

Pursuant to article 45, para. 1 of the Law on the Government (Official Gazette of the Republic of Serbia, No. 55/05, 71/05-correction, 101/07 and 65/08), the Government adopts

STRATEGY FOR FREE LEGAL AID SYSTEM DEVELOPMENT IN THE REPUBLIC OF SERBIA

I. INTRODUCTION

A possibility for an efficient protection of violated or threatened rights in democratic societies is a fundamental prerequisite for the establishment of the legal order and the principle of the rule of law. Legal aid which is being provided must meet specific standards originating from the right to a fair trial, the fundamental human right guaranteed by international documents on human rights and the Constitution of the Republic of Serbia. A fair trial entails equality of individuals in their respective access to justice as well as that they may protect and exercise their rights effectively, under the same conditions and without discrimination, before a court of law and any other organ of public authorities. To this effect, each and every individual must have access to legal aid, which entails a duty of the state to ensure the provision of legal aid of satisfactory quality, free of charge or at a reduced cost, when a person in need of legal aid cannot afford it or when, for reasons of fairness, the provision of legal aid is required.

The 2006 Constitution of the Republic of Serbia, following the examples of arrangements in contemporary comparative law, guarantees the right to legal aid for every individual (article 67), whereby this right in our legal system has acquired for the first time the status of a constitutionally guaranteed human right. Under the Constitution of the Republic of Serbia, the right to legal assistance, including free legal aid, may be exercised under the conditions stipulated by law.

The constitutional guarantee of the right to legal aid imposes an obligation upon the state to ensure conditions for enjoyment and protection of this right. Consequently, the state has a duty to regulate legally the provision of legal aid, which also entails an obligation of the state to ensure the provision of free legal aid.

In the Republic of Serbia, there are serious weaknesses and limitations with regard to enjoyment of the right to access to justice, which, amongst other things, is the consequence of an inadequate legal framework and meagre financial resources designated for the provision of free legal aid. To overcome these weaknesses it is necessary to establish a comprehensive, functional and efficient system of free legal aid which would remove obstacles out of the way and ensure equality in access to justice.

Bearing in mind strategic directions of development of the Republic of Serbia and efforts made by the state to establish fully the rule of law, in accordance with the highest international standards, which is a prerequisite for accession to the European Union, the Strategy for Free Legal Aid System Development (hereinafter: the Strategy) has been drafted as a first step towards the establishment of an effective, efficient and financially viable free legal aid system.

The Strategy lays out guidelines and crucial principles for the future legal and institutional framework of the free legal aid system, strategic directions for its

development, general and specific objectives, and measures for their achievement. By way of implementing the measures stipulated by the Strategy, a legal aid system shall be established which meets the needs of citizens and contributes to the establishment of the rule of law and legal order, as well as restores the trust of citizens in the judicial system of the Republic of Serbia and further advancement of the state in the process of integration into the European Union. Hence, the Strategy's starting point are reformist objectives set out in strategic documents that have been adopted by the Government.

The National Strategy of Serbia for Accession of the Union of Serbia and Montenegro to the European Union, which was adopted by the Government in June 2005,¹ stipulates, as one of its objectives, the creation of conditions for enjoyment of the right to a fair trial. The National Programme for Integration of the Republic Serbia into the European Union, which was adopted by the Government in October 2008,² marks out the advancement of access to justice as a short-term priority in item 1.2.2. "Civic and Political Rights", which is a part of the chapter entitled "Political Criteria", dedicated to the stability of institutions that guarantee democracy, rule of law, human rights and respect for and protection of minorities.

This strategy has been harmonized with the strategic objectives and directions laid out in the National Judicial Reform Strategy, which was endorsed by the National Assembly of the Republic of Serbia by way of its Decision on Endorsement of the National Judicial Reform Strategy (Official Gazette of the Republic of Serbia, No. 44/06), and the Action Plan for implementation of the Strategy which was passed by the Government of the Republic of Serbia in July 2006.

The National Judicial Reform Strategy designates access to justice as a priority in the establishment of an efficient judicial system and stipulates short-term, medium-term and long-term reforms in the legal aid system.

Short-term reforms	Medium-term reforms	Long-term reforms
Legal aid system is reviewed and a new law creating an integral legal aid system is proposed	Institutional support for legal aid is provided and the system is put in operation, criteria for granting legal aid are defined	Legal aid for civil/criminal cases provided using clear financial means test

The National Judicial Reform Strategy lays out an expectation that the establishment of the free legal aid system would provide for better citizens' awareness of their rights and obligations, improve their knowledge about the grounds for their complaints and the prospects for success in such proceedings, thus precluding the filing of ungrounded complaints, raising the quality of preparatory submissions and ensuring expert representation of clients before a court of law as well as that these effects would increase the degree of courts' efficiency.

