



YUCOM

Lawyers' Committee for Human Rights

ACCESS TO JUSTICE:

PROVISION OF INFORMATION, ADVICE AND FREE LEGAL AID IN SERBIA

Country report was prepared as part of the project “Triple A for citizens: access to information, advice and active help”

2016



Publisher

Lawyers' Committee for Human Rights – YUCOM
Kneza Miloša 4, 11103 Beograd
www.yucom.org.rs

For publisher

Milan Antonijević

Prepared by:

Milan Antonijević
Milan Filipović
Ana Janković Jovanović

Proofreading

Ljiljana Korica

Translation

Ljiljana Madžarević

Design and layout

Dosije studio

Printing

Dosije studio

Circulation 200 copies

ISBN 978-86-83209-65-1

The Country Report was prepared by the Lawyers' Committee for Human Rights – YUCOM as part of the project “Triple A for citizens: access to information, advice and active help” funded by the European Union. The contents of this publication are the sole responsibility of YUCOM and can in no way be taken to reflect the views of the European Union.

ACCESS TO JUSTICE:
PROVISION OF INFORMATION,
ADVICE AND FREE LEGAL AID IN SERBIA
“Triple A for citizens: access to information,
advice and active help”

CONTENTS ▶▶

1. SUMMARY	7
2. ABOUT THE PROJECT	8
3. ABOUT THE COUNSELING CENTERS FOR THE CITIZENS IN SERBIA	10
3.1. Obligation of state authorities to provide information	10
3.2. Obligation of the authorities to provide free legal aid	11
3.3. History of work on non-governmental providers of free legal aid	12
4. LEGAL FRAMEWORK FOR CITIZENS INFORMATION AND ASSISTANCE SERVICES	14
4.1. Disclosure of information	14
4.2. Right to access to information	14
4.3. Legal profession and court proceedings	15
a. Civil procedure	16
b. Criminal procedure	16
c. Administrative proceedings	16
d. Asylum	16
e. Proceeding before the Constitutional Court based on constitutional appeal	16
4.4. Free legal aid	17
4.5. Current legal provisions on free legal aid	18
a. Criminal proceedings	18
b. Law on Legal Profession	19
c. Reform of free legal aid	19
5. AVAILABILITY OF THE CITIZENS INFORMATION AND ASSISTANCE SERVICES	25
5.1. Local self-government units: cities (including city municipalities) and municipalities	25
5.2. NGO	28
5.3. Protector of Citizens	30
5.4. Commissioner for the Protection of Equality	31
5.5. Trade unions	32
5.6. Legal clinics	32
6. ESTABLISHED INSUFFICIENCIES RELATED WITH AVAILABILITY OF SERVICES, INFORMATION AND ASSISTANCE FOR THE CITIZENS	33
7. CONCLUSIONS AND RECOMMENDATIONS	35
7.1. Recommendations for the Government of the Republic of Serbia	36
7.2. Recommendations for non-governmental organizations	36
7.3. Recommendations for donors	36
7.4. Recommendations for bar associations	
8. NATIONAL PLAN FOR ADVOCACY	37



1. Summary

Country report on the information system, advisory and active assistance for the citizens of Serbia was developed as a result of the research conducted by the Lawyers' Committee for Human Rights within the project Triple A for Citizens: Access to information, Advice and Active help. The research included the analysis of the legal framework in the field of provision of information, advisory services for the citizens and provision of free legal aid. The report provides the overview of the obligation to provide information and advice as defined by the regulations of the RS.

The report presents the current situation in field of regulation of free legal aid, as well as comments about the Draft Law on Free Legal Aid which was presented to the professional public in September 2016. The comment about the Draft Law on Free Legal Aid was based on empirical data on the needs of the citizens for various types of free legal aid identified through long-term activities of YUCOM in this filed and the research¹ undertaken in December 2012.

The system of effective legal aid which should be the goal of the new Law on Free Legal Aid cannot be implemented without reviewing current practice of provision of free legal aid in Serbia. Despite the lack of uniform legal framework, free legal aid was provided on the basis of different legal regulations or needs of the citizens. Thus, the following were identified as possible providers of free legal aid: units of local self-government, attorneys, non-governmental organizations, legal clinics and labor unions. It was also identified that one segment of work of independent institutions – Protector of Citizens and Commissioner for Protection of Equality – included advising of the citizens and provision of free legal aid. Undertaken research provided data necessary for reaching of the conclusion on geographic distribution of providers of free legal aid. Also, the report contains numeric data on beneficiaries of certain services, as well as on the fields within which free legal aid is provided. It includes the opinions of the providers of free legal aid on advantages and insufficiencies of legal framework for development of effective and efficient system. These opinions, along with the data received through research, were the basis for formulation of recommendations for development of public policies and for the activities within non-governmental sectors and improvement of performance in provision of legal aid.

1 Results of the research are available at: http://yucom.org.rs/upload/vest-galerija_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf

2. About the Project

Project Triple A for Citizens – Access to information, Advice and Active help is implemented within the Partnership program for civil society organizations supported by the European Commission. Project activities are implemented by: the leading organization – European Citizen Action Service (ECAS) from Belgium, and its partners – National Foundation for Civil Society Development (NFCSD) from Croatia, Association for Democratic Initiatives (ADI) from Bosnia and Herzegovina, Civil Rights Program (CRP/K) from Kosovo, Lawyers’ Committee for Human Rights (YUCOM) from Serbia, **Association of Civil Society** Development Center (STGM) from Turkey, Law Centers Network (ICN) from the Great Britain, National Association of Citizens Advice Bureaux (NACAB) from Romania, National Association of Citizens Information Services (NACIS) from Ireland, Open Society Foundation (OSFA) from Albania (as of 2015), Macedonian Young Lawyers Association (MYLA) from Macedonia (as of 2015), and Center for Monitoring and Research (CEMI) from Montenegro (as of 2015).

The aim of the project is to encourage non-governmental organizations of the West Balkans and Turkey to provide access to information, advice and active help for the citizens in regards to their rights. Also, the intention of the project is to promote the role of civil society in strengthening of citizens and urging the governments to be accountable. Through collection of appeals and evidence, the organizations which inform the citizens and provide legal aid should be in a position to have influence on state policy in respect of key reforms and their implementation. The direct goal is to spread the concept of provision of advice to citizens in the West Balkans and in Turkey.

Provision of aid to the citizens is a significant service which should not be the goal in itself. Preventive actions and work on solving of a specific issue may assist in solving of individual issues. However, there is still a general interest to use the experiences acquired through work for identifying of general solutions for removal of breaches of rights and improvement of the position of those who do not have access to this service. In that sense, the experiences acquired while providing access to information, advice and active help (Triple A) may be analyzed and transformed into a document which would serve as the basis for advocating modification of regulations and policies.

Two key preparatory activities were defined within the first phase of this project:

- mapping of existing organizations which provide assistance to the citizens and free legal advice in the region, through use of surveys and interviews;
- feasibility study which should propose models for efficient provisions of services in the countries of the West Balkans and in Turkey.

These activities were followed by the public announcement for the civil society organizations to submit their proposals of sub-projects. Selected pilot projects (two per country, total of ten) contributed to implementation of Triple A concept in the West Balkans and in Turkey, and creation of sustainable citizens oriented service. Implementers of the pilot projects were in the position to establish and strengthen their capacities for provision of services (using Triple A model) through study visits to the services for provisions of aid and advice in the Great Britain, Romania and Ireland and work with mentorship of the experts from the EU.

In March 2015, project Triple A for Citizens – Access to information, Advice and Active help entered its second phase and expanded its services to three countries in the region: Albania, Macedonia and Montenegro. In this phase, the focus was placed on advocating in all the countries, with the following principal goals to: demonstrate importance of Triple A services to main stakeholders and emphasize how information received during provision of these services may lead to improvement of current legislation; improve/implement current legislation in the countries of the West Balkans and Turkey; increase funds for the sector of free legal aid in each country; encourages development of sustainable surrounding for providers of Triple A services; disseminate information on availability of free legal aid and other advice, information and active assistance within the country.

In the second phase of the project, work of YUCOM was directed at the campaign for raising awareness on importance of regulating the services of free legal aid. We prepared the National advocating plan, updated the Country report and database of service providers.²

CONCEPT TRIPLE A FOR CITIZENS

ACCESS

Access to information:

Everyone has an equal right to “knock on your door”, regardless of their income, position, language or beliefs and be treated with dignity and respect. Everyone should be enabled to find and access information about their rights in the most adequate way. Equal access means that information reaches also those who need help the most, due to low income or life under difficult circumstances due to disability, social exclusion or some other reason.

ADVICE

Advice:

The citizens must be provided with an opportunity to find the service which is free, personal, independent, impartial and trustworthy. They can help them through guidelines for self-assistance or through interactive means for solving problems “in their initial phase” – through proactive activities. In certain circumstances, i.e. for certain individual cases, it is necessary to find the solution in direct, personal contact. However, all citizens should receive equally high level of quality of services and attention.

ACTIVE HELP

Active help:

The citizens should not be left alone when they are in hopeless situation, or be forced to initiate the entire process from the start each time they ask for help. In small number of cases (e.g. in case of debt, housing or social rights) assistance turns into free legal support or aid for preparation of filings in administrative or court proceedings, i.e. involves inclusion of specialized services. There is a consensus that counseling centers must be organized so that they provide all services at one place, since many citizens have many related questions, e.g. about housing, social security, salaries and pensions and they expect to receive at least the first answer, without being referred to another service. This approach is also favored by the donors, especially at the time when public spending should be decreased. The trend is to encourage merging of several services for counseling of citizens and to join smaller ones into bigger units of broader geographic area in order to achieve financial savings.

² In 2015, Lawyers' Committee for Human Rights undertook the research for the purpose of updating of the existing Country report of 2013. All service providers identified in the first phase were contacted by telephone in order to update the database. In 2016, in light of the announced adoption of the Law on Free Legal Aid, YUCOM did an additional research directed at identification of new providers of free legal aid.

