

REPORT

ON IMPLEMENTATION OF THE LAW ON FREE LEGAL AID IN 2016-2017



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This publication has been produced
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are the sole responsibility of
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Published by:

Foundation Open Society – Macedonia (FOSM)

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Printed by:

Data Pons

Circulation:

1100

CIP - Каталогизација во публикација

Национална и универзитетска библиотека «Св. Климент Охридски», Скопје

347.921.8:340.13(497.7)»2016/2017(047)

ИЗВЕШТАЈ за примената на законот за бесплатна правна помош во 2016-2017 година / [автор Христина Василевска ; со придонес на Благлица Киров . и др.]. - Скопје : Фондација Отворено општество - Македонија, 2017. - 72, 68 стр. ; 21 см

Насл. стр. на припечатениот текст: Report on implementation of the law on free legal aid in 2016-2017 / Hristina Vasilevska. - Обата текста меѓусебно печатени во спротивни насоки. - Текст на мак. и англ. јазик. - Фусноти кон текстот

ISBN 978-608-218-269-8

1. Василевска, Христина [автор]

а) Правна помош - Законодавство - Македонија - 2016-2017 - Извештаи

COBISS.MK-ID 103727882

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ABBREVIATIONS

LFLA	Law on Free Legal Aid
FOSM	Foundation Open Society – Macedonia
NRC	National Roma Centrum – Kumanovo
YCC	Youth Cultural Centre – Bitola
EHO	Educational Humanitarian Organization – Stip
LLP	Law on Litigation Procedure
LGAP	Law on General Administrative Procedure
LCP	Law on Criminal Procedure
LSP	Law on Social Protection
AF	Attorney Fees
LF	Law on Family
LJC	Law on Justice for Children
MoI	Ministry of Interior
MoJ	Ministry of Justice

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DOCUMENT SUMMARY

Right to access to justice is a fundamental human right. Exercise of this right is closely related to and depends on accessibility of legal services for all citizens, irrespective of their material and social status. Access to justice for all citizens depends on efficiency of the system on free legal aid (FLA), thus guaranteeing exercise of human rights.

As part of its EU accession process, the Republic of Macedonia needs to align its national legislation with the EU *acquis*. This legal framework includes the Law on Free Legal Aid (LFLA), which was adopted in 2009 and started its enforcement in July 2010.

Purpose of LFLA is to ensure equal access to justice for all citizens, irrespective of their material status. Based on previously published reports on monitoring implementation of LFLA, it could be concluded that this law does not attain the purpose for which it was adopted. The last survey on public perception and citizens' awareness of LFLA showed that only 1.1% of total population in the Republic of Macedonia fulfil all law-stipulated conditions to benefit from free legal aid.

Since 2010, the Foundation Open Society - Macedonia and its partner organizations (National Roma Centrum - Kumanovo, Educational Humanitarian Organization - Stip, Youth Cultural Centre - Bitola, "Izbor" - Strumica, and Helsinki Committee of Human Rights in the Republic of Macedonia - Skopje), work on implementation of this law and monitor its enforcement, in order to identify possible shortcomings and propose recommendations for improvement. Starting

from 2014, the European Union, through the European Instrument for Democracy and Human Rights (EIDHR) which provides financial support to the project “Access to Justice in Macedonia”, has supported FOSM’s efforts aimed to advance free legal aid and legal solutions from LFLA.

To present, FOSM has developed and published six reports¹ under the project “Access to Justice in Macedonia” and this is the seventh report for the period 2016-2017. Assessment of LFLA’s implementation is based on data collected as part of the project by providers of free legal aid, i.e. authorized associations and regional offices of the Ministry of Justice, as well as data from 1,293 citizens who benefited from FLA. Moreover, this report includes data from the survey on public perception and citizens’ awareness of LFLA and the survey on citizens’ satisfaction with FLA received, accompanied with analysis of legal regulations, relevant reports, opinions and findings.

Development of this report relied on the methodology which includes monitoring implementation of LFLA by authorized associations, data collection and analysis, analysis of relevant documents related to free legal aid, as well as data and results from two surveys conducted.

Project activities also included establishment of database which, in addition to general and demographic information, features brief description of legal issues for which individuals requested free legal aid, time needed for MoJ to take decision upon FLA applications,

1 Report on Implementation of the Law on Free Legal Aid, FOSIM and MYLA, March 2010; Fairy Tale or Reality!? - Free Legal Aid in the Republic of Macedonia, MYLA and FOSM, February 2012; Analysis of Implementation of the Law on Free Legal Aid (2010-2012), MYLA and FOSM, 2013; Report on Implementation of the Law on Free Legal Aid in 2013, MYLA, 2014; Report on Implementation of the Law on Free Legal Aid in 2014-2015, FOSM, 2015.

most frequent legal issues for which free legal aid is requested, etc. Data collected was subjected to analysis and used as baseline for development of this report.

Moreover, this report features data from the analysis of rulings taken by the Administrative Court and Higher Administrative Court and the policy brief on identified shortcomings in the overall system on free legal aid and recommendations for its improvement.²

Based on the analysis, it could be concluded that, in the course of their work, authorized associations that are partners in the project have established the following shortcomings in LFLA and in the overall system on provision of free legal aid:

1. Deadlines stipulated under LFLA for taking decisions upon FLA applications are not aligned with deadlines for lawsuit motion and response in litigation and non-contentious procedures and deadlines for lodging appeal in administrative procedures, which often leads to breach of these deadlines, and ultimately results in citizen being approved free legal aid late in the process, when the need thereof has ceased to exist.
2. Social Work Centres pursue non-harmonized practices, i.e. individual centres apply different methods of work, which leads to legal and social insecurity of citizens.
3. Ministry of Justice applies different interpretation of provisions from LFLA for same or similar legal issues, but different applicants.

2 URGENT CHANGES ARE NEEDED TO THE OVERALL SYSTEM ON FREE LEGAL AID, policy brief, available at: <http://pristapdopravda.mk/wp-content/uploads/2012/10/Policy-brief-04.pdf> (last accessed on 18.6.2017)

4. LFLA is part of a broader system that provides legal security and access to justice for citizens and is therefore linked to the Law on Social Protection (LSP), which lacks crucial definitions of terms used in the system on free legal aid.
5. Law-stipulated conditions that citizens need to fulfil in terms of legal issue for which legal aid is requested and especially in terms of their material status are very strict, which often leads to non-approval of free legal aid for many citizens that need it.
6. Costs related to court fees, forensic expertise, securing evidence and other costs incurred in legal procedures for which free legal aid is approved fall on the burden of citizens.
7. Scope of preliminary legal aid is very narrow, and marked by inadequate regulation.
8. Except for legal advice and assistance in completing FLA applications, preliminary legal aid does not include drafting of simple submissions in administrative procedures.
9. Procedure on taking decisions upon FLA applications is concentrated (centralized).³
10. Law on Free Legal Aid is not aligned with other procedural laws directly linked to it (Law on Criminal Procedure, Law on Notary Activity, Law on Execution, Law on Litigation Procedure, Law on Non-Contentious Procedure and Law on General Administrative Procedure).
11. There are no mechanisms on monitoring and assessing implementation of LFLA and quality of legal aid provided.

3 The mildest form of decentralization is the so-called deconcentration, which implies transfer of decision-making powers from central to local level.

1

INTRODUCTION

About the Project

The project “Access to Justice in Macedonia” is financed by the European Union, through the European Instrument for Democracy and Human Rights (EIDHR), and implemented by the Foundation Open Society – Macedonia and its partner organizations: National Roma Centrum from Kumanovo, Educational Humanitarian Organization (EHO) from Stip, Youth Cultural Centre from Bitola, “Izbor” from Strumica and the Helsinki Committee of Human Rights in the Republic of Macedonia (Helsinki Committee) from Skopje.