The Strategy was drafted as part of the project "Creating an Effective and Sustainable System for Provision of Free Legal Aid in the Republic of Serbia", implemented by the Ministry of Justice in partnership with the United Nations Development Programme (UNDP), on the basis of an agreement reached in March 2007, and with the financial support of the Swedish International Development Cooperation Agency (SIDA). Strategic directions and future free legal aid system's framework in the Republic of Serbia are based on the two-year-long work of the Legal Aid Fund, set up as part of the project, which, through public competitions, has been

¹ <http://www.seio.gov.rs>

² <http://www.seio.gov.rs>

allocating funds for the provision of legal aid to poor and marginalized groups in the Republic of Serbia. This Fund's operation has made it possible to test various models for provision of legal aid, to highlight their advantages and shortcomings, to review criteria for granting legal aid as well as to pinpoint an efficient management and financing method for the free legal aid system, and thus come by valid data on the basis of which optimal solutions would be formulated, i.e. realistic and feasible proposals and recommendations.

The Strategy has been drafted in a participatory manner involving many stakeholders, and it is based on the conclusions adopted at several expert events organised during the project's implementation: "Creating an Effective and Sustainable System for Provision of Free Legal Aid" conference, held in June 2007 in Belgrade,³ "Free Legal Aid System Management" workshop, held in October 2008 in Belgrade⁴, as well as discussions with representatives of associations held over the course of June and July 2008 in Belgrade.

II. RATIONALE FOR STRATEGY DRAFTING

1. Obligations of the Republic of Serbia

According to the decision defined by the Constitution of the Republic of Serbia, and in view of the ratified international acts, the Republic of Serbia is obliged to regulate by laws the providing of legal assistance and develop a system of free legal aid, based on the international and regional documents on human rights.

Obligation of the Republic of Serbia to create conditions for enjoyment and protection of rights to legal aid comes from universal international documents on human rights, which guarantee the right to access to justice and fair trial. Article 10 of Universal Declaration of Human Rights defines that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.". The right to effective access to justice and fair trial is also guaranteed by the International Pact on Civil and Political Rights (*Official Gazette of Socialist Federal Republic of Yugoslavia*, No. 7/71) which stipulates that everyone shall be equal before the courts tribunals, and everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge against him, or of his rights and obligations in a suit at law (Article 14, paragraph 1). The guarantee of effective access to justice which explicitly includes the right to legal aid is also included in the Act on Ratification of the Convention on the Rights of the Child (*Official Gazette of Socialist Federal Republic of Yugoslavia – "International Contracts"*, No. 15/90 and *Official Gazette of Socialist Federal Republic of Yugoslavia – "International Contracts"* No. 4/96 and 2/97) which, among other things, stipulates that: "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her

³ Report on "Creating an Effective and Sustainable System for Provision of Free Legal Aid" conference, <http://www.fondpp.rs>.

⁴ Report on "Free Legal Aid System Management" workshop, <http://www.fondpp.rs>.

liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” (Article 37, item d).

The obligation of developing the system of legal aid comes also from the Act on Ratification of European Convention for the Protection of Human Rights and Fundamental Freedoms (*Official Gazette of Socialist Federal Republic of Yugoslavia – “International Contracts”, No. 9/03, 5/05 and 7/05 - correction*) and by ratifying it, the Republic of Serbia accepted the jurisdiction of European Court of Human Rights.

Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms guarantees the right to fair trial as a special human right based on ideas of natural justice, whose realisation is of essential importance for the development of democracy and principle of rule of law. Convention standard of fair trial includes a whole series of special rights, such as the right to effective access to court, the right to hearing, equality in using special processing authority, the right to unbiased and independent court established by the law, the right to equality in the process and others. One of the instruments for exercising the right to access to justice and meetings of the standard of fair trial is the right to legal aid. European Convention for the Protection of Human Rights and Fundamental Freedoms explicitly recognises the right to legal aid only to individuals accused of a criminal act by stipulating in Article 6, Paragraph 3, Item (c) that everyone charged of criminal offence has the minimum right to defend himself in person or through legal aid of his own choosing or, if he has not sufficient means to pay for legal aid, to be given it free when the interests of justice so require. However, since the standard of effective access to justice and fair trial apply to the field of civil law protection as well, the right to legal aid is also guaranteed in cases of civil rights and duties.

According to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the obligation of offering free legal aid exists when the “interests of justice” dictate it. Criteria used as a basis for assessing the “interests of justice” were developed in the long standing practice of European Court of Human Rights and expressed in its numerous decisions. Among these criteria the key role belongs to: the legal and factual complexity of the case, the severity of potential punishment, the nature of substantial right which is being protected in the case, as well as its significance for an individual, postulated incapability of the individual according to provisions of domestic law, the actual ability of the able individual to defend himself, or to undertake processing activities by himself, with all the circumstances regarding the individual being taken into consideration, such as age, degree of literacy, membership of a socially endangered or marginalised social group etc.⁵

The obligation of the Republic of Serbia to regulate by law and make operational the providing of legal aid, including the free legal aid, comes from its membership in the Council of Europe, whose recommendations it is obliged to follow.

