procedure-related costs could endanger the sustenance of the applicant and the sustenance of his/her household members, when taking into consideration the actual or foreseeable procedure-related costs. In **Montenegro**⁷¹, free legal aid is granted to children without parental care, persons with disabilities and victims of domestic violence, as well as victims of human trafficking, without having to determine their financial status, while the apartment or house where the applicant resides is not considered property when they fall within the pre-determined requirements related to the property area allowed. In **Kosovo**⁷², secondary legal aid (representation in court and administrative procedures) is granted to all applicants whose total family income is less than the average monthly income.

(6) Requirements related to the material status of free legal aid beneficiaries are not in compliance with the right to access to justice, as laid down in ECHR in the above-referred Airey criteria. In this regard, a **key criterion on whether the state is obliged to provide legal aid in a particular case is not the individual's qualification under a certain category of citizens, but the individual's ability to cover the procedure-related costs above all**. According to the

⁷⁰Law on Free Legal Aid, consolidated text (“*Official Gazette of the Republic of Croatia*” no. 63 from 30.5.2008 with integrated amendments from to the Law on Amending the Law on Free Legal Aid, “*Official Gazette of the Republic of Croatia*” no. 81 from 15.7.2011)

⁷¹LAW ON FREE LEGAL AID (“*Official Gazette of Montenegro*”, no. 20/11 from 15.4.2011)

⁷²LAW ON FREE LEGAL AID no. 04/L-017

Law in effect, this right is denied for a great number of citizens who live in poverty and who cannot cover the procedure-related costs, but fail to fulfil the strict requirements stipulated in LFLA.

Recommendations:

1. To precisely specify the categories of citizens entitled to free legal aid without additional establishment of their material status and without additional restrictions. The Law on Social Protection stipulates several rights enjoyed by persons at social risk as a result of poverty. Beneficiaries of these rights have already passed the verification of their material status and therefore there is no need for additional restrictions when they appear as applicants for free legal aid. This primarily concerns beneficiaries of social allowance, beneficiaries of permanent monetary allowance and beneficiaries of the right to monetary allowance for persons under the age of 18 who have the status of orphans and children without parental care.

2. To determinethe maximum monthly income of the applicant and his/her household members, in order to establish whether his/her sustenance is endangered, provided that this test is conducted on the basis of objectively measurable criteria that make due consideration of the number of household members. In its reports on the living standards in the country, the State Statistical Office includes objective data on the so-called “poverty lines”,which in addition to the amount of income make due account of the average consumer basket. These “poverty lines” can be used in defining this eligibility requirement for free legal aid applicants. It is very important to make due consideration of the number of household members when calculating the average income of the applicants, which can be efficiently instituted by determining the minimum income per household member.

3. When defining the requirements on applicants' property, to introduce a criterion whereby the applicant should not possess property that is a source of income for him/her. This criterion is stipulated under the Law on Social Protection and is defined in detail in the *Rulebook on the Manner of Exercising and Benefiting from the Right to Social Monetary Allowance*.⁷³ According to this criterion, the house or apartment where the applicant resides should not constitute an obstacle for exercising the right to free legal aid.

4. To stipulate the possibility, as an exemption, for approving free legal aid for persons who do not fulfil the above-indicated requirements, in cases of complex legal matters and in cases when the applicant is unable to represent him/herself in court, provided that the procedure-related costs are too high for the applicant to cover. This recommendation implies integration of the Airey criteria in LFLAand concerns the eligibility requirements for free legal aid applicants. The overall goal is to make LFLA more conducive to full exercise of the right guaranteed by ECHR.

⁷³ Article 3 of the *Rulebook on the Manner of Exercising and Benefiting from the Right to Social Monetary Allowance*, consolidated text, "Official Gazette of the Republic of Macedonia", no. 146/09, 59/2011, 123/11 and 139/11

"Property and property rights that are considered sources of income for the **sustenance of beneficiaries of social monetary allowance** shall include:

1. another family house or apartment;
2. house under construction;
3. house for rest and recreation;
4. business premises;
5. registered motor vehicle, not alienated in the last 6 months prior to the application's submission (motor vehicle, engine above 50 cm³, van, bus, truck), harvesting machines;
6. farm land owned or leased or owned by the state for which contract on use of agricultural land is signed, in an area of more than 7,000 m², land classified as 4th and 5th cadastre category,shall be calculated only as 40% of the actual are, while land classified in 6th, 7th, and 8th cadastre category shall be calculated only as 20% of the actual area; and
7. savings in the amount exceeding 50,000.00 MKD."

6. Long and thorny road to exercising free legal aid

- procedure on exercising the right to free legal aid -

The procedure on exercising the right to free legal aid is stipulated as an urgent procedure and it is initiated by submitting an application to the regional office of the Ministry of Justice. Authorized officers at the regional offices of the Ministry of Justice are obliged to immediately reconsider the applications, collect the data required to establish the applicant's material status and within a deadline of 12 days from the application's receipt they are obliged to complete and forward it to the Ministry of Justice for final decision-making. In order to comply with this deadline, LFLA also includes a deadline of three days for information holders to provide the requested data to the regional office. Once the application is forwarded, the Minister of Justice is obliged to take a decision on the free legal aid application not later than eight days following the application's receipt from the regional office.¹²

(1) According to LFLA, exercise of the right to free legal aid is conditioned and implies a procedure where the decision making competences are functionally divided between the regional offices of the Ministry of Justice authorized to receive and complete free legal aid applications and the Ministry of Justice, in the capacity of decision-making body. The procedure should provide fast and efficient verification of data required to determine whether the applicant fulfils the eligibility requirements. This procedure's duration and course are relevant indicators for: (1) the capacity of regional offices and the Ministry of Justice to implement LFLA; and (2) Ministry of Justice's capacity to verify and access data concerning the eligibility requirements for free legal aid applicants. This part of the analysis relies on data collected by means of Freedom

of Information (FOI) applications addressed to the Ministry of Justice. Another valuable source of data was the work of authorized associations in providing legal aid⁷⁴ for completion of free legal aid applications.

(2) The negative practices related to significant delays in the procedure on exercising the right to free legal aid and the obvious inability to comply with the law-stipulated deadline of 20 days continued in 2012 as well. On the basis of insight granted in 32 decisions on approving or rejecting free legal aid in 2012, it was established that the average time for decision-taking upon free legal aid applications continues to be more than two months. For comparison purposes, in 2011 the average time for decision-taking upon free legal aid applications was almost identical (58 days),⁷⁵ which shows that no improvements were made in this regard. Evidence in support of this statement are data presented in *Table 4*, which clearly indicate that in a period of three months decisions were taken for only half of the total number of submitted applications, which is not in compliance with the law-stipulated deadline of 20 days. However, the third quarter of 2012 was marked by a certain increase related to the decision-making dynamics, which is primarily a result of the high share of backlog and pending cases from the previous quarters.⁷⁶ **Long duration of the procedure on granting free legal aid prevents its application to solve certain types of legal issues as stipulated in LFLA, notably because short deadlines are anticipated in regard to exercising and protecting other rights** (labour rights, right to pension and disability insurance, right to health insurance, etc.). The specificity of these procedures lies in the fact that legal aid is usually needed and requested for violation or suspension of a certain right, while the law-stipulated deadline for motioning a legal remedy (appeal,

⁷⁴ MYLA, NRC, YCC and ROMA SOS;

⁷⁵ Fairy Tale or Reality?! Free Legal Aid in the Republic of Macedonia, pg. 45

⁷⁶ See Section 2, Paragraph 6.

administrative lawsuit, complaint) is 8, 15 or 30 days. Previous practices show that only few procedures on exercising the right to free legal aid were completed within a period of less than 30 days.

Examples from the work of authorised associations:

The person in question is a beneficiary of social allowance and suffers from serious health problems. The social allowance is the only source of income for sustenance and he lives in substandard conditions. During a control performed by the SWC, it has been established that in 2011 the person generated an income of 1,500.00 MKD and as a result thereof his social allowance was discontinued.

The next day, the person addressed the association with a request for legal aid. However, due to the fact that the authorized association is not entitled to prepare submissions in administrative procedures, the citizen was forced to apply for free legal aid in order to have an attorney-at-law appointed that would draft the appeal. Due to the short deadline set for lodging an appeal (15 days), the approval for free legal aid was not received in time and the citizen had no opportunity to hire an attorney-at-law that would draft the appeal, which would have entitled him to use the right to legal remedy.

(3) Reasons behind the delayed procedure are primarily identified in the number and diversity of data that the regional offices are obliged to collect. In other words, they need to collect substantially different data from at least eight separate state authorities and institutions (*see Table 9*). If only one state authority delays the provision of data required, the entire procedure would be “deadlocked”. This happens because of the diversity of data required, while some data are part of existing and easily accessible database (social allowance beneficiaries, immovable property tenure, monthly income) and insight therein is relatively easy

and fast. Other data (evaluation of property value) requires deployment of additional resources on the part of the information holder.

Table 7 – Overview of information holders and types of data required in the procedure

INFORMATION HOLDERS	TYPE OF INFORMATION REQUESTED
Social Work Centres	Is the applicant beneficiary of certain social protection rights?
Public Revenue Office	Amount and type of income of the applicant and his/her household members
Central Register of the Republic of Macedonia	Is the applicant a company manager?
Employment Agency of the Republic of Macedonia	Is the applicant employed?
Real Estate Cadastre of the Republic of Macedonia	Does the applicant or his/her household members own immovable property?
Municipality	Evaluation of immovable property, after having obtained information on the applicant's property ownership.
MOI	Is the applicant a victim of domestic violence, victim of crime, victim of human trafficking?
Pension and Disability Insurance Fund	Is the applicant exercising certain pension and disability insurance rights?

(4) Absence of an integrated electronic system that merges all databases compiled and kept by individual information holders has resulted in the use of written communication which, in addition to the abovementioned reasons, further delays the procedure due to the nature of the operation in question (archiving, endorsing, expedition, delivery, postal service). This is particularly devastating at times of developed Internet technologies and “e-Government” where certain data are already part of existing electronic databases (Cadastre, PRO, PDIF), some of which are publicly available.⁷⁷ The regional offices collect these data in writ-

⁷⁷<http://katastar.gov.mk>

ten. However, when assessing the free legal aid system due consideration must be made of the poor human resources and technical equipment available at the regional offices of the Ministry of Justice. Some of them do not have PCs or fax that would most certainly contribute to faster communication and data delivery.⁷⁸

(5) For comparison purposes, in the Republic of Croatia, the average time for decision-taking on free legal aid applications submitted was reduced from 15.22 days in 2010 to 8.64 days in 2011.⁷⁹

(6) Significant duration of the procedure on approving legal aid that continues in 2012 puts under question the effectiveness of the entire system on free legal aid. Having in mind that free legal aid is efficient only if it is timely and fast, the procedure's duration that extends to more than a month deprives the citizens of the legal aid they need to solve issues in the field of labour relations, administrative lawsuits and all legal issues that imply compliance with a specific deadline. This issue is very important in cases of possible amendments to the Law, especially because it directly concerns the capacity of the Ministry of Justice to implement the provisions from LFLA.

Recommendations:

1. To enable free legal aid for the categories of persons whose material status would not be verified upon the submission of the free legal aid application, but only assessed in regard to the legal issue for which legal aid is requested. In the Republic of Macedonia there are certain categories of citizens who, due to their difficult material status, are beneficiaries of certain rights whose exercise is conditioned with thorough verification of total income

⁷⁸Source – Report on the Implementation of the Law on Free Legal Aid – 2012, Jasna Buturac.

