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OF JUSTICE

DRAFT LEGAL AID ACT

OF THE REPUBLIC OF SERBIA

COMMENTS
ON THE DRAFT IN THE LIGHT OF
THE APPLICABLE EUROPEAN STANDARDS
AND EXPERIENCES OF THE COUNTRIES IN THE REGION

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I. METODOLOGY: TASK, OBJECTIVES, MISSION, BACKGROUND

This expertise was commissioned by the Directorate General of Human rights and Rule of Law of the Council of Europe in December 2011. The expert was invited to assess the compatibility of the Serbian draft law on legal aid (hereinafter: DLAA) with relevant European standards, taking inter alia also experiences of other countries in the region, in particular Croatia.

The expert has received the DLAA in late November 2011, in Serbian and in English language. He has, as a consultant, participated in the public debate at the Parliament of Serbia in Belgrade, on 12 December 2011. At this occasion he presented his provisional findings and expressed opinions on improvements needed.

Based on the public debate and various other consultations, the Serbian authorities have significantly amended the initial draft. The new draft was received in February 2012. That draft is the object of analysis in this expert report.

The report is divided in two parts. In the first part, the expert will briefly summarize the European standards, both those arising from the case law of the European Human Rights Court in Strasbourg, and from the other sources (CoE recommendations, comparative research). In the second part, the expert will consider the main structure and concept of the DLAA, evaluating it in the light of the standards elaborated in the first part, giving also concrete suggestions for improvements.

II. EUROPEAN LEGAL AID STANDARDS

A. THE RIGHT TO LEGAL AID IN ARTICLE 6(1) ECHR AND CASE LAW OF THE ECTHR

Art. 6(1) of the European Human Rights Convention (ECHR) provides *inter alia* the following

> In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Access to legal aid is a part of the entitlement to a fair trial in ECHR article 6(1). Over the years the ECtHR has delivered several decisions on legal aid as part of its principles on access to justice. We cannot go into detail on the content of its doctrine or give an extensive account of it, but will summarize some main principles now and develop on them when necessary for the different evaluations we make in the report.

Article 6/3c on minimum rights in criminal cases stipulates that legal aid should be provided „when the interests of justice so require." A similar standard is applied according to article 6(1) to other types of cases. *Airy v Ireland*[1] from 1979 contains the main principles. The decision sets a precedent which obliges governments to provide legal aid where needed taking into account the following criteria:

- the importance of the case to the individual (applicant);
- the complexity of the case;
- the individual's capacity to represent himself;
- the costs and the individual's capacity to carry them.

The Airy-principles have been confirmed in several judgements. ECtHR applies the criteria to the concrete circumstances of the complaint. Access to courts is meant to be *effective* for all citizens, independent of their economic situation. A violation will be established if costs appear as an actual barrier to access to court.

Since the findings of the ECtHR relate to individual complaints and usually are made long after the alleged violation has taken place, its case law contains challenges for national law makers. Legislation as such are not found in violation of the Convention although the Court has said that member states have an obligation to organize their legal systems in a way that prevents repeated violations of article 6.[2] It is mainly left to the states to find out how to best establish sufficient access according to their present system and legal tradition.

When evaluating this report will therefore build on rough estimates of *the risk* that violations will occur, but it will not be intended to forecast the number of violations that will actually be established by the ECtHR in the coming years. The procedures for bringing cases before the Court are time consuming and cumbersome, and depends to a great extend on legal aid lawyers' competence on the case law and procedures of the Court and their willingness to risk putting in a significant amount of unpaid work. The number of non-detected violations probably greatly outnumbers the number of established violations. Although the principles laid down in *Airy* appear discretionary and flexible,[3] they have important consequences for the shaping of legal aid schemes.

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1 Application No. 6289/73.

2 See as an example *Hadjidjanis v. Greece*, Application No. 72030/01.

3 See *Ashingdane v. UK,* esp. para 54 and 57 (Application No 8225/78).

B. BEST PRACTICES: COE RECOMMENDATIONS AND OTHER DOCUMENTS

Considering the importance that the rights of access to justice and to a fair hearing have for the rule of law and democratic society, the Council of Europe issued during a period of over three decades a number of resolutions and recommendations relevant for legal aid standards. Here is the list of relevant CoE resolutions and recommendations:

- *Resolution 76 (5)* on legal aid in civil, commercial and administrative matters, recommending that governments grant legal aid to all citizens of member states and to all residents on an equal footing with its own citizens.
- *Resolution 78 (8)* on legal aid and advice saying that economic obstacles to legal proceedings ought to be eliminated, and that an appropriate system of legal aid will contribute to that aim.
- *Recommendation No R (81) 7* on measures facilitating access to justice
- *Recommendation No R (93) 1* on effective access to the law and to justice for the very poor.
- *Recommendation (2000) 21* on the freedom of exercise of the profession of lawyers suggests that states should encourage lawyers to provide legal service to persons in economically weak positions and ensure that effective legal services are available to them, in particular to persons deprived of their liberty.
- *Recommendation (2001) 3* on the delivery of court and other legal services to the citizen through the use of new technologies.

In addition to the recommendations and resolutions, the Council of Europe also collected experience and knowledge on legal aid systems and best practices, producing the following documents[4]:

- *Action Plan on Legal Assistance Systems,* document adopted on 6 March 2002 by the Commission of Experts for the Efficiency of Justice and the CDCJ, Strasbourg (CJ-EJ(2002)5 Addendum III.
- *Legal Aid Best Practices.* Preliminary Draft Guide, document adopted on 5 February 2002 by the Commission of Experts for the Efficiency of Justice of the Council of Europe, Strasbourg (CJ-EJ(2002)2).

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4 See more at http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/Documents/2002/1CJEJ5%20e%202002.pdf.

There is also a body of national and international research in the field of legal aid and assistance. Many studies and reports refer to various legal aid practices, point to good and bad examples, and evaluate the implementation of the selected legal aid schemes.

This report will point to some of the elements that are considered to be of importance in design of the legal aid system, based on the above cited recommendations and the best practices in provision of legal aid. These elements will further be utilised as the criteria in the assessment of Serbian DLAA.