The project supports authorized associations for provision of free legal aid in compliance with the Law on Free Legal Aid (LFLA) and aims to contribute to improved system on protection of human rights in the country, by measuring citizens’ satisfaction with the existing system on free legal aid and by identifying shortfalls in its implementation, for the purpose of making recommendations aimed to improve the system.

Specific objectives of the project are:

- ▶ to support authorized associations providing preliminary legal aid, in order to improve access to justice;
- ▶ to perform detailed analysis of implementation of the Law on Free Legal Aid by conducting an independent assessment of the system on free legal aid and by surveying citizens’ satisfaction with the system on free legal aid and its accessibility.

Total value of the project amounts to 126,000 EUR.

Citizens can benefit from preliminary legal aid provided by authorized associations and regional offices of the Ministry of Justice (MoJ).

Methodology on Data Collection

Data collected for development of this report are obtained from the 2016 Report on Enforcement of LFLA, published by the Ministry of Justice, as well as from everyday activities of five authorized association that work with FLA applicants and enlist them in the established database. Additional tools for collection of data necessary for development of this report that were not covered in MoJ's official report implied submission of requests for free access to public information addressed to the Ministry of Justice, Administrative Court and Higher Administrative Court, basic courts and other relevant institutions.

Moreover, LFLA was analysed in terms of its efficiency and effectiveness in practice, as well as its accessibility to all citizens who are facing certain legal issue. Assessment of the current situation in terms of LFLA's implementation relied on the comparative method and took into account reports, findings and opinions developed and published by FOSM.

Data contained in the established database allowed the project team to have clear image about most frequent problems faced by FLA applicants, cases in which MoJ strictly adheres to law-stipulated conditions and cases in which it deviates therefrom, i.e. applies more liberal interpretation of LFLA (one of recommendations⁴

4 FOSM, Analysis of Rulings Taken by the Administrative Court and Higher Administrative Court, 2017

made by the Administrative Court concerned avoidance of rigid interpretation of provisions under LFLA in order to enable attainment of the law's purpose, which is access to justice for all citizens), with the ultimate goal of enabling access to justice for citizens that are obviously unable to engage and pay an attorney in order to have their legal issue resolved.

Also, the project team commissioned two surveys which secured data that were of exceptional importance for development of this report. The first survey,⁵ which concerns public perception and citizens' awareness of LFLA, provided clear image about citizens' information and knowledge about their right to free legal aid, what free legal aid means to them, but also how much they trust the institutions and whether they would seek free legal aid when faced with certain legal issue. All these data, complemented with analysis of the number of citizens in the Republic of Macedonia that fulfil law-stipulated conditions for obtaining free legal aid, allowed straightforward assessment of the law's efficiency and enforceability.

In addition to collection of quantitative data, this research included collection of data needed for qualitative indicators, by means of individual interviews with regional offices and organization of focus group discussion with all authorized associations for provision of free legal aid.

The second survey⁶ targeted only citizens who have addressed the five authorized associations for provision of free legal aid and registered in the database established as part of the project. Final

5 Reactor – Research in Action, Survey on Public Perception and Citizens' Awareness of the Law on Free Legal Aid, FOSM, 2016

6 GfK, Survey on Citizens' Satisfaction with Free Legal Aid Received, FOSM, 2017

findings showed that citizens are very satisfied with work performed by lawyers engaged at authorized associations, but are dissatisfied with actions taken by state institutions.

2

LEGAL FRAMEWORK FOR THE SYSTEM ON FREE LEGAL AID IN THE REPUBLIC OF MACEDONIA

Equal access to justice for all citizens is a fundamental human right whose exercise must be guaranteed by the justice system in the state. Constitution of the Republic of Macedonia, as the highest legal act, does not directly guarantee the right to free legal aid, but does that indirectly under the provision that guarantees equality of all citizens in the Republic of Macedonia.⁷

Existence of the Law on Free Legal Aid⁸ is only one step towards exercise of the right to equal access to justice for all citizens, but its inefficiency and strictly defined conditions for exercise of the right to free legal aid prevent this piece of legislation to attain the purpose for which it was adopted.

LFLA was adopted in December 2009 and its enforcement started in July 2010. It is a matter of complex legal solution whose main goal is to enable equal access to justice by means of free legal aid for vulnerable categories of citizens which, due to lack of financial means, are unable to resolve the legal issue they are facing.

Reports on implementation of LFLA developed by FOSM from 2011 onwards provide the conclusion that LFLA grossly underperforms in terms of attainment of its purpose on the account of rigid conditions which citizens must fulfil in order to be approved free legal aid and on the account of the closed list of legal issues for which free legal aid is approved.

7 For more information about the constitutional framework on free legal aid see: Report on Implementation of the Law on Free Legal Aid, FOSM and MYLA, 2011, p. 54

8 Law on Free Legal Aid ("Official Gazette of the Republic of Macedonia" no. 161/2009, 185/2011 and 27/2014)

In the first year of its implementation, LFLA was not subject to any amendments in spite of remarks put forward by authorized associations. In 2011, LFLA was amended in the section on categories of FLA applicants with addition of asylum seekers as eligible applicants for free legal aid in procedures on exercising this right.

Adoption of the Law on Justice for Children (LJC)⁹ in 2013 affected the system on free legal aid, as it anticipated attorney costs for representation of children at risk and children that have committed criminal offences and misdemeanours to be covered pursuant to LFLA, i.e. from the budget allocated for free legal aid.

To date, the last round of amendments to LFLA was adopted in 2015 when the Parliament of the Republic of Macedonia tasked the Ministry of Justice to establish links with the Real Estate Cadastre Agency within a period of three months.

In parallel to implementation of the project “Access to Justice in Macedonia”, the twinning project “Strengthening the Rule of Law” was also launched in the Republic of Macedonia and includes one component on revision, i.e. adoption of new LFLA that will ensure greater accessibility of free legal aid for all citizens. For that purpose, the twinning project established a working group tasked to draft recommendations and propose amendments that will improve LFLA.

9 Law on Justice for Children (“Official Gazette of the Republic of Macedonia” no. 148/2013)

Preliminary Legal Aid and Free Legal Aid

Under current LFLA, free legal aid is divided into preliminary legal aid and legal aid in procedures led in front of competent bodies or institutions.

Preliminary Legal Aid

Preliminary legal aid is provided by authorized associations and regional offices of the Ministry of Justice. In order to obtain authorization for provision of free legal aid, the association has to fulfil the following law-stipulated conditions:

- ▶ to be enlisted in the Registry of Citizens' Associations kept by the Central Register of the Republic of Macedonia;
- ▶ to have employed at least one graduated lawyer with passed bar exam;
- ▶ its Founding Act or Statute, in the section on goals and objectives, to have enlisted provision of preliminary legal aid in the field of operation for which the association is founded; and
- ▶ to have signed accountability insurance contract for possible damages from counselling in the lowest insurance policy/amount.

Same conditions apply to regional offices of the Ministry of Justice.

Preliminary legal aid covers:

- initial legal advice on the right to free legal aid;
- general legal information; and
- legal assistance in completing FLA application.¹⁰

10 Law on Free Legal Aid ("Official Gazette of the Republic of Macedonia" no. 161/2009, 185/2011 and 27/2014), Article 6

Authorized associations are not allowed to draft simple submissions in administrative procedures in order to help citizens, although their experiences and day-to-day work have shown that this is frequently requested by citizens, especially in cases when citizens engage with and communicate in written with state bodies and institutions.

