

REPORT ON FREE LEGAL AID IN R. of NORTH MACEDONIA

Inability of citizens to pay the lawyer's tariffs and court fees is generally a problem across the region. While free legal services are available to citizens, improvements of various degrees and forms are needed in the whole region regarding:

- *The quality of the free legal services* as: a) the advocates who provide legal services do not necessarily have the required knowledge and skills, especially when there are frequent changes of legislation in areas covered by the Law on Free Legal Aid (LFLA).
 - *Interest of advocates* to register as providers of free legal aid. In some cases there are little incentives for lawyers to register as providers of free legal aid as tariffs for free legal aid are perceived to be low and are determined by the authorities without significantly involving Bar Chambers. At this time this does not present a problem in RNM, because in the law that we are working on, we predict in the articles, that the payments will be according LT of RM which should be redone only in the part of free legal aid in three month period from announcing the law.
 - *Problems with appointing the lawyers for free legal aid* .It's done by the ministry wich have a list made by them, and it's put in a law also. The BAR doesn't have any saying in the list for now.
- What are the poverty levels in the country?
 - How much do the citizens use free legal aid?
 - Are there any assessments of whether they know about the availability of the free legal aid, and what is their perception of it and experience with using free legal aid?
 - Are the eligibility criteria for free legal aid reasonable and appropriate for the economically marginalized citizens (those below the poverty line)?

No state institution has currently made an analysis which gives an estimate of the poverty levels in the country. However, data regarding poverty levels in Macedonia is recorded annually by the Employment Service Agency of the Republic of Macedonia (ESARM).

The data collected by the ESARM in 2018 shows the following:

AUDIT

Of persons recorded in the

Employment Service Agency of the Republic of Macedonia

| Month | 2018 | |
|-----------|--------------------|------------------------------------|
| | Unemployed persons | Persons who are seeking employment |
| 1 | 2 | 3 |
| January | 103.285 | 89.617 |
| February | 102.834 | 89.653 |
| March | 102.538 | 89.070 |
| April | 101.762 | 88.897 |
| May | 98.916 | 89.189 |
| June | 96.482 | 89.652 |
| July | 95.421 | 90.007 |
| August | 93.522 | 90.217 |
| September | 92.191 | 90.402 |
| October | 91.485 | 90.551 |
| November | 91.723 | 90.002 |
| December | 94.721 | 89.962 |

The data collected by the ESARM in 2018 shows the following:

AUDIT

Of persons recorded in the

Employment Service Agency of the Republic of Macedonia

| Month | 2017 | |
|-------|------|------------------------------------|
| | | Persons who are seeking employment |

| | Unemployed persons | |
|-----------|--------------------|--------|
| 1 | 2 | 3 |
| January | 104.958 | 96.746 |
| February | 105.416 | 96.578 |
| March | 104.572 | 96.268 |
| April | 103.204 | 96.133 |
| May | 101.311 | 96.232 |
| June | 98.956 | 96.380 |
| July | 98.354 | 96.537 |
| August | 96.728 | 96.434 |
| September | 99.761 | 92.941 |
| October | 102.100 | 90.199 |
| November | 102.234 | 90.081 |
| December | 102.394 | 89.443 |

The criteria for receiving free legal aid, as per the Law on Free Legal Aid (LFLA), are as follows: the right to free legal aid is afforded to citizens of the Republic of Macedonia who have the status of a permanent legal resident, and who receive social benefits, are receiving disability living allowance, who do not earn any kind of income based on remuneration or real estate revenue, users of the lowest pension who live in a common household with two or more persons who are supported by him and families or a single parent with one or more minors who have the right to children's allowance.

In addition to these persons, in accordance with the legal framework, the right to free legal aid is afforded to persons seeking asylum, a person who has been granted asylum, internally displaced person, as well as a displaced or exiled person who has a residence in the Republic of Macedonia. As well as a foreign national who in accordance with international treaties, regardless of whether he or she has a residency in the Republic of Macedonia, exercises his right for which a competent authority is a state organ of the Republic of Macedonia, a stateless person who has the status of a legal resident and a citizen of an EU member-state under the conditions determined by law.

It is considered that the burden of the person seeking free legal aid and the burden of the members of his family living in a common household is jeopardized if the cumulative income of

that person and his household members does not exceed the amount of 50% of the average monthly salary paid in the Republic of Macedonia for the previous month, at the time of filing the request for free legal aid.

The income of the person claiming free legal aid can be assessed individually, if there are conflicting family interests in a dispute which claims legal aid.

For persons who are receiving social benefits or disability living allowance, and who do not earn any kind of income, or are receiving children's allowance, the Ministry of Justice obtains information from the Center for Social Work.

