

**PRAVNI FAKULTET
SVEUČILIŠTE U SPLITU**

**ZBORNİK RADOVA VIII. MEĐUNARODNOG
SAVJETOVANJA**

**„AKTUALNOSTI GRAĐANSKOG PROCESNOG
PRAVA – NACIONALNA I USPOREDNA
PRAVNOTEORIJSKA I PRAKTIČNA
DOSTIGNUĆA“**

6. i 7. listopada 2022. godine

**Zbornik radova VIII. međunarodnog savjetovanja
„Aktualnosti građanskog procesnog prava – nacionalna
i usporedna pravnoteorijska i praktična dostignuća“**

Nakladnik
Sveučilište u Splitu
Pravni fakultet
Domovinskog rata 8
21000 Split

**Katedra za građansko procesno pravo
Zavod za istraživanje građanskih sudskih
postupaka i suradnju s pravosuđem
Zavod za suradnju s gospodarstvom i ustanovama**

Zbornik radova međunarodnog savjetovanja „Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća“ referira se u HeinOnline bazi.

CIP - Katalogizacija u publikaciji
SVEUČILIŠNA KNJIŽNICA
USPLITU

UDK 347.91/.95(062)

MEDUNARODNO savjetovanje Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća (8 ; 2022 ; Split)
Zbornik radova VIII. međunarodnog savjetovanja Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća : <Split>, 6. i 7. listopada 2022. godine / <urednici Dinka Šago ... et al.>. - Split : Pravni fakultet, 2022.

Bibliografija iza svakog rada. - Summaries.

ISBN 978-953-8116-39-1

I. Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća 2. Šago, Dinka
I. Građansko procesno pravo -- Zbornici

190527004

Glavna urednica

izv. prof. dr. sc. Dinka Šago, Pravni fakultet Sveučilišta u Splitu

Tehnička urednica

Sanja Čović – Jurčević, mag. iur., Pravni fakultet Sveučilišta u Splitu

Urednici izdanja

prof. dr. sc. Jozo Čizmić, Pravni fakultet Sveučilišta u Splitu

prof. em. dr. sc. Mihajlo Dika, profesor emeritus
Pravnog fakulteta Sveučilišta u Zagrebu

prof. dr. sc. Alan Uzelac, Pravni fakultet Sveučilišta u Zagrebu

prof. dr. sc. Eduard Kunštek, Pravni fakultet Sveučilišta u Rijeci

izv. prof. dr. sc. Dejan Bodul, Pravni fakultet Sveučilišta u Rijeci

prof. dr. sc. Vesna Rijavec, Pravni fakultet Sveučilišta u Mariboru, Slovenija

prof. dr. sc. Aleš Galič, Pravni fakultet Sveučilišta u Ljubljani, Slovenija

prof. dr. sc. Tatjana Zoroska - Kamilovska, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija

prof. dr. sc. Arsen Janevski, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija

prof. dr. sc. Vesna Lazić Smoljanić, Pravni fakultet,
Sveučilišta u Utrechtu, Nizozemska

prof. dr. sc. Regina Garcimartín Montero, Pravni fakultet,
Sveučilišta u Zaragozi, Španjolska

prof. dr. sc. Alena Huseinbegović, Pravni fakultet Sveučilišta
„Džemal Bijedić“, Mostar, Bosna i Hercegovina

izv. prof. dr. sc. Viktorija Haubrich, Pravni fakultet Sveučilišta u Mostaru,
Bosna i Hercegovina

Recenzenti

- prof. dr. sc. Eduard Kunštek, redoviti profesor u trajnom zvanju
Pravnog fakulteta Sveučilišta u Rijeci
- prof. dr. sc. Alan Uzelac, redoviti profesor u trajnom zvanju
Pravnog fakulteta Sveučilišta u Zagrebu
- prof. dr. sc. Arsen Janevski, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija
- prof. dr. sc. Tatjana Zoroska - Kamilovska, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija
- prof. dr. sc. Aleksandra Maganić, redovita profesorica
Pravnog fakulteta Sveučilišta u Zagrebu
- prof. dr. sc. Gabrijela Mihelčić, redovita profesorica
Pravnog fakulteta Sveučilišta u Rijeci
- prof. dr. sc. Vladimir Boranijašević, redoviti profesor
Pravnog fakulteta Kosovska Mitrovica
- prof. dr. sc. Alena Huseinbegović, redovita profesorica
Pravnog fakulteta u Mostaru
- prof. dr. sc. Nevena Petrušić, redovita profesorica
Pravnog fakulteta Sveučilišta u Nišu
- izv. prof. dr. sc. Loris Belanić, izvanredni profesor
Pravnog fakulteta Sveučilišta u Rijeci
- izv. prof. dr. sc. Suzana Kraljić, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Mariboru
- izv. prof. dr. sc. Tjaša Ivanc, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Mariboru
- izv. prof. dr. sc. Slađana Aras Kramar, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Zagrebu
- izv. prof. dr. sc. Barbara Preložnjak, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Zagrebu
- izv. prof. dr. sc. Dejan Bodul, izvanredni profesor
Pravnog fakulteta Sveučilišta u Rijeci
- izv. prof. dr. sc. Viktorija Haubrich, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Mostaru
- izv. prof. dr. sc. Anđelija Tasić, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Nišu

Priprema i tisak
DES Split

Naklada
80 primjeraka

Ovaj Zbornik predstavlja rezultat međunarodnog savjetovanja
„Aktualnosti građanskog procesnog prava – nacionalna i usporedna
pravnoteorijska i praktična dostignuća“ održanog na Pravnom fakultetu
u Splitu 6. i 7. listopada 2022. godine.

Kontakt
izv. prof. dr. sc. Dinka Šago
e-mail: dsago@pravst.hr
aktualnosti.gpp@pravst.hr

Radni jezik:
hrvatski, slovenski, makedonski

Mjesto održavanja
Pravni fakultet Split
Domovinskog rata 8,
21000 Split, Hrvatska

ZBORNİK RADOVA VIII. MEĐUNARODNOG SAVJETOVANJA

„AKTUALNOSTI GRAĐANSKOG PROCESNOG PRAVA – NACIONALNA I USPOREDNA PRAVNOTEORIJSKA I PRAKTIČNA DOSTIGNUĆA“

Urednici izdanja

- izv. prof. dr. sc. Dinka Šago, Pravni fakultet Sveučilišta u Splitu
prof. dr. sc. Jozo Čizmić, Pravni fakultet Sveučilišta u Splitu
prof. em. dr. sc. Mihajlo Dika, profesor emeritus
Pravnog fakulteta Sveučilišta u Zagrebu
prof. dr. sc. Alan Uzelac, Pravni fakultet Sveučilišta u Zagrebu
prof. dr. sc. Eduard Kunštek, Pravni fakultet Sveučilišta u Rijeci
izv. prof. dr. sc. Dejan Bodul, Pravni fakultet Sveučilišta u Rijeci
prof. dr. sc. Vesna Rijavec, Pravni fakultet Sveučilišta u Mariboru, Slovenija
prof. dr. sc. Aleš Galič, Pravni fakultet Sveučilišta u Ljubljani, Slovenija
prof. dr. sc. Tatjana Zoroska - Kamilovska, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija
prof. dr. sc. Arsen Janevski, Pravni fakultet „Justinijan Prvi“
Sveučilišta "Sv. Kiril i Metodij" Skopje, Makedonija
izv. prof. dr. sc. Vesna Lazić Smoljanić, Pravni fakultet,
Sveučilišta u Utrechtu, Nizozemska
prof. dr. sc. Regina Garcimartín Montero, Pravni fakultet,
Sveučilišta u Zaragoza, Španjolska
prof. dr. sc. Alena Huseinbegović, Pravni fakultet
Sveučilišta „Džemal Bijedić“, Mostar, Bosna i Hercegovina
izv. prof. dr. sc. Viktorija Haubrich, Pravni fakultet
Sveučilišta u Mostaru, Bosna i Hercegovina
Sanja Čović – Jurčević, mag. iur., Pravni fakultet Sveučilišta u Splitu

Pravni fakultet

Split, 2022.

VIII. MEĐUNARODNO SAVJETOVANJE

„AKTUALNOSTI GRAĐANSKOG PROCESNOG PRAVA – NACIONALNA I USPOREDNA PRAVNOTEORIJSKA I PRAKTIČNA DOSTIGNUĆA“

Datum održavanja

6. i 7. listopada 2022. godine

Organizatori

Pravni fakultet u Splitu

Katedra za građansko procesno pravo

Zavod za istraživanje građanskih sudskih postupaka i suradnju s pravosuđem

Zavod za suradnju s gospodarstvom i ustanovama

Predsjednica programskog odbora

izv. dr. sc. Dinka Šago, izvanredna profesorica

Pravnog fakulteta Sveučilišta u Splitu

Programski odbor

prof. em. dr. sc. Mihajlo Dika, profesor emeritus

Pravnog fakulteta Sveučilišta u Zagrebu

prof. dr. sc. Jozo Čizmić, redoviti profesor u trajnom zvanju

Pravnog fakulteta Sveučilišta u Splitu

prof. dr. sc. Vesna Rijavec, redovita profesorica

Pravnog fakulteta Sveučilišta u Mariboru

prof. dr. sc. Tatjana Zoroska Kamilovska, redovita profesorica

Pravnog fakulteta Univerziteta u Skopju

prof. dr. sc. Arsen Janevski, redoviti profesor u trajnom zvanju

Pravnog fakulteta Univerziteta u Skopju

prof. dr. sc. Aleš Galič, redoviti profesor

Pravnog fakulteta Sveučilišta u Ljubljani

prof. dr. sc. Aleksandra Maganić, redovita profesorica

Pravnog fakulteta Sveučilišta u Zagrebu

-
- prof. dr. sc. Suzana Kraljić, redovita profesorica
Pravnog fakulteta Sveučilišta u Mariboru
- prof. dr. sc. Regina Garcimartín Montero, Prof. Titular de Derecho Procesal
Universidad de Zaragoza (Spain)
- prof. dr. sc. Alena Huseinbegović, redovita profesorica Pravnog fakulteta
Univerziteta „Džemal Bijedić“ u Mostaru
- izv. prof. dr. sc. Ratko Brnabić, dekan Pravnog fakulteta Sveučilišta u Splitu
- izv. prof. dr. sc. Viktorija Haubrich, izvanredna profesorica
Pravnog fakulteta Sveučilišta u Mostaru
- izv. prof. dr. sc. Dejan Bodul, izvanredni profesor
Pravnog fakulteta Sveučilišta u Rijeci
- Sanja Čović Jurčević, mag. Iur., asistentica
Pravnog fakulteta Sveučilišta u Splitu