1. THE STATE HAS TO PROVIDE EFFECTIVE ACCESS TO JUSTICE TO EVERYONE UNDER ITS JURISDICTION

The **state has the positive obligation to provide practical and effective access to justice.** This is achieved by enabling everyone to exercise his/her right of access to a court, but also to other legal services needed to ensure equality of all before the law. The right of access to justice and the right to a fair hearing are the essential features of any democratic society. Insofar, the state should take all necessary steps with a view to eliminate economic obstacles to legal proceedings, especially for those in an economically weak position, inter alia by setting up an appropriate system of legal aid (Resolution (78)8 on legal aid and advice; CJ-EJ (2002)2).

2. LEGAL AID IS AN OBLIGATION OF THE COMMUNITY AS THE WHOLE

It is emphasised that "provision of legal aid should no longer be regarded as a charity to indigent persons but as **an obligation of the community as a whole**" (The Resolution (78)8 on legal aid and advice at 11). The state has the central role in organising and coordinating the provision of legal aid, but it also remains an obligation of social solidarity, in particular for the legal professionals, but also for other segments of the society. Pro bono work may and should coexist with the legal aid services paid by the state, and the combination of the two may often result in a synergy that enables more efficient use of resources and better coverage of all those in need.

3. AVAILABILITY OF LEGAL ADVICE IS OF EQUAL IMPORTANCE AS LEGAL AID (IN NARROW SENSE)

The Resolution (78)8 emphasizes that "facilitating the **availability of legal advice as a supplement to legal aid for persons in an economically weak position is of equal importance** in the elimination of obstacles to access to justice". Insofar, the legal aid system should not only deal with the provisions on free representation in courts of law, but also with other, services for provision of legal advice. The extra-judicial options for provision of legal advice outside and before any concrete legal proceedings may significantly help in avoiding unnecessary litigation and other legal proceedings, and can therefore improve both the level of protection of individual rights and the efficiency of the legal aid system. Well

organised legal aid system has, especially through the availability of early and accessible general legal information and legal advice, the **preventive function**: it equally works on prevention of violations of individual rights, and on prevention of unnecessary legal processes and procedures. Provision of legal advice should also be supplemented by measures that facilitate amicable settlements of disputes before or after the commencement of legal proceedings, inter alia by availability of mediation or conciliation (see Recommendation (81)7).

4. SIMPLIFICATION OF PROCEDURES IS AN INTEGRAL PART OF LEGAL AID SYSTEM

Effective access to courts and efficient protection of the legal rights of the citizens can be provided not only by free legal assistance, but also by "**making the procedures so simple that persons may conduct cases themselves**" (Legal Aid Best Practices – CJ-EJ (2002)2). The efficiency of the use of funds available for legal aid may be significantly increased if legal aid policies on a macro level include initiatives for simplification of legal processes and procedures.

5. OTHER EXPENSES (E.G. COURT FEES) SHOULD BE CONSIDERED IN THE DESIGN OF THE LEGAL AID SYSTEM

As emphasised in the CoE Recommendation on measures facilitating access to justice, no unreasonable sums of money should be required of a party on behalf of the state in legal proceedings; in so far the **court and other fees should be reduced or abolished**, if they are a manifest impediment to justice. If payment of regular court or administrative fees and other legal expenses (e.g. the expenses of experts, witnesses, or translation of documents) would disproportionally burden the parties, the legal aid system should provide for possibilities of waiver, partial or full coverage or reduction of these fees and expenses. (See Resolution (78)8, at 3.).

6. SYSTEM OF LEGAL AID SHOULD ENSURE COLLABORATION OF ALL ORGANISATIONS AND INDIVIDUALS WHO CAN AND WISH TO CONTRIBUTE TO IT

Among the best practices of legal aid is a policy that encourages **collaboration of all qualified stakeholders**. This means that the well organised legal aid system should encourage participation of various legal aid providers and provide assistance from the state for them. Typically, in such a system the following organisations and individuals may take part: independent **lawyers** who regularly provide legal services; non-governmental organizations and associations (**NGO's, civil society organisations**) who work with the specific segments of the society and protect vulnerable groups; **bar associations**; legal **advice centres**; various **offices of state and local administration**; **courts and court employees**; **other legal professionals** (judges, notaries, bailiffs, *Recthspfleger*); **volunteers from various segments of civil society**; **legal clinics** at law schools and other organisations etc.

7. CLEAR AND WELL ORGANISED SYSTEM FOR APPLICANTS, NO UNNECESSSARILY COMPLEX OR BURDENSOME PROCESSES FOR OBTAINING OF LEGAL ADVICE AND ASSISTANCE

The practical and effective access to justice needs **accessible, easy and fast procedures** for all those who apply for available options of legal aid and assistance. In spite of necessity to control the financial and other eligibility of applicants in order to save unnecessary expenditures and optimize the use of available resources, the processes and procedures that have to be undergone in order to obtain legal aid and advice **should not be unnecessarily complex** (see Legal Aid Best Practices, CJ-EJ (2002)2). The approach to the provision of legal aid should be clear and well organised, distinguishing also the nature of the services provided. The procedures should also be adjusted to the nature, level and complexity of the legal assistance needed (e.g. they should be proportionate to the costs and scope of various services, distinguishing clearly simple legal advice from legal aid through representation in complex cases). All involved in the legal aid process – the organisers, actors and users of legal aid – should instantly see what legal aid and assistance is available and appropriate, and should be able to identify what steps have to be taken in order to enforce their rights.