Legal Aid

Free legal aid is provided by attorneys enlisted in the Registry of Attorneys Providing Free Legal Aid kept at MoJ and it covers:

- ▶ representation in administrative and court procedures of all instances;
- ▶ composition of written submissions in court and administrative procedures.¹¹

Attorneys engaged in procedures for which free legal aid is approved are reimbursed from MoJ's budget allocated to finance free legal aid, in compliance with the attorney fee reduced by 30%.

Unlike legislation adopted in other countries,¹² LFLA in Macedonia does not include a provision whereby citizens that have been approved free legal aid are exempted from payment of court fees, costs for forensic expertise and for securing evidence. According to the Law on Litigation Procedure, citizens that have initiated court procedure are allowed to submit motion for exemption from payment of court fees.

11 Law on Free Legal Aid ("Official Gazette of the Republic of Macedonia" no. 161/2009, 185/2011 and 27/2014), Article 6

12 M. Barendrecht et al., Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?, HiiL Innovating Justice, 2014, p. 42, available at: http://www.hiil.org/data/sitemanagement/media/Report_legal_aid_in_Europe.pdf (last accessed on 18.6.2017)

Beneficiaries of Free Legal Aid

In compliance with provisions from LFLA, FLA applicants must fulfil law-stipulated conditions which are very rigid and which, according to the survey on public perception and citizens' awareness of LFLA, are fulfilled by only 1.1% of total population in the Republic of Macedonia.

In order to exercise the right to free legal aid, applicants need to be nationals of the Republic of Macedonia with permanent residence on its territory, and must be:

- beneficiaries of social allowance;
- beneficiaries of disability allowance, who do not earn other type of income or property revenue;
- beneficiaries of the lowest pension allowance, who live in household with two or more dependents; and
- families or single parents with one or more minors, who are entitled to child support allowance;
- children at risk;
- children for whom there are reasonable doubts they have committed criminal offence or misdemeanour as stipulated by law.¹³

In addition, following categories of citizens can also appear as FLA beneficiaries:

- asylum seekers, persons whose right to asylum has been recognized, internally displaced persons, as well as displaced or exiled persons with temporary residence on the territory of the Republic of Macedonia;

¹³ In compliance with the Law on Justice for Children

- foreign nationals who, in compliance with the international treaties, and irrespective of their permanent or temporary residence on the territory of the Republic of Macedonia, exercise certain rights in front of competent state bodies of the Republic of Macedonia;
- stateless persons with legal residence in the Republic of Macedonia; and
- citizens of EU member-states, under terms and conditions and in manner stipulated by the law.

Conditions for Exercise of the Right to Free Legal Aid

In order to exercise their right to free legal aid, applicants need to **cumulative fulfil the following law-stipulated conditions:**

- ▶ to benefit from certain right in social protection;
- ▶ individual income and income earned by members of their household not to exceed 50% of the average monthly salary paid in the Republic of Macedonia for the previous month at the time of submitting the application for free legal; and
- ▶ applicants or members of their families living in the same household not to possess property whose value is equal to or exceeds the amount of five average monthly gross salaries paid in the Republic of Macedonia for the previous month.¹⁴

However, the right to free legal aid is not accessible to poor citizens that do not earn income, but are in possession of house whose value

¹⁴ Law on Free Legal Aid ("Official Gazette of the Republic of Macedonia" no. 161/2009, 185/2011 and 27/2014), Article 12

often exceeds the amount of five monthly gross salaries. **In this regard, LFLA is stricter than the Law on Social Protection wherein the right to social monetary allowance is also entitled to persons in possession of real estate, provided they cannot sustain their livelihood from said property.**

Moreover, LFLA does not distinguish between employed and unemployed citizens. Namely, the right to free legal aid should be guaranteed to all unemployed citizens which, due to lack of continuous income, are not in position to afford attorney services.

Legal Issues for Which Free Legal Aid is Approved

The closed list of legal issues for which free legal aid can be approved is narrow and restrictive. In particular, free legal aid is approved for following legal issues:

- rights in social, health, pension or disability insurance;
- labour relations;
- children protection;
- protection of victims of domestic violence;
- protection of victims of criminal offences;
- protection of victims of human trafficking;
- recognition of the right to asylum; and
- property tenure issues.¹⁵

LFLA does not cover certain, very important areas of legal issues faced by citizens, such as: problems in the area of family-related legal relations (marriage annulment and divorce, custody disputes,

15 Law on Free Legal Aid ("Official Gazette of the Republic of Macedonia" no. 161/2009, 185/2011 and 27/2014), Article 8

alimony, division of marriage property, establishment of paternity and maternity); problems related to consumer protection that could not subsumed under property tenure issues; exercise and protection of rights in social protection; status issues (legal capacity, citizenship); problems related to discrimination, etc.

Based on findings from the research on legal needs of citizens,¹⁶ it could be concluded that citizens are most often facing legal issues related to property, i.e. housing (problems with property purchase or sales, problems with purchase of state-owned land, problems related to property legalization, property related to property denationalization, overdue payment of several instalments under mortgage loans, parking problems, erroneous or disputable utility bills, obtaining or maintaining public services (telephone, water supply, heating), homelessness, neighbour issues or disputes, utility repairs or maintenance, issues with cadastre records), as well as legal issues related to employment, i.e. labour relations, consumer issues (problems with purchased goods or services, contracts which the signatory does not understand, problems with detrimental loan conditions, problems with safety of purchased goods), and money-related problems, i.e. debts.

PROVIDERS OF FREE LEGAL AID

Description of the Current Situation

Providers of free legal aid can be authorized associations that have fulfilled law-stipulated conditions, regional offices of MoJ, and reg-

¹⁶ Reactor – Research in Action, Legal Needs and Path to Justice in the Republic of Macedonia, FOSM, 2013, p. 14, available at: <http://www.fosm.mk/CMS/Files/Documents/20131810-Analiza-mk.pdf> (last accessed on 18.6.2017)

istered attorneys. Authorized associations are very important part of the overall system on free legal aid, which is also visible from the survey on citizens' satisfaction with free legal aid received. However, LFLA does not allow sustainability and adequate reimbursement of costs for lawyers engaged by associations in terms of work and time invested in provision of legal advice and legal information.

Challenges Faced by Authorized Associations for Provision of Free Legal Aid

Due to strict law-stipulated conditions for associations to obtain authorization for provision of free legal aid, they are facing day-to-day challenges in their operation.

The biggest challenge is financial sustainability of these associations, which are non-profit organizations and finance their activities mainly with funds from foreign and domestic donors. In order to fulfil the condition concerning full-time employment of lawyer with passed bar exam, an authorized association has to dispose with funds in the amount of at least 369,000 MKD annually, which are currently secured as part of projects. On the other hand, the Ministry of Justice reimburses costs incurred by authorized associations only for cases in which free legal aid was approved, in the amount of 1,100 MKD per case. If the association's lawyer has assisted and worked with an applicant whose FLA application was not approved by MoJ or who has not submitted FLA application at all, but benefited from legal information or initial legal advice, the authorized association would not be reimbursed for costs incurred for assistance provided to such applicants.

Based on this practice, as well as data collected, if an association has an average of three FLA applications approved on monthly ba-

sis, the same would be entitled to reimbursement in the amount of 3,300 MKD by MoJ, which is insufficient to cover basic monthly costs for the office. On the other hand, every month authorized associations are contacted by around 20 citizens seeking legal advice or information, and for these cases they are not entitled to reimbursement of costs by MoJ. LFLA prohibits authorized associations to promote, i.e. “advertise” their work, which further limits their financial sustainability.