Editor in Chief

Dinka Šago, PhD, Associate Professor, Faculty of Law in Split, Croatia

Executive Editor

Sanja Čović Jurčević, assistant, Faculty of Law in Split, Croatia

Editorial Board

Jozo Čizmić, PhD, Full Professor, Faculty of Law,
University of Split, Croatia

Mihajlo Dika, PhD, Professor emeritus, Faculty of Law,
University of Zagreb, Croatia

Alan Uzelac, PhD, Full Professor, Faculty of Law,
University of Zagreb, Croatia

Eduard Kunštek, PhD, Full Professor, Faculty of Law,
University of Rijeka, Croatia

Dejan Bodul, PhD, Assistant Professor, Faculty of Law,
University of Rijeka, Croatia

International Editorial Board

Vesna Rijavec, PhD, Full Professor, Faculty of Law,
University of Maribor, Slovenia

Aleš Galič, PhD, Full Professor, Faculty of Law,
University of Ljubljana, Slovenia

Tatjana Zoroska - Kamilovska, PhD, Full Professor,
Faculty of Law „Justinianus Primus“,
University “*Sv. Kiril and Metodij*” Skopje, Macedonia

Arsen Janevski, PhD, Full Professor, Faculty of Law „Justinianus Primus“,
University “*Sv. Kiril and Metodij*” Skopje, Macedonia

Vesna Lazić Smoljanić, PhD, Full Professor, Utrecht University
School of Law, Netherlands

Regina Garcimartín Montero, PhD, Associate Professor,
Faculty of Law Universidad de Zaragoza, Spain

Viktorija Haubrich, PhD, Assistant professor, Faculty of Law,
University of Mostar, Federation of Bosnia and Herzegovina

**VIII. INTERNATIONAL CONFERENCE
ACTUALITIES OF CIVIL PROCEDURAL LAW
„NATIONAL AND COMPARATIVE LEGAL THEORETICAL AND
PRACTICAL ACHIEVEMENTS”**

6 – 7. October 2022.

Faculty of Law, University of Split
Institute for Cooperation with the Economy and Institutions
Institute for Research of Civil Court Proceedings and Cooperation with the Judiciary
Department of Civil Procedure Law

President of the Scientific Program Committee

Dinka Šago, PhD, Associate Professor, Faculty of Law, University of Split, Croatia

Scientific Program Committee

Mihajlo Dika, PhD, Professor emeritus, Faculty of Law, University of Zagreb, Croatia
Jozo Čizmić, PhD, Full Professor, Faculty of Law University of Split, Croatia
Aleksandra Maganić, PhD, Full Professor, Faculty of Law University of Zagreb, Croatia
Ratko Brnabić, PhD, Associate Professor, Faculty of Law, University of Split, Croatia
Dejan Bodul, PhD, Assistant Professor, Faculty of Law, University of Rijeka, Croatia
Sanja Čović Jurčević, mag. iur., Assistant, Faculty of Law, University of Split, Croatia

International Scientific Program Committee

Vesna Rijavec, PhD, Full Professor, Faculty of Law, University of Maribor, Slovenia
Tatjana Zoroska Kamilovska, PhD, Full Professor, Faculty of Law,
University of Skopje, Macedonia
Arsen Janevski, PhD, Full Professor, Faculty of Law, University of Skopje, Macedonia
Aleš Galič, PhD, Full Professor, Faculty of Law, University of Ljubljana, Slovenia
Suzana Kraljić, PhD, Full Professor, Faculty of Law, University of Maribor, Slovenia
Regina Garcimartín Montero, PhD., Associate Professor, Faculty of Law,
University of Zaragoza, Spain
Alena Huseinbegović, PhD, Full Professor, Faculty of Law, University
of „Džemal Bijedić” Mostar, Bosnia and Hercegovina
Viktorija Haubrich, PhD, Assistant Professor, Faculty of Law,
University of Mostar, Bosnia and Hercegovina

Faculty of Law

Split, 6 – 7. 2022.

SADRŽAJ

Prof. em. dr. sc. Mihajlo Dika O RAZLOZIMA ZA PREKID PARNIČNOG POSTUPKA PO SILI ZAKONA PREMA HRVATSKOM ZAKONU O PARNIČNOM POSTUPKU	1
Prof. dr. sc. Jozo Čizmić Izv. prof. dr. sc. Viktorija Haubrich MJESTO I ULOGA ARBITRAŽNOG POSTUPKA U FEDERACIJI BOSNI I HERCEGOVINI - nužnost reforme	29
Prof. dr. sc. Alan Uzelac Ivana Zeljko POSLODAVAC KAO TIJELO OVRHE? O INSTITUTU NA ZALASKU	55
Prof. dr. sc. Gabrijele Mihelčić Izv. prof. dr. sc. Maša Marochini Zrinski OD PREDMETA STATILEO DO PREDMETA ARAMBAŠIN I HEGEDIŠ - NEKOLIKO RIJEČI O ZAŠTIĆENOM NAJMU	77
Prof. dr. sc. Nevena Petrušić CIVILNO PRAVOSUĐE PO MERI DETETA: MEĐUNARODNI STANDARDI I STANJE U REPUBLICI SRBIJI	109
Prof. dr. sc. Tatjana Zoroska Kamilovska Izv. prof. dr. sc. Milka Rakočević Tea Micevska, mag. iur. SUSTAV BESPLATNE PRAVNE POMOĆI U REPUBLICI SJEVERNOJ MAKEDONIJI: TRENUTNA SITUACIJA I IZAZOVI	133
Prof. dr. sc. Ranka Račić Doc. dr. sc. Dženana Radončić OGRANIČENJE NAČELA NEPOSREDNOSTI U POSTUPKU PRED ŽALBENIM SUDOM	161
Izv. prof. dr. sc. Slađana Aras Kramar OBITELJSKO SUDOVANJE: O SPECIJALIZACIJI I NADLEŽNOSTI.....	183
Izv. prof. dr. sc. Dejan Bodul O OVRSI NA KRIPTO IMOVINI ILI O JEDNOJ PRAVNOJ PRAZNINI	211
Izv. prof. dr. sc. Marija Boban Mr. sc. Zrinka Tironi OBAVIJEST TREĆE OSOBE O PARNICI I ZAŠTITA OSOBNIH PODATAKA...	233

Izv. prof. dr. sc. Dinka Šago Mirna Dajak, mag. iur. ANALIZA PRITUŽBI PACIJENATA I POTEŠKOĆE PRI UTVRĐENJU ODGOVORNOSTI LIJEČNIKA U POSTUPKU RADI NAKNADE ŠTETE	261
Izv. prof. dr. sc. Zvonimir Jelinić KORAK UNAPRIJED U PRAVOSUDNOJ REFORMI? ANALIZA REFORMSKIH PRIJEDLOGA IZ GODIŠNJEG IZVJEŠĆA O STANJU SUDBENE VLASTI ZA 2021. GODINU	297
Izv. prof. dr. sc. Anđelija Tasić GENEZA NAČELA ZAŠTITE IZVRŠNOG DUŽNIKA	331
Izv. prof. dr. sc. Katarina Knol Radoja NEZAKONITI DOKAZI U GRAĐANSKOM POSTUPKU	351
Dr. sc. Anđela Ljubić Čović HARMONIZACIJA ZEMLJIŠNE KNJIGE U FEDERACIJI BOSNE I HERCEGOVINE: NEKA PITANJA	371
Dr. sc. Jelena Đurišić Ivana Jabučanin, mag. iur. Ana Stojanovski, mag. iur. PRISILNI SMJEŠTAJ U PSIHIJATRIJSKU USTANOVU - standardi i sudska praksa Evropskog suda za ljudska prava	397
Doc. dr. sc. Jelena Čuveljak TAJNOST PARNIČNOG POSTUPKA	417
Ksenija Flack-Makitan, dipl. iur. PRAVO NA POŠTENO SUĐENJE I DIGITALNE TEHNOLOGIJE U PARNIČNOM POSTUPKU	439
Doc. dr. sc. Neža Pogorelčnik Vogrinc OBVEZNA MEDIACIJA V PRAVU EU	451
Izv. prof. dr. sc. Dinka Šago Sanja Čović Jurčević, mag. iur. ZNAČAJ ODREĐIVANJA I PROMJENE VRIJEDNOSTI PREDMETA SPORA U PARNIČNOM POSTUPKU	469
Doc. dr. sc. Marko Bratković Stjepan Gvozdić, mag. iur. KREDITI RBA ZADRUGA I PROCESNI PROBLEMI NJIHOVE PRISILNE NAPLATE: PRIJE I NAKON LEX ŠKIBOLA	493

CONTENT

Prof. em. Mihajlo Dika, Ph.D. UNTERBRECHUNG DES ZIVILPROZESSVERFAHRENS KRAFT GESETZES NACH KROATISCHEN RECHTS	1
Full Prof. Jozo Čizmić, Ph.D. Assoc. Prof. Viktorija Haubrich, Ph.D. THE PLACE AND ROLE OF THE ARBITRATION PROCEDURE IN THE FEDERATION OF BOSNIA AND HERZEGOVINA - the necessity of reform	29
Full Prof. Alan Uzelac, Ph.D. Ivana Zeljko, Law student THE EMPLOYER AS AN ENFORCEMENT BODY? THE SUNSET OF A LEGAL CONCEPT	55
Full Prof. Gabrijele Mihelčić, Ph.D. Assoc. Prof. Maša Marochini Zrinski, Ph.D. FROM THE SUBJECT STATILEO TO THE SUBJECTS ARAMBAŠIN AND HEGEDIŠ - A FEW WORDS ABOUT THE PROTECTED RENTAL	77
Full Prof. Nevena Petrušić, Ph.D. CHILD-FRIENDLY CIVIL JUSTICE: THE INTERNATIONAL STANDARDS AND THE STATE IN THE REPUBLIC OF SERBIA	109
Full Prof. Tatjana Zoroska Kamilovska, Ph.D. Assoc. Prof. Milka Rakočević, Ph.D. Tea Micevska, mag.iur. THE SYSTEM OF FREE LEGAL AID IN THE REPUBLIC OF NORTH MACEDONIA: CURRENT SITUATION AND CHALLENGES	133
Full Prof. Ranka Račić, Ph.D. Asst. Prof. Dženana Radončić, Ph.D. LIMITATION OF THE PRINCIPLE OF IMMEDIACY IN PROCEEDINGS BEFORE THE COURT OF APPEAL.....	161
Assoc. Prof. Slađana Aras Kramar, Ph.D. FAMILY COURT PROCEEDINGS: ON SPECIALISATION AND JURISDICTION.....	183
Assoc. Prof. Dejan Bodul, Ph.D. ABOUT ENFORCEMENT PROCEDURE ON CRYPTO ASSETS OR ABOUT A LEGAL GAP?	211
Assoc. Prof. Marija Boban, Ph.D. Mr. sc. Zrinka Tironi THIRD PARTY NOTICE AND PROTECTION OF PERSONAL DATA	233