⁷⁹Source - Assessment of the Croatian Legal Aid Act, 2010

generated and total property owned by the applicant and his/her household members. These primarily include rights to financial assistance related to social protection pursuant to the Law on Social Protection.⁸⁰In cases where these individuals appear as applicants for free legal aid, it is aimless and unnecessary to re-verify their material status, because it has already been established in the previous procedure on exercising the relevant social protection right. Adoption ofthis recommendation would significantly accelerate the procedure on exercising the right to free legal in cases motioned by above-indicated categories of citizens.

2. When setting criteria that are related to the material status of applicants for free legal aid, to use the criteria from the Law on Social Protection, because they are already defined and can be easily verified. The Law on Social Protection includes poverty as a social risk and determines criteria against which it can be established whether a person is living in poverty or not. LFLA, as a law that stipulates a special right for people in difficult material situation, should use the criteria from the Law on Social Protection because they are more easily verified compared to the complex system established by LFLA.

3. To integrate separate databases compiled and kept by individual information holders in one electronic system that can be accessed by employees of the regional offices. Simplifying and accelerating the procedure is of key importance with a view to enable easy access to data that the regional office should collect. Given the fact that necessary data are already part of individual electronic databases, these databases should be merged into an integrated system that can be accessed by all regional offices of the Ministry of Justice. In that regard, the regional offices should be technically equipped and should strengthen their human resources. Adopting this recommendation is of vital importance in order to improve the efficiency of the free legal aid system.

⁸⁰*Social allowance, permanent monetary allowance and right to monetary allowance for persons under the age of 18, who have the status of orphans and children without parental care.*

4. The Ministry of Justice to delegate competences on decision-taking upon free legal aid applications to the regional offices. Although at the moment there are no conditions for the regional offices to take decisions upon applications, the Ministry of Justice should invest in development of human resources and technical equipment at the regional offices, in order to enable them to take decisions upon applications, including their access to databases necessary for dataverification. In that, the Ministry of Justice would be released from this obligation and would be transformed into a second-instance body that takes decisions upon appeals lodged by the dissatisfied parties.

7. Towards an effective legal remedy for persons whose free legal aid application have been rejected

-right to legal remedy stipulated in LFLA-

The applicant whose free legal aid application is rejected by the Ministry of Justice of the Republic of Macedonia is entitled to initiate an administrative lawsuit in front of the Administrative Court of the Republic of Macedonia within a period of 30 days from the receipt of the decision on rejecting the application. The applicant is also entitled to initiate an administrative lawsuit should the Ministry of Justice fail to take a decision within the law-stipulated deadline. An appeal against the decision taken by the Administrative Court of the Republic of Macedonia can be lodged in front of the Higher Administrative Court of the Republic of Macedonia within a period of 15 days from the ruling's receipt.¹³

(1) An important component of LFLA that is subject of this report is the right to legal remedy for persons whose free legal aid applications have been rejected. According to LFLA, the two-instance procedure is established by allowing the dissatisfied party to initiate an administrative dispute in front of the Administrative Court of the Republic of Macedonia. This legal solution distinguishes LFLA from other laws that regulate certain administrative matters⁸¹ wherein dissatisfied parties are entitled to lodge an appeal before a second-instance administrative body, while court protection is stipulated in third-instance. The different approach pursued under LFLA raises the question on whether this legal solution is justified, i.e., whether the right to initiate an administrative dispute is an effective legal remedy in this procedure, in particular due to the

⁸¹Law on Pension and Disability Insurance, Law on Health Insurance, Law on Social Protection, Law on Denationalization, etc.

court procedure costs on one hand, and the procedure's duration on the other hand. Moreover, this analysis addresses the role of the Administrative Court as the institution competent to interpret problematic provisions from LFLA. Data related to this issue were collected by exercising the right to free access to information (FOI applications), as well as by means of strategic litigation in 15 cases related to provision of legal aid to persons whose free legal aid applications have been rejected.

(2) From LFLA's entry in effect to 30.11.2012, a total of 27 lawsuits⁸² were motioned in front of the Administrative Court of the Republic of Macedonia by persons whose free legal aid applications have been rejected. Total of 16 rulings were adopted, 6 of which concerned approval of lawsuit petition, 9 concerned rejection of the lawsuit petition as unreasonably grounded, while 1 lawsuit was dismissed as incomplete.⁸³

Table 8 – Number of administrative disputes initiated by people whose free legal aid applications have been rejected from the Law's entry in effect to 1.12.2012

Applications rejected	Lawsuits motioned	Decisions adopted	Lawsuits approved	Lawsuits rejected	Lawsuits dismissed	Average time for decision-taking
214	27	16	6	9	1	12 months

Based on data presented in the table above, a conclusion is reached that only 14% of applicants whose free legal aid applications have been rejected have used their right to legal remedy. The small number of initiated lawsuits compared to the number of rejected applications is a result of the stringent criteria, i.e., the person concerned

⁸² MYLA provided legal aid for legal protection of rejected free legal aid applicants in 15 from the total of 27 lawsuits.

⁸³ FOI response from the Administrative Court of the Republic of Macedonia no. 03-22/4 from 13.7.2012 and no. 03-38/5 from 13.12.2012

was aware that he/she is not eligible for free legal aid. However, the insignificant number of lawsuits is also due to the complexity of the administrative dispute procedure that is burdened with payment of court administrative fees and compilation of documents (lawsuit) for the legally illiterate party. As regards the duration of the decision-taking procedure at the Administrative Court, in average, at least one year passes by from the lawsuit's submission to the session on which decision is taken.⁸⁴

(3) Key questions that need to be answered concern whether and how administrative and court protection is made available to rejected applicants and how efficient it is.

Availability of administrative and court protection

Availability of administrative and court protection can be defined as absence of barriers that would significantly burden access to this legal remedy. The barriers can be legal or financial. *Legal barriers* are related to the procedure's complexity. For laymen, and in particular for persons with lower level of or without education, the administrative court procedure is more complicated and more complex than the administrative procedure. The possibility for the lawsuit to be rejected due to lack of legal knowledge and formal shortcomings is greater than the possibility for the appeal in administrative procedure to be rejected. *Financial barriers* are the costs related to initiation of particular procedures, and are comprised of court administrative fees for lawsuit and ruling, attorney-at-law's remuneration for compiling the lawsuit and petitioning for the lawsuit to be given priority (which is needed because there is no "urgent procedure" in front of the Administrative Court), as well as costs related to postal services. What is specific for the procedures led in front of the Administrative Court is the fact that all parties involved cover the procedure-related costs

⁸⁴The period that elapses from decision-taking to its delivering the party, which can last 3 to 4 months, is not included in this calculation.

separately and there is no obligation for the party that lost the administrative dispute to reimburse the costs.

Table 9 – Overview of usual costs related to initiation of administrative dispute against the Ministry of Justice’s decision on rejecting the free legal aid application⁸⁵

C o s t	A m o u n t
Court fees for submitting a law-suit ¹⁴	480.00 MKD
Costs related to postal services	180.00 MKD
Court fees for the ruling	480.00 MKD
Attorney-at-law remuneration for compiling the lawsuit -	3,900.00 MKD
Attorney-at-law's remuneration for petitioning the lawsuit to be given priority -	1,300.00 MKD
TOTAL:	6,340.00 MKD

Total and non-refundable costs in the amount of **6,340.00 MKD** are significant burden for a person who needs free legal aid⁸⁶ and represent a barrier that can prevent him/her from seeking legal protection, especially given the fact that having a lawsuit approved does not mean approval of free legal aid, but returning the case for reconsideration at the Ministry of Justice.

Efficiency of administrative court protection

Efficiency/effectiveness is the quality of a legal remedy to have a

⁸⁵Court administrative fees are calculated in compliance with the Tariff Code stipulated in the Law on Court Administrative Fees, costs for attorneys-at-law are calculated in compliance with the Bar Tariff Code, while postal service are given as lump-sum.

⁸⁶Often, these people do not generate any income nor own property.

substantial effect on or to allow correction of the initial violation of the right made in the first-instance decision.

Procedure's long duration (12 months) is a consequence of the nature of administrative court procedures, but is also a result of high case load at the Administrative Court. This practice is contrary to provisions from LFLA, notably because they stipulate that the procedure on approving free legal aid is **urgent**. Hence, the provisions from LFLA are contradictory because they stipulate administrative court remedies as second-instance and single legal remedy, which is in collision with the principle of urgency on which the Law is based. Long duration of the administrative dispute procedure results in failure to comply with law-stipulated deadlines for other procedures on exercising certain rights, and in turn prevents the persons concerned to solve certain legal issues, especially in cases where time is an important factor. Effectiveness of this legal remedy is questionable also in terms of the fact that administrative court's ruling implies an action that means annulment of the initial decision and returning the case for reconsideration at the Ministry of Justice, which can result in additional delay of the procedure for 2 to 3 months. On this account, the administrative court protection is not efficient in protecting the right to free legal aid in due course.

Recommendations:

- 1. To introduce the right to appeal against the decisions taken by the Ministry of Justice as a legal remedy motioned in front of a competent second-instance state commission that decides in administrative procedure and procedures related to labour relations.** In the capacity of a legal remedy, an appeal would be a more available and more efficient legal remedy compared to the administrative dispute, which should remain in place as third-instance legal remedy.

8. Free legal aid providers: vital link in the system or a necessary decor!?

- free legal aid providers -

In the Republic of Macedonia, free legal aid is provided by authorized citizens' associations, regional offices of the Ministry of Justice and attorneys-at-law. Authorized citizens' associations and authorized officers at the regional offices of the Ministry provide only *preliminary legal aid*, while attorneys-at-law provide legal aid in *court and administrative procedures*. Citizens' associations can provide preliminary legal aid if they fulfil the law-stipulated terms and conditions, that *inter alia* include the requirement for the association to have employed at least one lawyer with passed Bar Exam. The same requirement is valid for the regional offices of the Ministry of Justice. Citizens' associations authorized for provision of preliminary legal aid cannot use any form of advertising related to their provision of preliminary legal aid. Unlawful advertising on the part of associations provides reasonable grounds to have their authorization on provision of preliminary legal aid revoked. Every three months, the Ministry of Justice is obliged to publish an updated list of authorized associations providing free legal aid. As regards the attorneys-at-law, the only condition is to be enlisted in the Registry of Attorneys-at-Law Providing Free Legal Aid kept by the Ministry of Justice. Authorized citizens' associations and attorneys-at-law are entitled to have their costs reimbursed, i.e., they are remunerated for all legal aid actions provided to a person who was approved free legal aid.¹⁵

(1) Free legal aid providers, together with the Ministry of Justice, are the key entities whose actions affect the functionality and efficiency of the free legal aid system. Adequate regulation of their position, establishment of clear rules of operation, mutual cooperation and communication, and timely remuneration and reim-

bursement of costs for legal aid provided are important in the view of their full integration in the system, and also provides additional incentive for provision of quality legal aid for free legal aid applicants. This section includes an analysis of the role of all free legal aid providers separately. The section on citizens' associations is based on experiences from their direct involvement in the free legal aid system. The authorized associations include: MYLA, NRC, YCC and ROMA SOS.