3. About the Counseling Centers for the Citizens in Serbia

Counseling centers for the citizens, in terms of centers for general information and counseling of citizens, do not exist in Serbia. However, in the last thirteen years, the basis was placed for establishing of counseling centers primarily by adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (2004), Law on Free Access to Information of Public Importance (2004), Constitution of the Republic of Serbia (2006), Law on Local Self-Government (2007) and Law on Associations (2009).

Provision of information, advice and active help occurs in form of fragmented system, and its participants may be identified by types. However, that system is not coordinated or regulated.

3.1.

OBLIGATION OF STATE AUTHORITIES TO PROVIDE INFORMATION

Guarantees of free access to information existed back within the SFRY. Yugoslavian Constitution of 1974³ defined these guarantees within the frame of “social information system” (Article 75). However, it is not possible to evaluate the extent of implementation of this constitutional provision in practice.

As of that time, the right of citizens to free access to information has been constantly confirmed in the following Yugoslavian and Serbian constitutions. Thus, Article 10 of the Constitution of the Republic of Serbia of 1990 stipulates that “work of public administration authorities should be available to public. Limitations of this right are defined by the law”. However, these provisions were only theory, and they had not been used in practice until 2004, when the first Law on Free Access to Information of Public Importance⁴ was adopted.

In order to secure application of the right to free access to information of public importance, the Law defined the institution of the Commissioner for Information of Public Importance⁵. The Commissioner started working as of July 1, 2005. His competences were expanded in 2009 to personal data protection.

3 Article 75, Constitution of the SFRY of 1974: “Social system for provision of information secures harmonized recording, collecting, processing and disclosure of data and facts significant for monitoring, planning and directing of social development, as well as availability of information on those data and facts. Activities in the field of social system for provision of information are of utmost social interest.”

4 Law on Free Access to Information of Public Importance; Official Gazette of the RS, No. 120/2004, 54/2007, 104/2009 and 36/2010

5 After adoption of the Law on Personal Data Protection (2008), the name of the institution has been the Commissioner for Information of Public Importance and Personal Data Protection.

This institution has advocated recognition of the right to access the information as a constitutional right. The right to information is defined by Article 51 of the Constitution of the Republic of Serbia of 2006:

„Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.” Due to work of this institution, and with solid support by the NGO, the Law recognized by the Council of Europe as the best one in Europe, is fully implemented. All holders of public authorizations are under obligation to nominate a person to act on the requests of citizens and legal entities⁶ and to regularly disclose information about their work.⁷

In regards to provision of information held by the public authorities via Internet, there has been some progress in centralizing of the information system. Administration for Digital Agenda of the Republic of Serbia has developed the web portal <http://www.euprava.gov.rs>, which offers access to information from different fields in one place, including information from the ministries and agencies, and offers e-services.⁸ The ministries, despite having their websites, rarely have info line for assistance of the citizens to exercise their rights within their field of competence.⁹

3.2.

OBLIGATION OF THE AUTHORITIES TO PROVIDE FREE LEGAL AID

The Constitution of the Republic of Serbia, using the example of contemporary comparative law, guarantees the right to legal aid to all persons (Article 67)¹⁰, where this right, for the first time in history of the legal system of the Republic of Serbia, gained the status of a human right guaranteed by the Constitution. Pursuant to the Constitution of the Republic of Serbia, the right to legal aid, including free legal aid, may be exercised under conditions stipulated by the law.¹¹

6 Article 38, paragraph 1 of the Law on Free Access to Information of Public Importance: “The responsible person in a public authority shall appoint one or more officials to respond to requests for free access to information of public importance.”

7 Article 39, paragraph 1 of the Law on Free Access to Information of Public Importance: “A government body shall at least once a year publish a directory containing key facts about its operations (...);”

8 On this page, a citizen may quickly and easily access the most important contents of the portal such as e-service, news, frequently asked questions etc. Electronic services may be searched based on several criteria – life situation, initial letter, as well as relevant authority competent for provisions of the service.

9 The research showed that only one (out of 16 ministries in Serbia) – Ministry of Labor, Employment and Social Policy established the Information center in 2008 for the citizens to receive information on the rights in the field of labor and social policy (social and family legal protection, protection of persons with disabilities and veterans, domestic violence, employment and Inspection of labor, pension and disability insurance)

10 Article 67, Constitution of the RS: “Everyone shall be guaranteed right to legal assistance under conditions stipulated by the law. Legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal assistance offices established in the units of local self-government in accordance with the law. The law shall stipulate conditions for providing free legal assistance.”

11 See: Strategy on Free Legal Aid Development in the Republic of Serbia (Official Gazette of the RS, 05 number: 750-7292/2010, October 7, 2010)

The obligation of provision of free legal aid is established by the current Constitution for local self-governments and attorneys, in form of independent and autonomous service. During the research, it was noticed that certain municipalities in Serbia had established the service of free legal aid in the 70s and 80s, although most of them were established after adoption of the current Constitution.

Pursuant to the data from one questionnaire on work of municipal authorities for legal aid in Serbia¹², in the period from 2001 to 2006, services for provision of legal aid were established in 1/4 of the total number of municipalities on the territory of the Republic of Serbia. Between 1 and 3 persons working in those services are engaged working on legal issues, and additional 1 or 2 persons perform administrative or technical work. The research showed that municipalities mostly give oral advice.¹³

During 2008, pilot projects were implemented in eight municipalities, in accordance with the “Spanish institutional model”. Services of free legal aid were provided to the citizens on the territories of these municipalities, due to the agreement with the local bar associations. On the territory of the Autonomous Province of Vojvodina, this successful model was fully operational on the basis of the contract concluded by and between the Executive Council of Vojvodina and Autonomous Province of Vojvodina, covering the territory of the entire province.¹⁴ When it comes to attorneys, in practice, free legal aid comes down only to mandatory representation in criminal proceeding.

3.3.

HISTORY OF WORK ON NON-GOVERNMENTAL PROVIDERS OF FREE LEGAL AID

In Serbia, the beginning of civil wars in the former Yugoslavia in 1990s was followed by a great number of refugees, deserters, victims of violence and torture. Anti-military organizations¹⁵ used to provide information, advice and legal aid to victims of the war. One study¹⁶ of 2003 identified 18 organizations in Belgrade which provided direct assistance and support to the victims, primarily to: victims of domestic violence and/or sexual violence, violence against children and female victims of human trafficking and torture. The characteristic of these providers of legal aid is that they were profiled for legislative initiatives as well.

The results of their efforts were: introduction of the principle of conscientious objection (and finally, professionalization of Serbian army), amnesty for political prisoners, decrease of torture in prisons and detention units, introduction of criminal

12 Kosanović S, *Research on work of municipal legal aid services in Serbia*, Gajin S, Vodinečić V, Kosanović S, Čavoški A, Knežević Bojović A, Reljanović M, Legal aid, CUPS, Belgrade, 2007, pages 227-289.

13 Types of services: advice – 85,680; filings – 14,280; procedural – 7,140; other – 35,700; total – 142,800

14 Ibid 11

15 Center for Anti-War Action, Helsinki Committee for Human Rights, International Aid Network, Serbian Democratic Forum, Lawyers' Committee for Human Rights, Group 484, Danish Refugee Council, Norwegian Refugee Council, Belgrade Center for Human Rights etc.

16 Sanja Milojević, Biljana Mihić, Organizations that provide assistance to victims of crime in Belgrade, 2003. Available at: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370301037M.pdf>

offence of domestic violence in Serbian legislation and numerous changes in Serbian family law etc.

After 2005, the majority of them turned to the cases of discrimination, mobbing and violence against women, and only few organizations have stayed engaged in work with internally displaced persons and the Roma. After 2008¹⁷, the same non-governmental organizations started providing legal aid to the returnees based on the readmission and asylum seekers.

¹⁷ Agreement between the Republic of Serbia and the European Community on the readmission of persons residing without authorization on the territory of the EC, came into force in January 2008. Until 2013, 8,824 people were repatriated from the EU to Serbia.

4. Legal Framework for Citizens Information and Assistance Services

4.1.

DISCLOSURE OF INFORMATION

As previously explained, availability of information is regulated by the Law on Free Access to Information of Public Importance (of 2004). Article 39 of the Law stipulates that the state authorities shall, at least once a year, disclose key information about their work.¹⁸

4.2.

RIGHT TO ACCESS TO INFORMATION

The right of access to information is guaranteed by the Constitution (Article 51)¹⁹ and the Law on Free Access to Information of Public Importance. Pursuant to Article 5 of the Law, everyone is entitled to be informed whether a public authority holds specific information of public importance, and whether such information is otherwise accessible.

Everyone had the right to access information of public importance by being allowed to receive a document containing the information of public importance, by having the right to copy such a document, as well as the right to receive e copy of that document at request, by mail, fax, electronic mail or otherwise. In accordance with Article 16, a public authority shall, without delay, 15 days as of receipt of the request notify the applicant whether they have requested information, enable him/her access to the document containing requested information or question or send the applicant a copy of the document. In case of failure to act based on the request, the applicant

18 A government body shall at least once a year publish a report containing key facts about its operations, in particular: 1) description of its powers, duties and internal organization; 2) information on the budget and means of work; 3) information on the types of service it directly provides to interested parties; 4) procedure for submitting a request to the government body concerned or for lodging a complaint against its decisions, actions or omissions; 5) review of requests, complaints and other direct measures taken by the interested parties, as well as of decisions made by the government body concerned upon received requests and complaints and/or responses to other direct measures taken by interested parties; 6) information on the manner and place of storing information mediums, type of information it holds, type of information it grants access to and the description of the procedure for submitting a request; 7) names of the heads of the government body, descriptions of their powers and duties and procedures for their decision-making; 8) rules and decisions of the government body concerning the transparency of its operations (working hours, address, contact phones, logo, accessibility for persons with special needs, access to sessions, permissibility of audio and video recording, etc.), as well as any authentic interpretation of these decisions; 9) regulations and decisions on exemptions or limitations of the transparency of work of the government body, with relevant rationale. A government body shall grant an interested party access to its report free of charge or issue such party a copy of the report, against the reimbursement of necessary costs.

19 Article 51, Constitution of the Republic of Serbia: "Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law."

may address the Commissioner. Public authorities may refuse to provide information in case provision of information would threaten life, health, safety of the persons or in case disclosure would seriously threaten public interest, as stipulated by Article 9.²⁰

4.3.