Assoc. Prof. Dinka Šago, Ph.D. Mirna Dajak, mag.iur. ANALYSIS OF PATIENT COMPLAINTS AND DIFFICULTIES IN DETERMINING THE RESPONSIBILITY OF THE DOCTOR IN THE PROCEDURE FOR COMPENSATION	261
Assoc. Prof. Zvonimir Jelinić, Ph.D. A STEP FORWARD IN JUDICIAL REFORM? ANALYSIS OF REFORM PROPOSALS FROM THE ANNUAL REPORT ON THE STATE OF THE JUDICIARY FOR 2021.....	297
Assoc. Prof. Anđelija Tasić, Ph.D. THE GENESIS OF THE PRINCIPLES OF DEBTOR PROTECTION	331
Assoc. Prof. Katarina Knol Radoja, Ph.D. ILLEGALLY OBTAINED EVIDENCE IN CIVIL PROCEEDINGS	351
Anđela Ljubić Čović, Ph.D. HARMONIZATION OF THE LAND REGISTER IN THE FEDERATION OF BOSNIA AND HERZEGOVINA: SOME QUESTIONS	371
Jelena Đurišić, Ph.D. Ivana Jabučanin mag. iur. Ana Stojanovski mag. iur. INVOLUNTARY PSYCHIATRIC HOSPITALIZATION - STANDARDS AND CASE-LAW OF THE ECHR.....	397
Asst. Prof. Jelena Čuveljak, Ph.D. CONFIDENTIALITY OF THE LITIGATION PROCEDURE.....	417
Ksenija Flack-Makitan, mag.iur. RIGHT TO A FAIR TRIAL AND DIGITAL TECHNOLOGIES IN CIVIL PROCEDURE.....	439
Asst. Prof. Neža Pogorelčnik Vogrinc, Ph.D. MANDATORY MEDIATION UNDER EU LAW.....	451
Assoc. Prof. Dinka Šago, Associate professor, Ph.D. Sanja Čović Jurčević, mag iur. THE IMPORTANCE OF DETERMINING AND CHANGING THE VALUE OF THE SUBJECT OF A DISPUTE IN CIVIL PROCEEDINGS	469
Asst. Prof. Marko Bratković, Ph.D. Stjepan Gvozdić, mag. iur. CREDITS PROVIDED BY RBA COOPERATIVES AND THE PROCEDURAL PROBLEMS IN THE RELATED ENFORCEMENT PROCEEDINGS: BEFORE AND AFTER LEX ŠKIBOLA.....	493

ČLANCI



Prof. Dr. Sc. Tatjana Zoroska Kamilovska
University Ss. Cyril and Methodius,
Faculty of Law "Iustinianus Primus"- Skopje
Assoc. Prof. Dr. Sc. Milka Rakočević
University Ss. Cyril and Methodius,
Faculty of Law "Iustinianus Primus"- Skopje
Tea Micevska, Teaching Assistant, LLB,
University Ss. Cyril and Methodius,
Faculty of Law "Iustinianus Primus"- Skopje

THE SYSTEM OF FREE LEGAL AID IN THE REPUBLIC OF NORTH MACEDONIA: CURRENT SITUATION AND CHALLENGES

UDK: 347.921.8 (497.7)

Pregledni znanstveni rad

In order to fully enjoy the right to access to justice, it is not sufficient for the state to establish an effective system of legal protection, but to provide a system where, without discrimination of any kind, every person will be able to enjoy its right to access to justice regardless of the obstacles, typically of financial nature, one can confront in realization and protection of its rights. Such system is needed in order for the human rights to be protected and enforced equally. The right to legal aid is considered as an essential element of a fair, human and efficient system of administration of justice.

The paper discusses certain aspects of the right to free legal aid in international and national context. After analyzing the essence and concept of legal aid generally, the authors refer to the European standards relating to legal aid focusing on the legal instruments and measures adopted by CoE and EU and the case-law of the ECtHR in that regard. Furthermore, the current normative framework of North Macedonia concerning free legal aid in civil cases is being discussed including an analysis of the practical implementation of the Law on Free Legal Aid from 2019 and the challenges that occurred from its application in the practice.

Key words: *access to justice, legal aid, legal representation, civil proceedings*

„There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”¹

¹ U.S. Supreme Court Justice Hugo Black (1964).

1. INTRODUCTION

Legal aid is considered to be an essential element of a fair, human and efficient system of administration of justice that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial and the right to an effective remedy, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the administration of justice.²

Access to justice is vital element in the democratic process and one of the basic principles of the rule of law. It is essential to liberty, fairness and dignity and should be guaranteed to all individuals irrespective of their financial situation. It guarantees an individual's ability to protect his or her rights in conformity with human rights standards.³ The right to legal aid constitutes an essential component for the effective exercise of the right to access to justice. In the era when there are huge differences in the financial situation of citizens, everyone does not have the ability to approach the court through a good lawyer if they face any complexities since it is highly expensive to incur extra expenses where elementary facilities of life are hard to maintain. In that regard, legal aid is the procurement of aid to persons who are incapable to bear the cost of legal representation and access to the court framework. Its aim is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system.⁴ In order to fully enjoy the right to access to justice, it is not sufficient for the state to establish an effective system of legal protection, but to provide a system where, without discrimination of any kind, every person will be able to enjoy its right to access to justice every time his/her rights are violated or threatened regardless of the obstacles, typically of financial nature, one can confront in realization and protection of its rights. Such system is needed in order for the human rights to be protected and enforced equally. In that respect, every state should strive to develop and implement operative and maintainable legal aid system. Legal aid is not a philanthropic activity, but rather an organized system of the state and

² Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knau, 15th of March 2015, United Nations, General Assembly, Human Rights Council, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/119/35/PDF/G1311935.pdf?OpenElement>.

³ The efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, Guidelines adopted by the Committee of Ministers of the Council of Europe on 31 March 2021 and explanatory memorandum, August 2021, p. 16, available at: <https://rm.coe.int/guidelines-of-the-committee-of-ministers-of-the-council-of-europe-on-t/1680a39918>.

⁴ Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knau, 15th of March 2015, United Nations, General Assembly, Human Rights Council, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/119/35/PDF/G1311935.pdf?OpenElement>.

right of the citizens. The organization of an effective legal aid system can be considered as the state's response to the existence of certain vulnerable categories of persons who are unable to enjoy their right to access to justice on their own without organized community assistance.⁵

The contemporary system of legal aid is founded on two principal ideas. Primarily, such system respects the right to legal aid not only as an essential procedural guarantee for the effective exercise of other human rights, but also as a human right itself. Secondly, the legal aid, regardless of who provides it, must be qualified and meet certain requirements in terms of its quality.⁶

Generally speaking, there is no agreed definition or a single concept that define the notion of legal aid. Usually, neither international documents nor domestic regulations if analyzing comparatively, give an exact definition of that term. The modern concept of legal aid recognizes the legal aid as system that consists of actions aimed to neutralize the obstacles in exercising the rights, such as lack of legal knowledge or lack of financial means, each time somebody's rights could remain unrealizable and ineffective due to such obstacles.⁷

The right to access to justice must be fully guaranteed, not only formally. No difficulty of financial nature should be a *de facto* obstacle and prevent someone from enjoying or defending his/her right before the court due to the fact that insufficient financial means negatively affect such right and, accordingly affect the equal and effective enjoyment of rights. In that regard, the concept of free legal aid should be recognized, guaranteed and prompted as a standard that enables the attainment of formal legal equality and *de facto* enables the exercise of the rights and makes justice available to persons who, mainly due to their financial situation, are unable to exercise their right to legal protection on their own.⁸

2. EUROPEAN STANDARDS RELATING TO LEGAL AID

The right of access to justice, as an element of the right to a fair trial is a fundamental human right, and is guaranteed by respective number of international and national documents. Even though this right is prescribed by the Universal

⁵ A. Adamović, Sistem besplatne pravne pomoći u Sloveniji, "Pristup pravosuđu – instrumenti za implementaciju evropskih standarda u pravni system Republike Srbije", Tematski Zbornik radova, Niš, 2008., str. 149.

⁶ S. Gajin, Uvodnik in S. Gajin (Ed), Pravna pomoć, Centar za unapređivanje pravnih studija, Beograd 2007, p. 7.

⁷ V. Vodinelić, Pravna pomoć – U uporednom i našem pravu, sada i ubuduće in S. Gajin (Ed), Pravna pomoć, Centar za unapređivanje pravnih studija, Beograd 2007, p. 31.

⁸ In that regard, J. Čizmić, O pružanju besplatne pravne pomoći, Zbornik Pravnog fakulteta Sveučilišta u Rijeci (1991), v. 31, No. 1, 2010, p. 412.

Declaration of Human Rights⁹ and The International Covenant on Civil and Political Rights, the widest protection is given by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR).

Recognizing the right to legal aid as an essential precondition for exercising the right to access to justice and as an essential component of the right to a fair trial in that respect, the Council of Europe (CoE) and the European Union (EU) have over the years adopted legal instruments and measures that directly or indirectly affect the notion of legal aid and thus gradually built a firm and solid standard regarding this matter.