The Council of Europe has instructed member countries with numerous resolutions and recommendations to make easier and secure effective access to justice by simplifying and increasing transparency of court cases, by informing the public on mechanisms of

⁵ See: Airey v. Ireland, Artico v. Italy, Steel and Morris v. UK, Pakelli v. FRG, Goddi v. Italy, Czakalla v. Portugal, Croissant v. Germany, Quaranta v. Switzerland, Boner v. U.K., Granger v. U.K., at al. <http://www.echr.coe.int/echr>.

legal protection, etc. Beside this, the documents of the Council of Europe express expectation that member countries would regulate the providing of legal aid in the way which secures that no one is prevented by economical and other obstacles from efforts to exercise and protect their rights before any court or other body of public authorities. The most significant documents of the Council of Europe in the field of legal aid are: Resolution (76) 5 on legal aid in civil, commercial and administrative matters⁶, Resolution (78) 8 on legal aid and advice⁷, Recommendation No. R (81) 7 of the Committee of Ministers to member States on measures facilitating access to justice⁸, Recommendation No. R (93) 1 of the Committee of ministers to member states on effective access to the law and to justice for the very poor [1]⁹.

Republic of Serbia is committed to becoming a full fledged member of the European Union and that is why it is necessary to regulate the providing of legal assistance in accordance with the legal legacy and standards of European Union in this field.

In the European Union, the right to legal aid represents one of the fundamental rights, whose exercise secures effective access to justice. The Charter of fundamental rights of the European Union from year 2000¹⁰, establishes that: “Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.” (Article 47, Paragraphs 2 and 3).

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹¹ encourages member countries to include civilian sector into offering legal aid when the state, due to insufficient financial and human resources, is incapable of satisfying requirements for free legal aid.

Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules related to legal aid for such disputes since 2002¹² promoted the implementation of legal aid in cross-border disputes for individuals who lack sufficient financial resources in order to make the access to justice easier and more effective.

Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings from 2001¹³ encourages member countries to synchronise all legislations so

⁶ Resolution (76) 5 on legal aid in civil, commercial and administrative matters, from February 18, 1976.

⁷ Resolution (78) 8 on legal aid and advice, from March 2, 1978.

⁸ Recommendation No. R (81) 7 of the Committee of Ministers to member States on measures facilitating access to justice (adopted on May 14, 1981).

⁹ Recommendation No. R (93) 1 of the Committee of ministers to member states on effective access to the law and to justice for the very poor [1] (adopted on January 8, 1993). (<http://www.legislationline.org>).

¹⁰ Charter of fundamental rights of the European Union, (2000/C; 364/01; Nice, 7/12/2000).

¹¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal* L 180, 19/07/2000 P. 0022 - 0026.

¹² 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. *Official Journal* L 26/41, 31/01/2003.

¹³ 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, *Official Journal*, L 82/1, 22/3/20 for implementation of Strategy for Improvement of Position of Roma.

that they can offer adequate protections to victims of criminal offences and provide them entitlement to compensation for damages, which include the right to compensation of costs of the procedure.

The obligation of the Republic of Serbia to regulate providing legal aid comes from the Constitution of Republic of Serbia, which guarantees the right to a fair trial (Article 32), as well as the right to legal aid, as a special human right (Article 67) whose enjoyment and protection the state can provide.

The right to legal aid is one of the constitutional rights which the state guarantees in order to create equal opportunities for effective use of rights guaranteed by the Constitution of the Republic of Serbia and international contracts. General constitutional guarantee of the right to legal aid includes the state's duty to create appropriate normative framework of legal aid and secure conditions for the enjoyment and protection of this right, in accordance with Article 1 of the Constitution according to which Republic of Serbia is defined as the state based on the rule of law, social justice and principles of civil democracy. In that sense, the Constitution of the Republic of Serbia defines prohibition of every form of discrimination (Article 21, Paragraph 3 of the Constitution), as well as a guarantee that the attained level of human and minority rights may not be lowered (Article 20, Paragraph 2 of the Constitution).

Apart from general guarantees of the right to legal aid, Constitution of the Republic of Serbia also stipulates free legal aid, whose providing is regulated by the law (Article 67, Paragraph 3 of the Constitution). When establishing normative legal and institutional framework for free legal aid, it is necessary to create conditions for providing free legal aid by making everyone before the Constitution and law equal (Article 21, Paragraph 1 of the Constitution) and provide equal protection without discrimination (Article 21, Paragraph 2 of the Constitution).

2. Description of current situation

Although the Constitution of the Republic of Serbia guarantees the right to legal aid, the provision of legal aid, including free legal aid, has not been properly regulated, and an integrally regulated system of legal aid does not exist. This situation is not sustainable, especially taking into account the increasing demand for legal aid.