LEGAL PROFESSION AND COURT PROCEEDINGS

Legal profession provides legal aid, as independent and autonomous service, pursuant to the law and their authorizations. Court proceeding and representation in general are reserved for the attorneys as members of the Bar Association. Article 1 of the Law on Legal Profession²¹ defines organization of attorneys, conditions for practicing law, rights, obligations and responsibilities of attorneys, associates and organization and work of bar associations. Rights and obligations of attorneys depend on the substance mater and special procedures which regulate relevant procedures.

a. Civil procedure

In Serbia, civil procedure is regulated by the Civil Procedure Code – CPC (2011). Before its enactment, the parties could have represented themselves, or could have been represented by anyone who had full legal capacity to act as a representative of a party in first and second instance proceedings. However, party had to be represented by an attorney in the review proceedings or in the proceedings initiated for *writ of certiorari*, before the Supreme Court of Cassation.²²

The Civil Procedure Code of 2011 stipulates: “The parties may undertake actions in the proceedings personally or through a representative, who must be an attorney at law.”²³ Article 88 of the CPC defines that a trainee may represent a party if the trainee is working under the supervision of the instructed attorney at law and the instructing party agrees to it in the power of attorney, except in the proceedings based on legal remedies.

By the Decision of the Constitutional Court which became executive on June 5, 2013²⁴, the Constitutional Court declared parts of the provisions of Article 85, paragraph 1 of the CPC in the part stating “must be the attorney at law” as unconsti-

20 Article 9, Law on Free Access to Information of Public Importance: “A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby: 1) Expose to risk the life, health, safety or another vital interest of a person; 2) Threaten, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial; 3) Seriously jeopardize national defense, national and public safety, or international relations; 4) Substantially undermine the government’s ability to manage the national economic processes or significantly impede the fulfillment of justified economic interests; 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.”

21 Law on Legal Profession; Official Gazette of the RS, No. 31/2011 and 24/2012 – Decision of the Constitutional Court.

22 Civil Procedure Code; Official Gazette of the RS, no. 72/2011, 49/2013 – Decision of the CC, 74/2013 - Decision of the CC and 55/2014

23 Article 85, paragraph 1, Civil Procedure Code of 2011.

24 Decision of the Constitutional Court of Serbia IUz-51/2012 of May 23, 2013. Available at: <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/8915/?NO- LAYOUT=1>

tutional, and thus reinstated the possibility for the parties to have a representative, regardless of their profession.

In the explanation of its decision, the Constitutional Court stated that it had considered that the Constitution and the European Convention for Protection of Human Rights and Fundamental Freedoms did not mention explicit right to access to court, but that this right is inseparable from the right to a fair trial.

Since “revoking of the possibility to select the representative freely”, i.e. legal conditioning of a party, which does not want to or, for whatever reasons, cannot undertake directly actions in the proceeding until the final decision in the proceeding, to have a representative who is attorney at law, questions equality of the parties and limits the right to access to court, as well as the right to legal aid. Constitutional Court established that the limitation referred to in Article 85, paragraph 1 in part: “must be an attorney at law”, presents the limitation which is not legitimate, proportionate or necessary and is thus contrary to Article 20 of the Constitution, as well as the right to a fair trial referred to in Article 32 of the Constitution, and is also contrary to Article 36, paragraph 1 of the Constitution, i.e. equality in protection of the rights before courts of law and presents a form of indirect discrimination of citizens based on their financial position, prohibited by Article 21 of the Constitution.

b. Criminal procedure

In accordance with Article 73, paragraph 1 of the Criminal Procedure Code²⁵, only an attorney at law may act as a defense. In the procedure for criminal offences punishable by up to five years of prison, an attorney may be substituted by a legal trainee.

c. Administrative proceedings

In the administrative proceedings, pursuant to Article 47 of the Law on General Administrative Procedure²⁶, a party may select its representative. In accordance with Article 48, paragraph 1 of the Law on General Administrative Procedure, a representative may be each person enjoying full legal capacity, therefore attorney at law is not required in that case.

d. Asylum

Article 10, paragraph 2 of the Law on Asylum²⁷ stipulates that a person requesting asylum in the Republic of Serbia may use free legal aid, and that he/she may be represented by the UN Refugee Agency (UNHCR) and by non-governmental organizations providing legal aid to refugees. Article 11, paragraph 1 guarantees that an interpreter will be assigned to an asylum seeker who does not understand the language of the procedure. Pursuant to paragraph 2, a refugee may select his/her own interpreter, at own cost.

e. Proceeding before the Constitutional Court based on constitutional appeal

Constitutional appeal may be submitted against an individual act or activity of a state authority or organization with public authorization, and which are directed at breach or violation of human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have been exhausted or are not defined or the law excludes the right to their legal protection. Constitutional appeal may be submitted

25 Criminal Procedure Code; Official Gazette of the RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

26 Law on General Administrative Procedure; Official Gazette of the FRY, no. 33/97 and 31/2001 and Official Gazette of the RS, no. 30/2010.

27 Law on Asylum; Official Gazette of the RS, no. 109/2007

even in case other legal remedies have not been exhausted, when the applicant's right to trial within reasonable time has been breached.²⁸

Constitutional appeal may be submitted by everyone who believes that his/her human or minority rights or freedoms guaranteed by the Constitution have been breached by an individual act or activity of a state authority or organization with public authorization. Constitutional appeal may be filed on behalf of that person, on the basis of his/her written authorization, by another natural person, or state authority or other authority competent for monitoring and exercising of human and minority rights and freedoms.²⁹

In brief, in the proceeding on constitutional appeal, a party may represent itself or may be represented by anyone with full legal capacity.

4.4.

FREE LEGAL AID

Article 67 of the Constitution of the Republic of Serbia³⁰ stipulates that everyone is entitled to legal aid pursuant to the provisions of the law. The Constitution stipulates that attorneys at law and local authorities are under obligation to provide legal aid, while there is no reference to other providers of legal aid. This does not have to mean that other providers are prohibited from offering free legal aid, since the Constitution does not ban enactment of the regulations on other providers of legal aid and their activities. The Constitution empowers the legislator to establish the system of legal aid in efficient way, including the attorneys at law and local authorities. This system should also include other providers of legal aid, such as civil society organizations since that would contribute to greater efficiency.

Despite its importance as a human right, at present, free legal aid does not appear to be adequately regulated in Serbia. Disclosure of the information on financing and data on the number of cases is presently either not sufficient or not available at all.

There are serious gaps and limitations in the exercise of the right of access to justice, as a result of lack of required legal framework and limited financial resources allocated for free legal aid.³¹ Based on the latest available research, only 11% of the parties in court proceedings made use of the available exemptions from court costs. 47% of those interviewed were not even aware that free legal aid was available. Persons with a more educated background are more likely to know about free legal aid and therefore make use of it: 14.8% of the users of legal aid had an elementary school diploma, 10.4% of the users had a high school diploma, while 45.2% of the users had a higher-level diploma and 29.6% of the users had a college or university degree.³² These findings must be taken into consideration during implementation of existing and planned provisions on free legal aid, by making the provisions visible to the public.

28 Article 82, Law on Constitutional Court of the RS

29 Article 83, Law on Constitutional Court of the RS

30 Constitution of the Republic of Serbia; Official Gazette of the RS, no. 98/2006.

31 Strategy on Free Legal Aid Development in the Republic of Serbia, Official Gazette of the RS, no. 74/2010.

32 Vuković D., Antonijević M., Golubović K., Milenković M., Vujić K., Access to justice and free legal aid in Serbia – Challenges and reforms, Lawyers' Committee for Human Rights, SeConS, Belgrade, 2013.

4.5.

CURRENT LEGAL PROVISIONS ON FREE LEGAL AID

At present, the law only provides for free legal aid in the area of criminal law. Due to the absence of legal framework covering free legal aid in civil proceedings, civil and administrative disputes do not currently benefit from legal aid.

a. Criminal proceedings

Free legal aid in criminal proceedings is regulated by Criminal Procedure Code. It can be provided through: 1. mandatory defense; and 2. defense of poor persons.

1. Mandatory defense. In case of mandatory defense³³, if no defense counsel is chosen, the public prosecutor or president of the court before which the proceedings are being conducted shall issue a ruling appointing a court appointed defense counsel for the remaining part of the proceedings, according to the order on the roster of attorneys provided by the competent bar association.³⁴

When criminal proceedings are discontinued or charges are dismissed or a defendant is acquitted, it will be pronounced in the ruling or judgment that the costs of the criminal proceedings (including the fee of the defense counsel and representative) are covered from the budget funds of the court.³⁵ When a court convicts a defendant, it will pronounce in the judgment that he/she is required to indemnify the costs of the criminal proceedings.³⁶

2. Defense of Poor Persons. A defendant who, due to his/her financial position, is unable to pay the fee and costs of a defense counsel, will be appointed a defense counsel at his/her request, despite the fact that there are no reasons for mandatory defense, in case a criminal proceeding is initiated for a criminal offence pun-

33 The defendant must have a defense counsel: 1) if he/she is mute, deaf, blind or incapable to conduct his own defense successfully – from the first interrogation until the final conclusion of the criminal proceedings; 2) if the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of eight years or more – from the first interrogation until the final conclusion of the criminal proceedings; 3) if he has been taken into custody, or prohibited from leaving his abode, or is in detention – from the moment of deprivation of liberty until the ruling discontinuing the measure becomes final; 4) if he is being tried in absentia – from the issuance of a ruling on an in absentia trial and for the duration of such trial; 5) if the trial is being held in his absence due to reasons he himself induced – from the issuance of a ruling for the trial to be held in absentia until the ruling by which the court establishes that reasons for his inability to stand trial have ceased becomes final; 6) if he has been removed from the courtroom for disturbing the order, until the conclusion of the evidentiary procedure or the termination of the trial – from the issuance of the order on his removal until his return to the courtroom or the pronouncement of the judgment; 7) if proceedings for pronouncing a security measure of compulsory psychiatric treatment are being conducted against him – from the submission of a motion for pronouncing such a measure until the issuance of the decision referred to in Article 526 paragraphs 2 and 3 of this Code or until the ruling pronouncing a security measure of compulsory psychiatric treatment becomes final; 8) from the beginning of the negotiations with the public prosecutor on the conclusion of the agreement referred to in Article 313 paragraph 1, Article 320 paragraph 1 and Article 327 paragraph 1 of this Code, until the issuance of a court decision on the agreement; 9) if the trial is held in his absence (Article 449 paragraph 3) – from the moment of adoption of the ruling to hold the trial in his absence, to the adoption of the judicial decision on the appeal against the judgment.