The most important CoE document that regulates the notion of legal aid is the ECHR. Article 6 of ECHR, does not explicitly guarantee the right to legal aid in civil proceedings, but such right is considered as a component of the right to a fair trial. As it is generally familiar, the right to a fair trial comprises nearly all procedural human rights and logically precedes all other substantive human rights, which could not even exist without an appropriate mechanism for their protection.¹⁰ The practice of ECtHR has led to the identification of a numerous procedural guarantees that are not expressly stated in Art. 6 (1) of ECHR, but which were created as a result of the intensive development of such case-law. The guarantees thus created are considered as inherent consequences of the written guarantees of Art. 6, as guarantees that originate from its very essence. The right to legal aid is such guarantee, which is nowadays well embedded in the judicial consciousness, due to the extensive interpretation of Art. 6¹¹, providing for the individuals to access justice regardless of their financial means.

Although the right to legal aid is not expressly stipulated as a procedural guarantee, there is a rich case-law of the ECtHR regarding this matter. One of the most recognized and frequently cited cases that problematized the right to legal aid in civil proceedings is the case of *Airey v. Ireland* since this was the initial case where ECtHR dealt with the obstacles of financial nature in the context of

⁹ The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A).

¹⁰ A. Uzelac, Hrvatsko procesno pravo i jamstvo "pravičnog postupka" iz Evropske konvencije za zaštitu ljudskih prava i temeljnih sloboda, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, (1991), vol. 19, Supplement, 1998, str. 1010

¹¹ Article 6 explicitly guarantees the right to legal aid only in criminal proceedings. For everyone charged with a criminal offence, one of the minimum rights guaranteed is the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. See Art. 6(3) (c). Paragraphs 2 and 3 of Art. 6 of the ECHR are formulated as guarantees that apply to criminal proceedings. Nevertheless, the ECtHR also observes such guarantees as implicit requirements for fairness outside the criminal sphere, applying them *mutatis mutandis* in civil proceedings as well. See *Albert and Le Compte v. Belgium*, Judgement of 10 February 1983, para. 39.

the broader right to access to justice and due to the fact that this case has formed an important precedent for arguing that the right to legal aid is an integral part of human rights. The ECtHR has held that despite the absence of explicit guarantee of the right to legal aid in civil proceedings, Art. 6(1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.¹² Still, it is crucial to note that ECtHR in this case emphasized that the state is not obliged to provide free legal aid for every dispute relating to a „civil right”, but the need for free legal aid will depend on the circumstances of each individual case.¹³ In addition, the reasoning of the Court is that whilst Art. 6(1) guarantees to litigants an effective right of access to the courts for the determination of their „civil rights and obligations”, it leaves to the State a free choice of the means to be used towards this end. The institution of a legal aid scheme constitutes one of those means but there are others such as, for example, a simplification of procedure. In any event, it is not the Court’s function to indicate, let alone dictate, which measures should be taken. All that the ECHR requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Art. 6 (1).¹⁴

In its later decisions, the ECtHR have successively adopted certain criteria aimed at assessing whether there is a violation of Art. 6(1) based on the lack of legal aid. In that regard, the question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, *inter alia*, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant’s capacity to represent him/herself effectively. Particularly, the question whether or not Art. 6 require the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case.¹⁵ What has to be determined is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing.¹⁶ The Court has also held that the requirement to pay fees to a civil court

¹² *Airey v. Ireland*, Application No. 6289/73, Judgment of 9 October 1979, para 26.

¹³ *Airey v. Ireland*, para. 24 and 26.

¹⁴ *Airey v. Ireland*, para. 26.

¹⁵ *Airey v. Ireland*, para 26; *Steel and Morris v. the United Kingdom*, Application No. 68416/01, Judgment of 15 February 2005, para. 61; *McVicar v. the United Kingdom*, Application No. 46311/99, Judgment of 7 May 2002, para. 48.

¹⁶ *McVicar v. the United Kingdom*, para. 51.

should not obstruct access to a court for applicants who are unable to pay them.¹⁷ The question whether Art. 6 implies a requirement to provide legal aid will mainly depend on factors such as: the importance of what is at stake for the applicant¹⁸; the complexity of the relevant law or procedure¹⁹; the applicant's capacity to represent him/herself effectively²⁰; the existence of a statutory requirement to have legal representation²¹; the financial situation of the litigant²²; his/her prospects of success in the proceedings.²³ In its case-law the ECtHR also addressed the issue of granting legal aid in the respective national legal systems. In that regard, the Court's assessment is that it is important to have due regard to the quality of a legal aid scheme within a State.²⁴ Furthermore, the method chosen by the authorities should also be assessed whether it is compatible with the Convention.²⁵ When deciding upon requests for granting legal aid, the court should give reasons for refusing legal aid and to handle requests for legal aid with diligence.²⁶

In addition to the guarantees postulated within the ECHR and the jurisprudence of the ECtHR, CoE Law tackled the issue of legal aid in several other documents. Under CoE Law, legal aid should not be regarded as a charity to indigent persons but as an obligation of the community as a whole. No one should be prevented by economic obstacles from pursuing or defending his right before any court determining civil, commercial, administrative, social or fiscal matters. Legal aid should provide for all the costs necessarily incurred by the assisted person in pursuing or defending his legal rights, should be available even where a person is able to pay part of the costs of his proceedings and should always include the assistance of a person professionally qualified to practice law in accordance with the provisions of the state's regulation.²⁷ Furthermore, concerned at the situation of the very poor, understood as persons who are particularly deprived, marginalized or excluded from society both in economic and in social and cultural terms and

¹⁷ *Kreuz v. Poland*, Application No. 28249/95, judgment of 19 June 2001, para. 60-67.

¹⁸ *Steel and Morris v. United Kingdom*, para 61; *P., C. and S. v. the United Kingdom*, Application no. 56547/00, Judgment of 16 July 2002, para. 100.

¹⁹ *Airey v. Ireland*, para. 24.

²⁰ *McVicar v. the United Kingdom*, para. 48-62; *Steel and Morris v. United Kingdom*, para 61.

²¹ *Airey v. Ireland*, para. 26; *Gnahoré v. France*, Application no. 40031/98, Judgment of 19 September 2000, para 41.

²² *Steel and Morris v. United Kingdom*, para 62.

²³ *Steel and Morris v. United Kingdom*, para 62.

²⁴ *Essaadi v. France*, Application No.49384/99, Judgment of 26 February 2002, para. 35.

²⁵ *Santambrogio v. Italy*, Application No. 61945/00, Judgment of 21 September 2004, para. 52.

²⁶ *Tabor v. Poland*, Application No. 12825/02, Judgment of 27 June 2006, para. 45-46.

²⁷ See CoE Resolution (78)8 On Legal Aid and Advice, adopted by the Committee of Ministers on 2 March 1978 at the 284th meeting of the Ministers' Deputies, available at: <https://rm.coe.int/coe-rec-78-8-on-legal-aid-and-advice/1680a72d4d>.

that the situation of severe poverty continues to deprive individuals of the effective enjoyment of human rights which must be secured for all without distinction, the CoE recommends the states to undertake measures to facilitate access to the law for the very poor, to enable them an effective access to quasi-judicial methods of conflict resolution and an effective access to the courts.²⁸ Moreover, considering that it is desirable to eliminate existing economic obstacles to civil proceedings and to permit persons in an economically weak position more easily to exercise their rights in member States, the CoE Law allows people who habitually reside in one state to apply for legal aid in civil, commercial or administrative matters in another state.²⁹ The most recent document adopted by CoE relating to legal aid are the Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law.³⁰ Build on existing international, European and national standards, the guidelines aim to provide generic solutions that can help national legal aid schemes function more efficiently and effectively. As a practical tool, the guidelines present good practices and propose practical solutions to address the existing inconsistencies and lacunae.³¹

Apropos EU legal order, the EU bodies have also set down certain rules on legal aid. The legislative history of EU regarding legal aid goes back to the Treaty establishing the European Community³², following the conclusions of Tampere

²⁸ See CoE Recommendation No. R (93)1 on Effective Access to the Law and to Justice for the Very Poor, adopted by the Committee of Ministers on 8 January 1993 at the 484th meeting of the Ministers' Deputies, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804df0ee>.

²⁹ See European Agreement on the Transmission of Applications for Legal Aid of 27 January 1977, available at: <https://rm.coe.int/1680077322>. The Agreement is designed to eliminate economic obstacles to proceedings and to permit persons in an economically weak position more easily to exercise their rights. The Agreement sets out the procedure to be followed and, in particular, makes it possible for the person concerned to submit an application through the intermediary of the State of habitual residence. As of 20 August 2022, the Agreement was signed by 35 states and ratified by 33 states. The Republic of North Macedonia ratified the Agreement on 15 January 2003.

³⁰ Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law adopted by the Committee of Ministers of the Council of Europe on 31 March 2021, available at: <https://rm.coe.int/0900001680a1a347>.

³¹ Explanatory Memorandum to the Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law adopted by the Committee of Ministers of the Council of Europe on 31 March 2021, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a1f662.

³² In order to establish progressively an area of freedom, security and justice in which the free movement of persons is ensured, the Community agreed, among other, to adopt measures relating to judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market. According to Article 65(c) of the Treaty, these measures are to include measures eliminating obstacles to the good functioning of civil proceedings, if necessary, by promoting the compatibility of the rules on civil procedure applicable in the Member States.

from 1999³³ and the declaration of the Charter of Fundamental Rights of the European Union (CFR) in 2000. Furthermore, regarding secondary legislation, there is the Green paper on Legal aid in civil matters from 2000³⁴, which served as preparation for adoption of the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (Legal Aid Directive), which is considered as the prime source of law regarding this matter.³⁵

The CFR, as a source of primary EU law, in Art. 47(3) stipulates the right to legal aid to those who lack sufficient resources so far as such aid is necessary to ensure effective access to justice.³⁶ Article 47 applies to proceedings relating to all rights and freedoms arising from EU law. The Court of Justice of the European Union (CJEU) has also considered that access to legal aid is an important aspect of the general principle of effective judicial protection in EU law.³⁷ The CJEU has provided some guidance on the link between access to legal aid and Art.47. It instructed national courts, when assessing whether the grant of legal aid is necessary to ensure compliance with the EU general law principle of effective judicial protection, to take into account, *inter alia*: the subject matter and importance of what is at stake for the applicant, applicants' capacity to represent themselves effectively, the complexity of the procedure, and the applicant's prospect of success.³⁸

As for the legal aid standards set in specific secondary law, given that the lack of resources of a litigant and the difficulties flowing from a dispute's cross-border dimension shouldn't be allowed to hamper effective access to justice, the Legal Aid Directive seeks to promote the application of legal aid in cross-border disputes

³³ According to Tampere European Council 15 and 16 October 1999 Presidency Conclusions, European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union (point 30 of the Conclusions).