Several different laws contain provisions related to legal aid, which regulate only certain forms of legal aid. The Law on Local Self-Government ("Official Gazette of the RS" no. 129/07) in its article 20 point 31 stipulates that municipalities organize legal aid services to be used by citizens. The Law on Legal Profession ("Official Gazette of the RS" no. 24/98, 26/98-correction, 69/00-SUS, 11/02 and 72/02-SUS) in its article 25 stipulates that the bar association may organize provision of free legal aid to citizens in the territory of basic court. In the field of criminal law, provision of legal aid, including free legal aid, has been partially regulated by the Criminal Proceedings Code ("Official Gazette of the FRY" no. 70/01, 68/02 and "Official Gazette of the RS" no. 58/04, 85/05, 85/05-dr.zakon, 115/05, 49/07, 20/09 and 72/09) and the Law on Juvenile Perpetrators of Criminal Acts and Protection of Juveniles Under Criminal Law ("Official Gazette of the RS" no. 85/05). Free

representation of clients in civil proceedings has been regulated by the Law on Civil Action Proceedings ("Official Gazette of the RS" no. 125/04 and 119/09) and the Family Law ("Official Gazette of RS" no. 18/05). Provision of legal aid has also been mentioned in the Law on Asylum ("Official Gazette of RS" no. 109/07) which stipulates that persons seeking asylum have the right to free legal aid (article 10 paragraph 2), while persons who have been granted the right to sanctuary have rights equal to citizens of the Republic of Serbia with regards to free access to courts and legal aid (article 42). At the same time, according to article 38 paragraph 1 point 5 of the same law, foreign citizens who have been granted temporary protection have the right to legal aid under same conditions as those prescribed for persons seeking asylum.

In the Republic of Serbia, the need for provision of free legal aid is extremely strong. This conclusion is reached after considering the facts about the number, structure and social-economic position of population and the trend of increasing need for legal protection.

According to the 2002 census, excluding the data related to the Autonomous Province of Kosovo and Metohija, the Republic of Serbia had a population of 7,498,000, while according to latest estimates of the Republic Statistics Administration the Republic of Serbia had 7,334,935 citizens on January 1, 2009, again without data related to the Autonomous Province of Kosovo and Metohija.¹⁴

The Ministry of Internal Affairs estimates that 18.000 of our citizens have been sent back from Western European countries to the Republic of Serbia as a part of the readmission process performed in accordance with the Law on Adoption of the Agreement between the Republic of Serbia and the European Community on Readmission of Individuals Residing Illegally ("Official Gazette of the RS – International Agreements" no. 103/07); return of at least another 47.000 our citizens is expected in future, while the exact number of individuals who have been or will be sent back is not known. According to the Readmission Office, at least 65-70% of the total number of persons who have been readmitted in accordance with the Agreement are members of the Roma national minority.

In 2002, 10.6% of population of the Republic of Serbia lived below the poverty line i.e. approximately one tenth of citizens were poor. At the same time, the concentration of the population around the line of poverty is extremely pronounced and around 20% of the population has insufficient means for living.¹⁵ Although in the period 2002-2007 the number of impoverished has been reduced – with 6.6% below the poverty line and 14.4% having insufficient means of existence – the number of deprived is still very large. Poverty of working population is largely caused by unemployment. Since unemployment is the result of reduced production and structural imbalances in economy, and taking into account the uncompleted process of transformation of ownership, it is to be expected that the pace of laying off of workers will increase in the coming years.¹⁶

Vulnerable and marginalized social groups are in an especially difficult position (refugees and internally displaced persons, recipients of social welfare, children, youth, disabled persons, the Roma minority, single parents, old persons etc.).¹⁷ 97,354 refugees from Bosnia and Herzegovina and the Republic of Croatia, as well as 208,079 internally displaced persons (whose number has in the meantime increased to

¹⁴ <http://webrzs.stat.gov.rs>

¹⁵ <http://www.prsp.gov.rs>

¹⁶ National Employment Strategy 2005-2010 (Nacionalna strategija zapošljavanja za period 2005-2010. godine), April 2005.

¹⁷ Second Report on Implementation of the Strategy for Reduction of Poverty in Serbia (Drugi izveštaj o implementaciji Strategije za smanjenje siromaštva u Srbiji), August 2007. <http://www.prsp.gov.rs>

209,579), lived in the territory of the Republic of Serbia by the end of 2008, according to data collected by the Refugee Office.¹⁸

According to the 2002 census, 108,193 citizens of the Republic of Serbia identified themselves as members of the Roma national minority, but research indicates that the number of Roma nationals is significantly larger, between 250,000 and 500,000.¹⁹ Most of the members of Roma national minority live under very unfavourable social circumstances and their social-economic position is very difficult: 25.6% of the Roma has not attended school, only 27.2% of them are economically active and they are 10 times more deprived than the general population.