The assets of the person claiming free legal aid are assessed on the basis of evidence issued by the competent authority, which is determined on the basis of data provided for the person's income on all grounds, as well as the members of his household with whom he lives, and the statement for his material and social condition for a period of 6 months prior to the delivery of the request.

- How much are the advocates interested in registering as providers of services under the LFLA?
- What is the system for appointing advocates for free legal aid?
- What is the role of the Bar Chamber in that process?
- How do the Civil Society Organizations fit in?

The number of lawyers recorded in the Register of Lawyers, which is under the auspices of the Ministry of Justice of the Republic of Macedonia, is rising each year. The number of lawyer recorded in the Register of Lawyers is 335 for 2017.

Statistical data for 2010, 2011 and 2012 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – March 2012.

| Data | 07.07.2010 to 24.03.2011 | 25.03.2011 to 25.03.2012 | TOTAL |
|--------------------|-----------------------------|-----------------------------|-------|
| Registered lawyers | 202 | 11 | 213 |

Statistical data for 2012/2013 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – April 2013.

| Data | 01.04.2012 to 31.03.2013 | TOTAL (2010/2011/2012/2013) |
|--------------------|--------------------------|--------------------------------|
| Registered lawyers | 31 | 245 |

Statistical data for 2013 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – April 2014

| Data | 01.04.2013 to 31.12.2013 | TOTAL |
|------|--------------------------|-------|
|------|--------------------------|-------|

| | | |
|--------------------|---|-----------------------|
| | | (2010/2011/2012/2013) |
| Registered lawyers | 7 | 252 |

Statistical data for 2014 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – March 2015

| | | |
|--------------------|--------------------------|-------------------------------------|
| Data | 01.01.2014 to 31.12.2014 | TOTAL (2010/2011/2012/2013/2014) |
| Registered lawyers | 12 | 264 |

Statistical data for 2015 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – March 2016

| | | |
|--------------------|------|--|
| Data | 2015 | TOTAL (2010/2011/2012/2013/2014/2015) |
| Registered lawyers | 29 | 293 |

Statistical data for 2016 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – March 2017

| | | |
|--------------------|------|---|
| Data | 2016 | TOTAL (2010/2011/2012/2013/2014/2015/2016) |
| Registered lawyers | 23 | 315 |

Statistical data for 2017 according to the Annual Report on the Implementation of the Law on Free Legal Aid from the Ministry of Justice – March 2018

| | | |
|--------------------|------|--|
| Data | 2017 | TOTAL (2010/2011/2012/2013/2014/2015/2016/2017) |
| Registered lawyers | 20 | 335 |

Taking into consideration the fact that there are 2800 registered lawyers who are actively practicing the law in the Republic of Macedonia, the number of lawyers who give free legal aid and are recorded in the Register of Lawyers at the Ministry of Justice is insignificant. This means that only 8.5% of lawyers have shown interest in registering with the Ministry of Justice to give free legal aid. Thus we can conclude that there is insufficient interest amongst lawyers to engage in giving free legal aid. The reason for this is the lack of the Ministry's diligence in paying their legal fees. Namely, the general problem is the delay in payment.

According to the statistical data from the Annual Reports on the Payment of Lawyers from the Ministry of Justice, the following was concluded:

- From 25.03.2011 to 25.03.2012, remuneration for free legal aid and for cases which have been completed was paid to 6 lawyers. The total amount of paid fees, on the basis of compensation for free legal aid services was to 30.750,00 Denars.
- From 01.04.2012-31.03.2013, 13 lawyers were paid for their inclusion in giving free legal aid. The total amount titled “Award to the Lawyers for the Given Legal Aid” was 212.234,00 Denars.
- From 01.04.2013-31.12.2014, 29 lawyers who gave free legal aid were paid. The total amount titled “Award to the Lawyers for the Given Legal Aid” was 395.609,00 Denars.
- From 01.01.2014-31.12.2014, 37 lawyers who gave free legal aid were paid. The total amount of legal fees reimbursed was 748.101,00 Denars.
- In 2015, 26 lawyers who gave free legal aid were paid. The total amount titled “Award to the Lawyers for the Given Legal Aid” was 701.310,00 Denars.
- The Ministry of Justice does not have an estimate of how many lawyers were engaged in giving free legal aid and how many of them were paid for 2016.
- In 2017, 30 lawyers who gave free legal aid were paid. The total amount paid for their services was 1.359.897,00 Denars.

The appointing of lawyers is regulated with the Law on Free Legal Aid. Namely, according to Article 29 of the LFLA, the request for registering in the Register of Lawyers is filled out by the lawyer who later deposits the form to the Ministry of Justice, which upon receipt verifies the data in the request. The Ministry does this check through the Macedonian Bar Association. After this, the Minister brings a Decision with which the lawyer is registered in the Register of Lawyers, in 8 days from the deposit of the request.