Regional Offices of the Ministry of Justice

Regional offices of the Ministry of Justice can provide preliminary legal aid **only if they have employed a lawyer with passed bar exam**. At the same time, LFLA lacks closer regulation of the manner in which preliminary legal aid is provided and documented.

In the experience of authorized associations, regional offices apply non-harmonized practices, i.e. some regional officers allow applicants to select an attorney that would represent them from the Register of Attorneys Providing Free Legal Aid, while others have established practices whereby the lawyer employed at the regional office selects an attorney, without consulting the applicant. Furthermore, some regional offices are open for cooperation and dispose with adequate staff, while others do not even have computers and are unable to respond to certain requests made by associations and do not have relevant knowledge of laws that govern their work. Total of six regional offices have not received and forwarded to MoJ any FLA applications.¹⁷

17 MoJ's Report on Enforcement of LFLA in 2016, available at: <http://pravda.gov.mk/documents/tekst%20na%20izvestajot%20za%202016.pdf> (last accessed on 18.6.2017)

Attorneys as Providers of Free Legal Aid

Attorneys are single providers of free legal aid in court and administrative procedures. In order to obtain authorization for that, they need to be enlisted in the Registry of Attorneys Providing Free Legal Aid kept by MoJ.

When submitting FLA applications or after free legal aid is approved (depending on the practice established at individual regional offices) applicants are allowed to select an attorney they want to represent them from the Registry of Attorneys Providing Free Legal Aid.

Results from the survey on citizens' satisfaction with FLA received showed high assessments for quality of attorney services in procedures for which free legal aid was approved. More specifically, **42%** of respondents indicated assessments **“very good”** for quality of services provided by attorneys and reported that they are satisfied with accessibility of and legal counselling by attorneys they were appointed.

FLA applicants can request change of attorney after having established communication with them and after having perceived barriers that might distort the trust in attorney-client relations, lack of interest or unkind behaviour demonstrated by the appointed attorney, etc. LFLA does not stipulate deadline and manner in which FLA applicants can request a new attorney, but in the practice, they usually address the regional office where they have submitted their applications, in person or in written, briefly explain reasons and propose new attorney to lead the procedure for which free legal aid was approved.

3

ADMINISTRATIVE COURT
AS PART OF
THE SYSTEM
ON FREE
LEGAL AID

As second instance protection for citizens, the Law on Free Legal Aid anticipates motion of lawsuit in front of the Administrative Court against decisions taken by the Ministry of Justice on rejecting application for free legal aid, within a deadline of 30 days from the decision's receipt.

Administrative dispute represents *court protection* mechanism intended to assess *legality* of individual acts taken by state administration bodies (in this specific case, decisions of the Ministry of Justice on rejecting FLA applications). In other words, administrative disputes provide a form of oversight on the ministry's performance track record in terms of whether it has complied with LFLA and other relevant laws when taking decisions upon FLA applications. Administrative disputes are initiated by motioning a lawsuit in front of the Administrative Court against individual decisions taken by the Ministry of Justice. In assessing legality of such decisions, the Administrative Court establishes: 1) *whether the Law on Free Legal Aid was adequately applied*; 2) *whether the factual situation was fairly and fully established* (family and property status of applicants and legal issue for which legal aid is requested); and 3) *whether the procedure was led adequately*. Exactly this aspect of administrative disputes is of crucial importance for the Administrative Court to play its role as second instance body that will be actively involved in implementation of LFLA.¹⁸ Within a deadline of 30 days from the ruling's receipt, the Ministry of Justice is obliged to adopt new deci-

18 Report on Implementation of the Law on Free Legal Aid in 2014-2015, FOSM, 2015, p. 43, available at: <http://fosm.mk/mk/Home/Publication?news-ID=5013&catID=9&pageIndex=1> (last accessed on 18.6.2017)

sion, taking into consideration guidelines provided in the ruling of the Administrative Court.

The Administrative Court has a major role in the system on free legal aid, especially as mechanism for protection of citizens that have been denied free legal aid. Therefore, project activities included analysis of 15 rulings taken by the Administrative Court.

In particular, the project engaged an attorney tasked to lead procedures in front of the Administrative Court. A total of 14 lawsuits were motioned, but during the project's implementation, i.e. in the period January 2016 – June 2017, the Administrative Court has failed to take a single ruling in these cases. Hence it can be concluded that the Administrative Court needs more than 18 months to take ruling in lawsuits motioned.

Very small number of citizens decides to initiate administrative disputes because they need to cover procedure costs from their own pocket. Time needed for the Administrative Court to take its ruling is another factor that defers citizens from initiating second instance administrative procedure.

4

PROCEDURE ON EXERCISING THE RIGHT TO FREE LEGAL AID

Ordinary citizens find the procedure on approving free legal aid complex and vague, and they expect lawyers from authorized associations to provide both, preliminary legal aid and legal aid. More specifically, **18%** of respondents in the survey on citizens satisfaction with FLA received have indicated that **procedure on obtaining free legal aid is very complicated.**¹⁹

In order to complete FLA application, citizens can address authorized associations or regional offices of the Ministry of Justice, according to their place of residence. FLA applications are submitted on the template developed by MoJ and in attachment thereto applicants are obliged to submit statement confirming that information provided therein are truthful and confirming their material, economic and property status.

FLA applications are submitted to regional offices of the Ministry of Justice, which are responsible to collect all documents confirming data indicated in the application. Within a deadline of 12 days, regional offices are obliged to collect these documents and forward them to MoJ, together with the FLA application. Within a deadline of 8 days, MoJ should take a decision on approving or rejecting the application. MoJ's decision must enlist the legal issue for which free legal aid is approved and the attorney assigned to lead the procedure.

Procedure on approving free legal aid is regulated as urgent and must be completed within the law-stipulated deadline for citizens

19 GfK, Survey on Citizens' Satisfaction With Free Legal Aid Received, FOSM, 2017, p. 27

to be enabled access to justice and timely resolution of their legal issues. Based on previous practices, it could be established that, on average, FLA applicants wait from 40 to 50 days for MoJ to take decision upon their applications.

Reasons for such delayed decision-making are various, and most often they concern communication with other state authorities - holders of information needed to establish the applicant's status, as well as the need for the Minister of Justice to endorse the decision taken upon submitted application.

5

MONITORING IMPLEMEN- TATION OF THE LAW ON FREE LEGAL AID

Assessment of LFLA's implementation is based on data from the database which has registered all applicants that have addressed authorized associations, as well as data from 2016 Report on Enforcement of LFLA, published by the Ministry of Justice. Existence of the system on legal protection and access to justice guarantees efficient exercise and protection of citizens' violated or threatened rights and interests in front of competent courts and state bodies.

Free legal aid is form of legal protection that enables access to justice for particular category of citizens, i.e. costs incurred in the relevant procedure are covered by the Republic of Macedonia. Free legal aid is free-of-charge for beneficiaries thereof, but not for providers of free legal aid, whose costs for the work performed are reimbursed from the state, donors or other funding sources. The system on free legal aid enables partial formal legal equality, availability and access to court and to other state bodies for persons living in poverty. Main actors in collection and analysis of data include providers of free legal aid, Administrative Court and Higher Administrative Court, FLA beneficiaries and other relevant institutions.

Current Situation with the Law on Free Legal Aid

LFLA aims to enable access to justice for all citizens, irrespective of their material, property and social status. In particular, this law is intended to ensure protection for citizens that cannot afford to pay for legal assistance without endangering their material and property status, as well as the sustenance of their families.