In 2001, around 760,000 disabled individuals lived in the territory of the Republic of Serbia, while 70% of them lived in households that were below the poverty line; no less than 26% of them lived in extremely difficult conditions.²⁰

Children are a very vulnerable social group. The number of children whose rights have been violated by abuse and neglect has significantly increased, while the rate of juvenile delinquency is extremely high. According to the Centre for Social Work, 265 abused and neglected children have been registered in 2001, while a year later the number has increased to 973.²¹ In 2005, no less than 258 proceedings were initiated against juvenile perpetrators of criminal acts before the municipal court in Belgrade²² while in 2007 this number has increased to as many as 905.²³

The demand for legal aid services is constantly on the rise because the need for legal protection is increasing day in, day out, which is further corroborated by the sheer number of judicial and other proceedings. Thus, e.g. in 2002, 1,096,323 legal proceedings were initiated,²⁴ in 2004 – 1,196,620,²⁵ and in 2006 – the total number of legal proceedings launched rose to 1,610,659.²⁶

Access to legal aid in the Republic of Serbia is not at a satisfactory level. Official judicial statistics lacks aggregated data pertaining to the number of the accused who were appointed *ex officio* defence counsels. A survey conducted in 2005 by Public Interest Law Initiative (PILI)²⁷, in collaboration with the Belgrade-based organisation Lawyers' Committee for Human Rights, showed, however, that 14% of persons convicted of criminal offences punishable by prison terms of up to ten years in the Republic of Serbia had not had defence counsels at all. As many as 54% of the defendants had not had defence counsels by their side while giving statement before

¹⁸ Condition and Needs of the Refugee Population in the Republic of Serbia (Stanje i potrebe izbegličke populacije u Republici Srbiji) <http://www.kirs.gov.rs/docs/StanjeIPotrebeIzbeglickePopulacije.pdf>

¹⁹ Strategy For Improvement of Position of Roma in the Republic of Serbia (Strategija za unapređivanje položaja Roma u Republici Srbiji) ("Official Gazette of the RS" no. 27/09)

²⁰ Strategy For Improvement of Position of Disabled Persons in the Republic of Serbia (Strategija unapređenja položaja osoba sa invaliditetom u Republici Srbiji) ("Official Gazette of the RS" no. 1/07)

²¹ National Action Plan For Children In the Republic of Serbia (Nacionalni plan akcije za decu Republike Srbije), adopted at the session of the Government on February 12, 2004

²² Annual report of the Municipal Court in Belgrade for 2005, <http://okruznisudbg.rs/content/2006/godisnjiizvestaj>.

²³ Annual report of the Municipal Court in Belgrade for 2007, <http://okruznisudbg.rs/content/2008/godisnjiizvestaj2007godine>

²⁴ Report on the work of the Supreme Court of Serbia along with an overview of the work of courts of general jurisdiction for 2002.

²⁵ Report on the work of the Supreme Court of Serbia along with an overview of the work of courts of general jurisdiction for 2004; <http://www.mpravde.gov.rs>.

²⁶ Report on the work of the Supreme Court of Serbia along with an overview of the work of courts of general jurisdiction for 2006; <http://www.mpravde.gov.rs>.

²⁷ Report on the provision of legal aid, PILI, 2005.

investigative judges; 46% of the suspects had not had defence counsels by their side during investigations; and only 11% of the accused obtained free legal aid on account of poverty.

There is no reliable data as regards the number of persons who have exercised their right to a free legal representative in civil lawsuits under the conditions prescribed in the Civil Procedure Act, neither is there data on the number of juveniles in civil lawsuits who have been appointed a legal representative under the conditions prescribed by the Family Act. One may well assume, however, that the number of persons who have exercised their right to professional legal representation in legal proceedings is very small given meagre financial resources available to courts.

On the territory of the Republic of Serbia, 6,900 lawyers have been entered in the List of Lawyers. According to the data from a survey into the work of municipal legal aid organs in Serbia,²⁸ from 2001 until 2006 legal aid agencies were set up in ¼ of the total number of municipalities on the territory of the Republic of Serbia. Between 1 and 3 persons are engaged in these agencies to deal with legal matters, while another 1 or 2 persons deal with administrative and technical affairs. Pilot projects have been implemented in eight municipalities in accordance with “the Spanish institutional model” whereby free legal aid services have been provided to the citizens on territories of these municipalities thanks to agreements reached with local bar associations. On the territory of the Autonomous Province of Vojvodina, this successful model is fully operational on the basis of an agreement concluded between the Executive Council of Vojvodina and the Autonomous Province of Vojvodina covering the territory of the entire northern province.

The number of associations providing free legal aid to citizens in specific legal areas is not that large.²⁹ Most of such associations are offering free legal aid solely to very specific categories of citizens (refugees, internally displaced persons, victims of domestic violence, etc.) so that other citizens do not have access to this type of organised free legal aid.

Capacities of labour unions’ counselling offices, legal clinics at university law schools,³⁰ political parties, professional associations and other providers of legal aid are exceptionally modest.