34 Article 76, Criminal Procedure Code; Official Gazette of the RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

35 Article 265, Criminal Procedure Code; Official Gazette of the RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

36 Article 264, paragraph 1, Criminal Procedure Code; Official Gazette of the RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

ishable by the term of imprisonment of more than three years or if that is imposed by the reasons of fairness. In such a case, the defense costs are covered from the budget funds of the court. Defense counsel is appointed by the court president based on the order from the roster of attorneys delivered by competent bar association. Appointed defense counsel acts in capacity of *ex officio* defense counsel.

There are no precise data available on the number of appointed defense counsels. Based on the research of 2005, 14% of those convicted for criminal offences punishable by up to ten years of imprisonment did not have a legal counsel, 54% of the defendants did not have a defense counsel when giving statement to investigating judge, 46% of the suspects did not have a representative during investigation phase and only 11% of the defendants received legal aid on the basis of indigence.³⁷

b. Law on Legal Profession

The Law on the Legal Profession³⁸ stipulates that the Bar Association of Serbia may organize free legal aid (Article 66, paragraph 7). Article 26, paragraph 3 excludes the possibility that foreign attorneys could offer free legal aid.

In respect of Article 66, Bar Association of Vojvodina established on September 12, 2008 regulates “the rules for free services by the attorneys members of the Bar Association of Vojvodina”³⁹. In accordance with Article 1, paragraph 2, citizens are entitled to free legal aid in case their income does not exceed the amount set by the Executive Council. Furthermore, it is stipulated that every attorney is entitled to provide free legal aid (Article 1, paragraph 3), while the only precondition is that they prove no disciplinary measures have been taken against them and they have signed a statement that they accept the rules on free legal representation (Article 1, paragraph 4). Attorney who provides legal aid is entitled to a fee of 40,00 EUR per procedure, converted to RSD (Article 13, paragraph 1).

c. Reform of free legal aid

Decade and a half after Article 67 of the Constitution of the Republic of Serbia of 2006 guaranteed everyone the right to legal aid and six years after adoption of the Strategy on Free Legal Aid Development in the Republic of Serbia⁴⁰, adoption of the Law on Free Legal Aid which would enable exercising of this right in practice seems closer than ever before. In September 2016, the professional public was presented with the last draft of the Law on Free Legal Aid, and, based on some announcements⁴¹, its adoption should be on the agenda of the autumn session of the National Assembly. Draft Law which is supposed to be a compromise of different and frequently opposed interests, achieved in order to enable each individual equal and efficient access to justice, has many insufficiencies and shortcomings which could have effects in practice completely opposite to those expected.

Scope of the Draft. The Law gives broad scope of procedures which include free legal aid, by not listing them one by one, but Article 7 stipulates ban of provision

37 Report on provision of legal aid, PILI, 2005; Strategy on Free Legal Aid Development in the Republic of Serbia, Official Gazette of the RS, no. 74/2010.

38 Law on Legal Profession; Official Gazette of the RS, no. 31/2011 and 24/2012 – Decision of the CC

39 <http://www.akv.org.rs/novost.html?id=53>.

40 Strategy on Free Legal Aid Development in the Republic of Serbia (Official Gazette of the RS, 05 no. 750-7292/2010, October 7, 2010), available at: <http://www.pravamanjina.rs/attachments/Strategija%20razvoja%20sistema%20besplatne%20prane%20pomo%C4%87i%20u%20RS.doc>

41 More at: <http://www.blic.rs/vesti/drustvo/kuburovic-o-prioritetima-rasteretiti-sudove-i-doneti-zakon-o-poreklu-imovine/07hz0cw>

of free legal aid in certain procedures. Broad scope of procedures for which free legal aid is planned presents a positive approach to regulating of this area, but question is raised about justification for ban of certain procedures, and particularly stipulating of high pecuniary fines by Article 59 of the Law for provision of free legal aid in those cases. The Law thus prohibits, *inter alia*, provision of free legal aid in misdemeanor proceedings unless the offence is punishable by imprisonment, which may be justified by the compliance with the principle of sustainability of free legal aid defined by Article 10, paragraph 1, item 7 of the Law, but the associations will not be able to represent in strategic cases in the field of peaceful assembly, even in cases when free legal aid is not financed from the budget but from project sources.⁴²

The Law does not differentiate provision of free legal aid financed from the budget and project sources, so misdemeanor liability applies also to the case where there can be no damage for the budget⁴³. It is reasonable to ask the question: which protected goods or interests are protected by defining offences in such cases? Having in mind the ban which applies to associations in case free legal aid is not financed from the budget, the question is raised about justification of bans in other proceedings⁴⁴ as well, since in those proceedings the associations can or already have undertaken strategic representations for the purpose of advocating amendments to the Law.

Provision of Article 25, paragraph 4 of the Law should be identified as particularly problematic because it prohibits advertising of free legal aid, which will pose a problem for associations when, for the needs of implementation of the projects, it will be necessary to inform the public on provision of free legal aid directed at certain target group, such as provision of free legal aid to organizers of public gatherings during election campaigns.⁴⁵ However, it should be kept in mind that pursuant to provisions of Article 14, paragraph 2 of the Law, such free legal aid is otherwise limited to cases when free legal aid may also be provided to the beneficiaries who do not fulfill the conditions defined by the Law and does not include representation as the significant element of advocacy efforts for amending of the Law. The Law does not explicitly prohibit representation of the beneficiaries who do not fulfill the conditions nor does it stipulate sanctions for doing so, but Article 20, paragraph 1, item 4 defines the possibility of deletion from the registry of providers of free legal aid due to unlawful conduct.

42 Misdemeanor proceeding against Anita Mitic, Director of YIHR, for organization of the gathering called *Seven thousand* for the purpose of commemorating genocide in Srebrenica.

43 The Law stipulates the procedure for approval of free legal aid and procedure for collection of payments for provided services, so in case the protected resource is the budget of the RS, the budget can be damaged only in the situation when a person from the administrative authority, provider of free legal aid and person from the Ministry of Justice join their forces for the purpose of illegal acquiring of gain, in which case the offence would be consumed by perpetrated criminal act.

44 Provision of free legal aid is prohibited in commercial proceedings, procedures for registration of legal entities, proceedings for compensation for damages due to violations of honor and dignity, misdemeanor proceedings not punishable by imprisonment, in preliminary investigation, investigative and criminal proceedings if mandatory defense is defined for such criminal offence, proceedings where the costs are disproportionate with the value of the subject matter of the case, proceedings in which the party is not likely to succeed particularly if the expectations are not based on facts and evidence presented or in case they are contrary to current regulations, public order and good practice, as well as in case of abuse of the right to free legal aid.

45 Guidelines on organization of public gatherings with notice on provision of free legal aid, available at: <http://www.yucom.org.rs/uputstvo-o-organizovanju-javnih-skupova/>

By deletion from the registry, final decision in administrative proceeding, provider of free legal aid risks being exposed to high pecuniary fine in case of recurrence of provision of free legal aid or support without being reentered in the registry. Having this in mind, it becomes clear as to why this Law seriously threatens the ability of associations to lead strategic proceedings and advocate amendments to the Law.

Beneficiaries of free legal aid. Article 4 of the Law specifies broad scope of possible beneficiaries of social welfare and children's allowance and the list of categories such as victims of violence and victims of human trafficking, also stipulating that the right to free legal aid may also be achieved by the persons which would be eligible for social welfare or children's allowance if they paid legal aid. This is definitely welcome from the point of view of access to justice, because the Law thus included all the categories of persons whose access to justice is made difficult or impossible, however, it is reasonable to question sustainability of this model in respect of capacity of administrative authorities for timely processing of a great number of requests for provision of free legal aid. Namely, paying high amounts of attorneys' fees, particularly in administrative proceedings and proceedings before the Constitutional Court⁴⁶, the citizens with average income can definitely reach the point of being in a socially challenging⁴⁷situation, thus significantly increasing the scope of possible beneficiaries of free legal aid.

Providers of free legal aid and free legal support. Article 67, paragraph 2 of the Constitution of the Republic of Serbia stipulates that legal services shall be provided by the Bar Association and legal aid offices. According to Article 9 of the Law, free legal aid shall be provided by attorneys, legal aid services in the local self-government units and associations, while, according to Article 13, free legal support shall be provided by notaries, mediators, law faculties and services for support to victims and witnesses. Division to providers of free legal and providers of free legal support follows the division into the types of free legal aid they are authorized to provide.

Free legal aid. Free legal aid provided by the providers of free legal aid consists of providing legal advice on court proceedings, drafting motions, representation, defense, where the providers of free legal aid may also provide free legal support services.

Free legal support. Free legal support provided by the providers of free legal support, consists of providing general legal information, legal advice, initial legal advice not related to court proceeding, drafting documents, drafting notary documents and mediation.

46 Attorneys' tariff for preparation of constitutional appeal is 90,000 RSD (731 EUR), available at: http://www.paragraf.rs/propisi_download/advokatska_tarifa_tabelarni_prikaz_nagrada_sa_zapocetim_satom.pdf

47 On the basis of functional analysis of judiciary in Serbia prepared by the World Bank in 2014, many citizens cannot even afford to take part in simple proceedings. More at: <http://www.mdtfjss.org.rs/archive//file/Serbia%20JFR%20-%20Main%20Findings%20and%20Recommendations.pdf>

Free legal aid	Free legal support
Lawyers and legal aid services in the local self-government units, associations	Notaries, mediators, law faculties and services for support to victims and witnesses
Providing legal advice on court proceedings, drafting motions Representation and defence	Providing general legal information, initial legal advice Drafting documents Providing legal advice not related to a court proceeding, drafting notary documents and mediation

Article 40 of the Law stipulates that free legal support, with the exception of drafting of notarial documents and mediation, shall not be financed from the budget⁵³, so most of the providers of free legal support are not paid for their work⁵⁴, unlike providers of free legal aid.