Citizens' associations as free legal aid providers

(2) From LFLA's entry in effect to date, only four associations in the Republic of Macedonia used the opportunity to obtain authorization for provision of free legal aid, those being: MYLA, NRC, YCC and ROMA SOS. They were all authorized in 2011. In the same year, two other associations⁸⁷ submitted their relevant applications, but were rejected although they most certainly fulfilled the terms and conditions stipulated in LFLA. At the moment, these two associations are leading a procedure in front of the Administrative Court to contest the decision on rejecting their applications and a decision in this procedure is pending.⁸⁸ In 2012, no new associations applied for authorization to provide free legal aid. It should be noted that all associations that obtained authorization on free legal aid provision, including the two associations whose applications were rejected, succeeded in fulfilling all requirements imposed by LFLA with the financial support from the Foundation Open Society - Macedonia (FOSM). Without the financial support, none of these associations would have been able to obtain the authorization on preliminary legal aid provision, despite the fact that they have extensive experience and have relevant capacity for provision of legal aid. This situation is a result of one of the requirements stip-

⁸⁷EHO from Stip and Izbor from Strumica.

⁸⁸While this report was drafted, EHO from Stip received the ruling taken by the Administrative Court of the Republic of Macedonia approving the lawsuit petition and indicating that the association fulfils the terms and conditions stipulated in Article 17 of the LFLA, whereby the first-instance body is requested to adopt fair and lawful decision.

ulated in LFLA, whereby **the association should have employed at least one lawyer with passed Bar Exam**. This requirement obliges the association to secure funds for reimbursing the monthly gross salary for the person employed, while at the same time it is unable to collect its receivables from the Ministry of Justice for the legal aid provided.⁸⁹ On this account, many associations - which have the relevant capacity and long-term experience in provision of free legal aid to vulnerable categories of citizens - did not obtain the authorization and remained outside the national system on free legal aid.

(3) In 2012, the four authorized associations continued to provide preliminary legal aid in a total of 632 cases.

Table 10 – Overview of data on preliminary legal aid provided in 2012

	National Roma Centrum - Kumanovo	Roma SOS - Prilep	Youth Cultural Centre - Bitola	Macedonian Young Lawyers Association - Skopje
General legal information	260	169	120	64
Initial legal advice	7	0	4	10
Legal aid in completing the free legal aid application	6	6	11	9
Number of citizens benefiting from legal aid	259	175	130	68

Legal issues for which citizens need preliminary legal aid primarily concern the rights in the field of social protection, health insurance, labour relations, protection of property ownership, as well as protection of victims of domestic violence and protection of victims of crime.

⁸⁹See Section 3: Types of legal aid

(4) The prohibition for advertising additionally complicates the operation of authorized associations because they have no legal possibility to implement promotional activities to inform citizens without the risk of having their authorization revoked by the Ministry of Justice. Provision of preliminary legal aid is not possible if citizens are not informed that they can address certain association for legal aid. Although LFLA stipulates an obligation for the Ministry of Justice to publish an updated list of associations authorized to provide preliminary legal aid, to date this list is not uploaded on the official website of the Ministry of Justice. In 2012, authorized associations addressed the Ministry of Justice with a joint letter whereby they requested this list to be published, but this was not done by the cut-off date for this report. A completely different matter is the efficiency of this method of promotion, especially among the poor population that is usually excluded from the mainstream activities and has no access to Internet.

(5) In 2012, authorized associations faced the same problems noted in the previous year of LFLA's implementation. Their inability to collect their remuneration for legal aid provided is mainly due to the vague legal provisions that define preliminary legal aid, the utterly narrow scope of preliminary legal aid⁹⁰, as well as the prohibition for advertising. In turn, this prevents fulluse of associations' potential for promotion of free legal aid and improved legal information for the citizens, which in the long run would reduce the need for free legal aid. A positive development in 2012 is seen in the fact that the associations were reimbursed for the legal aid they provided in the amount of 4,200.00 MKD, which is below the minimum remuneration stipulated for associations.⁹¹ In 2012, other associations did not express interest in obtaining authorizations for provision of preliminary legal aid, primarily due to the stringent requirements stipulated in LFLA and the inability to recover at least a portion of their costs incurred for provision of preliminary legal aid.

⁹⁰See Section 3: Types of legal aid.

⁹¹Salary for the person who provides legal aid, administrative and office costs, telephone and internet bills.

Recommendations:

- 1. To alleviate the requirements for authorization of associations, by enabling an alternative solution for the manner in which they engage persons who will provide legal aid.** In addition to full-time employment, cooperation can be pursued by means of task contracts signed with lawyers who have passed the Bar Exam, or by means of task contracts signed with attorneys-at-law. This will also guarantee provision of expert and professional legal aid. This recommendation will enable the associations to efficiently manage their resources and to direct legal aid where it is most needed.
- 2. To revoke the legal provision that prohibits associations to advertise their services.** Provision of legal aid is impossible without promotion of free legal aid and introducing citizens to this right, which requires promotional activities that the associations could implement. This especially concerns promotion of free legal aid among members of vulnerable groups of citizens, which are often closed and excluded from access to information, but with whom associations have established effective communication channels.

Regional offices of the Ministry of Justice as legal aid providers

- (6) Pursuant to LFLA, regional offices of the Ministry of Justice are entrusted with provision of preliminary legal aid, following the entry in effect of the relevant provision on 1.1.2012.⁹²This was done for the purpose of allowing time for the regional offices to fulfil the requirements related to employment of a lawyer with passed Bar Exam, who will provide the preliminary legal aid.
- (7) By the cut-off date for this report, most regional offices did not fulfil this requirement, while some of them have not employed at least a graduated law student.

⁹²Article 18 and Article 49 of the LFLA.

Table 11 – Overview of regional offices of the Ministry of Justice according to their status in relation to fulfilling the requirement stipulated in Article 18 of the LFLA

Regional offices with employed lawyer who passed the Bar Exam ¹⁶	Regional offices with employed graduated law student ¹⁷	Regional offices without employed graduated law student
Berovo	Centar	Makedonski Brod
Valandovo	Cair	Kavadarci
Kratovo	Kisela Voda	Gevgelija
Kriva Palanka	Tetovo	Stip
Negotino	Gostivar	
Resen	Kicevo	
Ohrid	Struga	
Bitola	Bitola	
Kumanovo	Radovis	
Karpos	Strumica	
	Probistip	
	Sveti Nikole	
	Kocani	
	Vinica	

Hence, only 10 regional offices of the Ministry of Justice can provide preliminary legal aid. As for the remaining regional offices, 14 of them have employed a lawyer, whereas 4 regional offices have not even recruited a graduated law student and the work is performed by administrative officers.

(7) Poor human resources and technical equipment at the regional offices significantly impede provision of quality legal aid. Small number of regional offices that have employed lawyers with passed Bar Exam, limited access to the Internet,⁹³ absence of

⁹³Ibid., pg. 18

a methodology for records keeping on provided legal aid,⁹⁴ limited access to collections of legal texts are the shortcomings that must be removed in order to transform the regional offices into entities that citizens can address for obtaining quality legal advice.

Recommendations:

- 1. To provide the regional offices with adequate human resources and technical equipment in order to fulfil the requirements for preliminary legal aid provision.** Key precondition for provision of quality legal is enabling phone, fax and Internet access, including access to collections of laws and bylaws. In addition, the regional offices should be enhanced with quality staff that should undergo continuous training. This activity must be an integral part of the Ministry of Justice's long-term strategy for establishing the free legal aid system.
- 2. To establish a clear methodology to be applied by the regional offices when providing preliminary legal aid.** Given that the regional offices and authorized associations are on the same level in the free legal aid system, the Ministry of Justice, in the capacity of the central authority, needs to establish an identical methodology, by means of Guidelines on the manner of providing free legal aid and records keeping on services provided.
- 3. To task the regional offices with implementation of activities for promotion of the right to free legal aid on local level.** The regional offices are more appropriate than the Ministry of Justice to promote free legal aid, because they act on local level. Therefore, they should be tasked with regular communication and cooperation with local governments, basic courts, regional units/departments of state authorities, the local branch of the Bar Association and local citizens' associations.

⁹⁴Ibid., pg. 22

Attorneys-at-law as free legal aid providers

(8) The only additional requirement imposed for attorneys-at-law in order to qualify as legal aid providers is to be enlisted in the Registry of Attorneys-At-Law Providing Legal Aid⁹⁵ kept by the Ministry of Justice. By the cut-off date for this report, the Registry enlisted a total of 233 attorneys-at-law. Majority of them were enlisted in the previous years as well, while in 2012 19 new attorneys-at-law used this possibility.⁹⁶ Compared to the total number of attorneys-at-law in the country that accounts for more than 2,000,⁹⁷ the number of attorneys-at-law enlisted in the Register shows a rather low interest among them to participate in the free legal aid system. By the cut-off date for this report, a total of 101 attorneys-at-law, by means of individual decisions taken by the Ministry of Justice, provided legal aid in specific cases, 47 of which provided legal aid in 2012.

(9) Attorneys-at-law provide quality legal aid in compliance with the professional standards and ethical code of conduct, but they face significant problems that hinder provision of legal aid and are result of unclear legal provisions and LFLA's non-alignment with other laws that regulate court and administrative procedures. First, attorneys-at-law are affected by the non-payment of other procedure-related costs (primarily court administrative fees and remuneration for forensic experts) whose payment determines whether particular procedure would be initiated or not.⁹⁸ Furthermore, they face problems related to the decision on reimbursements of procedure-related costs in cases when the party to which free legal aid was provided has lost the case. Vague provisions regulating waiver of legal representation by the party should be made due consideration of, in particular knowing that the Law does not

⁹⁵<http://www.justice.gov.mk/PravnaPomos/>

⁹⁶Source: www.justice.gov.mk

⁹⁷Bar Chamber of the Republic of Macedonia, www.mba.org.mk

⁹⁸See Article 146, paragraph 2 and Article 235 of the LLP.

refer to the attorney-at-law's right to request to be withdrawn from a case/lawsuit. Finally, the circle of problems faced by attorneys-at-law is closed by difficulties related to collection of their remuneration, as well as the provisions from the new Law on Attorney-at-Law's Fee Stamps.

(10) Attorneys-at-law's actions in individual cases are further narrowed by the fact that LFLA's provisions do not stipulate reimbursement of court administration fees and costs for forensic expertise. Thus, they are forced to petition for exemption from payment of court administrative fees pursuant to LCAF and LLP, submitted together with the lawsuit, which can be, but is not necessarily approved, given the judges' discretionary decision-making rights. The problem with the reimbursement of costs for forensic expertise is even greater. Pursuant to the LLP in effect, if there is need for forensic expertise as evidence, the findings thereof should be submitted together with the lawsuit. Otherwise, forensic expertise is not accepted and presented as evidence in the procedure. Preparation of findings and opinions implies costs that are usually too high for the applicant cover and thus he/she often waives the initiation of the procedure. Having in mind that court procedures often require certain form of expertise (material, financial, medical, geodesy findings, construction findings, etc.) obvious is that the problem related to non-reimbursement of these costs in cases of free legal aid is very frequent.