Existing mechanisms for provision of free legal aid suffer from many shortcomings out of which the following are crucial: free legal aid is not accessible to a large number of citizens; there is no possibility to collect credible statistical data at the level of the entire state, which are necessary for successful planning and management of the free legal aid system; there is no possibility to gather complete and accurate data which would provide an insight into the degree of efficiency of the existing mechanisms, cost analysis and drafting of valid financial plans; no legal aid services’ quality control has been put in place, and the providers of free legal aid are not sufficiently motivated to provide quality legal aid services. Access to justice is a key factor for humanization and democratization of a society and a prerequisite for the

²⁸ Kosanović, S., A survey into the work of municipal legal aid services in Serbia (Istraživanje o radu opštinskih službi pravne pomoći u Srbiji), Gajin, S., Vodinelić, V., Kosanović, S., Čavoški, A., Knežević Bojović, A., Reljanović, M., Legal Aid (Pravna pomoć), CUPS, Belgrade, 2007, p. 227-289.

²⁹ Report on the inclusion of NGOs in judicial reform process in the field of provision of legal aid, 2005. Over the course of 2005, out of 516 of surveyed NGOs, only 10 were dealing with legal representation (NGO Sector in Serbia, Civic Initiatives (Građanske inicijative), Belgrade, 2005, p. 9).

³⁰ Petrušić N., Report – A Survey into capacities and possibilities of legal clinics for inclusion in the institutional free legal aid system (Izveštaj-istraživanje kapaciteta i mogućnosti pravnih klinika za uključivanje u institucionalni sistem besplatne pravne pomoći), Fund for an Open Society (Fond za otvoreno društvo), Belgrade, 2007.

establishment of the rule-of-law principle. Access to justice is, at the same time, a poverty reduction instrument with a powerful impact on the citizens' satisfaction and their identification with legal, political and social system. Long-standing unfavourable situation in judiciary as a whole has caused a serious legal crisis, loss of citizens' trust as regards the access to the values like freedom, equality and justice as well as a deterioration of the citizens' legal awareness. Citizens today are not particularly familiar with legal tenets and procedures, they are not well aware of their own rights, or the ways in which they may exercise and protect their rights.

Negative consequences of the existing situation in the field of provision of legal aid entail a necessity to build as soon as possible a modern normative and legal framework for legal aid and to establish an efficient free legal aid system.

III. AREAS ENCOMPASSED BY THE STRATEGY

This strategy provides guidelines and basic principles of the normative-legal and institutional framework for free legal aid, whose implementation will ensure a systemic change in the field of legal aid provision. In this respect, it offers answers to basic questions that are relevant to the establishment of a free legal aid system as a new public service for citizens: 1) who and under which conditions is entitled to free legal aid; 2) who and under which conditions provides free legal aid; 3) how is the right to free legal aid to be exercised; 4) how should the free legal aid system be managed; 5) how to control and ensure quality of free legal aid that is being provided.

In the areas encompassed by the Strategy, general and specific objectives have been defined, concerning beneficiaries and free legal aid providers, the procedure for exercising the right to free legal aid, method of management, control and ensuring a quality free legal aid as well as the way in which it is funded. As part of each of the specific objectives, the measures that should be taken to accomplish them have been defined.

IV. PRINCIPLES OF FREE LEGAL AID SYSTEM

The designated free legal aid system should integrate organisational structure, responsibilities, processes and procedures, and all available resources in a manner which ensures accessibility and satisfactory level of quality of free legal aid services.

Successful functioning of the free legal aid system in the Republic of Serbia entails a balance of interests of all the stakeholders: beneficiaries and providers of free legal aid services, the citizens who, in their capacity as taxpayers, are funding the free legal aid system, the Government, courts and other organs of public administration at all levels.

The free legal aid system should be based on the following principles:

- Accessibility of free legal aid services;
- Focus on the needs of free legal aid services' beneficiaries;
- Equality in utilisation of free legal aid and prohibition of discrimination of free legal aid services' beneficiaries;
- Providing incentives for general dissemination of legal information and for counselling on the part of the organ providing free legal aid;
- Providing incentives for peaceful dispute resolution;

- Efficiency and sustainability of the free legal aid system;
- Maintenance and advancement of the existing resources in the field of provision of free legal aid;
- Providing incentives for partnerships and coordination of activities of free legal aid services' providers;
- Creating conditions for specialisation of free legal aid services' providers for specific legal matters;
- Transparency of all forms of activities regarding management and decision-making in the free legal aid system;
- Efficient monitoring, control and improvement of free legal aid services' quality.

V. GOALS AND OBJECTIVES

1. General Goal

Effective, efficient and sustainable free legal aid system in the Republic of Serbia, which ensures equal access to justice, thus achieving equality of the citizens before the law and the rule of law.

2. Specific objectives and measures

a) Establish forms and types of free legal aid

In order to achieve successful functioning of the system of free legal aid, it is necessary to precisely define forms of free legal aid (free legal aid, primary and secondary legal aid) and specify types of free legal aid to be offered.