Lack of financial compensation raises the issue of efficiency of the system of free legal aid prescribed by the Law.⁵⁵ Moreover, since the compensation for providing legal advice not related to a court proceeding is not paid from the budget, the question is raised as to why the provision of such advice would even require prior request approval by administrative authority as per the procedure prescribed by Article 33 of the Law, which is contrary to international standards. Having in mind that large segment of free legal aid and free legal support is specifically related to legal advice that is or is not related to a court proceeding, there is a question of administrative authorities' possibility to timely process large number of requests considering the fact that there is a 15-day deadline and a negative presumption in case that the authority does not respond, as stipulated by Article 33, paragraph 3 of the Law. In its 2014 functional analysis of Serbian judiciary, the World Bank highlighted the danger of the new Law on Free Legal Aid being „stillborn“, if its fiscal and operational implications were not carefully planned, or if its implementation method was poorly designed.⁵⁶ This may present a problem from the aspect of conflict of interest, since a local self-government body may appear as a party in the proceedings.

48 They can also be provided to persons who do not meet the requirements – Article 14, paragraph 2 of the Law

49 They are provided upon approval of request submitted to the administrative authority - Article 15 of the Law

50 Ibid 48

51 Ibid 49

52 They are provided to all the persons without the need to meet certain special requirements – Article 14, paragraph 2 of the Law.

53 Providing of general legal information, initial legal advice and advice not related to a court proceeding are not financed.

54 Legal clinics, offices for support to victims of violence and witnesses, as well as attorneys and associations when providing free legal support.

55 Pursuant to the research of 2013, the major part of provided free legal aid (61%) refers to provision of information on the possibility to exercise the rights. - Vuković D., Antonijević M., Golubović K., Milenković M., Vujić K., *Access to Justice and Free Legal Aid in Serbia* – Challenges and Reforms, Lawyers' Committee for Human Rights, SeConS, Belgrade, 2013.

56 Based on the functional analysis of Serbian judiciary performed by the World Bank in 2014, many citizens cannot even afford to initiate simpler proceedings. More at: <http://www.mdtfjss.org.rs/archive/file/Serbia%20JFR%20-%20Main%20Findings%20and%20Recommendations.pdf>

According to YUCOM's experience, most of the free legal aid requests will be related to property-legal affairs, so there is a real danger that the cases dealing with serious violations of basic human rights and freedoms will not be considered in a timely manner. The provision of Article 33, paragraph 4 of the Law which stipulates rendering of the decision as soon as the request is received in case there is a threat of irreparable damage or expiration of deadline for legal remedy submission, leaves space for prioritizing, but practical application of this provision is questionable, especially considering the lack of sensitivity in the work of state authorities, such as social welfare centers⁵⁷ and police stations⁵⁸, perceived in domestic violence cases.

We should think about the method for determining priorities based on the category of beneficiaries, where such method would be mandatory for administrative bodies. Since Serbian judiciary has a big problem with respecting the right to trial within a reasonable time, it is necessary to think about allowing the free legal aid and support providers to draft rush notes and complaints in accordance with the Law on Protection of the Right to a Trial within Reasonable Time without previous approval from administrative authority. Otherwise, even if the final version of the Law omitted the provision about negative presumption in case of no reply from an administration authority, there would be an absurd, but real possibility that instead of 15 days, beneficiary would wait several months for approval of request for drafting a complaint about violation of the right to a trial within reasonable time.

A good solution in this Law is availability of mediation on the level of free legal support provision, since general legal information and initial legal advice, especially about expected costs and length of proceedings, could guide the beneficiary towards peaceful dispute resolution; therefore, the biggest potential of the Law lies in possible unburdening of judiciary by reducing the number of cases, increasing the quality of trials and ensuring timely access to justice in cases where citizens do not have any alternative to court proceedings.

Register. Register of the providers of free legal aid will be kept by the ministry in charge of judiciary, as a unique public electronic database containing data on providers and types of legal aid. This would allow free legal aid analysis based on the data currently not available in sufficient amount. Existence of the register is necessary for implementation of legal aid control and it is especially important for monitoring methods and results of the legal aid provided and for increase of its validity.

Referral. Article 34, paragraph 2 of the Law stipulates that, after approving free legal aid, administrative body refers the beneficiary to a registered provider in line with the rules set by the minister. This can be especially problematic if the rules focus only on equal and random distribution of cases without taking into consideration the criteria of specialization for free legal aid provision to certain categories of persons.

57 "The most frequent objections about the centers for social services are inactivity and bureaucracy. Many cases dealt with by the legal aid services require active participation of the experts from the centers for social work (e.g. in the field of domestic violence, family affairs or poverty), but frequently there is a lack of such assistance. On the other hand, centers for social work are perceived as institutions which infrequently step out of their regular scope of work, even out of their offices". Vuković D., Antonijević M., Golubović K., Milenković M., Vujić K., *Access to Justice and Free Legal Aid in Serbia* – Challenges and Reforms, Lawyers' Committee for Human Rights, SeConS, Belgrade, 2013, page. 45.

58 Requests for initiation of misdemeanor proceeding submitted by police are often followed by initiation of proceeding in which victim of violence and perpetrator are accused of disturbing public order and peace, most often when a female victim of violence is screaming, shouting or trying in some other way to defend herself from a violent partner, thus disturbing public order and peace.

Organizations dealing with the rights of certain categories of persons, like LGBT or asylum seekers, may also end up in a situation where they are mostly providing free legal aid in property-legal cases, while the attorneys who have never before dealt with asylum seekers' rights may end up providing free legal aid to asylum seekers. This can discourage associations from being entered into the register, since by being entered into register they become obliged to provide free legal aid in all cases referred to them; on the other hand, it can also raise the question of quality of service provided to beneficiaries by the providers without previous experience with certain sensitive matters.

Particular problem may arise from providing free legal aid to LGBT community members who live in small communities and who have not revealed their sexual orientation to their family or friends, since they would now be forced to do so in their request to administrative authority in order to exercise their right to free legal aid. The issue of "shame" is not reserved only for LGBT community members, but it can also apply to other vulnerable categories such as victims of domestic violence. Possibility for them to address an organization specialized for solving their problems without suspicion that circumstances of their case would become public, is of key importance for persons who are not only victims of violence, but also of dysfunctional legal system that should provide them protection and security, to gather courage and ask for help.

Financing. Article 40 of the Law stipulates that free legal aid shall be financed from the budget of the Republic of Serbia or from the local self-government budget, as well as from donations. Article 43 of the Law also envisions the possibility of project financing from public revenues. The issue of financing is an important aspect of the actual efficiency of the Draft Law.

5. Availability of the Citizens Information and Assistance Services

Aside from certain attorneys, free legal aid is also provided by (5.1 .) local self-government units (5.2.) associations such as NGOs (5.3.), the Ombudsman of the Republic of Serbia, (5.4.) the Commissioner for the Protection of Equality, (5.5.) trade unions and (5.6.) so-called legal clinics at law faculties.

5.1.

LOCAL SELF-GOVERNMENT UNITS: CITIES (INCLUDING CITY MUNICIPALITIES) AND MUNICIPALITIES

Information presented in the section 5.1. has been received from 167 cities (and city municipalities) and municipalities that participated in this survey.⁵⁹

At the local level, municipality is responsible for providing free legal aid to its residents. Article 20, paragraph 1, point 31 of the Law on Self-Government⁶⁰ requires the local authorities to provide legal aid in accordance with the Constitution and other legal provisions.

Serbian Constitutional Court has ruled that it is unconstitutional for a municipality (in this case, the Municipality of Palilula in the capital City of Belgrade) to organize legal aid outside of the municipal administration, either in cooperation or through other institutions – in this case through attorneys as members of the Bar Association⁶¹. The Constitutional Court found that the municipality does not have legal authority to transfer provision of legal aid services to other institutions, and that the absence of legal aid to citizens in the municipality itself represents violation of the right to legal aid under the provisions of Article 67, paragraph 2 of the Constitution.

Geographic coverage. The Republic of Serbia consists of central Serbia and two autonomous provinces of Vojvodina and Kosovo and Metohija. Kosovo, however, is not included in this report.⁶²

There are 167 local self-government units in Serbia, including city municipalities. In 102 municipalities and cities, there is an organized provision of free legal aid, whether

59 Lawyers' Committee for Human Rights contacted 167 municipalities by phone, email or request for free access to information of public importance. In addition, 32 municipalities participated in the survey by filling out questionnaires distributed to all free legal aid providers. Information on free legal aid provision was also gathered through review of information booklets of cities and municipalities.

60 The Law on Local Self-Government; (Official gazette of the RS, no. 129/2007 and 83/2014 – other law)

61 Constitutional Court Decision, IUI no. 45/2009 of February 18, 2010, published in the Official Gazette of the RS, no. 55/2010 of August 6, 2010.

62 Situation in Kosovo is not a subject of this report, since the project is working on a separate report for Kosovo.

as part of organizational units of municipal administration⁶³ (62), or through forming of special legal aid service or department (36). In 12 municipalities and cities, free legal aid provision is organized in cooperation with NGO *Balkan Center for Migration and Humanitarian Activities*, through the project for support to displaced persons from Kosovo and Metohija and refugees from Bosnia and Herzegovina and Croatia.⁶⁴ In their survey replies, seven municipalities stating that they do not have an organized provision of free legal aid also stated that the legal aid was provided by municipal public attorney's office, municipality employees and the head of administration.

All city municipalities of the City of Belgrade provide free legal aid.⁶⁵ In addition, the survey showed that there were special locally formed services that provide advice and legal aid to certain categories. Thus, City of Belgrade's Office for Youth provides free legal aid to persons under the age of 30.⁶⁶

In the Autonomous province of Vojvodina, 24 out of 45 cities and municipalities provide organized free legal aid to citizens, where ten of them have formed a special unit.