³⁴ Green paper from the Commission: Legal aid in civil matters: The problems confronting the cross-border litigant, Brussels, 9.2.2000, COM (2000) 51 final.

³⁵ Official Journal L 026, 31/01/2003 P. 0041 – 0047. In addition to this legal instrument, we should also mention the Council Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19.7.2000, p. 22–26.

³⁶ In the Explanations relating to the Charter of Fundamental Rights (OJ C 303, 14.12.2007, p. 17–35), on Art. 47 – Right to an effective remedy and to a fair trial, regarding the paragraph that regulates the right to legal aid, it is underlined that in accordance with the case-law of the ECtHR, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy. There is also a system of legal assistance for cases before the Court of Justice of the European Union.

³⁷ Case C-63/01, *Evans and the Secretary of State for the Environment, Transport and the Regions, and The Motor Insurers' Bureau, judgment of 4 December 2003, para. 77*; Case C-279/09, *DEB Deutsche Energiehandels und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, judgment of 22 December 2010, para. 42*.

³⁸ Case C-279/09, *DEB Deutsche Energiehandels und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, judgment of 22 December 2010, para. 61*.

for persons who lack sufficient resources where aid is necessary to secure effective access to justice. It is intended as an instrument with a main purpose to guarantee an adequate level of legal aid in cross-border disputes by laying down certain minimum common standards relating to legal aid in such disputes. According to the Directive, legal aid may include legal advice, legal assistance and representation in court, exemption from court fees and exemption from certain fees related to the cross-border nature of the dispute such as interpretation, translation and travel costs.³⁹ In addition, the Directive introduces rules on processing applications for legal aid.⁴⁰

3. NORMATIVE FRAMEWORK OF MACEDONIAN FREE LEGAL AID SYSTEM

A comprehensive legal framework constitutes a strong foundation upon which a country can regulate different legal areas according to its priorities and citizens' needs. If we take into consideration the fact that the Republic of North Macedonia was one of the constituent republics of the former Socialist Federal Republic of Yugoslavia (SFRY), it should be pointed out that the right to free legal aid was recognized on federal level since the 1950s. Therefore, before entering into elaboration of the current normative framework, it is of key importance to put the historical genesis of the law – on federal and state level – under scrutiny.

During the period of the SFRY, in the spirit of the Socialist egalitarianism, access to court was cheap and simple – the court fees were low, attorney services and expert reports were inexpensive, and the price that had to be paid for issuance of various certificates and documents was negligible.⁴¹ Free legal aid was prescribed in both Criminal Procedure Code from 1953 and Law on

³⁹ As it is emphasized in the Directive, legal aid should cover pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the cost of proceedings. Regarding the issue when the legal aid is considered to be appropriate see particularly art. 3 and 7 of the Directive.

⁴⁰ the Directive regulates the following issues: the obligation to grant legal aid to persons who are partially or totally unable to meet the costs of proceedings (Article 5); the possibility for the Member States' competent authorities to reject legal aid applications for actions which appear to be manifestly unfounded (Article 6); the categories of expenses that should be covered by legal aid (Article 7); the categories of expenses that should be covered by the Member State of domicile or habitual residence (Article 8); the principle of continuity of legal aid (Article 9); the principle of the application of legal aid to extrajudicial procedures (Article 10); the principle of the application of legal aid for the enforcement of authentic instruments (Article 11); the designation and empowerment of the Member States national authorities to grant or refuse legal aid (Article 12 in conjunction with Article 14); and the application procedure (Article 13 in conjunction with Article 15).

⁴¹ A. Uzelac, B. Preložnjak, The Development of Legal Aid Systems in the Western Balkans. A Study of Controversial Reforms in Croatia and Serbia, *Kritisk Juss* 2012, p. 265.

Litigation Procedure from 1957 (LLP 1957). With regards to civil procedure, the LLP 1957 established the possibility of court appointment of an attorney, upon request by an indigent party which was exempted from payment of procedural costs.⁴² Even after the dissolution of the SFRY, certain social elements remained in procedural laws, but they were gradually abandoned, like the parties' right to self-representation in legal procedures, free choice of legal representatives, and the public authorities' obligation to provide legal advice to legally illiterate citizens.⁴³ Overall, the dissolution process combined with many other challenging social situations were followed by increased formalization and bureaucratization, which led to an inevitable need of institutional and normative improvement of the legal aid institute in the independent republics.

Given that social and economic inequality are in the core of the concept of free legal aid and that the right to legal aid is considered to be a procedural guarantee for effective exercise of other rights, it is desirable for it to be recognized at the highest normative level in the national legal system. Still, our Constitution does not explicitly regulate the right to legal aid.

Republic of Macedonia adopted the first Law on Free Legal Aid⁴⁴ in 2009. Its main aim was to provide equal access to court to the citizens and other persons in accordance with LFLA, for the purpose of enabling free legal aid in conformity with the principle of equal access to justice.⁴⁵ However, the key point of the critical assessment of the LFLA 2009 was that it established a supplementary system of legal aid to the already existing systems established with the laws regulating court procedures especially the litigation procedure.⁴⁶ The quality of the law was called into question and burdened by the extremely restrictive criteria that needed to be fulfilled by the applicants, the non-compliance with the provisions of the special laws, as well as the vague and imprecise provisions.⁴⁷ Researches and data from the Ministry of Justice showed that many citizens found the procedure for approval of free legal aid very complicated and that a very low number of people

⁴² G. Kocevski, National Report, North Macedonia, Region Eastern Europe and Central Asia, Global Access to Justice Project, https://globalaccesstojustice.com/global-overview-north-macedonia/?tab=5.-legal-aid-system#_ftn4;

⁴³ A. Uzelac, B. Preložnjak, *op. cit.*, p. 265.

⁴⁴ Law on Free Legal Aid (Official Gazette 161/2009, 185/2011, 27/2014 и 104/2015), [LFLA 2009].

⁴⁵ Analiza na primenata na Zakonot za besplatna pravna pomos za periodot 2010 – 2012 godina, Makedonsko zdruzenie na mladi pravnici, Skopje, 2013, p. 18, [MZMP, Analiza 2010 - 2012]. See also: LFLA 2009, Art. 2.

⁴⁶ G. Kocevski, National Report.

⁴⁷ MZMP, Analiza 2010 – 2012, p. 18, 19.

succeeded to achieve state-funded legal aid.⁴⁸ In addition, the LFLA 2009 did not guarantee this right and in practice, there is no documented case where people received completely covered free legal aid in civil procedure.⁴⁹ Consequently, a new reform process was initiated in 2015 resulting with an adoption of a new Law on Free Legal Aid in 2019.⁵⁰ The new LFLA 2019 includes novelties that are expected to have positive impact on the promotion of the right of natural persons related to access to justice and fair court protection, which is actually defined as its primary objective.⁵¹

In respect to the current normative framework in North Macedonia, there are few legal sources which stipulate the concept of free legal aid. Depending on the legal issue, legal aid can be provided in criminal procedures, civil and administrative procedures and in juvenile justice. As already mentioned, our Constitution does not regulate the right to legal aid explicitly. However, it is stipulated that a person which is summoned, apprehended or detained has a right to an attorney in police and court procedure.⁵² In the field of criminal law, the Law on Criminal Procedure⁵³ regulates the compulsory defense with a defense counsel and ex-officio defense counsel and the defense of indigent parties.⁵⁴ The LFLA 2019 mainly covers the institute of free legal aid in the field of civil and administrative procedure, but the Law on Litigation Procedure⁵⁵ contains provisions which regulate this area as well. Namely, Articles 163-166 of LLP prescribe exemption from paying costs of the procedure for the party who, according to his/her general property situation, is not able to bear these costs without damage to his/her necessary maintenance and the necessary maintenance of his/her family.⁵⁶ The practice shows that, depending on different circumstances, there are cases where courts in North Macedonia

⁴⁸ Civil Society Report: North Macedonia under review at 2020 High Level Political Forum, Coalition sexual and health rights of marginalized communities MARGINS Skopje, Association for Emancipation, Solidarity and Equality of Women – ESE Skopje, 2020, p. 6, 7, [Civil Society Report]; MZMP, Analiza 2010 – 2012.

⁴⁹ Civil Society Report, p. 6.

⁵⁰ Law on Free Legal Aid (Official Gazette, 101/2019), [LFLA 2019]. The adoption of the LFLA 2019 required preparation of a considerable number of by-laws. The Ministry of Justice adopted 17 by-laws in that regard.

⁵¹ Access to Justice in North Macedonia, Macedonian Young Lawyers Association, Skopje, 2019, p. 49, [MYLA, Access to Justice in North Macedonia].

⁵² Constitution of the Republic of North Macedonia, Art. 12 (3).

⁵³ Law on Criminal Procedure, Official Gazette (150/2010, 100/2012; 142/2016; 193/2016; 198/2018), [LCP].

⁵⁴ LCP, Art. 74 and 75.

⁵⁵ Law on Litigation Procedure, Official Gazette (79/2005; 110/2008; 83/2009; 116/2010; 124/2015), [LLP].

⁵⁶ Equal Access, Analysis of the application of the Law on Free Legal Aid including analysis (cost-benefit analysis) of the costs of its implementation with a special focus on the gender aspect, Skopje, 2015, p. 8, [Equal Access, Analysis].

partially satisfy,⁵⁷ completely satisfy⁵⁸ or reject⁵⁹ the requests for free legal aid. At last, the Law on Justice for Children⁶⁰ guarantees the right to free legal aid in the procedures for protection of the rights and interests of the child before the Ministry of Internal Affairs and the Center for Social Affairs in cases and under conditions stipulated by the Law on Free Legal Aid.⁶¹

The free legal aid in the area of civil law will be discussed furtherly in the following parts.

3.1. Forms and scope of legal aid

In general, people with low incomes, socially excluded, marginalized categories of citizens and persons, as well as those who, for any reason, have found themselves in a difficult financial position and are therefore unable to pay a lawyer in order to protect their rights and freedoms guaranteed by the international and national law of the state can request legal aid.⁶² Therefore, it is important to emphasize that Macedonian regulations make distinction between two forms of legal aid that can be requested – primary and secondary legal aid.