Measures:

- Define all types of free legal aid: general legal information, initial legal advice, legal advice, legal aid in writing submissions and representation before courts, state administration bodies and other institutions;

- Define the category of primary legal aid so that it includes the following: general legal information and initial legal advice (information about the legal status of an individual, advice on possibility of solving the dispute by mutual agreement, information related to court proceedings, the manner of implementation of verdict and possibilities of realization of the right to free legal aid); legal aid in writing submissions and other legal documents;

- Define the category of secondary legal aid so that it includes the following: legal advice; legal aid in writing submissions and representation before courts, state administration bodies and other institutions.

b) Establish the range of users of free legal aid

Establish the range of users of free legal aid by stipulating criteria for exercise of the right to free legal aid, whose implementation ensures that primary legal

aid is available to everyone while secondary legal aid is available to deprived individuals and members of disadvantaged and marginalized social groups, including the possibility of offering legal aid on the grounds of fairness and on the basis of obligations resulting from international contracts.

Measures:

- Define free legal aid as a legal aid that is free for the user, regardless of who offers or funds it;

- Ensure that each individual has the right to primary legal aid, which is offered in every legal matter on the basis of an oral request delivered to the provider of free legal aid by its user;

- Define criteria for exercise of the right to secondary legal aid ensuring that free legal aid is available to deprived individuals on the grounds of fairness and when such aid results from international contracts, including legal aid in legal matters having an element related to foreign issues;

- Define criteria for exercise of the right to legal aid before the bodies of public administration in accordance with the practice of the European Court for Human Rights with regard to enforcement of article 6 of the European Convention on Human Rights and Fundamental Freedoms;

- Define criteria for free legal aid without discrimination on the basis of personal status of the user while taking into account differences related to financial and total social and economic position of the individual, with the aim to remove obstacles in access to justice and ensure complete equality of individuals or groups who are fundamentally in an unequal position;

- Include in the range of users of free legal aid, apart from the citizens of the Republic of Serbia, all foreign citizens who temporarily or permanently reside in the Republic of Serbia, persons without citizenship and asylum-seekers, while at the same time specifying conditions under which they are allowed to exercise the right to free legal aid.

v) Establish the range of providers of free legal aid

Establish the range of providers of free legal aid so that legal aid can be available and qualified, providing high-quality legal aid with optimal usage of available resources.

Measures:

- Provide necessary conditions for free legal aid to be offered by lawyers and legal aid services in local self-government units;

- Define conditions under which associations and other forms of organizing may participate in provision of free legal aid;

- Provide necessary conditions for free legal aid to be offered by lawyers, as well as by legal aid services in local self-government units, except in complex legal matters (legal matters that require specialist legal knowledge or which involve a large number of legal regulations), provided that it is offered by lawyers who

have passed bar exam and that such legal representation does not constitute a conflict of interest or in any other way jeopardize the interest of the legal aid user;

- Define consistent standards related to provision of legal aid, as well as standards of organizational functioning of legal aid;

- Create an integrated Register of providers of free legal aid.

g) Regulate the procedure of exercise of the right to free legal aid

The procedure for exercise of the right to free legal aid should be regulated so that it is simple, efficient and transparent.

Measures:

- Ensure that primary legal aid is offered to every individual at his/her oral request, without any limitations with regard to financial status of the aid user;

- Define the contents of the request for secondary legal aid, the contents of the decision approving the legal aid, and the contents of the instruction for provision of legal aid;

- Define the documents that are required to establish the right to free legal aid;

- Ensure the possibility of control of data which have been used to decide on the request for approval of free legal aid;

- Provide the possibility of revision of the right to free legal aid in case of changed circumstances relevant for exercise of the right to free legal aid, as well as the user's obligation to give information about such circumstances;

- Define the procedure of issuing directions for usage of secondary legal aid.

d) Create organizational structure to provide efficient functioning of the free legal aid system

Efficient management of the system of free legal aid is one of the necessary preconditions for its successful functioning. While designing the organizational structure of management, it is necessary to take into account the following crucial starting points:

- 1) Define subjects of accountability for provision of an adequate system of free legal aid;

- 2) Include all interested subjects in bodies that manage the system of free legal aid;

- 3) Create conditions for integrated management of human and material resources and all processes in the procedure of provision of legal aid;

- 4) Base the management of the system on complete information and knowledge;

- 5) Organize the management in such a way that it provides early identification of problems in functioning of the free legal aid system, their immediate

elimination, adjustment and extension of the range of free legal aid, in accordance with citizens' needs and financial their abilities.

Measures:

- The Government will form a body – the Council for Implementation of Strategy of Development of Free Legal Aid System (later referred to as the Council) – that proposes measures related to free legal aid. Professional and administrative-technical support to ensure successful activities of the Council will be offered by the competent ministry within whose authority lies the prevailing part of the issues relevant for the Council;

- Local self-administration units will consider the possibility and needs to form appropriate bodies at the level of local self-administration whose role would be to propose measures related to legal aid in local self-government;

- Composition and procedure of election of the bodies' members will ensure that all interested subjects have their representatives.