Assessment of LFLA's relevance in the Macedonian society was guided by the following questions: does the law reflect legal needs of citizens in the Republic of Macedonia; how rigid are law-stipulated conditions for citizens to obtain free legal aid; and whether legal issues for which free legal aid can be approved are well defined.

Social-Economic Indicators and Legal Needs of Citizens

According to data from the State Statistical Office for 2015, 22.9 % of households in the Republic of Macedonia live in poverty and cannot meet their basic sustenance needs.²⁰ The research on legal needs of citizens in the Republic of Macedonia showed that every second citizen is facing certain legal issue. Citizens that participated in focus groups organized as part of the survey on their satisfaction with FLA received, on several occasions, underlined their dissatisfaction with the institutions,²¹ while 24.8% of respondents indicated that, due to their financial status, they would not seek legal aid when they are facing certain legal issue.²²

Poverty rate in the country is much higher compared to the established share of 1.1% of citizens that fulfil law-stipulated criteria for obtaining free legal aid. When these shares are translated into absolute figures, it turns out that more than 165,000 citizens in the Re-

20 State Statistical Office, Press Release: Laeken Indicators on Poverty in 2015, available at: <http://www.stat.gov.mk/PrikaziSooopstenie.aspx?rbtxt=115> (last accessed on 18.6.2017)

21 GfK, Survey on Citizens' Satisfaction with Free Legal Aid Received, FOSM, 2017, pp. 5, 14 and 29

22 Reactor – Research in Action, Survey on Public Perception and Citizens' Awareness of the Law on Free Legal Aid, FOSM, 2016, p. 27

public of Macedonia live in poverty, while only 18,000 citizens can benefit from free legal aid provided by the state. According to data from the State Statistical Office, in 2015 total of 55,872 citizens were registered as beneficiaries of social allowance.²³

Average net salary in the Republic of Macedonia paid for March 2017 amounted to 22,445 MKD, while the minimum net salary paid in May 2017 amounted to 8,870 MKD. On the other hand, the average consumer basket for April 2017 amounted to 32,233 MKD.²⁴ Hence, it can be concluded that two average salaries earned by a four-member family are hardly sufficient to secure basic products and that the family's sustenance would be threatened if they have to pay for attorney services in order to have a particular legal issue resolved.

Citizens That Cannot Exercise the Right to Free Legal Aid

The Law on Free Legal Aid is known for its stricter approach in establishment of conditions for exercise of the right to free legal aid, unlike conditions anticipated for exercise of rights in social protection stipulated under the Law on Social Protection (LSP).²⁵ Namely,

23 State Statistical Office, Press Release: Institutions and Rights in Social Protection for Underage and Adult Beneficiaries, 2015, available at: <http://www.stat.gov.mk/pdf/2016/2.1.16.25.pdf> (last accessed on 18.6.2017)

24 State Statistical Office, Press Release: Average Monthly Net Salary Paid Per Employee for March 2017, available at: <http://www.stat.gov.mk/pdf/2017/4.1.17.40.pdf> (last accessed on 18.6.2017)

25 Law on Social Protection ("Official Gazette of the Republic of Macedonia" no. 79/2009; 36/2011; 51/2011; 166/2012; 15/2013; 79/2013; 164/2013; 187/2013; 38/2014; 44/2014; 116/2014; 180/2014; 33/2015; 72/2015; 104/2015; 150/2015; 173/2015; 192/2015 and 30/2016)

for a person to be approved free legal aid, they should not be in possession of property whose value exceeds five average monthly gross salaries paid in the Republic of Macedonia for the previous month. This stipulation excludes large number of citizens that need free legal aid, but cannot benefit therefrom because they own a house where they live together with their family. In comparison, LSP stipulates that: "...materially unsecured persons shall be persons and households whose income earned on all grounds does not exceed the amount of social monetary allowance established by this law and who are not in possession of property and property rights that could sustain their livelihood".²⁶ An addition problem is created by non-performance of property evaluation by chartered appraisers in cases when it is established that applicants are in possession of property.

Legal Issues Excluded from the Scope of the Law on Free Legal Aid

LFLA stipulates closed list of legal issues for which free legal aid can be approved, whereby the single condition is for the legal issue to be of interest for the applicant. The list of legal issues pertaining to litigation and administrative matters includes: rights in social, health, pension and disability insurance; labour relations; protection of children and minors; protection of victims of domestic violence; protection of victims of criminal offences; protection of victims of human trafficking; and property tenure issues. Certain legal issues for which citizens need legal aid are not included in the

²⁶ Ibid, Article 46, paragraph 1

list of legal issues for which free legal aid is approved (for example, **social protection**).²⁷

Moreover, certain specific needs of vulnerable categories of citizens (**exercise of the right to citizenship, status issues**) are also excluded from the list of legal issues for which free legal aid is approved.

LFLA is marked by another legislative gap in terms of perpetrators of criminal offences for which the criminal law anticipates imprisonment sentence in duration of up to 10 years. It is a matter of legal vacuum in provision of free-of-charge defence attorney paid by the state budget, which is not covered by LFLA, and therefore defence for poor people in all stages of criminal proceedings should be regulated under LFLA, i.e. perpetrators of criminal offences should be enlisted as possible FLA applicants.²⁸

Consequences from Centralized (Concentrated) Procedure on Approving Free Legal Aid

The law-stipulated deadline for taking decision upon FLA applications is **20 days** from the application's receipt, but this

27 Social insurance does not concern and is not related to social protection. Social insurance covers payment of mandatory salary contributions that are by all employed persons in the Republic of Macedonia, and includes: 1) pension and disability insurance on the basis of current level of salary payment; 2) mandatory fully-funded pension insurance; 3) years of employment insurance which is calculated incrementally; 4) mandatory health insurance; 5) insurance in case of unemployment.

28 Report on Implementation of the Law on Free Legal Aid in 2014-2015, FOSM, 2015, p. 38, available at: <http://fosm.mk/mk/Home/Publication?news-ID=5013&catID=9&pageIndex=1> (last accessed on 18.6.2017)

deadline has been breached in almost all cases. Procedure on approving free legal aid is regulated as urgent, but previous practices have shown that, on average, FLA applicants wait **40 to 50 days**, and in some cases even 90 days, for the Ministry of Justice to take decision upon their applications.

Reasons for such delayed decision-making are various, and most often they concern communication with other state authorities - holders of information necessary to establish the applicant's material status, as well as the need for the Minister of Justice to endorse the decision taken upon submitted application.

Scope of Legal Aid Provided by Authorized Associations in the Project "Access to Justice in Macedonia"

In the period January 2016 – May 2017, associations authorized for provision of free legal aid were addressed by 1,293 citizens, of which 56 continued to submit application for free legal aid.

Compared to previous years, it was established that citizens demonstrate declined interest for free legal aid. This trend could be attributed to extensive and unclear procedure on approving free legal aid, notably because in some cases MoJ needs as much as three months to take its decision upon submitted applications. In doing so, deadlines for legal protection of FLA applicants are frequently breached and approved free legal aid becomes unnecessary and pointless. In part, that is due to the law-stipulated prohibition for authorized associations to advertise their work, as well as practices of MoJ on irregular and rare organization of days of free legal aid, which contributes to poor animation of citizens and their awareness about possibilities offered by LFLA.