In Central Serbia, the following municipalities provide free legal aid: Boljevac, Bajina Bašta, Bačka Topola, Čačak, Čičevac, Doljevac, Gadžin Han, Golubac, Jagodina, Knić, Kragujevac, Kraljevo, Kruševac, Leskovac, Loznica, Mali Idoš, Merošina, Niš – Panteleji, Niš – Palilula, Niš – Niška Banja, Niš – Medijana, Novi Pazar, Odžaci, Paraćin, Petrovac na Mlavi, Pirot, Požarevac, Smederevo, Tutin, Užice, Valjevo, Vranje, Zaječar, Žabalj, Žagubica.⁶⁷

Based on the data collected, a difference can be perceived between rural and urban areas regarding availability of free legal aid services. It was noted that rural areas did not have legal aid services formed in the municipality, even though, due to their underdevelopment, they have higher percentage of impoverished citizens and, therefore, greater need for the free service.

Number and categories of beneficiaries. YUCOM's research has shown that most of the municipalities do not have statistical data on the number of free legal aid beneficiaries. Available data show that the number of beneficiaries varies in different municipalities, in some cases due to the size of municipality, or, in other cases, due to some other factors not related to their size.

In the cities in Serbia, free legal aid services are organized in different ways.

In the City of Belgrade, there is no free legal aid system at the city level, but that system is organized in the city municipalities which are part of the City. Thus, in most of the city municipalities, there are organized legal aid services. Some of these municipalities report on the number of beneficiaries: in 2015, CM Zvezdara had 2290 beneficiaries; CM Zemun had 5726 beneficiaries in 2015 and 3896 in 2016; CM Obrenovac had 1260 beneficiaries in 2015; CM Novi Beograd had 4807 beneficiaries in 2015⁶⁸; CM Mladenovac had 1520 beneficiaries in 2015⁶⁹.

63 E.g. Legal aid provision is in the description of an existing job position, or there is a special job position systematized for free legal aid provision

64 More at: <http://www.bcm.org.rs/humanitarne-ak/>

65 Barajevo, Voždovac, Vračar, Grocka, Zvezdara, Zemun, Lazarevac, Mladenovac, Novi Beograd, Obrenovac, Palilula, Rakovica, Sopot, Stari grad, Surčin, Savski venac and Čukarica

66 More at: <https://www.facebook.com/Kancelarija-za-mlade-Novi-Beograd-126760944047734/>

67 Ibid. 59

68 Information booklet of the City Municipality of Novi Beograd, available at: <http://novibeograd.rs/download/dokumenta/informator/INFORMATOR-33-1.pdf>

69 Information booklet of the City Municipality of Mladenovac, available at: http://www.mladenovac.rs/download/Informator_o_radu_GOM.pdf

The City of Niš does not have a central service formed, but most of city municipalities in Niš have a legal aid service formed. Thus, in 2015, CM Pantelej had 174 beneficiaries, and, in 2016, 127 beneficiaries. In 2015 and 2016, CM Niška Banja had an average of 110 beneficiaries per year.

In the City of Kragujevac, there is a centralized system for free legal aid provision that includes legal aid service on the city level and 7 city offices. In 2015, this service had 8293 beneficiaries, and, in 2016, 5561 beneficiaries.⁷⁰ All citizens, regardless of their financial status, can obtain legal aid in an administrative procedure before the centers for social work and the Pension and Disability Insurance Fund, as well as in domestic violence proceedings.

In the City of Subotica, free legal aid provision is organized through an agreement between the City of Subotica Ombudsman's Office and Subotica Bar Association based on which beneficiaries may receive legal aid from the attorneys free of charge. In 2015, 44 persons obtained free legal representation this way, while 5 persons were rejected for not meeting the requirements, and one person died before adoption of decision per that person's request.⁷¹

The City of Sombor formed a free legal aid service which had 2954 beneficiaries in 2015. The right to free legal aid is granted to the citizens who are socially endangered or belong to one of vulnerable groups (refugees, victims of human trafficking, victims of domestic violence, etc.), while other citizens may use the legal aid services at the cost of 50% of attorneys' rate.⁷²

In 2005, free legal aid service formed in the City of Čačak processed 1402 cases.⁷³ In line with provisions of the Decision on Legal Aid to Citizens, legal aid service is obliged to provide oral legal advice to all citizens who address them, regardless whether their place of residence is in the City of Čačak territory or in the territory of other cities and municipalities.

In 2015, department for legal aid affairs formed in the City of Loznica provided legal advice and wrote motions on 2994 occasions.⁷⁴ Citizens of Loznica may get free oral legal advice from attorneys in Legal Aid Department, and, as needed, the attorneys draft motions, complaints, submissions, objections, petitions, etc., as well as legal documents, contracts, statements, wills, etc., for a fee or free of charge in case of the categories of citizens exempt from payment.

Other cities mostly have an established special service for free legal aid, with the exception of the City of Pirot⁷⁵ where free legal aid is provided by Municipal Public Attorney's Office, based on the decision of the Pirot Municipal Assembly on provision

70 Period January-August 2016

71 Subotica Ombudsman's Office, Annual Report for 2015, available at: http://www.subotica.rs/documents/pages/10417_1.pdf

72 Decision on provision of legal aid services in the City of Sombor ("Official Journal of the City of Sombor, no. 9/2015")

73 Information booklet of the City of Čačak, available at: http://www.cacak.org.rs/userfiles/files/Informator/INFORMATOR_O_RADU_OPSTE_UPRAVE.doc

74 Information booklet of Loznica, available at: <http://www.loznica.rs/cms/mestoZaUpload-Fajlove/Informator%20o%20radu%20-%20najnoviji-%2014.06.2016.pdf>

75 With adoption of the Law on Amendments and Modifications of the Law on Territorial **Organization, Pirot became a city in February 2016**

of legal aid to the citizens of the Municipality of Pirot.⁷⁶ It is particularly interesting to mention the response of the Municipality of Zrenjanin reporting that during 2015 and 2016, their service for provision of free legal aid did not provide services.

When it comes to municipalities, according to the data available, the Municipality of Petrovac na Mlavi formed a service for free legal aid provision. In 2015, free legal aid was mostly provided to socially vulnerable and Roma persons, where the citizens received around 1200 pieces of oral legal advice, and 384 motions. The Municipality of Bajina Bašta did not fill out the statistics regarding the oral advice number, but it reported that, in 2015, free legal aid service drafted 115 motions and contracts.

In 2015, legal aid service in the Municipality of Bački Petrovac had 48 beneficiaries, while in 2016, it had 23 beneficiaries.

Nature and type of services. This research illustrates an important role the local self-government units have in the provision of primary legal aid. Even though municipalities can also organize the provision of secondary legal aid, the research shows that they mostly provide oral advice and draft motions. In cases where a local self-government unit is the opposite party in a dispute, citizens may address non-governmental organizations or trade unions, especially when 15% of them state that they do not trust the attorneys.⁷⁷

Types of financing. Most of the municipalities are financed by the state or from local self-government resources. They can get funds from their own budgets, based on the revenues collected from legal aid beneficiaries belonging to the general public category. Fees set by the municipalities for the legal aid provided vary from 20 to 50% of attorneys' rate.

5.2. NGO

Information presented in the section 5.2 was gathered from 33 non-governmental organizations which filled out a questionnaire distributed during this project or published information in their annual reports.

Geographic coverage. Services of free legal aid on the national level are provided by 22 non-governmental organizations, 5 non-governmental organizations on a regional level and 24 non-governmental organizations on a local level.⁷⁸ 10 out of the total of 15 non-governmental organizations provide legal representation on national level, 3 NGO provides it on a regional level, and 8 NGOs on the local level. Based on the data received, the analysis was done of the number of employees per organization. 12.12% non-governmental organizations have 1-5 employees, 33.33% organizations have 6-10 employees, 33.33% have 11-25 employees, 21.21% have 26-50 employees and none of them have more than 50 employees.

Number and categories of beneficiaries: Number of beneficiaries varies from a few to 12,567⁷⁹ beneficiaries per year. The survey has shown the number of

76 More at: <http://www.pirot.rs/index.php/loksamouprava/javnop>

77 Vuković D., Antonijević M., Golubović K., Milenković M., Vujić K., *Access to Justice and Free Legal Aid in Serbia – Challenges and Reforms*, Lawyers' Committee for Human Rights, SeConS, Belgrade, 2013.

78 Some non-governmental organizations provide services to the citizens on several levels.

79 In 2015, Praxis had 12,567 beneficiaries.

NGOs that provide services per beneficiary category: the employed (8), the unemployed (10), persons with disabilities (15), women (16), children or youth (16), the elderly (10), migrants/refugees/asylum seekers (12), Roma (14), patients (8), persons in state of social need (11), war veterans (4), LGBT (7), general public (10).

The survey has shown that non-governmental organizations' services are mostly focused on children and youth 48.48%, women – 48.48%, Roma – 42.42%, and migrants/refugees/asylum seekers – 36.36%, and persons with disabilities – 45.45%.

This survey has provided us with an insight into the way NGOs provide their services. 94% of non-governmental organizations provide their services in person, in offices; 91% of non-governmental organizations provide their services over the phone, and 88% provide services via email and 18% on-line.

Nature of services provided: Out of 33 non-governmental organizations included in the survey, 94% provide information, 82% provide advice by legal professionals and lawyers, 64% provide active help and 57% perform monitoring of government's activities.

Regarding the form of provision of active help, 61% of non-governmental organizations provide legal assistance (in addition, they assist in drafting of motions to public authorities and courts), 45% of non-governmental organizations provide representation in courts and administrative bodies with participation of legal professionals, 73% undertake campaigning and advocacy for amendments to laws, and 33% provide assistance in using alternatives to court (mediation).

The survey has shown that non-governmental organizations provide services to beneficiaries in the following areas: criminal law (30%), immigration/asylum (27%), housing (27%), human rights (76%), education (42%), healthcare (39%), social security (42%), employment (36%), elections and voting (12%), torture (24%), children's rights (33%) and LGBT rights (27%).