What can be noted from the procedure of appointing a lawyer, i.e. registering of lawyers, is that the Macedonian Bar Association plays no role in the process, which constitutes a problem. And then there is the problem with appointing of lawyers. In the statistics which are provided, we can see that out of 335 lawyers registered in the Register, only around 30 lawyers are engaged annually. Even though statistical data about who those lawyers are is not available, it is common knowledge that the same lawyers are rotated.

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.

According to the statistical data from the Ministry of Justice from 2010 - 2017:

| Data | Recorded associations | TOTAL (2010/2011/2012/2013/2014/2015/2016/2017) |
|---------------------------|-----------------------|--|
| 07.07.2010- 24.03.2011 | / | / |

| | | |
|-----------------------|---|----|
| 25.03.2011-25.03.2012 | 4 | 4 |
| 01.04.2012-31.12.2013 | 3 | 7 |
| 01.04.2013-31.12.2013 | 2 | 9 |
| 01.01.2014-31.12.2014 | / | |
| 2015 | / | |
| 2016 | 1 | 10 |
| 2017 | / | 10 |

- What is the effectiveness of free legal aid (e.g. approved requests for free legal aid vs. submitted requests; successful cases of free legal aid vs. approved requests)?

According to the Ministry's Annual Reports on free legal aid, the following data on citizens using free legal aid can be collated:

- From 25.03.2011 to 25.03.2012, 154 requests for free legal aid were lodged to all 34 districts of the Ministry of Justice. Out of these 172 requests have been resolved (requests lodged before 25.03.2011). Requests that have been approved – 64, rejected requests – 91, and a verdict for stopping the procedure – 17.
- From 01.04.2012 to 31.03.2013, 180 requests for free legal aid were lodged. During this period, the Court ruled over 196. The number of approved requests was 68 and 126 were rejected. Requests for stopping the procedure lodged by the parties – 2.
- From 01.03.2013 to 31.12.2013, 162 requests for free legal aid were lodged. During this period, the Court ruled over 162. The number of approved requests was 75 and 81 were rejected. Requests for stopping the procedure lodged by the parties – 6.
- From 01.01.2014 to 31.12.2014, 270 requests for free legal aid were lodged. During this period, 114 requests were approved, and 140 were rejected. The procedure was stopped for 7 requests due to the requests for stopping the procedure filed by the parties. In 4 cases a verdict was brought by the Court due to the changing of the circumstances.
- In 2015, 199 requests for free legal aid were lodged. During the entire year, the court ruled over 192. The number of approved requests was 113 and 79 were rejected. Requests for stopping the procedure lodged by the parties – 7.
- From 01.01.2016 to 31.12.2016, 130 requests for free legal aid were lodged. During that period, the court ruled over 150. The number of approved requests was 65 and 85 were rejected. The Court stopped 10 requests with a verdict.
- From 01.01.2017 to 31.12.2017, 137 requests for free legal aid were lodged. During this period the Court ruled over 113. The number of approved requests was 74 and 39 were rejected. The court stopped 13 requests with a verdict.

- Are there any legislative, political or other issues that impede access to free legal aid by economically marginalized citizens?
- What issue areas and types of cases are covered by free legal aid, and are they appropriately covered for the economically marginalized citizens?
- Are the beneficiaries of the free legal aid appropriately determined? Who are they according to the legislation?

Free legal aid according to the current law does not apply to the cases for obligatory defense provided for in the Criminal Procedure Code and the Law on Juvenile Justice, nor in exemption from paying fees during the procedure provided for in the Law on Civil Procedure and the Law on General Administrative Procedure.

The request for free legal aid according to the current law will be approved in all court proceedings if it is in the interest of the requestor. This covers: rights in the domain of social, health, pension or disability insurance, employee relations, protection of children and minors, victims of domestic violence, protection of victims of crime, protection of victims of human trafficking, recognition of the right to asylum and property rights.

Free legal aid will not be given when it is obvious that the claims are unreasonable or when there are no legal facts upon which legal action can be taken.

- Who are the major training providers to advocates?
- What trainings are available to advocates for continuous professional development?
- What are the training gaps for effective implementation of the LFLA? Is there interest among advocates to attend trainings?

Training/workshops for lawyers regarding free legal aid is not available in the Republic of Macedonia. Therefore, the interest of lawyers is relatively unknown. However, taking into consideration the fact that a large number of lawyers have shown great interest in having trainings so they can perfect their craft, it is expected that having trainings regarding this issue will be of great interest.

Skopje, February 8, 2019

Lawyer Bojana Netkova