Table 1. Overview and status of FLA applications submitted through authorized association involved in the project, for the period January 2016 – May 2017

	Submitted applications	Rejected applications	Approved application	Discontinued procedure	Pending decision	Total citizens that addressed authorized association for free legal aid
Helsinki Committee	10	2	4	/	4	224
NRC	12	2	5	2	3	432
EHO	13	3	4	1	5	260
IZBOR	10	3	4	/	4	184
YCC	12	4	3	/	5	193
Total	57	15	19	3	21	1293

Most often, FLA applicants request legal aid in the following areas:

Table 2. Overview of legal issues for which citizens addressed authorized associations involved in the project

Legal area	Number of interventions
Rights in social, health or disability insurance	614
Property tenure relations	197
Children protection	66
Protection of victims of domestic violence	48
Rights pertaining to labour relations	42
Protection of victims of criminal offences	28
Various (administrative procedures, divorce, inheritance procedure, execution procedure, and other obligation relations beyond the area of property tenure relations)	298

From total of 1,293 FLA applicants, 687 are man and 606 are women. Breakdown of FLA applicants according to their ethnicity is: 625 are Macedonians, 21 are Albanians, 532 are Roma, 80 are Turks, and 44 are members of other ethnic groups. In the period April 2016 – May 2017, the toll-free line 0800 44 222 that operates within the project was contacted by total of 44 people.

Scope of Free Legal Aid Provided According to the Ministry of Justice' Report

According to the 2016 Report on Enforcement of the Law on Free Legal Aid,²⁹ the Ministry of Justice has been presented with total of 130 applications for exercise of the right to free legal aid. In the period January – December 2016, MoJ adopted 160 decisions, i.e. 65 decisions on approving FLA applications and 85 decisions on rejecting FLA applications. In 2016, MoJ adopted 10 conclusions on discontinuing the procedure on approving free legal aid.

Territorial Accessibility of Free Legal Aid

Unlike systems and legislation adopted in other countries, it can be concluded that the Republic of Macedonia is characterized by good territorial coverall with free legal aid. Total of 34 regional offices of the Ministry of Justice located in different municipalities provide free legal aid, while in the period 2011-2016 the Registry of Authorized Associations kept by MoJ's enlisted a total of 10 authorized associations, those being:

29 MoJ's Report on Enforcement of LFLA in 2016, p. 8, available at: <http://pravda.gov.mk/documents/tekst%20na%20izvestajot%20za%202016.pdf> (last accessed on 18.6.2017)

2011	2012	2013	2014	2016
<ul style="list-style-type: none"> • National Roma Centrum - Kumanovo • Macedonian Young Lawyers Association - Skopje • Roma SOS - Prilep • Youth Cultural Centre - Bitola 	<ul style="list-style-type: none"> • Multiculture - Tetovo 	<ul style="list-style-type: none"> • EHO - Stip • Izbor - Strumica • Centre for Development and Promotion of Public Life - Tetovo 	<ul style="list-style-type: none"> • 8th September - Skopje 	<ul style="list-style-type: none"> • Helsinki Committee for Human Rights in the Republic of Macedonia

On that basis, it is clear that civil society organizations are interested in contributing to promotion of the system on free legal aid and to increased accessibility of free legal aid for citizens.

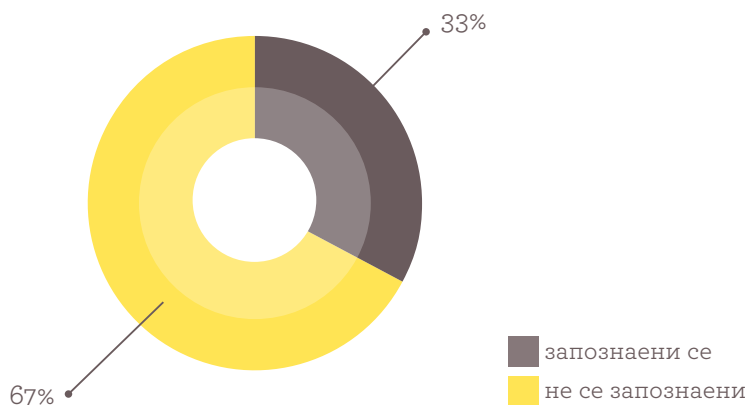
As regards attorneys registered for provision of free legal aid, the relevant registry kept by MoJ enlists a total of 317 attorneys from different municipalities. According to knowledge gained in the course of project implementation, attorneys refrain from provision of free legal aid, i.e. registration as providers of free legal aid, due to the fact that they are reimbursed according to the attorney fee decreased by 30%. Nevertheless, the last increase of attorney fees should be an additional incentive for them to register as providers of free legal aid.

Citizens' Awareness about Availability of Free Legal Aid

The survey on public perception and citizens' awareness of LFLA showed that high **67% of respondents are not knowledgeable**

about this law. According to LFLA, the Ministry of Justice should organize days of free legal advice, intended for information dissemination to citizens about their right to free legal aid. According to the last report on enforcement of LFLA published by the Ministry of Justice, only three regional offices have organized such days. Days of free legal advice were organized by two regional offices on the territory of the City of Skopje, i.e. Kisela Voda and Gazi Baba, and one regional office outside the capital, i.e. Tetovo. Such practices make it extremely difficult to achieve equitable information of citizens in other towns across the state.³⁰ Results from the survey on public perception and citizens' awareness of the Law on Free Legal Aid showed that **84.7% of citizens have never heard about days of free legal advice** which are organized by MoJ in compliance with LFLA.

Chart 1. Citizens' awareness of LFLA



³⁰ MoJ's Report on Enforcement of LFLA in 2016, p. 10, available at: <http://pravda.gov.mk/documents/tekst%20na%20izvestajot%20za%202016.pdf> (last accessed on 18.6.2017)

According to LFLA, the Ministry of Justice – in cooperation with the Bar Chamber, Notary Chamber, Chamber of Executors and Chamber of Mediators – is obliged to organize days of free legal advice on quarterly basis, intended to inform citizens about their right to free legal aid for issues in the area of mediation, bar, notary and execution activities. This actually brings to the surface another contradiction of LFLA, identified in the fact that it does not anticipate approval of free legal aid for legal issues in execution procedures, procedures led in front of notaries and mediation procedures.

On the other hand, the project “Access to Justice in Macedonia” organized 10 sessions on legal literacy at which citizens were informed about their rights and obligations in labour relations and social protection. At these sessions, participants were informed about their right to free legal aid and procedure on exercising this right.

6

SUSTAINA-
BILITY OF
THE SYSTEM
ON FREE
LEGAL AID

Funding of the System on Free Legal Aid

According to LFLA, the system on free legal aid is financed by the Ministry of Justice. Based on MoJ's last report on enforcement of LFLA in 2016,³¹ this ministry has paid a total of 829,753 MKD, of which 813,253 MKD were disbursed to attorneys engaged in procedures for which free legal aid was approved and only 16,500 MKD were disbursed to five authorized associations for provision of free legal aid.

This method of financing is completely non-functional for authorized associations which, in compliance with law-stipulated conditions, must employ under full term contract a lawyer with passed bar exam, tasked with provision of free legal aid. Funds which authorized associations are reimbursed by MoJ are insufficient to cover basic costs of operation and if free legal aid was not financed by donors they would not be able to fulfil the law-stipulated conditions and continue to operate within the system on free legal aid.

Unlike the system on free legal aid system in Croatia, where funds intended for authorized associations are paid in advance, authorized associations in Macedonia are reimbursed after submission and approval of their cost lists and only for cases in which free legal aid was approved.