8. PUBLIC EXPENDITURE ON LEGAL AID SHOULD BE ADEQUATE, VARIED AND EFFICIENTLY USED

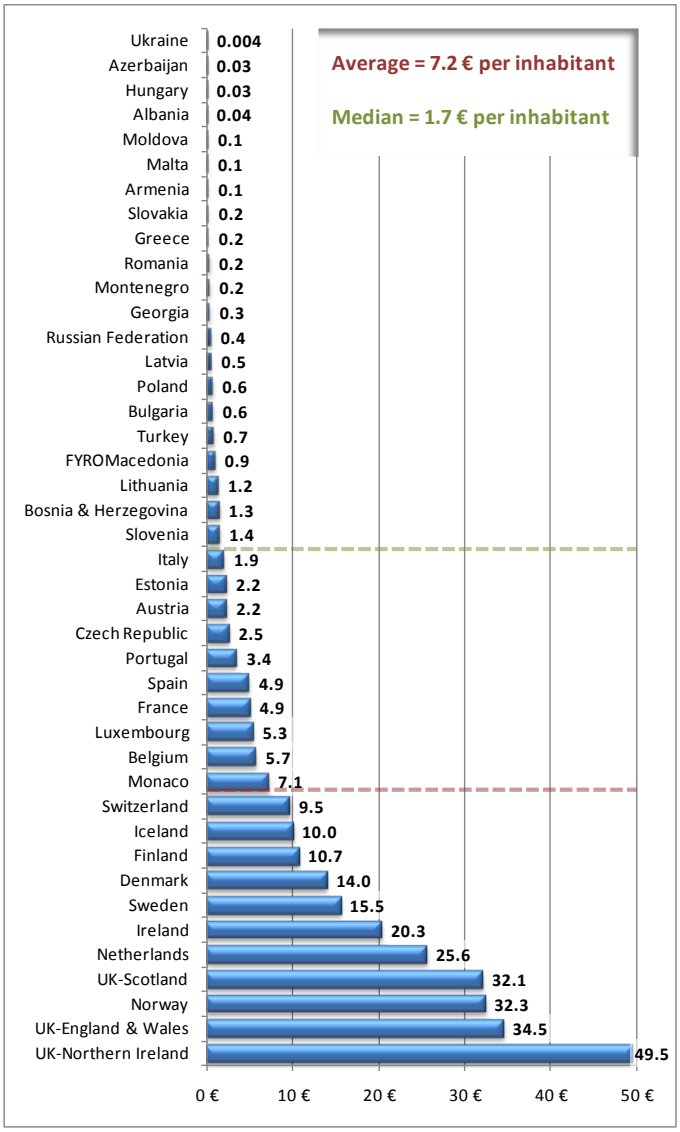
As stated in CoE Resolution (78)8 on Legal Aid and Advice (App. p. 8), the responsibility for financing the legal aid system should be assumed by the state. Although the funds available for legal aid need not exclusively come from the state budget, and may be supplemented by means from other sources, including the volunteer contributions by various organisations and persons from civil sector, the residual duty of the state to ensure sufficient funding and ultimately secure that the necessary finances be secured by the state remains. The public expenditures on legal aid may, of course, be at a lower or higher level, which is connected to the efficiency of their use, the design of the legal aid system and the situation on the market of legal services. In modern legal aid systems, the best results are achieved if public expenditures on legal aid are not exclusively spent on one or very few elements and actors in the legal aid system. In the same way as the legal needs and problems are varied and need differing approach by persons and organisations with various expertise, a well-organised legal aid system should also distribute available funds on various services and various legal aid providers, insuring synergy and optimal efficiency of expenditures.

In spite of sometimes rather significant differences regarding legal aid expenditures from state budget per capita, some minimal conclusions as regards the volume of legal aid funds may be drawn from the available data assembled by the Council of Europe bodies. Within the regular evaluation of the European judicial systems of the CEPEJ, the EJS reports on efficiency and quality of justice contain also data on the legal aid budgets of the European states. In the CEPEJ report for 2010 (*Les systèmes européens judiciaires – Edition 2010*) based on 2008 data, the data on legal aid budgets of European states are presented and compared.

As visible from the figure below (Figure 2.15, EJS 2010, p. 32), median legal aid budged awarded from public funds in European states is 1,7 € per inhabitant, while the average is 7,2 € per inhabitant. The countries of similar tradition and geography as Serbia (the "region") may mainly be put in the frame between 1 and 2 € per capita (eg. Macedonia 0,9, Lithuania 1,2, Bosnia & Herzegovina 1,3, Slovenia 1,4, Italy 1,9, Estonia 2,2, Austria 2,2).

Insofar, although no exact prescription regarding public funds available for legal aid can be made, it is essential for every legal aid system to have public expenditures that are adequate, varied and efficiently used.

Figure 2.15 Annual public budget allocated to legal aid per inhabitant in 2008 (Q13)



III. LEGAL AID IN SERBIA – EVALUATION OF THE DLAA

A. INTRODUCTION

Before entering into concrete analysis of the DLAA, several disclaimers have to be made. A thorough expert evaluation of the legislative project of this scope would need an extensive body of information, which should go far beyond the mere text of the draft proposal, participation in one public debate and some background materials.

I would like to point to some **elements which are lacking**, which may be of considerable importance for the overall assessment of the legislative project.

i. In order to assess the current state of affairs in legal aid sector and the unmet legal needs, what is needed is a comprehensive **empirical research** and analytical study of collected data based on a number of indicators. Although Serbian authorities have collected some comparative data and have relied on international standards while producing the Strategy on development of legal aid system in Republic of Serbia (see more at http://www.mprav-de.gov.rs/lt/news/vesti/besplatna-pravna-pomoc.html), this still seems to be insufficient. The use of the research on the functioning of the present legal aid schemes, and the international body of research on legal aid is rather limited, and what dominates is a debate led by professional lobbying of various current or prospective actors in the legal aid system. So far, it seems that even the assessment of the money currently spent on legal aid (eg. the amounts that are spent from the court budgets on lawyers in criminal cases or payment of expenses in civil cases) has not been done.

ii. A comprehensive project of establishment of a national legal aid system would need a thorough **planning of the impact** of new legislation. In particular, the planning would *inter alia* need to contain:

   a. projection of the population covered (number of applicants, their economic and social background,

   b. assessment of needs covered by legal aid (detailed plans to address current deficiencies or transform the current legal aid schemes in the new integrated system);

   c. plans for services provided (expected amount of aid granted for particular type of legal aid; number of cases of legal aid and assistance).

iii. Detailed **plans as to the available legal aid budget**, its division and planned expenditures at macro and micro level. In order to evaluate the prospects that the legal aid system will work as planned, and to monitor and evaluate the

results, the legislative package should contain the indication of the total amounts planned to be distributed in the first years for particular purposes (type of legal aid) and for particular legal aid providers. The principles of distribution and the indicative amounts per type of case should also be explained in some detail. Leaving the budget planning, amounts available for support of particular aims (including expenses), and tariffs for state-supported legal aid cases for implementing regulations which will be passed only after the enactment of the DLAA significantly reduces the ability to give reliable judgments and assess the viability of the whole project.