Free legal aid is provided by several operational NGOs, with continuous support from attorneys and other qualified persons. The Lawyers' Committee for Human Rights (YUCOM), for example, provides legal advice related to human rights violation, torture, discrimination and domestic violence. Other NGOs are: (a) CHRIS – focused on the same areas, (b) Praxis – protection of refugees and internally displaced persons, (c) Belgrade Center for Human Rights – migrants/refugees/asylum seekers, (d) Ecumenical Humanitarian Organization from Novi Sad (EHO) – national minorities, Roma, internally displaced persons from Kosovo and returnees from Western Europe as per readmission, (e) IAN – refugees and internally displaced persons, (f) ASTRA – human trafficking (especially related to children and women) and (g) Child Rights Center – children and youth. Of course, limited areas of expertise are the result of NGOs' limited resources, since they, as a part of the civil society, are not financed by the state.

The issues of refugees and migrants should be solved in order to update the possibility for provision of free legal aid in regards to newly created situation caused by the refugee crisis. The crisis has resulted in an increased need for direct assistance in the field, in Belgrade and on the border crossings. Several non-governmental organizations have been recognized as relevant providers of free legal aid, such as Belgrade

Center for Human Rights (they are the most experienced in this field), Lawyers' Committee for Human Rights, International Aid Network in Serbia, etc.

Types of financing. Based on the results of the research, 67% of non-governmental organizations are mostly financed by donors, while 18% non-governmental organizations are partly financed by the state or local authorities. Financing is one of the main problems of the civil society in Serbia. The need to acquire resources for operation is, at the same time, a significant factor in achieving independence in the work of non-governmental organizations, both from the state and from foreign donors. In addition, the fact that services provided by non-governmental organizations are target-oriented can be explained by limited resources obtained for achieving of project goals, as well as by the fact that there is no institutional state support.

5.3.

PROTECTOR OF CITIZENS

Serbian Law on the Protector of Citizens has established an institution for protection of citizens' rights. The Office of the Protector of Citizens started working in 2005. According to the law, the Protector of Citizens shall protect the rights of citizens and control the work of government agencies. The Protector of Citizens has become a constitutional category with adoption of the Constitution of the Republic of Serbia in 2006.⁸⁰ The Protector of Citizens is appointed by the National Assembly for a period of 5 years⁸¹ and is granted the same immunity as the National Assembly members.

The Protector of Citizens is authorized to investigate the work of government agencies based on citizens' complaints or based on his/her own initiative, as well as give recommendations. The Protector of Citizens is an influential institution that, as part of its work, also provides legal aid informally. Services of the Protector of Citizens are free of charge for all citizens.

Number of cases and topics of various public interests that are handled by the Ombudsman are reaching the level that could not have been anticipated when this institution was established. This also shows the actual need for free legal aid in Serbia.

80 Article 138, the Constitution of the RS: "The Protector of Citizens shall be independent state body who shall protect citizens' rights and monitor the work of public administration bodies, body in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been delegated. The Protector of Citizens shall not be authorized to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor's Offices. The Protector of Citizens shall be elected and dismissed by the National Assembly, in accordance with the Constitution and Law.

The Protector of Citizens shall account for his/her work to the National Assembly. The Protector of Citizens shall enjoy immunity as a deputy. The National Assembly shall decide on the immunity of the Protector of Citizens. The Law on the Protector of Citizens shall be enacted."

81 Article 4, par. 6, the Law on the Protector of Citizens of the Republic of Serbia: "The Protector of Citizens is appointed for a period of five years and the same person may be elected not more than twice in succession."

Table 1 – Table shows the types of violated rights, their number and percentage of the total number of complaints filed in 2015⁸²

The area of rights	Number of violated rights	% of the total number of complaints
Economic, social and cultural rights	2,837	35.56%
The right to good administration	2,765	34.66%
Civil and political rights	1,226	15.37%
Special rights in the area of children's rights	480	6.02%
Special rights in the area of gender equality	196	2.46%
Special rights of persons deprived of liberty	177	2.22%
Special rights of persons with disabilities	166	2.08%
Special rights of the members of national minorities	130	1.63%
Total number of violation of rights in 6,231 complaints:	7,977	

5.4.

COMMISSIONER FOR THE PROTECTION OF EQUALITY

The Law on the Prohibition of Discrimination⁸³ establishes the position of the Commissioner for the Protection of Equality. The Commissioner is appointed by the National Assembly of the Republic of Serbia for a period of 5 years⁸⁴ and is granted the same immunity as the National Assembly members (Article 31). The Commissioner is an institution that provides legal aid to the citizens who have been victims of discrimination. According to Article 33, the Commissioner receives and reviews complaints pertaining to violations of the Law on the Prohibition of Discrimination and provides recommendations that are not binding. The Commissioner may bring proceedings before the court (Article 36). The citizens are not obliged to pay any fees (Article 35).

From January 1 to December 31, 2015, the total of 1040 new cases was filed. Out of the total number of new cases in 2015, 797 were complaints, 215 recommendations of measures for achieving equality, and others were opinions on draft legislations, criminal charges, and recommendations to the Constitutional Court, warnings and announcements.

During 2015, in 50 cases, it was decided that there was no discrimination, while in 99 cases, it was determined that there was discrimination, and in 97 cases, recommendation was submitted to the Constitutional Court.

Out of the total number of recommendations in 2015, those recommendations were implemented in most of the cases, while in 5 cases discriminators failed to act in

82 The number of violated rights is always higher than the number of complaints, because numerous complaints indicate multiple rights violations. 2015 Annual Report of the Protector of Citizens, available at: <http://zastitnik.rs/attachments/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202015.docx>

83 The Law on the Prohibition of Discrimination; (Official gazette of the RS, no. 22/2009)

84 Article 29, the Law on the Prohibition of Discrimination: "The Commissioner shall be elected for a period of five years. One and the same person may be elected Commissioner twice at the most."

accordance with recommendations of the Commissioner for the Protection of Equality. In 2015, there were no complaints filed for protection against discrimination, while, since 2011, there are ongoing or legally closed procedures as per 13 complaints.⁸⁵

5.5.

TRADE UNIONS

Trade unions may provide legal advice to their members. According to the data available⁸⁶, two national trade unions have their own legal service. In line with trade unions' mandate to protect employees, the legal aid provided by them primarily focuses on social and economic issues related to employment. As such, they only provide legal aid to their members and not to the general public. Trade unions also have difficulties related to financing and resources⁸⁷, and they can also face obstruction by company owners or management in providing legal aid⁸⁸. According to a survey of 2013, 11% of free legal aid beneficiaries received their legal aid from trade unions.⁸⁹

5.6.

LEGAL CLINICS

Legal clinics at the law faculties give their students an opportunity to provide in a supervised manner free legal aid to actual clients. That way, persons in economically unfavorable position, members of marginalized groups or the student body members may receive free legal advice.

Currently, the Novi Sad University⁹⁰ provides free legal advice in the areas of environmental protection and human trafficking; the Niš University⁹¹ has legal clinics for civil law and protection of women's rights, while the Belgrade University⁹² has legal clinics for family law, criminal law, asylum seekers' rights, and discrimination issues. Private University Union⁹³ in Belgrade has legal clinics for labor law and family law.⁹⁴ Supervision of students' work ensures appropriate legal aid, although resources and adequate supervision may be a challenge if the goal is to provide legal aid to everyone who needs it.

Legal clinics are financed both from faculty funds and donor funds. Legal clinic at the Union University in Belgrade is financed from revenues derived from book sales, trainings, etc. On the other hand, legal clinic at the Law Faculty in Niš is financed by donors.

85 The Commissioner for Protection of Equality's Annual Report for 2015, available at: <http://ravno-pravnost.gov.rs/wp-content/uploads/2016/09/Redovni-godisnji-izvestaj-poverenika-za-2015.pdf>

86 Vuković D., Antonijević M., Golubović K., Milenković M., Vujić K., *Access to Justice and Free Legal Aid in Serbia – Challenges and Reforms*, Lawyers' Committee for Human Rights, SeConS, Belgrade, 2013.

87 Ibid.

88 Ibid.

89 Ibid.

90 <http://ekologija.pf.uns.ac.rs/pravna%20klinika.htm>

91 http://www.prafak.ni.ac.rs/index.php?option=com_content&view=article&id=166&Itemid=241&lang=en

92 <http://www.ius.bg.ac.rs/eng/>

93 <http://www.pravnifakultet.rs/pravna-klinika.html>

94 Legal clinic for labor law at the Union University provided 35 pieces of advice during the school year 2015/2016.

6. Established Insufficiencies Related With Availability of Services, Information and Assistance for the Citizens

Objective of the project (establishment of general information service addressing all the questions from citizens and providing information, advice and active help) is especially relevant for Serbia, because, not only does such service not currently exist, but the existing institutions and bodies created for this purpose have limited capacities and lack mutual coordination. 78.4% of the survey respondents stated that the existing services providing advice to citizens do not correspond to their need for information, advice and active help.

In the absence of a general service that would be regulated by a binding legal framework, various bodies rarely provide information and mostly on voluntary basis. Such basis is not sufficient to ensure citizens' access to information in a qualitative and continuous manner.

Analysis of the results of the survey conducted among providers of legal aid indicates that active help in Serbia, especially legal representation and assistance in use of alternatives to courts, is at a very low level. The results show that 14% of all respondents provide mediation and reconciliation services, and only 23% provide legal representation. In examining of geographic coverage, it is apparent that legal representation in the Autonomous Province of Vojvodina is at a very low level⁹⁵, having in mind that active help providers are those municipalities which had a contract with the Bar Association of Vojvodina under a previous pilot project, and that project has now ended.

There is a lack of information and advice services in rural areas around Serbia. It is obvious that only large urban environments are covered by such services. The need for direct access to information and advice is even more prominent in these areas due to their lack of internet coverage (only 33% of households have internet connection)⁹⁶.

The second least represented category of beneficiaries is the category of employed citizens. Results of the latest survey have shown a great need for assistance

95 Novi Sad Humanitarian Center provides free legal aid to socially endangered persons, as well as to Roma population and internally displaced persons in several municipalities in Vojvodina.

96 Data from the Statistical Office of the Republic of Serbia, Usage of Information-Communication Technologies in the Republic of Serbia, 2012.

related to labor and employment issues. Advice on taxes, debts and bankruptcy is not part of these services in Serbia. 37.2% of the respondents stated that they didn't apply quality standards or measures in their work.