31 MoJ's Report on Enforcement of LFLA in 2016, p. 10, available at: <http://pravda.gov.mk/documents/tekst%20na%20izvestajot%20za%202016.pdf> (last accessed on 18.6.2017)

7

CONCLUSIONS AND RECOMMENDATIONS AIMED TO IMPROVE THE SYSTEM

Based on this analysis, as well as previously published reports, the following conclusions were inferred:

- ▶ In the last six years, the Law on Free Legal Aid has failed to attain the purpose for which it was adopted, i.e. ensure access to justice for all citizens. Based on data presented in this report, there is an obvious trend on declining interest among citizens for obtaining free attorney services, mainly as a result of the complicated procedure on approving free legal aid and breach of law-stipulated deadlines by the Ministry of Justice, as well as strict conditions that citizens must fulfil in order to be approved free legal aid, but also after they have been approved free legal aid, which means that they need to continue to fulfil the law-stipulated conditions in the course of benefiting from free legal aid.
- ▶ Serious problem that has endured for long period of time is non-functionality and inadequacy of the overall system on provision of free legal aid, especially for citizens at social risk who are intended beneficiaries of this law, which is best represented by the continuously decreased number of citizens that have exercised their right to free legal aid.
- ▶ Importance of the Law on Free Legal Aid and its proper enforcement are mirrored in citizens' need for piece of legislation that will guarantee their legal security and will ensure access to justice.

In continuation, this report enlists recommendations aimed to improve LFLA and the overall system on free legal aid. All recommendations arise from data collected and analysis of documents relevant for the system on free legal aid.

All proposals should be subject of broader debate at which they will be presented and reconsidered with all stakeholders, allowing space for comments and additions. Having in mind the fact that, according to the Council of Europe's Evaluation of European Justice Systems,³² Macedonia is at the bottom of the list in terms of efficiency of the justice system, there is an urgent need for changes to LFLA.

a. Broader coverage of legal issues for which free legal aid is approved and streamlined conditions that should be fulfilled by applicants for free legal aid

The list of legal issues for which free legal aid is approved should be broad and should take into account the legal needs of citizens. Results from the research on legal needs of citizens in the Republic of Macedonia showed that citizens are often faced with problems related to discrimination and consumer rights, which are not covered by the scope of legal issues for which free legal aid is approved.

Having in mind that in their everyday life citizens are engaged in various legal matters/relations and various participation in the legal traffic, and for the purpose of enabling equal access to justice for all citizens, the most adequate solution would be for all legal

³² Evaluation of European Judicial Systems, available at: <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf> (last accessed on 18.6.2017)

issues that resolve certain rights that are of interest for citizens to be covered by the Law on Free Legal Aid. In this manner, all citizens that fulfil the law-stipulated conditions will be able to submit applications for free legal aid for problems in all legal areas. In doing so, citizens will be allowed equal and efficient access to justice, without any limitations in terms of the legal area for which free legal aid is requested.

Conditions which citizens need to fulfil in order to obtain free legal aid should be defined in a manner that ensures bigger coverage of citizens that could appear as potential beneficiaries of free legal aid. In the case of citizens that are beneficiaries of social allowance or other right in social protection, procedure on approving free legal aid should not include additional assessment of applicant's property status, having in mind that the same has been proved by another state body when the person was recognized his/her right to monetary allowance on the grounds of particular right in social protection. As regards applicants that are not beneficiaries of particular right in social protection, the procedure on approving free legal aid should include assessment of family income, while establishment of the upper threshold for allowed income should take into consideration the number of family members, i.e. calculation of family income should be made on the basis of income per family/household member. Of course, the legislator should also take into consideration the multigenerational character of households in Macedonia given that, due to poor economic power and tradition, one household is most often comprised of two or more generations, which does not necessarily mean that they are sharing living costs and that their legal issues have identical legal destiny and outcome. In addition, the established upper threshold for allowed income defined as condi-

tion for applicants to be approved free legal aid should not be lower than the threshold of poverty per capita, i.e. per family, calculated on annual basis by the State Statistical Office.

Furthermore, calculation of income that are subject of assessment should exclude monetary claims, revenue and property that are exempted from the execution procedure in compliance with the Law on Execution, as well as monetary allowance awarded in compliance with the Law on Social Protection and Law on Protection of Children. In addition, due consideration should be made of the possibility for assessment of applicant's property status to exclude the house, i.e. the apartment where the applicant lives and which is not used for financial earnings (for example, rent), as well as agriculture land in areas and with planted crops in compliance with the Law on Social Protection and bylaws that regulate exercise of rights in social protection.

Assessment of applicant's property status should be performed by authorized evaluators and not by employees at the Ministry of Justice, which is the case at the regional office in Bitola where tenure deeds are submitted to the municipality for experts therefrom to appraise value of said property, after which the completed application is forwarded to MoJ.

As regards victims of domestic violence and unemployed persons who do not earn income on any grounds and cases of labour disputes, free legal aid should be guaranteed irrespective of the applicant's property status. In the case of labour disputes, results from the research on legal needs of citizens³³ showed that they do not

33 Reactor – Research in Action, Legal Needs and Path to Justice in the Republic of Macedonia, available at: <http://www.fosm.mk/CMS/Files/Documents/20131810-Analiza-mk.pdf> (last accessed on 18.6.2017)

believe in successful outcome when their employers appear as opposing party in the dispute. Hence, the right to free legal aid needs to be guaranteed in all labour disputes of citizens.

b. Costs that should be covered by the right to free legal aid

Due consideration should be made of the possibility for all costs arising from certain legal dispute for which free legal aid is approved to be covered under LFLA. In addition to attorney fees, LFLA should anticipate all necessary costs in court and administrative procedures as eligible costs covered by the right to free legal aid, including court and administrative fees, costs for forensic expertise and opinions, costs for translation and interpretation, as well as costs for securing evidence.

c. Expanding scope of preliminary legal aid and funding for authorized authorizations

In order to ensure that preliminary legal aid fulfils its essence and justifies the attribute “preliminary”, in addition to provision of legal advice, legal information and assistance in completing FLA applications, associations should be allowed to draft simple submissions in all procedures that do not necessarily require representation by attorney, which will ultimately improve communication between citizens and institutions.

In that regard, experiences in England have proved to be especially successful, i.e. legal aid centres are authorized for provision of professional advice, assistance in drafting submissions, as well as assistance in legal dispute negotiations. Moreover, under the justice system in the Netherlands, preliminary legal aid also includes recommendation, i.e. referral of clients to professionals that could help them resolve the specific legal issue.

As regards financial sustainability of authorized associations, good example was observed with LFLA in Croatia and practices established in the Netherlands, England, Scotland and Poland, which anticipate advance funding for associations by means of open calls for grants. Namely, at the year's start the Ministry of Justice announces an open call for grants and associations apply for funding by submitting work programme to be implemented in the course of the year. Funds awarded in that manner could be used to cover costs for employment of lawyer, office costs, as well as for capacity building by participation in and organization of various training. In addition, funds intended for civil society organizations could serve two goals: 1) funds for registered and authorized associations providing free legal aid, which have employed lawyer with passed bar exam; and 2) funds for organizations implementing activities on legal empowerment and literacy for particular marginalized groups. For example, funds approved under the second goal could be used to organize training on labour rights and to fund programmes on paralegal assistance to specific groups, such as Roma, persons with disabilities, unemployed youth, victims of domestic violence, etc. These funds should be awarded by means of annual and multiannual open calls, in compliance with previously established programme that reflects legal needs and problematic areas that are of interest at that period

in time. The new Law on Free Legal Aid could define activities on legal empowerment and literacy intended for particular marginalized groups as special form of legal aid, i.e. legal empowerment.³⁴

Following the example from Finland, where free legal aid covers telephone counselling as well, LFLA in Macedonia should also anticipate this possibility, in order to secure funds to cover costs for maintenance of toll-free telephone line for FLA applicants that would operate within the Ministry of Justice.