Primary legal aid. The LFLA 2019 defines the primary legal aid as “a type of free legal aid provided by the Ministry of Justice (hereinafter: the Ministry), the authorized association and the legal clinic.”⁶³ It can be noted that the Law gives a very narrow definition of this type of legal aid. In general, this is the first form of legal information which enables familiarization with the subjects’ rights and obligations, counseling, referral and compilation of simple forms in administrative proceedings, complaints and requests for the protection of the citizens’ freedoms and rights.⁶⁴ The primary legal aid includes legal advice on using the right to secondary legal aid and legal aid in preparing the request for secondary legal aid.⁶⁵ In respect of the scope of primary legal aid, precisely, it encompasses initial legal advice on the right to use free legal aid, general legal information, general legal advice, assistance in completing the request for secondary legal aid, assistance

⁵⁷ Decision of the Court of Appeal Bitola, GZ – 2417/17 dated 10.01.2018.

⁵⁸ Decision of the Court of Appeal Bitola, GZ – 2070/16 dated 01.12.2016.

⁵⁹ Decision of the Basic Civil Court Skopje, PL1-P.br.155/15 dated 03.09.2015; Decision of the Basic Civil Court Bitola, P4-21/16 dated 03.03.2016; Decision of the Court of Appeal Skopje, GZ-6424/17 dated 04.05.2018.

⁶⁰ Law on Justice for Children, Official Gazette (148/2013; 152/2019; 275/2019).

⁶¹ Equal Access, Analysis.

⁶² Informative brochure on the right to free legal aid, Macedonian Young Lawyers Association, Pravno – Informaciski Centar, Skopje, p. 5, [Informative brochure].

⁶³ LFLA 2019, Art. 3.

⁶⁴ Informative brochure, p. 6.

⁶⁵ Informative brochure, p. 6.

in filling out forms, including forms issued by an administrative authority in an administrative procedure for social protection and protection of children's rights; pension, disability and health insurance; protection of victims of gender-based violence and family violence; registration procedure in the register of births; ~~acquiring personal identification and citizenship documents, drafting petitions to the Commission for Protection against Discrimination and to the Ombudsman, as well as requests for the protection of freedoms and rights to the Constitutional Court of the Republic of North Macedonia.~~⁶⁶

The initial legal advice on the right to use free legal aid implies informing and advising on the conditions, procedure and subjects where free legal aid can be used.⁶⁷ On the other hand, the general legal information implies general and principled instructions and information about the method, conditions and procedure for exercising a certain right or interest, fulfilling a specific obligation and referral to a competent public authority or a competent court.⁶⁸ Furthermore, general legal advice is advice on the method and possibilities for solving the legal issue, on the legal regulation, the possibility of out-of-court settlement, on the rules and costs of the procedure, on the enforcement of decisions of the procedure, familiarization with the rights and obligations of the applicants and beneficiaries of free legal advice, as well as with the method of providing legal assistance in judicial and administrative proceedings.⁶⁹

In the spirit of making justice and free legal aid more accessible, the Ministry promoted an official website through which citizens can be informed about the right of free legal aid.⁷⁰

Secondary legal aid. Under LFLA 2019, secondary legal aid is prescribed as a form of free legal aid provided by a lawyer registered in the Register of lawyers for secondary legal aid.⁷¹ It is granted to a person who needs expert legal assistance from a lawyer for a specific legal matter and who is unable to pay the costs of the procedure due to his financial situation and whose request is justified.⁷²

⁶⁶ LFLA 2019, Art. 6.

⁶⁷ Ministry of Justice, Primary Legal Aid, <<https://pravnapomos.mk/primarna-pravna-pomosh/>>.

⁶⁸ LFLA 2019, Art. 3. Informative brochure, p. 7: For example, if a person is interested in what benefits people with disabilities and their families can receive, he/she needs primary legal assistance in the form of information.

⁶⁹ LFLA 2019, Art. 3. Informative brochure, p. 7: For example, if the Center for Social Works rejected a person's request for compensation for assistance and care from another person, the person needs primary legal assistance in the form of legal advice for appealing the decision.

⁷⁰ The official website: <https://pravnapomos.mk/>.

⁷¹ LFLA 2019, Art. 3.

⁷² LFLA 2019, Art. 13.

Regarding the scope of the secondary legal aid, it is approved for representation at all levels in civil court proceedings, administrative proceedings and administrative disputes, in procedures for discussing the inheritance before a notary public, as well as for the preparation of a debtor's submissions before a competent enforcement agent, when enforcement is carried out by selling real estate if the conditions stipulated in the Law are met.⁷³ Thus, the secondary legal aid covers the costs of the procedure that occurred after the day of approval of the request for granting free legal aid.⁷⁴ The LFLA 2019 introduced a novelty which allowed expert witness, court and administrative fees to be covered by the Ministry's budget for the first time, which contributed to a rapid increase of interested citizens for free legal aid.⁷⁵

3.2. Beneficiaries and conditions for obtaining free legal aid

According to the Macedonian law, there is a differentiation between persons who are eligible for primary legal aid and persons who are eligible for secondary legal aid. Certain criteria have to be fulfilled in order for each type of legal aid to be given. With the new LFLA 2019, the conditions for access to justice have been improved in such a way that not only citizens who have the status of a social case, but all natural persons with low incomes, can receive free legal aid.⁷⁶

In respect of the primary legal aid, LFLA 2019 provides that all natural persons who have a domicile or residence in the territory of the Republic of North Macedonia have the right to primary legal aid.⁷⁷ Furthermore, it stipulates that the primary legal aid is provided to any interested person.⁷⁸ From these provisions, it can be concluded that any (natural) person who is interested and has a domicile or residence in North Macedonia, can request primary legal aid.

However, in order for secondary legal aid to be approved, the procedure is more complex since there are separate eligibility criteria which need to be met. Firstly, legal aid may be requested by both Macedonian and foreign citizens,⁷⁹ stateless people or people who seek asylum.⁸⁰ If the person fulfills one of these

⁷³ LFLA 2019, Art. 14.

⁷⁴ Ministry of Justice, Secondary Legal Aid, <https://pravnapomos.mk/sekundarna-pravna-pomosh/>, [Ministry of Justice, Secondary Legal Aid].

⁷⁵ Annual Report 2021, p. 5; Informative brochure, p. 6.

⁷⁶ Annual Report 2021, p. 5.

⁷⁷ LFLA 2019, Art. 5.

⁷⁸ LFLA 2019, Art. 7.

⁷⁹ See A. Uzelac, B. Preložnjak, *op. cit.*, p. 268. For example, in Croatia as well, legal aid may be requested by Croatian citizens and certain categories of foreigners. If a person is among those who fulfill the nationality condition, two tests then must be passed: a means test and a merit test.

⁸⁰ LFLA 2019, Art. 15.

conditions, then he/she has to pass the means test. Primarily, the LFLA 2019 takes the applicant's financial status into consideration, as the free legal aid can be provided if the applicant, due to his/her financial situation "cannot exercise the rights...without jeopardizing his own support and the support of the members of his/her family with whom he/her lives in a common household."⁸¹ Furthermore, similarly to the Croatian law, legal aid should be granted only after full financial screening of the applicant.⁸² Therefore, the applicant may be granted secondary aid if: he/she fulfills the requirements for income⁸³ and property;⁸⁴ he/she fulfills the conditions provided as an exception for the approval of legal aid;⁸⁵ in addition to the abovementioned conditions, the request for secondary legal aid is justified in accordance with Article 21 of LFLA 2019, which refers to the justification of the request.

Regarding the requirements for income, the law lays down specific figures while differentiating whether a person lives alone or in a joint household. Therefore, if a person lives alone, it is considered that his financial situation is threatened by the costs of the procedure if his/her monthly income does not exceed the amount of the minimum net salary in the Republic of North Macedonia, determined by the regulations in the area of the minimum salary.⁸⁶ On the other hand, if the applicant lives in a joint household with members of his family, his/her monthly income should not exceed the minimum net salary, and the monthly income of each subsequent family member does not exceed the amount of 20% of the minimum net salary determined by the regulations of the area the minimum wage.⁸⁷

The LFLA 2019 has crystallized the figures regarding the property requirements which are regarded by three main objectives: real estate, cadastral plots and registered motor vehicles. Therefore, secondary legal aid will be granted if based on the submitted statement it is determined that: the applicant for legal assistance and his family members own only one single-family building or apartment as a separate part of a building in which they live; in addition to the abovementioned property, the applicant and his family members own one or more physically

⁸¹ LFLA 2019, Art. 17(1); Art. 17(2): The financial situation of the applicant and his family members is determined on the basis of a written statement about the financial situation.

⁸² A. Uzelac, B. Preložnjak, *op. cit.*, p. 268.

⁸³ LFLA 2019, Art. 18.

⁸⁴ LFLA 2019, Art. 19.

⁸⁵ LFLA 2019, Art. 20.

⁸⁶ LFLA 2019, Art. 13; For example, if a person lives alone, in order to receive free legal aid his or her income should not exceed the amount of 18.000 denars.

⁸⁷ LFLA 2019, Art. 13; For example, if the applicant lives with one more member in a joint household, in order to receive legal aid, their total amount of monthly income should not exceed the amount of 21.600 denars. If the applicant lives with two more members, their joint monthly income should not exceed the amount of 25.200 denars.

connected cadastral plots with a total area of no more than 300 m² in the city of Skopje or 500 m² in the municipalities of the Republic of North Macedonia, i.e. one or several cadastral plots with a total area of no more than 5000 m in rural areas; the applicant for legal aid and members of his family have only one registered motor vehicle with an engine capacity of no more than 1,200 cubic centimeters.⁸⁸

In exceptional cases, free legal aid will be granted without determination of the financial situation if the applicant is placed in a foster family, a housing unit for organized living with support or in a social protection institution, with a decision of the Center for Social Work, the applicant needs initiation and representation in a procedure for the imposition of temporary measures for protection against domestic violence before a competent court, or the claimant, due to a natural disaster, *vis major* or other circumstances beyond his control, finds himself in a financial situation that prevents him from independently ensuring the protection of his rights.⁸⁹ Thus, the request has to meet the justification criteria stipulated in LFLA 2019.⁹⁰

3.3. Free legal aid providers

The state legal system is consisted of several free legal aid providers. Primary legal aid is provided by: an authorized official of the Ministry; an authorized association and a legal clinic.⁹¹

The Ministry, through its regional departments⁹² provides general legal information, general legal advice, advice on using the right to free legal aid to any interested person on any legal issue and provides legal assistance to complete the request for secondary legal aid.⁹³ The associations and legal clinics to every interested person for every legal issue of their interest also help with: compilation of simple forms in administrative proceedings, complaints to the Ombudsman and the Commission for Protection against Discrimination and compilation of requests for the protection of freedoms and rights before the Constitutional

⁸⁸ LFLA 2019, Art. 19.