(11) The fact that LFLA does not stipulate a possibility for waiving legal representation and attorney-at-law's withdrawal from the case causes legal insecurity among both attorneys-at-law and free legal aid beneficiaries, which was noted in several cases. In how many cases and due to what reasons the free legal aid beneficiary can waive legal representation by an attorney-at-law? How does that affect the decision taken by the Ministry of Justice of the Republic of Macedonia, as an individual act on appointing an attorney-at-law in the relevant case? How should the Ministry of

Justice act in such case? These are just some dilemmas that have emerged in relation to LFLA's implementation and that have not been covered by the legal provisions from LFLA. In turn, this creates risks of improvisation and *ad hoc* decisions that are insufficient to guarantee legal security for attorneys-at-law and free legal aid beneficiaries. On the other hand, a question is raised on how to operationalize decline or waiver of legal aid provision,⁹⁹ which is stipulated under the Law on Bar, the Code of Conduct for Attorneys-at-Law and other acts adopted by the Bar Chamber. LFLA does not include provisions that would imply "operationalization" of these actions, and the Ministry of Justice takes *ad hoc* decisions in these cases, although the number of such cases is not low.

(12) Collection of remuneration for legal aid provided, as stipulated in LFLA, is difficult and significantly delayed. Reasons for this practice are identified in the long duration of procedures, absence of deadlines stipulated in LFLA for the Ministry of Justice to take a decision on reimbursing the attorney-at-law. In addition, there are no legal provisions related to payment of remuneration in cases where the free legal aid beneficiary waives legal representation or withdraws from the procedure, as well as in cases when attorneys-at-law withdraw from legal representation in the case. The attorneys-at-law's remuneration is closely connected with their obligation stemming from the Law on Attorney-at-Law's Fee Stamp¹⁰⁰, whereby they enclose their fee stamp to all submissions, which is an instrument for advance payment of personal income tax. This means that attorneys-at-law are obliged to pay the tax in advance, but are uncertain whether they will be remunerated for their services. A more serious problem related to this Law is the fact that it does not take into consideration attorneys-at-law's remuneration pursuant to LFLA, which is 30% lower than their re-

⁹⁹ Article 17, paragraph 2 of the Law on Bar.

¹⁰⁰ The Constitutional Court initiated a procedure to establish the constitutionality of Article 6, paragraphs 3 and 4 and Article 7, paragraphs 1, 2 and 3 of the Law on Attorney-At-Law's Fee Stamp and delivered interim measure on terminating enforcement of individual acts and activities taken or pending in relation to these two articles of the Law.

muneration according to Bar Tariff Code. In other words, in cases where they provide free legal aid, attorneys-at-law are obliged to pay personal income tax calculated according to the value of actions taken in compliance with the Bar Tariff Code, while at the same time they can collect a remuneration by the Ministry of Justice in an amount that is by 30% lower than the one stipulated in the Bar Tariff Code. Thus, attorneys-at-law have to compensate the difference of 30% from their own pocket, which is an unfair practice.

Recommendations:

1. To exempt free legal aid beneficiaries from payment of court administrative fees and to include costs for forensic experts in LFLA.

When these costs are exempted, attorneys-at-law would be fully and completely dedicated to representing the free legal beneficiary without undue delay of the procedure or facing the risk of the procedure being withdrawn if the beneficiary is obliged to cover these costs.

2. To stipulate detailed legal provisions on the waiver of legal representation, its consequences and the possibility for the attorneys-at-law to withdraw from the case. LFLA needs to include clear provisions stipulating the types of cases in which legal representation can be waived, the consequences of such waiver and the actions that should be taken by the Ministry of Justice in such cases. Attorneys-at-law's withdrawal from legal representations and the reasons thereof are regulated in the Law on Bar, but LFLA must include a provision that would regulate the Ministry of Justice's actions in such cases.

3. To amend the Law on Attorney-at-Law's Fee Stamp with a view to align attorneys-at-law's taxation rate with the remuneration they receive pursuant to LFLA. As explained above, the Law on Attorney-at-Law's Fee Stamp in effect forces the attorneys-at-law to pay personal income tax in the amount stipulated

with the Bar Tariff Code and expressly prohibits them to pay lower tax rates. On the other hand, according to LFLA, attorneys-at-law are entitled to remuneration that is by 30% lower than their tariff. On this account, the Law on Attorney-at-Law's Fee Stamp should be amended in order to ensure fair taxation of attorneys-at-law in compliance with their remuneration stipulated in LFLA.

4. To stipulate a deadline for the Ministry of Justice to take a decision on attorneys-at-law' remuneration. Having in mind the need for timely payment of attorneys-at-law' remuneration, a deadline should be stipulated for the Ministry of Justice, following the receipt of the list of expenses, to take a decision on payment of attorneys-at-law's remuneration for provision of free legal aid pursuant to LFLA.

9. State funds allocated for free legal aid are halved from year to year

- funding free legal aid -

Funds necessary to support free legal aid are secured from the budget of the Ministry of Justice, as a separate budget account proposed by the Minister of Justice and approved by the Government of the Republic of Macedonia, as well as from donations and other revenue in compliance with the Law. The purpose of these funds is to settle attorneys-at-law's remuneration and to cover the costs of authorized associations for legal aid provided in cases in which decision on approving free legal aid has been adopted. These funds do not include costs for maintenance of the free legal aid system (human resources, infrastructure, promotion, etc.).¹⁸

(1) It should be noted that free legal aid implies significant costs that are covered by the state and include remuneration of legal aid providers and maintaining the free legal aid system (human resources of the Ministry of Justice, infrastructure, costs for processing free legal aid applications, promotional activities). State budget funds allocated on annual level to support the free legal aid and their utilization are an indicator on the state's possibilities and interest in free legal aid, as well as on the system's efficiency in general.

(2) In 2012, the state budget account for free legal aid amounted to a total of 3,000,000.00 MKD.¹⁰¹ Funds for free legal aid are allocated on annual basis from the budget of the Ministry of Justice of the Republic of Macedonia: budget account 637; programme 10; budget item 425 on contracting services.¹⁰²

¹⁰¹FOI response no. 19-2756/2 from 26.7.2012

¹⁰²FOI response no. 19-1578/2 from 15.6.2011

Table 14 – Allocated and used funds for free legal aid

Year	2010	2011	2012
Allocated funds	12,000,000.00 MKD	6,000,000.00 MKD	3,000,000.00 MKD
Used funds	0.00 MKD	5,152.00 MKD	179,974.00MKD ¹⁹

Data presented in the table above provide the conclusion that **funds allocated for free legal aid in 2012 are halved in amount compared to 2011 figure and are four times as less compared to 2010 figure.** Evident is the tendency of halving funds for free legal aid, whose implementation started in 2010. The reason behind the budget cuts are primarily identified in the almost complete non-utilization of funds committed in the previous years, which logically resulted in the Ministry of Justice's decision to reduce the budget for this purpose. However, it is not reduction of funds that raises concerns, but the low utilization rate that is an important indicator for LFLA's enforcement in general. The strict criteria that resulted in small number of free legal aid beneficiaries, as well as the provision on submitting a list of expenses once case is closed (relatively long period of time) have led to poor results and poor utilization of funds available.

Structure of reimbursed lists of expenses

From the start of LFLA's implementation until 14.12.2012, the Ministry of Justice was presented with a total of 27 lists of expenses, 18 of which were reimbursed.¹⁰³ The submitted 27 lists of expenses do not include the lists of expenses submitted by au-

¹⁰³Source: FOI response no. 19-3961/2 from 14.12.2012

thorized associations, which were not taken into consideration by the Ministry of Justice.¹⁰⁴ Among the lists of expenses dominant are those submitted by attorneys-at-law. As regards their reimbursement, indicative is the fact that only 18 of the total of 27 lists of expenses were reimbursed, especially knowing that free legal aid has already been approved and the Ministry of Justice is not obliged to collect additional evidence in this regard. From the start of LFLA's implementation, a total of 185,126.00 MKD from the total budget account for free legal aid were spent to reimburse attorneys-at-law.

(3) When analysing funds approved for free legal aid, it is important to compare the national practice against other countries that have introduced free legal aid systems in civil and administrative procedures. The main indicator used in the comparison is the total budget allocated for free legal aid, expressed in EUR per capita. When inferring conclusions, another important consideration is the state's economic power expressed as GDP per capita.

Table 15 – Overview of funds per capita allocated for free legal aid in civil and administrative procedures

	2010	2011	2012
Macedonia	0.095 EUR	0.047 EUR	0.024 EUR
Croatia ²⁰	0.056 EUR	0.051 EUR	0.136 EUR
Bulgaria ²¹	0.4181 EUR	0.618 EUR	0.486 EUR
Kosovo ²²	0.165 EUR	0.159 EUR	N/A
Montenegro ²³	Law was not adopted yet	Law was not adopted yet	1.83 EUR ²⁴

The table contains data on the amount of budget funds allocated for the free legal aid system by the neighbouring states

¹⁰⁴ See Section 3, Paragraph 4.

that have adopted laws on free legal aid. At first glance, obvious is the significant difference between the Republic of Macedonia and other countries, especially in 2012. From the law's entry in effect, Montenegro planned complete equipment and staffing of so-called free legal aid services. Every year, Bulgaria faces shortage of funds and requests re-allocation of funds. Same situation is recorded in Croatia. In Macedonia, the free legal aid system lags behind in terms of funding, not taking into consideration the significant non-utilization of funds allocated for this purpose.

(4) At this moment it is impossible to infer a conclusion whether the budget funds in the amount of 3,000,000.00 MKD (according to the new Law) are sufficient to finance free legal aid. When the first draft laws were developed in 2009, the Ministry of Justice also prepared a regulatory impact assessment and document on the law's financial implications. In the years that followed, the initially anticipated 12,000,000.00 MKD per year were reduced. Even the assessment on the Law's fiscal implications does not include a possibility for development of detailed analysis of law-related costs, and it does not anticipate funds needed for capacity building and promotion of the Law. Such improvisation in the legislation drafting process resulted in the absence of any analysis on the potential number of persons who would need free legal aid, the potential cost of free legal aid in individual cases, manner of defining the eligibility criteria in order to balance between facilitating access to justice and the budget's cost-effectiveness. Having in mind the current situation, reasonable is to expect that without essential changes to LFLA, the utilization rate of these funds will not be significantly increased, and therefore every year funds allocated for this purpose will be reduced. In fiscal terms, reduction of funds is a logical action due to the very low utilization rate recorded in the previous years.

RECOMMENDATIONS TO IMPROVE FUNDING OF FREE LEGAL AID

- 1. To develop a study and analysis of free legal aid's fiscal implications, which would enable the Ministry of Justice to obtain the actual image on legal aid needs, the annual number of cases and their average cost.** In parallel with future amendments to the Law on Free Legal Aid, a detailed analysis must be developed on the potential cost for the state and the most efficient manner of funds utilization. This can be achieved by making an assessment on the number of persons who would benefit from free legal aid, determining the average cost per case, cost analysis for employees at the Ministry of Justice and the regional offices. Answers to these questions would enable the Ministry of Justice to obtain a real image on the Law's fiscal implications.
- 2. To provide a possibility for the attorneys-at-law whose lawsuit motion is approved in court procedure to collect their remuneration in compliance with the Tariff Code from the losing party in the lawsuit, which will ultimately save funds for the Ministry of Justice.** The Law on Litigation Procedure stipulates the obligation for the party that loses the lawsuit, upon a decision issued by the court, to reimburse the expenses incurred by the other party in the lawsuit. This can be used also to reimburse the attorneys-at-law in cases they have won and will give them the possibility to collect their remuneration in compliance with the existing Bar Tariff Code, instead of receiving remuneration from the Ministry of Justice that is by 30% lower than their regular fee. In cases of uncollectible costs, the attorneys-at-law would be entitled to collect their remuneration in compliance with LFLA. On one hand, this solution will save funds for the Ministry of Justice that could be used to fund free legal aid and, on the other hand, the attorneys-at-law would be able to collect their remuneration for the legal actions taken in compliance with the existing Bar Tariff Code.