In order to ensure clear regulation of rewards for counselling, drafting submissions and other legal actions taken by lawyers at authorized associations, LFLA should anticipated an obligation for the Ministry of Justice or another external body to adopt the tariff list for all services covered by preliminary legal aid.

d. Deconcentration of decision-making upon applications for free legal aid

Practices show that, in order to ensure compliance with deadlines, LFLA should entrust regional offices with decision-making upon FLA applications, whereby decisions on approving or rejecting free legal aid should be endorsed by the regional office's head. That would lead to deconcentration of the overall procedure and, instead of the Ministry of Justice, decisions will be taken by regional offices, i.e. authorized lawyers with passed bar exam, which will ultimately contribute to shorter deadlines in which decisions are taken.

34 M. Barendrecht et al., Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?, HiiL Innovating Justice, 2014, p. 55, available at: http://www.hiil.org/data/sitemanagement/media/Report_legal_aid_in_Europe.pdf (last accessed on 18.6.2017)

Moreover, the deconcentrated procedure will ensure greater legal security of citizens by introducing several-instance procedure, i.e. regional offices of the Ministry of Justice will decide upon applications for free legal aid, and when applicants are dissatisfied with the decision they will be able to lodge an appeal to the newly established independent body or to motion lawsuit against the decision of said independent body in front of the Administrative Court.

In France, Belgium, Poland and Germany, the process on decision-making upon FLA applications is fully decentralized, while Scotland, Ireland and the Netherlands have established independent advisory bodies.

e. Establishment of independent body tasked to monitor and assess implementation of the Law on Free Legal Aid

An independent body needs to be established and tasked with monitoring implementation of the Law on Free Legal Aid, taking decisions in first instance upon appeals, ensuring unified enforcement of the law, conducting research and delivering training, ensuring quality of free legal aid provided to citizens, controlling quality of work performed by attorneys, associations and other organizations implementing activities on legal empowerment and literacy for marginalized groups of citizens, establishing programmes, and taking decisions on funding activities performed by the organizations.

Furthermore, this body could monitor the work of regional offices and develop reports with remarks and guidelines aimed to improve

quality of free legal aid, including proposals to amend the Law on Free Legal Aid.

Members of this body should be professional and independent employees, which could be selected from the line of representatives from authorized associations and the Ministry of Justice, professors at the Faculty of Law, as well as representatives from the Bar Chamber or from the line of attorneys registered for provision of free legal aid.

f. Alignment of the Law on Free Legal Aid with the Law on General Administrative Procedure, Law on Litigation Procedure, Law on Notary Activity and Law on Execution

In order to ensure equal access to justice for all citizens, deadlines for the Ministry of Justice to take decisions upon FLA applications need to be aligned with deadlines governing lawsuit motion and lawsuit response in litigation and non-contentious procedures. Deadline for taking decisions upon FLA applications, including the time needed for submission of said decision to applicants and appointed attorneys, should be shortened to 12 days, while deadline for lawsuit response and deadline for lodging appeal in civil or administrative procedures should be extended to minimum 20 days in cases when free legal aid is requested and approved. At the same time, a possibility should be created for electronic submission of decisions to applicants and attorneys. In that manner, citizens that are approved free attorney services will have 8 days at their disposal for their attorney to draft submissions and they will be enabled exercise of the right to access to justice.

The Law on Litigation Procedure does not include provisions that closely regulate situations in which people that are beneficiaries of free legal aid have won the litigation procedure and, in compliance with LLP, are entitled to reimbursement of procedure costs from the other party. Moreover, there are no legal provisions on whether and to what extent these people are entitled to reimbursement of costs from the other party, given that LFLA does not stipulate an obligation for persons that have won the litigation procedure to return the funds which the state had paid on the grounds of free legal aid to attorneys that represented them. This legal gap results in non-utilization of significant source of income in the budget on free legal aid.

According to the Law on Notary Activity, parties in inheritance procedures led in front of notaries are obliged to engage an attorney to represent their interest.³⁵ On the other hand, the Law on Free Legal Aid does not include provisions by means of which costs for attorney representation in front of notaries will be covered by the right to free legal aid. In these cases, attorneys will have to share their reward with notaries, in compliance with the notary fee, and therefore these cases need to be regulated under the Law on Free Legal Aid.

g. Clear definition of particular terms which citizens frequently encounter when requesting free legal aid (single parent, average monthly net or gross salary, shared household, family member)

Certain sections from the Law on Social Protection, Law on Free Legal Aid and other related laws related to them should include

³⁵ Law on Notary Activity ("Official Gazette of the Republic of Macedonia" no. 72/2016), Article 147, paragraph 2

more precise normative provisions that include clear, accurate and unified definitions of terms like single parent or single pregnant woman, at least on the same level they are defined under the Law on Protection of Children and its bylaws. Moreover, when establishing whether the applicant's sustenance is threatened, legal provisions need to precisely establish the average monthly gross salary as upper threshold for income earned by applicants and members of their household, as is the current practice in evaluation of the value of property in their possession, which could amount to maximum 5 monthly gross salaries. In addition, definitions for basic legal terms must be necessarily adjusted to actual needs of citizens.

h. Training and continuous coordination for employees at Social Work Centres in order to ensure harmonized practices

For the purpose of avoiding different interpretations of same primary and secondary regulations on the part of Social Work Centres located in different towns across the country, employees at these centres need to maintain continuous communication and harmonize their practices. It is inadmissible for employees at these centres not to be knowledgeable about laws and rulebooks that govern their work, whose purpose is social protection of citizens.

In order to avoid non-harmonized practices applied by different Social Work Centres, in addition to more frequent communication, all employees need to be trained and sensitized to work with citizens in exercise of their rights in social protection. By attending said training, employees will benefit from capacity building and exchange of positive practices from work with citizens.

i. Ensuring mechanisms on informing citizens about their rights

Results from the survey on public perception and citizens' awareness of the Law on Free Legal Aid³⁶ showed that 66.3% of respondents do not know where to address for free legal aid. Only 7.5% of citizens are familiar with an association they can address for free legal aid, while remaining 92.5% of them do not know that associations provide free legal aid.

In order to exercise their rights, citizens must be aware of them. Introduction of mechanisms on regular information of citizens should be a priority for all institutions. This type of events/meetings will be attended by citizens and representatives from relevant institutions who should answer the most frequently asked questions, such as: when does deadline for lodging appeal start to expire; does the application need to be submitted in written; what evidence should be presented, and should also inform citizens about novelties and changes to legal provisions that govern their work.

j. When taking decisions upon applications for free legal aid, the Ministry of Justice needs to pursue a harmonized approach, in compliance with provisions from the Law on Free Legal Aid

Harmonization of practices at the Ministry of Justice in terms of taking decisions upon FLA applications is equally important as harmonization of practices at Social Work Centres. Broader inter-

³⁶ Reactor – Research in Action, Survey on Public Perception and Citizens' Awareness of the Law on Free Legal Aid, FOSM, 2016

pretation of legal provisions will allow greater number of citizens to exercise their right to free legal aid and legal protection. Narrow interpretations lead to adoption of different decisions for identical legal issue. At the same time, harmonized actions in taking decisions will imply greater level of legal security for authorized associations that are the first filter for various legal cases and applicants, but also greater level of legal security for FLA applicants. Analysis of rulings taken by the Administrative Court showed that this court has ordered the Ministry of Justice to apply broader interpretation of norms, for the purpose of attaining LFLA's goal, i.e. equal access to justice for all citizens.

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