đ) Ensure sustainable funding of the free legal aid system

Ensure funding of free legal aid by the state in order to provide conditions for equal access to justice at the whole territory of the Republic of Serbia, taking into account regional differences in the level of poverty. Funding should be designed so that it places least possible strain on the budget, ensuring cost-effectiveness and financial efficiency without creation of bloated bureaucratic structures. Provide an efficient mechanism to control funding of providers of legal aid. At the annual level, costs of the free legal aid system would consist of the following:

- Cost of the system's management structure;
- Financial cost of free legal aid providers.

Primary legal aid is paid by the state to legal aid providers using a flat rate principle, since payment per individual legal advice would involve much larger costs.

Secondary legal aid is paid by the state to legal aid providers in a form of advance payments tied to the first instance of legal aid, provided that after realization of expenses of proceedings, the provider is obliged to pay back the advance payment, which practically constitutes an element of self-financing.

e) Create a system of quality assurance in provision of legal aid services

Build an integrated, functional, efficient, sustainable and economical system of quality assurance guaranteeing a high level of professionalism, high quality of legal aid services, and development of a culture of quality. This quality assurance system should be established in accordance with the following principles:

- The quality assurance system for free legal aid should result in promoting and ensuring high quality of work of free legal aid providers;

- The quality is ensured by controlling the content of free legal aid and the procedure on the basis of which it is offered;

– Create mechanisms in the free legal aid system that would allow continued improvement of the existing level of quality of free legal aid.

Measures:

– Establish standards related to conditions to be fulfilled by providers of free legal aid, especially regarding their expertise and qualifications, including indicators of quality of free legal aid services;

– Define preventative and corrective measures to ensure quality of free legal aid services and specify rules of accountability with regard to legal aid (in case of unscrupulous, non-professional or legal aid that is not performed on time);

– Designate the competent authority and regulate the procedure of quality assurance for free legal aid services;

– Define rules to protect information about users of services, especially the obligation to ensure confidentiality of information;

– Develop instruments necessary to ensure, control and improve the quality of free legal aid services.

VI. MONITORING AND EVALUATION

In order to implement the Strategy successfully, it is necessary:

1) institutionalise the monitoring and management of the process of Strategy implementation by way of formation of a special body – the Council, consisting of representatives of all the stakeholders;

2) determine the Council's scope and method of work;

3) prepare a plan for monitoring and evaluation, including:

– assessment of indicators of progress in terms of establishing and functioning of the free legal aid system;

– elaboration of procedures for monitoring and evaluation of legal aid providers' performances;

– collection and periodical analysis of relevant statistical data;

– development of mechanisms for interventions in case of delays in the Strategy implementation;

– revising planned measures and activities, if deemed necessary;

– evaluation of final outcomes of the Strategy implementation, which ensures recording of all positive results, difficulties and identified problems; determining proposals needed to overcome problems, identify priority areas for further activities, etc.

4) presentation of the results of monitoring and evaluation to the public.

VII. ACTION PLAN

The Action Plan is enclosed with this Strategy and constitutes its integral part.

VIII. FINAL PROVISION

This Strategy is to be published in the Official Gazette of the Republic of Serbia.

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G O V E R N M E N T

Accuracy of transcript verified by
SECRETARY GENERAL

Tamara Stojčević

FIRST DEPUTY PRIME MINISTER

Ivica Dačić, s.r.

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ACTION PLAN

No.	Measure/ Activity	Responsibility for activity	Date for activity
A) JOINT ACTIVITIES			
1.	Formation of Strategy Implementation Council	Government	January 2011
2.	Creation of legal framework for the functioning of free legal aid system – Draft Law on Free Legal Aid	Ministry of Justice	According to the Government's programme of work
B) ACTIVITIES RELATED TO DIRECT STRATEGY IMPLEMENTATION			
1.	Defining conditions for establishment of a single register of free legal aid services' providers	Council, Ministry of Justice	September 2011
2.	Proposing standards and quality indicators for free legal aid services' providers	Council	March 2012
3.	Proposing criteria for standardization and operationalization of procedures for establishment of free legal aid	Council	December 2011
4.	Control and ensuring quality of free legal aid services	Ministry of Justice	June 2012
V) ACTIVITIES RELATED TO FREE LEGAL AID SYSTEM DEVELOPMENT			
1.	Defining conditions for creation of a single database on beneficiaries and free legal aid services' providers	Council, Ministry of Justice	December 2012
2.	Professional advancement of advisory bodies' members in the field of free legal aid	Ministry of Justice	March 2013
3.	Organizing trainings for free legal aid services' providers	Authorised organs	June 2013
4.	Formation of a body for free legal aid at the level of local government units	Ministry of Justice and Ministry of Public Administration and Local Self-Government	September 2013
5.	Promoting free legal aid system and dissemination of information on the functioning of the system to the public	Council, competent ministries	continuous