CONCLUSIONS FROM THE LAW ON FREE LEGAL AID'S IMPLEMENTATION

Three years after LFLA was adopted and almost two and a half years from its entry in effect, the problems that were identified at the time when LFLA was drafted are still present, even though they were already identified in other countries that have established free legal aid systems. Unlike the situations in which majority of problems that emerge in regard to Law's implementation are a result of insufficient preparation and capacity at the national authorities, in the case of LFLA problems are mainly due inadequate or unclear legal provisions. Notwithstanding the nomotechnical inadequacy of legal provisions, obvious is the absence of a concept on the type of free legal aid system that should be established in Macedonia. Does LFLA aim to facilitate access to institutions for all citizens, or facilitated access is enabled only for people living in extreme poverty? Does easier access to justice cover all civil and administrative procedures or only the specific procedures enlisted in the Law, i.e., rights in the field of social protection, health, pension or disability insurance, labour relations, protection of children and minors, victims of domestic violence, protection of victims of crime, protection of victims of human trafficking, approval of the right to asylum and property tenure issues? What is the purpose of establishing preliminary legal aid if the state imposes requirements that can be fulfilled by only 4 associations although three years have passed from LFLA's adoption? These are only some of the questions that remain unanswered after three years from the law's entry in effect.

Based on monitoring findings related to LFLA's implementation, the following key conclusions are inferred:

- (1)** The number of free legal aid applications submitted is insignificant and even after two and a half years have passed from LFLA's entry in effect there is no tendency on increased number of applications, primarily due to absence of efficient promotional activities aimed to in-

form the citizens about their right to free legal aid;

(2) The number of rejected free legal aid applications is almost double compared to the number of approved applications, which distinguishes the Republic of Macedonia from other counties that have adopted law-on free legal aid. This ratio is a result of the stringent eligibility criteria for the citizens (*"three-fold" requirements*), as well as LFLA's failure to include certain legal issues (for example, family law matters) for which citizens can apply for free legal aid;

(3) The procedure on exercising the right to free legal aid is implemented with considerable delays and it is still not framed within a law-stipulated deadline of 20 days, which is mainly due to heterogeneous data that need to be collected and the insufficient capacity at certain regional offices to act upon the applications;

(4) There are no efficient and available legal remedies for the applicants whose free legal aid applications have been rejected which can provide re-examination of the first instance decision, in that making due consideration of the procedure's urgency;

(5) Only four citizens' associations provide preliminary legal aid, but they are not financially supported by the state. LFLA fails to instigate interest among other associations with significant capacity in provision of legal aid to get involved in the national system on free legal aid;

(6) Court procedures in which free legal aid is granted are delayed as a result of the fact that court administrative fees and other procedure-related costs are not covered under LFLA, which imposes the need for submission of petitions for exemption from payment of these costs pursuant to the material laws (LCAF, LLP);

(7) The Law is not conducive to utilization of funds allocated for free legal aid, which results in these funds being halved from year to year.

It should be noted that monitoring findings on LFLA's implementation do not indicate improvements or significant differences in the three years of its enforcement. Namely, LFLA's implementation and passing of time do not contribute to more efficient use of the possibilities it offers, but on the contrary, the impression is gained that its application is in impasse. Number of free legal aid applications is not increased, higher number of applications is rejected, and there are no serious efforts in place to improve the capacity at the regional offices and the Ministry of Justice. Therefore, the general conclusion from the previous analysis and reports is still valid, i.e., immediate and substantial amendments to the Law on Free Legal Aid need to be adopted in a transparent and participatory procedure, including all stakeholders involved in the free legal aid system. It is important for these amendments to be based on analyses and relevant reports, in order to avoid legislative improvisation that would result in enactment of yet another law of poor quality.

CHAPTER III: TOWARDS QUALITY AND EFFICIENT LAW ON FREE LEGAL AID IN THE REPUBLIC OF MACEDONIA

- few words on the direction to be pursued by the amendments to the LFLA -

The previous sections of this report provided an overview of three years of implementation of LFLA, with an assessment of its effectiveness in facilitating access to justice for the citizens and a conclusion that serious problems characterize its implementation in practice, which results in the need for defining guidelines and a framework for future amendments to LFLA. Ministry of Justice's 2012 Annual Programme anticipated amendments to LFLA in the second half of 2012 and even though this process was initiated it was not completed by the cut-off date for this report. This chapter analyses the perspectives for adoption of quality amendments that would contribute to establishment of an efficient national system on free legal aid which, according to the financial possibilities, will be a bridge between citizens and institutions in the exercise of their rights. Since the challenges faced by free legal aid reforms are described in the chapter on monitoring findings, the final chapter includes the key recommendations for establishment of an effective national system on free legal aid.

1. Need for Law on Free Legal Aid

What categories of citizens in the Republic of Macedonia need free legal aid?

One of the important questions that should be raised in the process on amending LFLA is whether the Republic of Macedonia needs a Law on Free Legal Aid in civil and administrative procedures? The answer is clear and unequivocal. A state where almost 1/3 of the population lives below the poverty line and does not have sufficient funds to meet basic sustenance needs, needs and is obliged to adopt a law that would facilitate access to justice. In addition, analysis is needed in order to identify the beneficiaries of the Law on Free Legal Aid. The mere fact that the Republic of Macedonia waited for 19 years to adopt a law on free legal aid, which was not preceded by an initiative, but was mainly adopted for the purpose of fulfilling an obligation assumed as part of the EU accession process and the Judicial Reform Strategy, provides the conclusion that the state does not care for its citizens and their access to justice. At last the Law was adopted, but featured significant shortfalls and without any objections from stakeholders (with the exception of the civil society). In order to assist its citizens in obtaining access to justice, the state must immediately make a needs-assessment,¹⁰⁵ because in the absence of relevant knowledge on the actual needs it risks to render the free legal aid system dysfunctional yet again. Moreover, in the absence of relevant analysis of potential free legal aid beneficiaries, LFLA excludes entire groups of vulnerable citizens from the free legal aid system.

Given that precise information is not available on this issue, the present report provides a brief overview of key elements from the analysis that should be performed in order to identify the need for a law on free legal aid. They include: (1) to identify obstacles in access to

¹⁰⁵ *Research of Legal Problems in Bulgaria by Using the Justiciable Events Method*, Martin Gramatikov, Open Society Institute – Sofia, 2010

justice in the Republic of Macedonia; (2) to identify categories of persons and types of legal issues for which they need free legal aid.

(1) Barriers to access to justice in the Republic of Macedonia that must be taken into account when amending LFLA. As a starting point, the analysis should identify obstacles to access to justice considering the fact that LFLA aims to facilitate access to justice for the citizens. Relevant literature¹⁰⁶ on this issue indicates that obstacles to access to justice can be of legal nature (complex laws, strict procedural rules, frequent amendments to laws), financial nature (high litigation-related costs) or personal nature (legal literacy, knowledge on laws in effect). As regards the national framework and making due consideration of the Macedonian legal system and characteristics of the society, obstacles to exercising the right to access to justice include:

- costs related to leading procedures on exercise and protection of the rights are high for more than one third of the population;
- existing practices on frequent amendments to the laws without adequate analyses on the quality of legal provisions and their impact, and lack of effective promotion of legislative changes; and
- low level of legal literacy and lack of knowledge on the laws among the population.

In the absence of relevant information for the last two obstacles

¹⁰⁶According to "Pursuing the Public Interest - A Handbook for Legal Professionals and Activists, PILi NET, Columbia Law School, New York, USA, 2001" pg. 214, impediments to access to justice can include high court costs, overly restrictive jurisdictional rules, that are vague and unknown for broader public, ineffective enforcement mechanisms, corruption, low legal awareness and lack of affordable and competent legal services. Similar overview on obstacles in access to justice is given in the analysis "Access to Justice in Europe: an Overview of Challenges and Opportunities, FRA - European Union Agency for Fundamental Rights, 2010" page 37 according to which obstacles in access to justice primarily include: law-stipulated limits (deadlines) for taking legal action, restrictive rules on legal standing, legal procedure's duration, excessive legal costs, procedural formalities and requirements and complexity of legal procedures.

(for which specific analyses should be developed), this report briefly addresses the high costs related to court procedures in the Republic of Macedonia as an obstacle to access to justice, which is reconsidered under LFLA. Exercising and protection of rights in civil and administrative procedures is not free-of-charge and implies costs that are covered by the person acting as plaintiff/applicant, and in most cases these costs are settled in advance.

Table 16 – Overview on common costs for initiating certain court procedures with an engagement of an attorney-at-law

Type of procedure (example)	Costs related to court administrative fees for lawsuits	Costs related to legal aid provided for compiling a lawsuit	Costs related to evidence gathering (forensic expertise)	TOTAL
Lawsuit motioned for collection of unpaid salaries and salary contributions for 10 months in the amount of 220,000.00 MKD	4,400.00	3,900.00	4,500.00	12,800.00
Initiating an administrative dispute for exercising the right to health insurance	480.00	3,900.00	0.00	4,380.00
Motioning a lawsuit for indemnity claims (30,000.00 MKD) and non-material damages (200,000.00 MKD) for suffered emotional distress, injury and mental anguish	4,600.00	3,900.00	12,000.00	20,500.00
Motioning a lawsuit to establish ownership rights over real estate in the amount of 10,000.00 EUR	12,300.00	3,900.00	6,000.00	22,200.00
Lodging a lawsuit for divorce and division of property acquired during the marriage	800.00 480.00	1,950.00 1,950.00	0.00 0.00	5,180.00

The table above provides data related only to costs incurred for initiating the relevant procedure, while leading the procedure implies additional costs which can be three times higher until the court decision is delivered. When determining whether above-referred amounts impose obstacles to exercising certain right, a key issue is whether citizens are able to cover these costs without endangering their own subsistence. Having in mind that almost 1/3 of the population in the Republic of Macedonia lives in poverty with less than 5,073.00 MKD per month (single-member household), i.e., 10,655.00 MKD (four-member household),¹⁰⁷ a conclusion is reached that above-referred amounts constitute a major obstacle for this category of citizens and may defer them from initiating the relevant procedures on protecting their rights.

2. Categories of citizens which must be covered with the amendments to LFLA

1. Persons who live in poverty

People living in poverty have limited access to justice because they are unable to cover the high procedure-related costs. When analysing poor people as a special category, it is important to make due consideration of the fact that they are not a homogeneous group, but a collection of many different groups of people who have special needs and requirements. For instance, attention should be paid to the relation between belonging to a particular vulnerable and marginalized group and living in poverty, because people's vulnerable status prevents them to alleviate their poverty.¹⁰⁸

¹⁰⁷ Source: SSO Communication on Laeken Poverty Indicators from 5.11.2010. no. 4.1.12.83

¹⁰⁸ Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2009.