For all these reasons, this expertise may only evaluate the gross design of the draft law, relying on past experience in a similar context (eg. in Croatia). The analysis based on the bare legislative skeleton naturally contains a fair amount of guessing and cannot guarantee that otherwise favorably evaluated elements of the system will in fact produce the desired output. It can only be advised that, to avoid uncertainty and unwanted results, the Government make effort to complete the plans for reform by considering the missing elements.

B. MAIN ELEMENTS OF THE DLAA

1. LEGAL PROBLEMS COVERED

The DLAA has a broad scope when the areas of legal problems are concerned. Under Art. 7, the problem areas are defined in relation to types of proceedings, and expressly include:

- criminal and misdemeanour proceedings ;
- civil proceedings (litigation, enforcement and extra-contentious proceedings);
- administrative proceedings (including administrative disputes);
- constitutional proceedings (appeals before the constitutional court);
- proceedings regarding enforcement of criminal sanctions;
- mediation proceedings;
- other procedures before independent or regulatory bodies.

In regard to the stage of proceedings, the DLAA recognizes the right to legal aid in first instance and appeals proceedings, until the final decision, but also in proceedings regarded the extraordinary legal remedies, and in the proceedings of enforcement of court judgments and other enforceable documents. In principle, the right to legal aid also exists in the proceedings before the international tribunals and bodies.

A negative list – a list of issues that will not be accepted as worthy of legal aid – is somewhat hidden. They are not contained in the general provisions (Art. 9), but in the part of DLAA that deals with the procedure for processing legal aid applications. In Art. 34, the following legal problems are specified as reasons for dismissal of legal aid applications:

1) proceedings before commercial court;
2) the procedure for obtaining construction and other licenses in an administrative procedure;
3) registration of commercial entities, citizens' associations and foundations;
4) compensation of immaterial damages for the offence of honour and reputation;
5) procedure against the legal action for decreasing child's support when the person bound to pay the alimony failed to do so.

In addition, under Art. 16, for all types of legal aid cases it is required that provision of legal aid is in the interest of justice (orig. *pravičnost,* equity/fairness), or that legal aid is "of invaluable importance for effective protection of applicants' rights").

Whether this condition is fulfilled, has to be assessed in each specific situation, taking into consideration:

- importance of the object of proceedings (rights or goods that are protected or claimed) for the applicant, and particularly the level of possible punishment, the amount of indemnity claim, type of dispute, and similar;
- factual complexity of the case or complexity of regulations that are applied in the proceedings, especially if a great number of laws is applied in the proceedings, if there are many participants in the proceedings, if the application of law requires specialized expertise, and similar;
- ability of the applicant to defend and represent the rights and interests by him/herself based on the age, mental or physical health condition, literacy, affiliation to vulnerable groups, family situation, economic status, and similar;
- economic power or monopolist position of the opposed party on the market;
- the need to ensure legal and equal legal protection in the proceedings.

For some cases, e.g. for cases related to children without parental care, or for certain other cases related to personal status and family rights (the exact list is still under construction), the DLAA provides the presumption that awarding legal aid is in the interest of justice.

Evaluation:

The fact that DLAA in principle excludes only a relatively narrow list of legal problems is in itself good, and can be taken as an advantage in comparison with some countries in the region that have a rather restrictive list of legal problems that qualify for legal aid (in Croatia, the narrow and vague list of "existential issues" that qualified for legal aid was declared unconstitutional by the Constitutional Court).

It can also be noted that the DLAA effectively transposed the Airey criteria (see above at II.A) into Art. 16. This demonstrates the willingness of Serbia to apply the international human rights standards in this area, and consider the practice of the European Court of Human Rights.

The focus on "legal proceedings" rather than on legal problems can, however, indicate that legal problems are uncovered, if they are in concrete case not (yet) occurring in the context of the concrete proceedings. Any type of free legal advice and assistance in legal transactions, negotiations and similar legal matters before and outside of any legal proceedings seems to be excluded by formulations in Art. 7. This type of wording is also in contradiction with Art. 2 para 1, that asserts the equal rights of citizens on effective access to justice not only in various proceedings, but also prior to initiation of these proceedings and outside of any proceedings.

One may also anticipate some problems with this regulation at a very practical level. The flexibility of the criteria requires well-considered discretion and competent knowledge of the problem area. The "competent body" of legal aid administration is apparently not always able to make such an estimation on its own, as the DLAA provides in Art. 16/4 that such a body *shall* require the opinion of the court or other body before which the (main) proceedings are conducted. In spite of the provision that such a body would be obliged to express its views on the of legal aid application within 8 days, the need to circulate the application from legal aid authority to competent tribunal and back may certainly contribute to delays in the process (realistically, it can easily happen that this communication lasts several months, rather than several weeks). Even though the application can be decided without requesting the opinion (para 5), it may be doubted whether an open standard like this will be appropriately and uniformly interpreted by the "competent authority" for legal aid (see *infra* III.B.7). It seems that the drafters of DLAA have already recognized these problems, and tried to address them by inserting Art. 16a which authorizes the court or other body that conducts the proceedings to grant temporary legal aid (or, in the alternative, independently decide on the basis of equity criterion). In any case, the opened alternatives show that the search for the most practicable solution continues, which should be supported. In the present form, this regulation is unfinished and needs further work.