When assessing the obstacles to strengthening of the provision of information and advice services to Serbian citizens:

- 77% of the respondents stated that donors hesitated to finance projects. This result shows that sustainability of the existing NGOs that provide information and counseling services is in danger.
- 90% of the respondents stated that there was a lack of interest of the government and local authorities.
- 82% of the respondents stated that certain legal obstacles existed.
- 82% of the respondents stated that there was a lack of public advocacy and public trust.

7. Conclusions and Recommendations

In order to continue with establishment of the system of information, advice and help to the citizens in Serbia, the following steps are necessary:

7.1.

Recommendations for the Government of the Republic of Serbia

The state, that is, the appropriate ministries and other public institutions should recognize the existing NGOs as partners in providing information as part of their mission, and publish the list of these organizations on their websites. This will increase citizens' trust in institutions and NGOs, and it may also help address donors' hesitation in financing of projects. It is necessary to prepare a map of information and advice services that would allow citizens to have easier access to free legal aid, to all legal aid requirements and to closest legal aid services or organizations providing those services. It would be good to develop such map through partnership with all relevant ministries.

It is necessary to increase state administration capacities for applying the principle of provision of aid to beneficiaries. This will reduce the number of inquiries directed to legal aid services related to provision of basic legal advice. In addition, it should be taken into consideration how to sanction the employees violating this requirement.

In its final version, the Law on Free Legal Aid should standardize a sustainable procedure regarding public administration's capacities to process high volume of free legal aid requests, since there is a very wide scope of potential beneficiaries. Having this in mind, the procedure should be standardized in such way that would take into consideration the priorities in provision of free legal aid (i.e. victims of violence and human trafficking), as well as specialization of non-governmental organizations in provision of free legal aid to certain categories of people. In addition, it is necessary to remove those provisions of the draft Law which obstruct/impede the work of non-governmental organizations in strategic representation and advocacy for law amendments.

Legal aid in municipalities should be organized separately from local administration in order to avoid conflict of interest when providing advice to the citizens whose rights are violated by the local authorities. Information on provision of free legal aid in local self-governments is usually not available on their Internet presentations, so they should be more visible to the citizens.

The Government should support development of legal aid services in all local self-governments in Serbia. Based on the data collected, there is a huge difference in development of capacities for free legal aid provision in different parts of Serbia. This situation is especially worrisome since these less developed areas with higher risk of poverty and social exclusion do not have a developed NGO sector. In that sense, the Government and the ministries of justice and public administration should develop a special program for increasing capacities of municipal legal aid services. Having in

mind the differences between local self-governments, possible transitional solution may be forming of joint services for several municipalities, in order to reduce costs. These solutions may be complemented by appointing a lawyer-on-duty in the municipality who would be available certain days of the week, and by allowing the public to get answers to frequently asked questions via call centers.

7.2. Recommendations for non-governmental organizations

Continuous cooperation of non-governmental organizations is required for purpose of strengthening the influence of state policies in the area of legal aid, with the goal of improving legal framework and establishing efficient legal aid through recognition of the existing free legal aid providers.

Non-governmental organizations must be included in setting the criteria of quality of advice and these criteria must be binding for them in order to increase public trust.

7.3. Recommendations for donors

It is necessary to develop capacities of the non-governmental organizations in order for them to be capable of providing adequate legal aid to as many beneficiaries as possible, and especially to those belonging to vulnerable groups.

7.4. Recommendations for bar associations

Development of activities of *pro bono* attorneys and law offices in Serbia. Key interested parties should raise awareness of the need for attorneys to dedicate some of their time to provision of free legal aid in the form of self-engagement or engagement in non-governmental organizations, trade unions or legal clinics at law faculties.

8. National Plan for Advocacy

Current situation in Serbia

After ten years of waiting, based on the statements of government official, the Law on Free Legal Aid should be adopted soon.⁹⁷ In accordance with the Draft Law, the application would start as of January 2008. Enactment of the Law is very significant, since the existing system of free legal aid in Serbia is unable to provide minimum services for all the citizens and under equal terms.

Pursuant to Article 67 of the Constitution of the Republic of Serbia, everyone is guaranteed the right to legal aid, under equal terms, under conditions defined by the law. Furthermore, the Constitution stipulates that only the attorneys (members of the Bar Association) and services in units of local self-government may provide free legal aid. However, these providers have not established sustainable and transparent services. In practice, certain NGOs provide free legal aid, but there is no quality control in place for provision of these services regardless of the type of provider of legal service. Since there is no reference to NGOs as providers of free legal aid in the Constitution, in 2014, the National Assembly amended the Civil Procedure Code cancelling the possibility of representation before the courts for many service providers in civil procedure. As of that time, only attorneys and representatives of local self-governments with bar exam may represent the parties in court proceedings.

Provision of free legal aid in Serbia is decentralized and dependent of the economic strength of the units of local self-government. Moreover, the criteria and procedures for provision of free legal aid are different in local self-governments, and free legal aid is less accessible in rural areas than in urban environments.

Based on the National Judicial reform Strategy (NJRS) 2013-2018, and the latest updated Action Plan (2014), the Law on Free Legal Aid should have been adopted by the end of 2014.

Some of proclaimed strategic guidelines are as follows:

- defining of the structure of standardized system of legal aid through establishing of normative framework and institutional support;
- improvement of normative framework on the basis of the results of evaluation in regards to access to justice of vulnerable and marginalized groups.

Working group completed the Draft Law in mid-2015, and it was approved by the EC, but it was not adopted in 2015 either.

In its Progress Report for Serbia in November 2015, the European Commission clearly recommended that Serbia “should adopt new Law on Free Legal Aid and enable undisturbed implementation in coordination with key stakeholders.” Action Plan for Chapter 23 (2016) set end of 2016 as the new deadline for adoption of the Law on Free Legal Aid. In accordance with that, new Draft Law on Free Legal Aid was pre-

97 More information at: <http://rs.n1info.com/a192727/Vesti/Vesti/Kuburovic-najavila-izmene-Krivicnog-zakonika.html>

sented to the public in September 2016, and based on the statements of government officials it should be adopted by the National Assembly by the end of the year.⁹⁸

Optimal situation

- Adopted Law on Free Legal Aid in order to achieve coherent system of free legal aid in compliance with the European and international standards and practice.
- Role of the municipalities, unions, non-governmental organizations, bar associations, legal clinics, as well as other relevant social institutions, is recognized in provision of free legal aid.
- Budget of the Republic of Serbia for 2017 and the following years allocates adequate means for sustainable free legal aid.
- Donors are motivated to increase the standards of free legal aid in Serbia.
- Increased pro bono support from the attorneys.
- In transitional phase, it is necessary to recognize the standards for quality control and development of sustainable systems of free legal aid.
- Triple A quality standards are recognized by other providers of the service of free legal aid (currently, YUCOM has discussions with municipalities in Serbia).
- All service providers (NGO, local self-governments, legal clinics etc.) completed relevant training courses and are enabled to provide free legal aid
- Raising awareness of vulnerable groups.

Key stakeholders:

Government of Serbia, Commission for Implementation of the National Judicial Reform Strategy, Ministry of Justice, Ministry of Labor, Employment, Veteran and Social Affairs, Ministry of Public Administration and Local Self-Government, National Assembly – Committee on the Judiciary, Public Administration and Local Self-Government, Delegation of the EU in Serbia, non-governmental organizations providing free legal aid, info centers, bar associations, legal clinics, Protector of Citizens, Commissioner for Equality, UNDP in Serbia, OSCE in Serbia, the World Bank.

Existing consultative mechanisms to be used => existing starting points

- National Convent on the EU for Chapter 23
- Working group for drafting of the Law on Free Legal Aid (Ministry of Justice)

Initiators of the action of public representation:

Members of the Triple A Project from Serbia (Lawyers' Committee for Human Rights, Network CHRIS), National Convent for Chapter 23, ReView 23, network of providers of free legal aid, legal clinics.

Realistic goals for nation advocacy conferences, as well as for the completion of Triple A Project

- National Assembly of the Republic of Serbia has adopted the Law on Free Legal Aid and took over the responsibility of monitoring the implementation of the Law – controlling function of the Serbian Parliament.
- Members of the Triple A network are invited / elected for the purpose of preparation of the draft budget.

.....
98 Ibid. 97

- Law on Free Legal Aid defines the position of NGOs and other providers of free legal aid.
- There is a strong dedication of all the NGOs to advocacy of adoption and implementation of the Law on Free Legal Aid.
- Cooperation of various providers of free legal aid.
- Citizens recognize the system of free legal aid as good tool to exercise their rights.

Existing advocacy activities

Compared to 2014, in 2015 the NGOs did not have new and various advocacy activities, except for direct meetings with the delegation of the European Union to Serbia during preparation of the Progress Report for Serbia in 2015, regular meetings with all interested parties (Ministry of Justice, local self-governments) and participation in the working group drafting the Law.

New advocacy activities

- Strengthen current activities between the NGOs.
- Organize informative meetings with representatives of the Government.
- Mobilize the citizens to provide support in this process (press conference, TV programs on public service, events such as presentation of the reports and recommendations in public venues – e.g. main city square).
- Maintaining horizontal cooperation between all providers of free legal aid (NGO, local self-governments, legal clinics etc.)
- Secure participation of numerous non-governmental organizations in the process of public consultations on the Law on Free Legal Aid (informing NGOs on the drafting process of the Law on Free Legal Aid, provision of technical support in preparation of specific amendments sending amendments to the Ministry of Justice and the Assembly).
- Maintaining support of international organizations, USA, EU and Sweden.
- Maintaining relations with bar associations.
- Social networks / portals.

Timeframe

December 2015 – November 30, 2016.

Risks

Elections in 2016.

This Law is not the priority of the Government – there is not significant public pressure.

Indicators

- Budget for 2017 allocated adequate means for sustainable free legal aid.
- Assembly adopts the Law on Free Legal Aid.
- Ministry of Justice supports the concept.
- At least one member of Triple A takes part in consultations.
- 3A network is known as one of the initiators in regards to provision of access to information, advice and active help.