According to official data published by SSO, in 2011¹⁰⁹ the share of poor people in the Republic of Macedonia was **30.4%, i.e., almost one third of the population lives in poverty**. Access to justice for these people is difficult not only because they are unable to cover the high procedure-related costs, but also because they have low legal awareness/legal literacy which is a result of their low education level. Notably, **54.6% of poor people live in households where the head of household has not completed any education level or has completed only primary education.**¹¹⁰ According to SSO's methodology, poor households are considered the households whose total annual income does not exceed the so-called poverty line. Thus, a four-member household (2 adults and 2 children) would be considered poor if it generates monthly income lower than 10,655.00 MKD, while the poverty line for a single-member household is set at 5,073.00 MKD per month.¹¹¹

Poor people often need to solve legal problems caused by or resulting from the position they are in, i.e., living in poverty. This primarily includes issues related to the **exercise of rights in the field of social protection, health and pension insurance, and labour relations**. A significant portion of their legal problems is related to **propertyownership (legalization, privatization, protection)** and **consumer protection (disputes over unpaid utility bills, loans)**. Although they are not directly related to their status, **family law matters** also have a major effect on these people's legal needs (divorce, child support, property ownership).

The Law in effect covers only a small portion of the poor population. Amendments to LFLA must formulate the eligibility criteria/requirements concerning their property status in a manner that would virtually cover the entire poor population in the country.

¹⁰⁹Source:- <http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbrtxt=37>

¹¹⁰Source: SSO Communication no. 4.1.12.50 from 11.7.2012.

¹¹¹Source : SSO Communication on Laeken Poverty Indicators in 2010. no. 4.1.12.83 from 5.11.2012.

2. Victims of domestic violence

Victims of domestic violence are considered a particularly vulnerable group which, due to their specific status, needs psychological, social and legal protection. In the absence of official statistics on the total number of victims of domestic violence, this report relies on data from the Ministry of Interior (MOI), according to which in 2010¹¹² MOI acted upon 4,034 complaints lodged on the grounds of domestic violence. This figure includes only victims who reported domestic violence, while a large share of these victims are reluctant to report domestic violence.

Victims of domestic violence's needs for legal aid include legal counselling during the first steps in the procedure on protection, which is led before MOI and the Social Work Centre. Legal aid is especially needed in the procedure on issuing temporary measures,¹¹³ as stipulated in the Law on Family, which aim to protect the victim from the violence suffered. Furthermore, if elements of crime are established, the victims need legal aid for legal representation as an aggrieved party in the criminal procedure or as a plaintiff in cases of civil criminal lawsuits. In addition, the victims need legal aid in order to solve problems they face in family law matters, such as divorce, alimony, division of marital property and the like.

¹¹² Analytical observations on the status of domestic violence in 2010, www.mvr.gov.m

¹¹³ **Temporary measures for protection** of victims of domestic violence. The court may issue an order for the perpetrator of domestic violence, whereby it: 1) prohibits the perpetrator to threaten with domestic violence; 2) prohibits the perpetrator to harass, upset, telephone, contact or otherwise communicate with a family member, directly or indirectly; 3) prohibits the perpetrator to approach the home, school, workplace or other place regularly visited by another family member; 4) issues eviction notice to the perpetrator regardless of ownership status until the adoption of final decision by competent court; 5) prohibits the perpetrator to possess firearms or other weapons, or confiscate such weapons; 6) orders the perpetrator to return to the family items needed to meet the family's daily needs; 7) orders the perpetrator to provide mandatory financial support to the family; 8) orders the perpetrator to attend adequate counselling services; 9) orders compulsory treatment if the perpetrator uses alcohol or other psychotropic substances or suffers from certain disease; 10) imposes obligation to the perpetrator to reimburse medical and other costs incurred due to domestic violence; and 11) imposes other measure deemed indispensable by the court in order to provide security and wellbeing of other members of the family.

Victims of domestic violence must be covered with the amendments to LFLA as a separate category of free legal aid applicants for which, due to their specific status, free legal aid should be approved in urgent procedure. Verification of a person's status as victim of domestic violence must neither affect the urgency nor the outcome of the procedure on approving for free legal aid and should be conducted *ex post*.

3. Members of minority communities

A specific category of citizens are Roma households that live in substandard conditions. Their special status originates from the fact that they are faced with multiple obstacles to access to justice. Poverty, illiteracy and insufficient Macedonian language skills are often emphasized as open or hidden discrimination in the country.

Most commonly, this category of people faces legal problems related to social protection and health insurance, rights concerning the unemployment status and family law matters. Another important area where they need legal aid is protection of victims of domestic violence and protection of victims of human trafficking and crime.

Involving citizens' associations that work on social inclusion of these categories of citizens and provision of legal services as part of the free legal aid system, notably by authorizing them as preliminary legal aid providers can improve the status of and can facilitate access to justice for this category of citizens.

4. Refugees, asylum seekers, stateless persons, migrants

These people represent a special category for which the state is obliged to provide free legal aid due to the commitments assumed under the international agreements and treaties ratified by the

Republic of Macedonia. In 2012, a total of 2,637 persons¹¹⁴ were categorized under this group, 1,130 of which are refugees, 389 are asylum seekers and 1,145 are stateless persons.

Legal issues for which these persons need legal aid include: procedures on the right to asylum, exercise of the right to health insurance and social protection for foreigners, acquiring the right to work permit in the Republic of Macedonia, regulating the status of foreigners, obtaining citizenship, etc.

LFLA must cover these people as categories of citizens who may be granted free legal aid without verifying their material status. In that regard, cooperation should be established between the Ministry of Interior and the Ministry of Labour and Social Policy as the competent authorities for these people, in order to ensure efficient promotion of free legal aid.

3. Procedure on amending LFLA

Will the Republic of Macedonia finally obtain an applicable and quality law?

Citizens' associations authorized to provide free legal aid¹¹⁵ and other stakeholders as well,¹¹⁶ repeatedly informed the Ministry of Justice, as the central authority, about the problems identified in regard to LFLA's implementation that are a result of the poor quality of legal provisions. Led by the need for amending the existing law, in July 2012, MYLA together with other associations autho-

¹¹⁴Source : <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d8f6&submit=GO>

¹¹⁵By means of publishing: 1. Report on the Implementation of the Law on Free Legal Aid, 2011 and 2. Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia, 2012

¹¹⁶Analysis of the Scope of the Law on Free Legal Aid, 2010, Stojanka Mirceva, PhD and Ardit Memeti, M.A.

rized to provide free legal aid developed a *public policy paper*¹¹⁷ and submitted it to the Ministry of Justice. This paper assessed the current state-of-affairs and offered recommendations to overcome the problems identified. The key recommendation implied initiation of a procedure on adopting essential amendments to LFLA, which will be based on analyses and will involve all stakeholders (attorneys-at-law, judges, MLSP, MOI, associations, regional office employees) as the only way to draft and adopt a quality LFLA. In parallel, the Ministry of Justice initiated a process on assessment and evaluation of the existing law. For this purpose, the Ministry of Justice contracted an expert¹¹⁸ who developed a report¹¹⁹ that provided nearly identical key findings and recommendations with those indicated in MYLA's reports on LFLA's implementation in 2010 and 2011.¹²⁰

As a result of the evaluation and according to its Annual Work Programme, the Ministry of Justice initiated a procedure on amending LFLA anticipated for the second half of 2012. For that purpose, the Ministry of Justice established a working group,¹²¹ which started its work in late September¹²². Macedonian Young Lawyers Association was invited and took active part in the working group's activities. At the 6 meetings held by the working group, amendments to LFLA were drafted, but by the cut-off date for this report they were not submitted to the Government of the Republic of Macedonia for follow-up actions.

¹¹⁷ How citizens of the Republic of Macedonia can obtain a quality Law on Free Legal Aid, MYLA, 2012

¹¹⁸ Jasna Buturac, Head of the Department for Free Legal Aid at the Ministry of Justice of the Republic of Croatia.

¹¹⁹ Report on the Implementation of the Law on Free Legal Aid, 2012.

¹²⁰ <http://soros.org.mk/default.asp?lang=mak&menuid=2085>

¹²¹ By means of a decision taken by the Ministry of Justice no. 07-3192/7 from 28.9.2012.

¹²² The working group invited and included representatives of the Ministry of Labour and Social Policy, Ministry of Interior, Bar Association of the Republic of Macedonia, judicial authorities, authorized associations and employees from free legal aid department at the Ministry of Justice. MYLA was invited to designate a representative to the working group.

When drafting the amendments, the working group was focused on achieving the following goals:

- to streamline the eligibility requirements/conditions for exercising the right to free legal aid;
- to clarify the legal issues for which free legal aid can be approved;
- to improve the Law's nomotechnical quality and to align LFLA with other laws in effect;
- to precisely regulate the reimbursement of litigation costs in cases in which free legal aid was approved;
- to specify preliminary legal aid and associations' role in provision of preliminary legal aid.

When drafting the amendments, the working group faced certain challenges and difficulties in its operation that were related to:

- exemption from payment of court administrative fees, as one of the key elements that should be included in the right to free legal aid, cannot be stipulated under the amendments to LFLA, because they are regulated by special law. This imposes the need for amendments to the Law on Court Administrative Fees, accompanied with an analysis of fiscal implications that such a decision would have in terms of the judicial budget;
- the proposal put forward in the evaluation report¹²³ and concerning the transfer of competences on decision-taking upon applications in first-instance to the regional offices was not reconsidered due to insufficient human and technical resources at the regional offices;
- inability to cover costs related to forensic expertise that are significant element of litigation costs¹²⁴ under LFLA, be-

¹²³Report on the Implementation of the Law Free Legal Aid, Jasna Buturac, June 2012, pg. 24.

¹²⁴In compliance with the amendments to LLP which entered in effect in September 2011, forensic expertise evidence must be submitted in attachment to the lawsuit.

cause this expertise is regulated by a special law,¹²⁵ and due to non-existence of an authority/entity representing forensic experts that would be consulted in the procedure; - having in mind the scope of amended provisions aimed to improve the Law's structure and clarity, adoption of entirely new text seemed a more practical solution.

Conclusion

The first stage of amending LFLA (drafting of amendments by the working group) is a significant step forward compared to the process of adopting the existing law.¹²⁶ The procedure, based on relevant analyses and reports which significantly involved all stakeholders, can contribute to improving the quality and efficiency of free legal aid. However, one should not undermine the problems described above, as well as the fact that this is only the first step in adopting a quality law. Until its adoption by the Parliament, the original text may be subject to significant corrections. MYLA will be directly involved in the process and will indicate any possible deviations from the draft amendments put forward by the working group.

¹²⁵Law on Forensic Expertise, "Official Gazette of the Republic of Macedonia"no. 115 from 31.8.2010.

¹²⁶See: Annual Report on the Implementation of the Law on Free Legal Aid, 2011, pg. 11

4. Final recommendations

What efforts are needed for the Republic of Macedonia to establish an efficient national system on free legal aid in civil and administrative procedures that would facilitate access to justice for poor and vulnerable categories of citizens?

Chapter II of this analysis provides individual recommendations addressing the components from LFLA that were subject of the monitoring and are aimed to improve the efficiency of free legal aid. However, essential reforms to improve the overall system should be based on a holistic approach, which means defining activities needed to increase the efficiency of the system as a whole and incorporating them under individual recommendations. Some of the recommendations are relatively simple and are a matter of stakeholders' willingness, while others require considerable efforts and resources on the part of the state and other stakeholders.

The process on establishing free legal aid faces certain challenges that can significantly impede implementation of free legal aid and necessitate adequate solutions to be designed. Given that legal aid in civil and administrative procedures is a novelty and absence of previous system, put the competent institutions in a position to copy legal solutions and provisions from existing laws on free legal aid adopted in other countries, without aligning them to the Macedonian legal system, which resulted in legal provisions that are inconsistent. The fact that the state should secure funds from the already limited state budget to fund free legal aid creates certain mistrust and reluctance among policy makers and tendency to impose strict criteria for legal aid approval. Lack of research and analyses on citizens' needs and types of legal issues they face results in legal improvisations that do not correspond with actual needs for legal aid. In this regard, a certain limitation is identified in insufficient human and technical resources at the Ministry of Justice, together with the regional offices, and related to perfor-

mance of activities entrusted to it as the key authority in the free legal aid system.