2. ELIGIBILITY CRITERIA AND THE POPULATION COVERED

The DLAA separates eligibility criteria for primary and secondary legal aid. For primary legal aid, no eligibility check is needed (and also no test of "interests of justice/equity"), however it is questionable how extensive this form of legal aid is, and to which level it is supported by the State (see *infra* at III.B.4 and III.B.8).

For secondary legal aid, the applicants have to meet the criterion of economic status (see Art. 9 para 1 p 1). The economic status of legal aid beneficiary is further explained in Art. 10. Under Art. 10 para 1, legal aid shall be provided to individuals who "given their economic status and economic status of the members of his/her household, could not afford to pay for legal aid without jeopardizing their own support and support of the household members or persons they are legally obliged to support".

The household members are defined as “spouses, unmarried partners, children, adopted children and other relatives living with the applicant or supported by the applicant”.

The DLAA does not stipulate any concrete monetary levels of applicants’ income or property. It only states that for the eligibility, the competent authority has to take into consideration “ownership on movable and immovable property, regular and ad hoc earnings, and other income at the time of submitting the application”.

The economic status has to be established both for the applicant and for the members of his/her household. For this purpose, they also have to give their written consent for obtaining information on their property and verifying other details regarding their economic and personal status contained in the legal aid application.

Since the law does not provide any concrete figures, it is to be concluded that the body deciding on legal aid should evaluate whether granting legal aid would be justified by the economic status of the applicant in every case in the light of concrete circumstances. The exceptions are only those listed in Art. 10 para 4. This paragraph establishes a list of cases in which it is presumed that the applicant satisfies the economic status test. This will be the case

- if the applicant is a registered social aid beneficiary, or
- if the average monthly income per applicant's household member does not exceed a double amount of the minimum subsistence level, or
- if it is established that the applicant's necessary expenditures exceed the income.

The procedure for verification of the applicants’ declarations will be conducted by the competent legal aid body. The procedure of verification has to be provided in an implementing regulation (to be enacted after passing of the DLAA).

Evaluation:

The eligibility criteria are determined in a flexible way, which puts into relation the economic status of the applicant and his ability to cover the necessary legal costs without undue hardship. This method of determination of eligibility is in principle compatible with the human rights standard as contained in the ECHR and in the ECtHR jurisprudence (see *supra* II.A). On the other side, due to flexibility of this criterion, it is virtually impossible to make assessment of the part of the population that will be covered by the legal aid scheme.

Some special categories of applicants, such as social aid beneficiaries, satisfy the eligibility criteria automatically (see above, DLAA Art. 10 para 4). It would be useful to know the proportion of population that fall within the categories that are automatically eligible for legal aid (for the purposes of this expertise, no data in this respect were supplied).

The discretionary character of assessment of (general) eligibility criteria may cause difficulties in establishment of uniform practice. It also remains to be seen how generous or restrictive will be the policy of competent legal aid bodies, and whether the process of

verification of information regarding economic status will be adequately swift. Even though the general approach is consistent with human rights policies, its application will certainly be a considerable challenge for the competent authorities.

Some aspect of the criteria from Art. 10 that relate to the members of the household appear to be potentially questionable. Similar as (equally problematic) Croatian approach, it is required to establish the economic status of the applicant and all members of his/her household, irrespective whether there is any individual or mutual obligation to support such members. Even the parents of the grown-up children who live with them because of the lack of resources to rent or buy an apartment, the alienated spouses in a divorce proceedings, or distant relatives who happen to share the same living space, should be checked for their property status. Moreover, the household members have to actively consent to full insight into their property and income; although the consequences of refusal were not elaborated, it may happen that any such refusal could mean an absolute veto on legal aid application. Both the too broad circle of household members whose property status has to be taken into account, and the unexceptional requirement for their consent, are unfair and may seriously jeopardize the access to justice in individual cases (such occurrences already happened under a similar legislative regime in Croatia).

3. PROVIDERS

The DLAA distinguishes several classes of legal aid providers. Under definitions of legal aid providers in Art. 6, the following providers are specified:

- attorneys at law,
- notaries,
- mediators,
- legal aid services established in local self-government units,
- associations and other forms of civil society organizations, in particular
- NGOs,
- trade unions,
- legal clinics,
- organizations for consumer protection.

The DLAA contains extensive (sometimes even too detailed) provisions on conditions for acquiring the status of registered legal aid provider, on registry of providers, on limitations in the authorities of particular types of legal aid providers, on controlling mechanisms and the liability of the legal aid providers etc.

Evaluation:

The participation of various categories of legal aid providers was (and still is) among the most contested points in the legal aid reform. A number of points were raised in the public debate, ranging from constitutional arguments to the compatibility with the legal

representation provisions in the Code of Civil Procedure. In this part of the expertise, the following two topics related to legal aid providers will be addressed:

- Legal status and constitutional position of legal aid providers, and
- The conditions and procedures for registration of legal aid providers

Two other, equally important points related to legal providers will be addressed in the later parts of this expertise. The scope of authorities of specific groups of legal aid providers will be discussed *infra* in ch. 4 (Service: primary and secondary legal aid), and the methods of payment for legal aid and, more generally, financing of specific legal aid providers, will be discussed *infra* in ch. 5 (Financing).

I.) LEGAL STATUS AND CONSTITUTIONAL POSITION OF LEGAL AID PROVIDERS

As underlined above (see II.B.2), the international standards and best practices in legal aid consider legal aid as an obligation of the community as a whole, and encourage participation and collaboration of all organisations and individuals who can and wish to contribute to it (see *supra* II.B.7). Insofar, the fact that DLAA attempts to shape a mixed system with a diversity of legal aid providers should be assessed positively.

In the public debate in Serbia, one of the controversial points in the debate considered the constitutional limitations for inclusion of some actors (eg. NGO's) in provision of legal aid. The argument was derived from Serbian Consitution, Art. 67 para 2, which basically states that legal services are provided by the Bar and legal aid offices of local administration.