⁸⁹ LFLA 2019, Art. 20.

⁹⁰ LFLA 2019, Art. 21.

⁹¹ LFLA 2019, Art. 4 (3).

⁹² The official page of the Ministry of Justice has posted the addresses, names, telephone numbers and e-mail addresses of the authorized persons of the Regional Departments: < https://www.pravda.gov.mk/Upload/Editor_Upload//PO_Adresi_odgovorni_mob01062021.pdf >, < https://www.pravda.gov.mk/Upload/Editor_Upload//E-mail%20%D0%B0%D0%B4%D1%80%D0%B5%D1%81%D0%B8%20%D0%BE%D0%B4%20%D0%BE%D0%B2%D0%BB%D0%B0%D1%81%D1%82%D0%B5%D0%BD%D0%B8%20%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B5%D0%BD%D0%B8%D1%86%D0%B8%20%D0%BE%D0%B4%20%D0%9F%D0%9E.pdf >.

⁹³ Informative brochure, p. 7; LFLA 2019, Art. 7(4).

court.⁹⁴ Currently, there are 15 registered associations.⁹⁵ The legal clinic acts in accordance with the education program adopted by the law faculty, with the aim of providing practical teaching to the students of the law faculty while cooperating with lawyers registered in the Register of Lawyers, as well as with the Bar Association of the Republic of North Macedonia. At the moment, there are six registered legal clinics.⁹⁶ Regarding non-governmental organizations and in line with the LFLA, they have the same role in the primary legal aid which consists of an initial legal consultation exclusively about the right to use legal aid – common legal information and legal aid in filling out a request for free legal aid.⁹⁷

On the other hand, secondary legal aid is provided by lawyers with acquired power to represent the beneficiaries in proceedings before a court, a state organ, the Pension and Disability Insurance Fund of North Macedonia, the Health Insurance Fund of North Macedonia and persons exercising public authorities.⁹⁸ They are stipulated in the Register of Lawyers for Providing Legal Aid.⁹⁹ The lawyers may act within the framework of LFLA 2019 only in cases when the applicant is approved to use secondary legal aid with a certificate issued by the regional department or by a decision from the Ministry of Justice (when it has decided positively after a submitted application).¹⁰⁰ He/she must not exceed the scope of the application.¹⁰¹ The appointed lawyer cannot refuse to provide secondary legal assistance, as well, except in the case when the requested legal assistance is outside the scope of this law or is not in accordance with the ethical rules or the restrictions provided by the acts of the Bar Association, for which he is obliged immediately and at the latest within three days to notify the Ministry.¹⁰²

3.4. Procedure for obtaining free legal aid

The procedure for obtaining free legal aid is different and depends on the type of legal aid which is requested.

⁹⁴ Informative brochure, p. 7.

⁹⁵ Ministry of Justice, Register of Registered Associations for Providing Legal Aid, <https://www.pravda.gov.mk/bpp>.

⁹⁶ Ministry of Justice, Register of Legal Clinics for Providing Legal Aid, <https://pravda.gov.mk/clinics>.

⁹⁷ Bojana Netkova, Report on Free Legal Aid in the Republic of North Macedonia, Rule of Law Initiative, 2019, p. 6.

⁹⁸ LFLA 2019, Art. 4 (4).

⁹⁹ Ministry of Justice, Register of Lawyers for Providing Legal Aid, <https://www.pravda.gov.mk/bp-advokati>.

¹⁰⁰ Informative brochure, p. 7.

¹⁰¹ In that regard: LFLA 2019, Art. 32(2).

¹⁰² LFLA 2019, Art. 32 (3).

In case of requesting primary legal aid, the initial meeting with the providers is aimed at explaining the nature of the problem to the person who is interested or helping him/her to find out whether the problem is a legal issue, whether it is within the scope of the legal services which the Ministry, the association and the legal clinic provide, as well as the types of legal assistance that are most suitable for the person.¹⁰³ At this point, the providers cannot act in the name and on behalf of the person.¹⁰⁴ The provider is obliged to help the person fill out the request for secondary legal aid, the statement about his/her financial situation and the financial situation of his family members and to obtain the other necessary documents *ex officio*.¹⁰⁵ The abovementioned request may be submitted to the regional department personally, by mail or through an authorized association.¹⁰⁶ The submission of the request is the initial act of the procedure for obtaining the secondary legal aid. The authorized official is obliged to examine and determine whether the requester meets the conditions for approval of secondary legal aid within 15 days from the day of receipt of the request.¹⁰⁷ After the admission and screening of the financial situation, the authorized official for each individually submitted request for secondary legal aid issues a certificate for an approval of the request or issues an act as public information notifying the requester (hereinafter: a notification) that the request is rejected.¹⁰⁸ If the conditions are fulfilled and the request is approved, the certificate for approval authorizes an appointed lawyer to provide secondary legal assistance, exempts the user from court fees and expenses related to the procedure before the court in accordance with the law, frees the user from the costs of the expertise and exempts the user from administrative fees.¹⁰⁹ If the request is rejected, the applicant may submit an objection within 15 days to the Ministry of Justice against the notice disallowing secondary legal aid.¹¹⁰ The Ministry evaluates the objection without delay, and within ten days at the latest, it makes a decision on the approval or rejection of secondary legal aid, which it

¹⁰³ LFLA 2019, Art. 7(2).

¹⁰⁴ LFLA 2019, Art. 7(3).

¹⁰⁵ LFLA 2019, Art. 8(3). Afterwards, the provider prepares a short-written opinion on the matter, which he will add to the files and complete the request for secondary legal assistance, no later than two days after the meeting. Similarly, the association or the legal clinic, within four days of receiving the request, submits it to the regional department of the Ministry located in the area where the person has a residence or stay. LFLA 2019, Art (4), (5).

¹⁰⁶ Ministry of Justice, Secondary Legal Aid.

¹⁰⁷ LFLA 2019, Art. 23(1); Ministry of Justice, Secondary Legal Aid.

¹⁰⁸ LFLA 2019, Art. 13(4).

¹⁰⁹ LFLA 2019, Art. 13(5).

¹¹⁰ Ministry of Justice, Secondary Legal Aid; LFLA 2019, Art. 23(18).

delivers to the applicant.¹¹¹ If the Ministry decides to refuse the secondary legal aid, the applicant can initiate an administrative dispute before a competent court.¹¹²

When there is an urgent need to provide legal assistance or in the specific legal matter the court or other competent authority set short deadlines for action, the request can be approved within two days of receipt if it is justified and if there is no basis for rejecting the request without checking the financial situation with the authorized organs.¹¹³

4. PRACTICAL IMPLEMENTATION OF THE LFLA 2019

With the new LFLA, the conditions for access to justice have been improved in such a way that not only citizens who have the status of a social case, but all natural persons with low incomes, can receive free legal aid.¹¹⁴ It also enabled the expertise, court and administrative fees to be covered by the Ministry's budget for the first time, which contributed to a rapid increase of citizens interested in free legal aid.¹¹⁵ In addition, a National Coordinative Body for the Application of the LFLA 2019 was established in February 2020 as a forum for sharing information, communication and coordination between stakeholders on topics of importance for the application of the LFLA and facilitating access to justice on national level.¹¹⁶

The Annual Report on the Application of the LFLA for 2019¹¹⁷ shows that in 2018, the regional departments received only 156 requests for free legal aid in sum.¹¹⁸ In respect of 2019, it has to be pointed out that the new LFLA 2019 entered into force on 1 October 2019. Nonetheless, that year, a total number of 299 persons received primary legal aid. Furthermore, a total of 175 requests for secondary legal aid were submitted, of which 90 were approved,¹¹⁹ 73 were

¹¹¹ Ministry of Justice, Secondary Legal Aid; LFLA 2019, Art. 24(1).

¹¹² LFLA 2019, Art. 24(3).

¹¹³ Ministry of Justice, Secondary Legal Aid; LFLA 2019, Art. 25; Informative brochure, p. 11.

¹¹⁴ Annual Report 2021, p. 5.

¹¹⁵ Annual Report 2021, p. 5.

¹¹⁶ Ministry of Justice, National Coordinative Body, <https://pravnapomos.mk/nacionalno-koordinativno-telo/>.

¹¹⁷ Annual Report of the Application of the Law on Free Legal Aid for 2019, Ministry of Justice, Skopje, March, 2019, https://www.pravda.gov.mk/Upload/Documents/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0_2019.pdf, [Annual Report 2019].

¹¹⁸ Annual Report 2019, p. 13.

¹¹⁹ From the approved requests, 44 were approved in accordance with the old LFLA 2009 (with certificate) and 46 were approved according to the new LFLA 2019 (with decision).

rejected and the approved legal aid was terminated in 12 cases.¹²⁰ Regarding free legal aid providers, in 2019, there were 40 newly recorded lawyers in the Register of Lawyers for Providing Legal Aid, which resulted in having a total number of 396 lawyers for the year.¹²¹ The total number of Associations which provided free legal aid amounted to 10 and there were 3 Legal clinics which provided free legal aid. In regard of the amount of funds which were paid out as a reward for providing free legal aid, the annual approved budget for 2019 amounted MKD5.000.000.00. However, the annual realized budget amounted MKD1.176.072.00.¹²²

The Annual Report on the Application of the LFLA for 2020¹²³ makes even more comprehensive analysis in comparison with Annual Report 2019 and gives additional information, for example, for the number of the regional departments with regional offices, the number of employees as well as the gender and ethnic structure of the people who obtained primary and secondary legal aid. Starting with the regional departments, in 2020, there were 21 regional departments with regional offices.¹²⁴ In respect of the rest of the free legal aid providers, 83 new lawyers have been registered in the Register of lawyers, after which the total number of lawyers registered for the provision of legal aid by the end of 2020 was 395 lawyers.¹²⁵ According to the Ministry's register, the number of authorized Associations for providing primary legal aid was 11 and the number of authorized legal clinics was 6.¹²⁶ Regarding primary legal aid, in 2020, a total of 2,727 people received primary legal aid.¹²⁷

¹²⁰ Annual Report 2019, p. 18.