In order to overcome the above-indicated challenges identified in the national system on free legal aid and increase its efficiency, the following recommendations should be implemented:

1. Procedures on amending existing and adopting new laws on free legal aid or access to justice should be transparent and guarantee meaningful involvement of all stakeholders.

The existing practices related to adoption of laws in fast-track procedure and in non-transparent manner under the auspices of fulfilling commitments assumed as part of the accession process, especially in regard to laws related to fundamental human rights and freedoms, such as LFLA, must be discontinued. Regulation of free legal aid must guarantee substantial involvement of representatives of attorneys-at-law, judges at basic courts, Ministry of Labour and Social Policy, Ministry of Interior and the associations that have capacity and experience in provision of free legal aid. On the contrary, there is high risk of adopting vague and unenforceable legal provisions, as is the case with the existing law.

2. Activities should be taken to improve human and technical resources at the Ministry of Justice and the regional offices with a view to enable fast and efficient exercise of the right to free legal aid and quality management of the entire system.

Contrary to practices in some neighbouring countries¹²⁷ that have established special bodies to administer the free legal aid system, LFLA in Republic of Macedonia entrusted the Ministry of Justice with these competences. As regards the implementation of this role, it is of outmost importance for the Ministry of Justice to be equipped with relevant human resources with solid knowledge of legal aid and access to justice and sensitive to vulnerable categories of citizens. Furthermore, spatial and technical capacity at the

¹²⁷Bulgaria, Albania, Kosovo

regional offices should be improved, including integrated computer system connections to state authorities that hold information relevant for free legal aid.¹²⁸

3. Ministry of Justice, civil society and academic community should conduct analyses and research related to access to justice and free legal aid that would contribute to adopting quality and enforceable legal provisions in LFLA.

As mentioned in the second chapter of this analysis, in order to improve the efficiency of free legal aid, proposed amendments to LFLA must be based on relevant research and analyses. Regulation of legal issues for which free legal aid can be approved without due consideration to citizens' actual needs for legal aid would be incomplete and erroneous. Definition of property-related eligibility criteria without actual knowledge on the poverty rate and average monthly expenses can result in establishment of strict or lenient criteria that would be fulfilled by majority of the population. Same is valid for the need for detailed analysis of LFLA's fiscal implications. These analyses would provide inputs for adoption of decisions that would increase the efficiency of free legal aid.

4. Preliminary legal aid should be strengthened as a legal institute that could successfully address the issue of legal alienation and illiteracy of the population and would facilitate resolution of legal problems prior to initiation of court procedures. Related to this is encouraging extrajudicial dispute resolution as a "cheaper" form of free legal aid.

Providing easy access to relevant information on the legal system in clear and understandable manner will help reduce the citizens' legal alienation and will eliminate the mistrust in the legal system and the legal profession. If people are properly informed about their rights and responsibilities and manners in which they can exercise and protect these rights, they will be able to make a reasonable decision whether and when they will initiate legal procedures without burdening the courts with unfounded claims. On the other hand, people who need

¹²⁸Public Revenue Office, MOI, Social Work Centres, Cadastre.

and can exercise certain rights will be given the possibility to do so.

5. Associations that provide legal aid should be integrated in the free legal aid system and would therefore help citizens to more efficiently benefit from free legal aid.

Most frequently free legal aid beneficiaries are people who live on the margins of society and who, due to poverty, poor education, discrimination, are experiencing social exclusion. They are unable to protect their rights in individual capacity, primarily because of their social exclusion. Efficient manner that also proved to be useful is to reach out to these categories of people through the associations. In the Republic of Macedonia there are a number of associations with long experience and capacity for provision of legal aid to vulnerable categories of citizens.¹²⁹ The state must use these associations, primarily by supporting them and involving them in the national system and by reimbursing their costs.

6. Cooperation and information exchange among all stakeholders involved in the free legal aid system should be established and maintained.

Finally, one must not forget that free legal aid is an area that involves many institutions and stakeholders and is governed by several laws that concern different fields of operation. Thus, it is of outmost importance to establish and maintain on-going communication and information exchange among stakeholders at central, and especially at local level.

¹²⁹ Victims of domestic violence, Roma community, victims of human trafficking, drug users, people living in extreme poverty, people with disabilities, refugees, persons without identification documents, etc.

ANEXES

1. Relevant legislation consulted in the preparation of this analysis

1. *Law on Free Legal Aid* – Official gazette of the R.M, No. 161 from 2009 and no. 185 from 2011,
2. *Constitution of the Republic of Macedonia and the amendments* – Official gazette of the RM, No. 52 from 1991,
3. *Law on Criminal Procedure* – Official gazette of the RM, No. 150 from 2010,
4. *Law on Civil Procedure* – Official gazette of the RM, No. 79 from 2005, No. 110 from 2008, No. 83 from 2009 and No. 110 from 2010 year,
5. *Law on General Administrative Procedure* - Official gazette of the RM No.38 from 2005, No. 110 from 2008, No.118 from 2008 and No. 51 from 2011,
6. *Law on Administrative Disputes* – Official gazette of the RM, No. 62 from 2006, No. 27 from 2008, No. 117 from 2009 , No. 150 from 2010, No. 171 from 2010,
7. *Law on Asylum and Temporary protection* – Official gazette of the RM No. 19 from 2009, No. 146 from 2009, and No. 166 from 2012,
8. *Law on Family* - Official gazette of the RM No. 80/1992, 9/1996, 19/2000/79/2001, 38/2004, 60/2005, 33/2006, 84/2008, 117/2009, 67/2010, 39/2012, 44/2012,
9. *Law on Organization and operation of the state administration bodies* – Official gazette of the RM No. 58 from 2000, No. 44 from 2002, No. 82 from 2008, No. 167 from 2010, and No. 51 from 2011 year,
10. *Law on Attorneyship* - Official gazette of the RM 59/2002, 10/2003, 34/2003, 60/2006, 29/2007, 8/2008, 106/2008, 20/2009, 117/2009, 135/2011, 113/2012,
11. *Law on Associations and Foundations* – Official gazette of the

RM No. 52 from 2010,

12. *Law on Social Protection* – Official gazette of the RM No.

79/2009, 51/2010, 36/2011, 51/2011, 166/2012,

13. *Law on Pension and Disability Insurance* – Official gazette of the RM No. 98/2012 year,

14. *Law on Contributions for Compulsory Social Insurance* – Official gazette of the RM No. 142/08, 233/2008, 62/2009, 64/09, 156/2009, 166/2010, 53/2011, 185/2011, 44/2012 and 150/2012,

15. *Rulebook on the Form and Content of the Application for Registration of Legal Aid Lawyers* – Official gazette of the RM No. 65/2010,

16. *Rulebook on the Content of the Form of the Application for Free Legal Aid* – Official gazette of the RM No. 65/2010,

17. *Rulebook on the Content of the Form of the Application for Authorization to Provide Preliminary Legal Aid* – Official gazette of the RM No. 65/2010,

18. *Rulebook on the Content of the Expense Report of the Scope of Work Performed by Authorized Associations* – Official gazette of the RM No. 65/2010,

19. *Rulebook on the Content of the Expense Report of the Scope of Work Performed by a Lawyer* – Official gazette no. 65/2010,

20. *Tariff on the Compensation of the Expenses of the Association for Providing Preliminary Legal Aid* – Official gazette of the RM no.65/2010

2. Relevant International Legal Documents for the Right to Free Legal Aid and Access to Justice

Documents within the UN framework

International agreements:

1. Universal Declaration of Human Rights (Art. 1, 2, 6 и 7)
2. International Covenant on Civil and Political Rights (ICCPR) (Art. 14)

Acts of the UN institutions:

1. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

Documents within the Council of Europe framework

International agreements:

1. European Convention on Human Rights Art. 6(1), (3) and Art. 5(3),
2. European Agreement on the transmission of Applications for Legal Aid (1977) and the Additional Protocol (2001),

Acts of the institutions of the Council of Europe framework

1. European Court of Human Rights - Rules of Court (2002)
2. Recommendation No. R (81) 7 on Measures facilitating access to justice
3. Recommendation No. R (84) 5 on Principles of civil procedure designed to improve the functioning of justice
4. Recommendation No. R (86) 12 on Measures to prevent and reduce the excessive workload in the courts
5. Recommendation No. R (87) 18 concerning the Simplification of criminal justice
6. Recommendation No. R (93) 1 on Effective access to the law and to justice for the very poor
7. Recommendation No. R (95) 12 on the Management of criminal justice

8. Recommendation No. R (99) 6 on the Improvement of the practical application of the 9. European Agreement on the transmission of applications for legal aid
9. Recommendation No. R (99) 19 concerning Mediation in penal matters

3. Resource web pages about the free legal aid

http://www.ilagnet.org	International recourse center intended for researchers and policy creators from the field of legal aid and access to justice;
http://www.legalaidrefor.org	Forum for networking and exchange of information and resources for free legal aid and the rights of the defendants between policy makers, lawyers and NGO's;
http://legislationonline.org	Provides direct access to international norms and standards concerning special areas from special significance to the human rights.

4. Overview of judgements of the European Court of Human Rights related to the right to free legal aid in civil cases.¹³⁰

I Airey v. Ireland, Application No. 6289/73, Judgment of October 9, 1979

- summary -

The Court found Ireland in violation of Article 6 (1). In this case, an Irish woman had been trying to obtain a decree of judicial separation from her husband but was unable to do so, as long as the Irish legal aid system did not provide legal assistance in such matters and the woman herself was not in a financial position to meet the costs involved. Hence, she claimed that there had been a violation of Article 6 (1) of the Convention, by reason of the fact that her right of access to a court was effectively denied. The Court highlighted a number of circumstances that cumulatively led to a finding that Mrs.Airey had been denied an effective right of access to a court by the state's refusal of legal aid. First, the proceedings, which concerned an application for a decree of judicial separation from the applicant's husband, were commenced by petition and conducted in the High Court, where the procedure was complex. Second, litigation of the kind at issue, in addition to involving complicated points of law, necessitated proof of adultery, unnatural practices, or cruelty, which might have required the tendering of expert evidence or the calling and examining of witnesses. Third, marital disputes often entailed an emotional involvement that was scarcely compatible with the degree of objectivity required by advocacy in court. The Court drew attention also to the fact that the applicant was from a humble background, had gone to work as a shop assistant at a young age before marrying and having four children, and

¹³⁰ Source - European Court of Human Rights Jurisprudence on the Right to Legal Aid, Open society justice initiative and Columbia Law School - Public Interest Law Institute, 2006

had been unemployed for much of her life. In all the circumstances, the Court considered it most improbable that Mrs.Airey could effectively present her own case. It considered further that this view was corroborated by the fact that, in each of the 255 judicial separation proceedings initiated in Ireland between January 1972 and December 1978, the petitioner had been represented by a lawyer.

The Court further found that the right to access to a court is not absolute and may be subject to legitimate restrictions, including the imposing of financial contributions or requiring a case to be well-founded and not vexatious or frivolous.