While it is not possible to enter into constitutional arguments of Serbian law, which have to be interpreted by competent Serbian bodies, it may be pointed to the fact that a similar issue appeared before the Croatian Constitutional Court, on the basis of Art. 27 of Croatian Constitution which contains a very similar provision (Croatian provision mentions only the Bar). The decision of the Croatian Constitutional Court of 6 April 2011 (U-I-722/2009) found that inclusion in the provision of legal aid of other actors, not specifically mentioned in the Constitution, is constitutional. As stated in that decision, the Constitution only emphasizes the central role of the Bar (and its members) and guarantees its independence, but does not award to it absolute monopoly and exclusivity in all kinds of legal services. Apart from the position of Croatian law, most of legal systems in Europe also share the view that legal services are not (and should not be) in the absolute monopoly of any closed professional group, and a large number of them include in the legal aid system also various "external" actors.

Another legal argument which was raised in the public debate was connected with the new Serbian Code of Civil Procedure (enacted in 2011, SG 72/2011) which stipulates in Art 85 that basically only attorneys-at-law may appear as representatives in civil proceedings before the court. Derived from this provision, some participants in the public debate on DLAA were

arguing that secondary legal aid (more precisely, court representation) cannot in DLAA be given to anybody but the members of the Bar.

Again, for an external expert it is difficult to argue about the points of Serbian law. From a comparative perspective, however, it seems that an argument about the systemic priority of the Code of Civil Procedure in relation to Legal Aid Act has not a strong persuasive force. The legislation on legal aid, if passed by the Parliament in the form of an act (*zakon*) has the same status as legislation (*zakon*) that regulates civil procedure. The later act can derogate a prior act (*lex prior derogat legi posteriori),* and the (more) specific act can stipulate exceptions from the provisions of a (more) general act (*lex specialis derogat legi generali, lex specialissima derogat legi speciali).* The changes in the Code of Civil Procedure which happened in 2011 were in the area of court representation rather dramatic: from a legislative regime that allowed court representation by any adult and sane person, irrespective from his/her legal knowledge and professional status, the circle of those who may appear as representatives was narrowed down to only a small segment of lawyers who are admitted to the Bar. It would therefore not be illogical or unnatural to adjust or soften this regime in the area of legal aid. If the availability of lawyers (members of the Bar), and their willingness to engage in legal aid cases is not fully guaranteed, legal limitation on court representation may lead to situations in which right of access to court would be violated. Therefore, it can be assessed that the arguments relying on the Code of Civil Procedure are in their current version more an expression of lobbying of particular interest groups than serious legal and/or political arguments in the public interest.

In some aspects, the DLAA has been affected by the above constitutional and legal debates. The DLAA does recognize a multitude of legal aid providers, but – in a kind of a compromise – applies different regimes on particular groups of providers. The result is that, in the current version, the status of different legal aid providers is rather different. This is primarily reflected in three fields: regarding conditions and procedure for registration, regarding the scope of authorities of different legal aid providers (see *infra* at 4), and regarding financing (see *infra* at 5). These differences in the status may be the cause of dysfunctions, and put into question whether the (declarative) inclusion of certain providers in the legal aid system will be offset (or annulled) by the significant limitations, high requirements and supplemental conditions set in the law.

II.) CONDITIONS AND PROCEDURE FOR REGISTRATION OF LEGAL AID PROVIDERS

The legal requirements for registration are contained in Arts. 25 and 26 of the DLAA. These requirements are different for attorneys and for other providers from civil sector (associations, clinics etc.).

For attorneys, any attorney is authorized to register, unless he/she was subject to disciplinary sanctions. The registration is processed by the respective Bar Association, and the only condition is that attorneys who register submit a written statement accepting to

serve as legal aid lawyer under applicable rules of professional ethics, and declaring the field of their specialization (if applicable). The list of legal aid lawyers, based on their preferences and free applications, is composed by the Bar, and transferred to the Ministry of Justice.

In respect to other organizations, the applications are processed directly by the Ministry. Under Art. 26, the association that wishes to register has to prove by documents:

- its legal status;
- experience and specialization of the employees and hired staff for provision of legal aid in a specific field;
- that it has employed at least one lawyer with Bar exam and experience in representation of at least three years, who shall supervise the provision of legal aid;
- possession of technical equipment (eg. offices) needed to provide legal aid;
- its financial plan.

In respect to legal clinics, the faculties of law which organize such clinics have to *inter alia* submit evidence on the experience of the clinic, program of work, proof of specialization, data on teaching staff, attorneys and other lawyers engaged in the work of the clinic and their written declarations, names of supervisors (who need to be lawyers with a Bar exam), information on technical equipment and financial plans.

In addition to all those requirements, the organizations that apply for registration also have to submit an analysis of legal needs of particular groups of beneficiaries.

Even if all of the above requirements are met, the Ministry will only allow registration "if it determines the need for free legal aid provision and if the funds from the budget of the Republic of Serbia or the budget of autonomous province and local self-government units are allocated." The need will exist only if it is established that legal needs cannot be satisfied by the Bar and the legal aid offices at the units of local self-government. The procedure for determination of the need is complex, and includes annual consultations between the Government and the units of local self-government, collection of opinions from the Bar Association and local administration, occasionally also opinions from Ministry for Human and Minority Rights, state administration and local self-government, or other ministries competent for a specific field (see Art 26a).

It seems that this approach creates a significant misbalance, which can be harmful for the achievement of desired goals. In particular, it seems that the requirements are not proportionate to the expected functions and authorities of particular legal aid providers, and that they cannot secure the availability of legal aid to everyone. The high threshold for registration of every other legal aid provider but the members of the Bar is going contrary to the fact that it is expected (and partially commanded by law) that for vast majority of complex legal tasks such as representation in courts, only attorneys will be utilized. On the other hand, the requirements for registration are as high as if the associations and legal clinics will be almost exclusively active on most complex legal tasks.

In respect to attorneys (members of the Bar), their registration and active engagement on legal aid cases depends solely on their free will. Evidently, in such a system a sufficient number of lawyers will only register if they find suitable motivation. In the situation in which no criteria for financing of legal aid are known (see *infra* at 5), it is likely to happen that only a small number of lawyers will be registered. For those attorneys who register, the DLAA does not provide any specific quality check (except for the lack of disciplinary sanctions) and it can likely happen that the level of their quality and services will be significantly below the average.