¹²¹ Annual Report 2019, p. 18.

¹²² From those, based on the decisions on lawyers and law firms, they were paid 1.159.572.000 denars, and the Associations were paid funds in the amount of 16.500.000 denars. It can be concluded that a large amount of the Operating budget (a total amount of 3.823.928.00 denars) was not used in the planned year. Annual Report 2019, p. 19.

¹²³ Ministry of Justice, Annual Report of the Application of the Law on Free Legal Aid for 2020, Skopje, 2020, < <https://www.pravda.gov.mk/Upload/Documents/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%91%D0%9F%D0%9F%20%D0%B7%D0%B0%2020%20%D0%B3%D0%BE%D0%B4.pdf> >, [Annual Report 2020].

¹²⁴ Annual Report 2020, p. 6.

¹²⁵ Annual Report 2020, p. 9.

¹²⁶ Annual Report 2020, p. 9.

¹²⁷ From persons who received primary legal aid in 2020, 1,279 were men and 1,407 were women. In the Ministry's Regional Departments, a total of 663 people received primary legal aid, of which 357 were men, 306 were women. From the total number of persons (663) who received primary legal assistance in 2020 in the regional departments, 299 persons were of Macedonian ethnicity, 209 persons of Albanian ethnicity, 18 persons of Turkish ethnicity, 53 persons of Roma ethnicity and 2 persons of Serbian ethnicity. Furthermore, a total of 2,039 people received primary legal assistance through the authorized associations, of which 911 are men and 1,087 are women. Lastly, a total of 25 people received primary legal assistance from the legal clinics, of which 11 are men and 14 are women. There is no information about the ethnicity of the persons who received primary legal aid from the regional departments and legal clinics, Annual Report 2020, p. 10, 11, 12.

On the subject of secondary legal aid, in 2020, there were 207 submitted requests in total, 132 were approved, 49 were declined and in 14 cases the approved legal aid was terminated.¹²⁸ Compared to 2019, in 2020 the number of submitted requests for secondary legal assistance increased by 25.5%. The number of approved requests for secondary legal aid in 2020 increased by 31.8%. The number of rejected requests for secondary legal aid decreased in 2020 compared to 2019 by 32.8%.¹²⁹ Regarding the budget and financial information, the approved funds/budget for free legal aid for 2020 was MKD5.000.000.00 and the realized annual budget was MKD1.601.176.00.¹³⁰

The Annual Report for 2021 provides even more detailed information about the gender and ethnic structure of the persons who received free legal aid from different providers. The number of regional departments remains the same as 2020. In respect of the legal aid providers, 46 new lawyers have been registered in the Register of lawyers, after which the total number of lawyers registered for providing legal aid by the end of 2021 was 441 lawyers.¹³¹ The number of authorized Associations for providing primary legal assistance was 15 and the number of authorized legal clinics for providing primary legal aid was 6 since there weren't any newly registered clinics.¹³² The Annual Report for 2021¹³³ shows that a total of 3266 people received primary legal aid through regional departments, authorized associations and legal clinics, of which 1481 were men and 1580 were

¹²⁸ Annual Report 2020, p. 13.

¹²⁹ Annual Report 2020, p. 14.

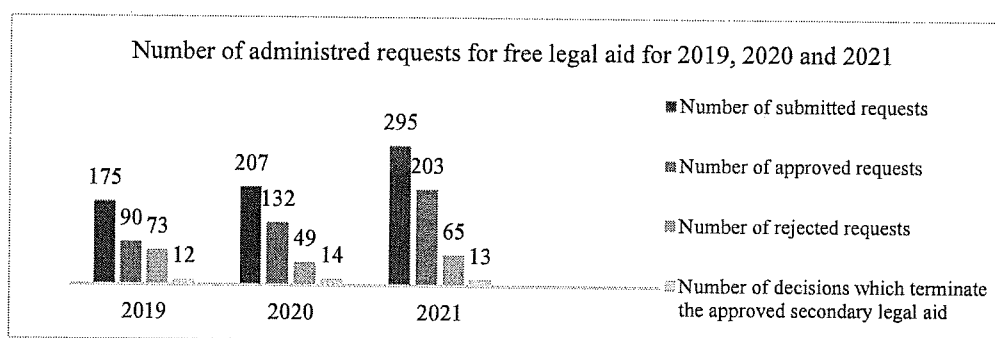
¹³⁰ From those, 1.557.676.00 denars were paid to lawyers and law firms, and funds in the amount of 43.500.00 denars were paid to associations in 2020. It can be seen that, similarly to 2019, great amounts of funds (3.398.824.00 denars) from the Operating budget for 2020 were not used even though they were planned for the cause of providing free legal aid. Annual Report 2020, p. 15.

¹³¹ Annual Report 2021, p. 9.

¹³² Annual Report 2021, p. 9.

¹³³ Ministry of Justice, Annual Report of the Application of the Law on Free Legal Aid for 2021, Skopje, 2021, <https://www.pravda.gov.mk/Upload/Documents/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%91%D0%9F%D0%9F%20%D0%B7%D0%B0%202021%20%D0%B3%D0%BE%D0%B4%20%D1%84%D0%B8%D0%BD%D0%B0%D0%BB%D0%BD%D0%BE.pdf>, [Annual Report 2021].

women.¹³⁴ Furthermore, there was a total of 295 requests which were submitted for obtaining secondary legal aid, 203 requests were approved, 65 requests were rejected and approved legal aid was terminated in 13 cases.¹³⁵ In relation to 2020, in 2021, the number of submitted requests for secondary legal aid increased by 42%, the number of approved requests for secondary legal aid in 2021 increased by 53% and the number of rejected requests for secondary legal aid decreased in 2021 compared to 2020 by 7.2%.¹³⁶ Regarding the budget, the approved funds/budget for free legal aid for 2021 was MKD5,000,000.00, but the realized annual budget for free legal aid in 2021 was MKD1.736.258.00.¹³⁷



5. CURRENT SITUATION AND CHALLENGES WITH THE IMPLEMENTATION OF THE LFLA 2019

Although it is apparent that the new LFLA 2019 furtherly promoted the citizens' right to access to justice and ensured that a wider group of people can obtain free legal aid, it is inevitable to conclude that there are certain dilemmas

¹³⁴ Annual Report 2021, p. 10.

A total of 1194 persons obtained free legal aid from the Regional Departments, of which 555 were men, 444 were women and of those, 545 persons were of Macedonian ethnicity, 172 persons of Albanian ethnicity, 66 persons of Turkish ethnicity, 112 persons of Roma ethnicity and 39 persons of other ethnicities. In 2021, a total of 8 associations submitted reports on provided primary legal assistance to the Department for Free Legal Assistance and total of 2062 people received primary legal aid, of which 923 were men and 1129 were women and of those, 700 persons were of Macedonian ethnicity, 80 persons of Albanian ethnicity, 71 persons of Turkish ethnicity, 273 persons of Roma ethnicity and 19 persons of other ethnicities. Lastly, in 2021, only 1 Legal Clinic submitted a report to the Ministry which showed that a total of 10 people received primary legal aid, of which 3 men, 7 women and of those, 5 were of Macedonian ethnicity and 5 were of Roma ethnicity. In 2021, a total of 1 (one) Legal Clinic submitted a report to the Department for Free Legal Aid - Ministry of Justice. A total of 10 people received primary legal assistance, of which 3 are men and 7 are women, Annual Report, p. 10, 11, 12.

¹³⁵ Annual Report 2021, p. 14.

¹³⁶ Annual Report 2021, p. 14.

¹³⁷ On the basis of given Decisions, funds in the amount of MKD 1.697.103.00 were paid to lawyers and law firms, and funds in the amount of MKD 39.155.00 were paid to Associations in 2021. It can be seen that in 2021 there is a huge difference (3.263.742.00 denars) that remained unused. Annual Report 2021, p. 16.

identified within the practical implementation of the Law. We will refer on certain issues in the following part.

- *What is the method, conditions and procedure for payment of the additional costs that may arise in the procedure?*

The LFLA 2019 does not stipulate types of costs which are related to court proceedings; instead, it refers to the LLP. Although, LFLA 2019 contains provisions for compensation of the award and costs of the lawyers appointed in a specific case¹³⁸ and the costs of expert testimony,¹³⁹ it fails to regulate the method, conditions and procedure for the other costs that may arise. In that regard, as a separate law, LLP in its Chapter IX provides that there are several types of additional costs that may arise for the users of secondary legal aid, such as: expenses for a temporary representative or special guardian, advancement of costs for super expert, costs in proceedings for securing evidence, inspection costs, translation and certification of documents attached as evidence, collection of documents as evidence (certificates, etc., for which it is necessary to pay a certain fee) and other expenses. The essence of these costs is that, unlike the exemption from court fees, they must be paid in advance. If not, the free legal aid beneficiary will suffer the consequences of the non-payment. If we take into consideration that the LFLA 2019 expressly provides that the costs for providing secondary legal aid in accordance with the procedures provided by it are covered from the funds of the Ministry's Budget,¹⁴⁰ then the issue that occurs is regarding the method, conditions and procedure for payment of the additional costs that may arise in the procedure since the LFLA 2019 does not operationalize such questions with particular provisions.

- *Are the costs that may occur after the approval of the request covered under the same request?*

According to the LLP, each party previously bears the costs caused by its own action.¹⁴¹ However, it has to be noted that the types and amount of costs that users of secondary legal aid may face in civil procedure can never be fully predicted in advance. That is due to the fact that the circumstances of the case, the type of procedure and the actions of the opposing party are just some of the several factors that may contribute to the outcome of the case. Therefore, another dilemma that occurs is whether the costs that may arise after the approval of the already submitted request for free legal aid are covered by the same request?

¹³⁸ LFLA 2019, Art. 33.

¹³⁹ LFLA 2019, Art. 13(6).

¹⁴⁰ LFLA 2019, Art. 13(7).

¹⁴¹ LLP, Art. 146(1).