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx-i=001-57420](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420)

II Steel and Morris v. United Kingdom, Application No 68416/01Judgment of February 15, 2005

-summary -

The Court found a violation of Article 6 (1). The Court reiterated that it is central to the concept of a fair trial, in civil as well as in criminal proceedings, that a litigant should not be denied the opportunity to present his or her case effectively before the court, and that he or she should enjoy equality of arms with the opposing side. The court noted that it may be acceptable to impose conditions on the grant of free legal assistance based, *inter alia*, on the financial situation of the litigant or his or her prospects of success in the proceedings. Further, the court noted that it is not incumbent on the state to use public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary.

Here, the applicants were defendants in a defamation suit brought by McDonald's concerning derogatory leaflets they had distributed. The

Court distinguished the *McVicar* case in that: there were potential financial consequences of a significant nature compared to the applicants' personal situations; the legal issues were rather complex; and there were very large quantities of interlocutory actions, court hearings, documentary evidence, pages of written judgments, and witnesses, including scientific experts. The court further considered that neither sporadic help given by volunteer lawyers nor extensive judicial assistance and latitude granted by judges to the applicants was any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel, especially given the disparity between the levels of legal assistance enjoyed by the applicants and McDonald's.

Hyperlink of the decision in the HODOC database:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68224>

III P, C and S v. United Kingdom, Application No. 56547/00, Judgment of July 16, 2002

- summary -

The Court found a violation of Article 6 (1) where the applicants were denied free legal aid while contesting the severance of their parental rights in child abuse proceedings, because of the complexity of the case, the importance of what was at stake, and the highly emotional nature of the subject matter. The Court applied the tests in the *Golder* and *Airey* line of cases, recalling that free legal assistance may be necessary in civil matters in order to ensure that access to a court is both effective and fair. Here, P was forced to represent herself in child abuse proceedings even though the trial judge noted that the case would have been conducted differently had she been given effective counsel. Assistance afforded to P by the counsel for the other parties and the latitude the judge granted P in presenting her case were considered no substitute for competent representation by a lawyer.

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?
?i=001-60610](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60610)

**IV McVicar v. United Kingdom, Application No.
46311/99, Judgment of May 7, 2002**

- summary -

After assessing the circumstances of this matter, the Court found no violation of Article 6 (1) if legal aid in defamation cases is not available. The Court reiterated that “the question whether or not the Article 6 (1) requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case.” Here, the applicant was a well-educated and experienced journalist, the law was not sufficiently complex to require a person in the applicant’s position to have legal assistance, he was represented until the commencement of trial by an experienced defamation lawyer, and his emotional involvement was not incompatible with the degree of objectivity required by advocacy in court. In all these circumstances, the Court concluded that the applicant was not barred from presenting his defense effectively to the local court, nor was he denied a fair trial, as the result of his lack of entitlement for free of charge legal aid. But see also *Steel and Morris v. United Kingdom* (below).

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?
?i=001-60450](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?
?i=001-60450)

**V Bertuzzi v. France, Application No. 36378/97, Judg-
ment of February 13, 2003**

-summary -

The Court held that the applicant had not had effective access to a tribunal, in breach of Article 6 (1) of the Convention. Here, the applicant was granted legal aid in the context of civil proceedings

involving a lawyer as a defendant. However, that decision remained a dead letter, because the three lawyers successively assigned to the applicant's case sought permission to withdraw due to personal links with the lawyer the applicant wished to sue. In spite of his efforts, the applicant failed to get the president of the legal aid office to assign a new lawyer to his case and was therefore unable to issue the proceedings. The Court noted that the legal aid office had granted the applicant legal aid, despite the fact that legal representation was not compulsory. This indicates that it considered it essential for the applicant to be assisted by a qualified practitioner in the proceedings, as the proposed defendant was a lawyer. In the Court's view, the relevant authorities, when notified of the withdrawal of the various lawyers, should have provided a replacement so that the applicant could benefit from effective legal assistance. The Court considered that the possibility of conducting his own case in proceedings against a legal practitioner had not afforded the applicant the right of access to a court in conditions allowing him the effective enjoyment of equality of arms, a principle inherent in the concept of a fair hearing.

Hyperlink of the decision inthe HUDOC database:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60939>

VI A. B. v. Slovakia, Application No. 41784/98, Judgment of March 4, 2003

-summary -

The Court found a violation of Article 6 (1), since domestic courts failed to assess the conditions for granting legal aid in the applicant's case and to deliver a formal decision about refusal of legal aid as required by domestic law that could be challenged before a higher court. The "appearance of fair administration of justice" was found to be of a crucial importance in the present case. Such was the unfairness of the proceeding that it was unnecessary to examine whether the lack of legal representation caused the applicant any actual prejudice. See also

Tabor v. Poland (cited above), where the Court found that the applicant's request for legal aid was not handled with the required amount of diligence, because the court did not give any reasons to the decision of refusal of legal aid and issued it too late.

Hyperlink of the decision inthe HUDOC database:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60965>

VII Munro v. United Kingdom, Application No. 10594/83, Commission decision of July 14, 1987 (inadmissible)

-summary -

The Commission declared that the lack of legal aid in defamation proceedings against a former employer did not hinder an applicant's right to access to court because: (a) by its nature, a defamation claim can easily be open to abuse even though it is highly risky and the outcome is unpredictable; (b) defamation proceedings do not necessarily trigger the *Airey* rule where the consequences are not as serious for the litigants (see *Airey v. Ireland*); and (c) the applicant had a hearing challenging his dismissal in an Industrial Tribunal, during which the same substantive issues were resolved as would have been in defamation proceedings, although it did not specifically consider the allegations of defamation.

Hyperlink of the decision inthe HUDOC database:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-357>

VIII Thaw v. United Kingdom, Application No. 27435/95, Commission decision of June 26, 1996(partly inadmissible)

- summary -

The Commission found the applicant's complaint manifestly ill-founded-

ed. Legal aid may be denied on the basis that a claim either is not sufficiently well grounded or is regarded as frivolous or vexatious, as long as the decision of the administrative authority was not arbitrary. Here, legal aid was refused on the basis that the applicant had shown no grounds for being a party to the proceedings and that his claim had very little prospect of success. The applicant has made no allegation, and the Commission found no basis for finding that the decision was arbitrary.

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx-i=001-3225](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-3225)

IX Stewart-Brady v. United Kingdom, Application Nos. 27436/95 and 28406/95, Commission decision of July 2, 1997 (Недопущена)

- summary -

The Commission noted that the lack of legal aid in defamation proceedings where the applicant was under mental disability, and thus unable to bring the proceedings in person, could constitute a problem of access to court. However, the denial of legal aid here could not be characterized as arbitrary, because the applicant's action for libel had no reasonable prospect of success. As well, he was given legal aid to seek legal advice on other possible proceedings, and the costs of litigation would be disproportionate to any likely damages to be awarded. See also *Nicholas v. Cyprus*, Application No. 37371/97, Admissibility decision of March 14, 2000 (inadmissible)

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx-i=001-3747](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-3747)

X Cruz de Carvalho v. Portugal, Application Number 18223/04, Judgment 10 July 2007

-summary -

The applicant was prevented by the judge from interrogating witnesses and participating actively in the oral proceedings of his civil case due to the fact that he was not represented by a lawyer. The Court noted that this put him in a disadvantaged situation as the notion of a fair trial, incorporates in itself the respect of the principle of equality of arms. In a civil case this includes the obligation to offer to every side the possibility to reasonably present its case. In the given case, the applicant, being informed that the representation of a lawyer is not obligatory as stipulated in domestic law, has chosen to represent himself, but was not allowed and did not actually dispose of the same procedural opportunities as the other side in the proceedings. The Court found that the principle of equality of arms has not been observed and consequently there has been a violation of Article 6 § 1 of the Convention.

Hyperlink of the decision inthe HUDOC database:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx-
?i=001-81508](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81508)

Other decision relevant for legal aid and access to justice

Overall Scope and Eligibility for Legal Aid	
<i>Artico v. Italy</i> , Application No. 6694/74, Judgment of May 13, 1980	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57424
<i>Jordan v. United Kingdom</i> , Application No. 24746/94, Judgment of May 4, 2001	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59450
<i>Bubbins v. United Kingdom</i> , Application No. 50196/99, Judgment of March 17, 2005	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68548
<i>Biondo v. Italy</i> , Application No. 8821/70, Judgment of 28 February, 2002	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60229
Legal aid in appeal procedures	
<i>Pham Hoang v. France</i> , Application No. 13191/87, Judgment of September 25, 1992	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57791
<i>R. D. v. Poland</i> , Application Nos. 29682/96 and 34612/97, Judgment of December 18, 2001	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59992
<i>Aerts v. Belgium</i> , Reference No. 61/1997/845/105, Judgment of July 30, 1998	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58209

<i>Gnahore v. France</i> , Application No. 40031/98, Judgment of September 19, 2000	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58802
<i>Del Sol v. France</i> , Application No. 46800/99, Judgment of February 26, 2002	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60166
<i>Essaadi v. France</i> , Application No. 49384/99, Judgment of February 26, 2002	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-64724
<i>Tabor v. Poland</i> , Application No. 12825/02, Judgment of June 27, 2006	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-76078
Issues Related to the Procedures of Legal Aid Application and Appointment of a Legal Aid Lawyer	
<i>Aerts v. Belgium</i> , Reference No. 61/1997/845/105, Judgment of July 30, 1998	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58209
<i>Del Sol v. France</i> , Application No. 46800/99, Judgment of February 26, 2002	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60166
<i>Gutfreund v. France</i> , Application No. 45681/99, Judgment of September 12, 2003	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61138

<i>A. B. v. Slovakia</i> , Application No. 41784/98, Judgment of March 4, 2003	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60965
<i>Tabor v. Poland</i> , Application No. 12825/02, Judgment of June 27, 2006	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-76078
<i>Santambrogio v. Italy</i> , Application No. 61945/00, Judgment of September 21, 2004	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-66656
<i>Sujeeun v. United Kingdom</i> , Application No. 27788/95, Commission decision (inadmissible)	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-2705
Costs of Court Proceedings; Repayment of Legal Aid Fees	
<i>Ashingdane v. United Kingdom</i> , Application No. 8225/78, Judgment of May 28, 1985	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57425
<i>Tolstoy Miloslavsky v. United Kingdom</i> , Application No. 35573/97, Judgment of July 13, 1995	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-4058
<i>Aït-Mouhoub v. France</i> , Reference No. 103/1997/887/1099, Judgment of October 28, 1998	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58259
<i>Garcia Manibardo v. Spain</i> , Application No. 38695/97, Judgment of February 15, 2000	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58494

<i>Kreuz v. Poland</i> , Application No. 28249/95, Judgment of June 19, 2001	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59519
<i>Kniat v. Poland</i> , Application No. 71731/01, Judgment of July 26, 2005	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69901
<i>Jedamski and Jedamska v. Poland</i> , Application No. 73547/01, Judgment of July 26, 2005	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69898
<i>Teltronic-CATV v. Poland</i> , Application No. 48140/99, Judgment of January 10, 2006	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-71946
<i>V. M. v. Bulgaria</i> , Application No. 45723/99, Judgment of June 8, 2006	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-75682
Reimbursement of Litigation Costs	
<i>Croissant v. Germany</i> , Application No. 13611/88, Judgment of September 25, 1992	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57736
<i>Lagerblom v. Sweden</i> , Application No. 26891/95, Judgment of April 14, 2003 <i>Stankiewicz v. Poland</i> , Application No. 46917/99, Judgment of April 6, 2006	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57736 http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-73083

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