On the other side, the requirements for the other providers are disproportionately high. The main flaw in the design appears to be the fact that the engagement of the other legal aid providers is considered to be a replacement for (lacking) services of professional lawyers, and not an independent part of the legal aid system that has its own merits and advantages. The comparative practice of legal aid systems show that, while members of the Bar naturally have advantages in certain fields (eg. regarding representation in the courts of general jurisdiction), the various specialized organizations (law advice centers, human rights organizations etc.) excel in the field of legal advice in specific fields as well as in protection of interests in specialized proceedings. Therefore, the subsidiary nature of granting the status of legal aid provider for organizations other than the Bar and its members is contrary to best practices and cannot be justified.

Generally, the requirements in Art. 26 and Art. 26a (the latter is inserted after the public debate in December 2012, and by its content does not correspond to its findings and spirit) are excessive, overregulated and inappropriate. In more detail:

- the requirement of engaging a lawyer with a Bar exam and three years practice is an overkill, as most CSO's provide legal assistance in the matters in which much lower qualifications are sufficient;
- the need to supply a whole set of documents (eg on establishment of an association) is superfluous since they can be found in the official registers;
- the need to supply (conditional) declarations and information on an unknown number of persons that will collaborate on legal aid in case of positive decision on registration is speculative, sometimes impossible;
- declaration of specialization for legal clinics is difficult in advance, as the engagement of clinics has to adjust to specific needs of the users and the educational process;
- the supervision of legal clinics by lawyers with a Bar exam and experience in court representation is only in place when and if a Clinic independently and directly represents parties in courts; it is not necessary for provision of legal advice.

It is therefore suggested that the conditions for registration of associations and clinics as legal providers be significantly reduced and simplified. The registration should not depend on the availability of budgetary resources, but be a precondition for participation in the public procurement process where legal aid providers would bid for funds available for particular purposes. The registration of certain legal aid providers (eg. CSO's) should not depend on the availability and the opinion of the others (eg. attorneys). One should consider how to ensure adequate motivation for registration of legal aid attorneys, and how to secure

coverage of all parts of the country by legal aid lawyers, eventually by introducing mechanisms that would, on the basis of even distribution, consider participation in legal aid cases as an obligation of the lawyers (this would also be in line with the legal tradition in the region).

4. DELIVERING SERVICE: PRIMARY AND SECONDARY LEGAL AID

The DLAA has invested a lot of space and efforts on distinctions between the various legal aid services. Art 5 distinguishes:

- primary and secondary legal aid;
- general legal information; initial and other legal advice; legal advice; drafting of motions; drafting of legal documents; representation; and defence.

The given definitions may be useful, although they are occasionally unclear and overlapping (eg. the distinction between "legal advice", "initial advice" and "other legal advice"; the distinction between self-standing legal advice and legal advice as a part of representation). Their purpose is also not quite apparent – they are partly used to delineate the authorities of different legal aid providers, and partly to indicate the source of financing (or scope of financing).

At the highest level, legal aid is divided into primary and secondary legal aid.

Primary legal aid is defined as "the right of the legal aid beneficiary to general legal information, initial and other legal advice, in any legal matter, which shall be exercised on the basis of a request addressed to the free legal aid provider, free of charge".

Secondary legal aid is defined as "the right of the legal aid beneficiary to the drafting of documents and motions, to initiation and participation in the mediation procedure, to defence and representation before courts of law, administrative authorities and other bodies, as well as in the procedures for peaceful settlement of disputes, which shall be implemented under the conditions of this Law".

It is hard to distinguish the primary and secondary legal aid as regards legal advices. While "initial and other advice" is regarded to be a part of the primary legal aid, legal advice "in connection with a concrete subject-matter of the proceedings" is considered to be a part of representation, and is therefore defined as a part of secondary legal aid.

In the latest version of the draft, it seems that the major difference is that primary legal aid is in fact contained in the fact that primary legal aid is not paid by the state to the legal aid provider (see Art. 18 para 2: "Primary legal aid shall be provided free of charge and for secondary legal aid, the providers shall be paid in the amount and the manner in line with this law"). Insofar, it seems that primary legal aid has become in the latest text more an element of a pro bono system than an element of the legal aid system in the sense of the concept described in Art. 3 (right to legal services… funded by the state and local government).

Primary legal aid is provided by lawyers (Art. 20 para 1 and 2), notaries and mediators (Art. 20 para 3), legal aid offices of the local administration (Art. 20 para 4), associations and legal clinics (Art. 20 para 5), public authorities at all levels (Art. 20 para 6), and by legal aid call centers (optional – Art. 20 para 8). However, legal professionals have to provide primary legal aid pro bono, under the schemes that are outside the legal aid scheme of the DLAA. As the other legal aid providers provide legal aid under the DLAA, but cannot count on any financial compensation from its legal aid scheme, it remains unclear what is the purpose of such a regulation.

The secondary legal aid may be provided by various legal aid providers, but the extent to which they are entitled to offer it is regulated by complex and partly hardly understandable provisions.

The attorneys are the only ones who may provide any form of secondary legal aid. Moreover, they are the only ones who are entitled to compensation for their secondary legal aid (Art. 23 para 1).

The legal aid services of the local government may engage in representation "in line with the law", under several conditions that should be met cumulatively:

- that the aid is provided by graduated lawyer with the Bar exam and experience;
- that the case does not involve "a complex legal matter that requires specialized legal knowledge" or where "significant number of regulations are applied", and
- if representation "does not involve conflict of interests" or jeopardizes beneficiary's interests in other way.

Notaries may only engage in drafting motions and documents (the DLAA refers here to the special legislation, the law governing notary service). The same goes for mediators (they may hold informative sessions and conduct mediation procedure).

Associations and legal clinics may provide "specific forms of secondary legal aid only on the basis of the decision of the competent body and under the requirements provided by this Law" (Art. 23 para 5). This formula is not further elaborated and therefore remains unclear what is aimed by it – legal advice, drafting of documents and submissions or representation (in particular because, as stated before, only attorneys are entitled to compensation for secondary legal aid provided under DLAA).

Evaluation:

The definition of services and their division is among the weakest points in the DLAA. The distinction between primary and secondary legal aid exists in some other countries in Europe (eg. Croatia, Lithuania), but the Serbian law does not follow the generally accepted and customary definition, under which primary legal aid comprises all forms of extra-processual and pre-processual legal assistance, document drafting and advice, with the preventive purpose – to avoid litigation and other forms of legal proceedings. The definition of primary

legal aid in the DLAA is not only unclear – it is very restrictive and narrow, and covers practically only some forms of short, initial advices (up to 60 minutes, see Art. 30 para 2).

This narrow definition of primary legal aid is probably caused by the fact that this type of aid is under DLAA not financed by the state-supported legal aid scheme.

However, if primary legal aid is not paid from the legal aid budget (see. Art. 5, Art. 18 para 2), and if the attorneys have exclusive right to compensation for the provision of legal aid (Art. 23, para 1 in fine), it becomes rather difficult to see if and how the other providers will be paid for their services.

The services that other legal aid providers are obliged or authorized to provide are also, except in the case of lawyers, disproportionately limited. The limitations are partly personal (forcing the legal aid providers to engage lawyers with Bar exams and experience, irrespective of the nature of the case), partly related to discretionary decisions of the state authorities (eg. the need to acquire the "decision of the competent organ" for every case), partly related to subject-matter, where very broad standards and blanket provisions which are open to varying interpretations are used ("no need for specialized knowledge", "no complex matter", "no need for consulting larger number of regulations"). All these limitations will make the field of work of other legal providers (both those from offices of local administration and from civil sector) very limited.

Exclusion of (non-initial) legal advice and drafting of various documents from the definition of primary legal aid may also mean that associations and clinics would not be authorized to provide such services to those in need even as a part of their free and volunteer activity, and that they would eventually be authorized to receive such requests only after passing all of the checks in the meticulous process led by "competent bodies" of legal aid administration. If this interpretation is correct (the legal provisions in the DLAA are in this respect drafted in the way that allows different conclusions, and no detailed implementing provisions exist at this point), this would have a chilling effect, and may even effectively freeze the development of legal aid work in the very important field of legal advice, which – as noted *supra* at II.B.3 – is of equal importance for well-ordered legal aid system.

All in all, from the provisions on types of legal aid, it seems that the DLAA is only paying lip service to the idea of an integrated legal aid system in which collaboration of various actors and organizations is encouraged (see *supra* at II.B.6). The sensible participation in the system of any other organization but the members of the Bar is through limitative provisions regarding the type of legal aid that can be provided and the lack of right to appropriate compensation made very difficult. On the other hand, the system of recruitment of attorneys for legal aid work does not guarantee the sufficient coverage of needs (even in the most narrowly construed field of secondary legal aid), which may impair the effective access to justice for all those under jurisdiction of Serbian authorities.

5. PROCEDURE FOR GRANTING LEGAL AID, PROCESSING APPLICATIONS

The primary legal aid (reduced, as explained *supra*, to initial short advices, basically in oral form) has to be delivered *pro bono* by the respective legal aid provider upon direct application of any applicant. There is no eligibility check, either regarding the nature of the issue or the economic status of the applicant, since the right to primary legal aid is awarded to "any person" in "any legal matter" (see Art. 8 para 1). The only requirement is that primary legal aid should be provided "under equal conditions" (Art. 9 para 1, Art. 30 para 1). It seems that the general obligation of legal aid providers to keep records on the rendered legal aid (in the form which will later be regulated by the act of the Minister of Justice) is also applicable to primary legal aid (for a contrary conclusion see Art. 39 para 4).

The secondary legal aid will be granted only on the basis of application to the competent organ of legal aid administration. The application has to be filed either directly or through the legal aid provider, using – in principle – the application forms prescribed by the Ministry (Art. 32).

The applications (and any decisions on the application) have to be delivered to the court or other body before which the (main) procedure is being conducted. The purpose is to prolong the time limits in case that legal aid is requested for a particular legal action that has to be undertaken within a specified deadline.

The applications have to contain personal data, the data on legal matter for which aid is being requested, declarations, other data and evidence of economic status of the applicant and the members of the household, including the personal statements of the household members (see *supra* III.B.2), as well as other relevant information. The incomplete applications will be rejected if not corrected within 8 days; however, if some evidence cannot be supplied by the applicant, the competent organ will *ex officio* establish the facts, using also its right to ask information from public and private sources (see Art. 31).

The application will be rejected if the requirements regarding legal problems covered by the scheme (Art. 34) and the requirements of eligibility (Art. 35, para 1/1) are not met. It will also be rejected if it is not submitted in due time (ie. if the time limit for launching the procedure has or would have expired), and if it is manifestly ill-founded (Art. 35, para 1, p 2 and 3).

The time-limit for processing the applications for legal aid is generally 15 days from receipt; however, urgency may grant priority to certain applications (Art. 37).

The decisions may be appealed within 8 days. The appeals are being decided before the Appeals Commission, which has to make decision within 15 days. Against the final decision, which is made according to the rules of administrative proceedings, an administrative suit may be filed.

Based on the decision which grants legal aid to the applicant, the applicant is authorized to request respective service from the legal aid provider indicated in the decision (voucher/referral). When the provider delivers the service, it can request payment on the basis of the same decision (voucher). Within 15 days from the request, the legal aid administration (the competent body) will make a calculation and issue a decision on the amount of compensation. It is to be assumed that this amount will eventually be paid on the basis of this decision (from legal aid budget?), as it is stipulated that the decision, when it becomes final, shall have a force of an enforceable deed.

Evaluation:

Awarding right to primary legal aid to anyone in every matter is very generous, however it raises several issues. First, as this right is something what is not matched by any direct investment or compensation from the legal aid budget, this command of *pro bono* work may turn to be unfair for some legal aid providers. Second, although the legal aid providers are required to keep records on provided legal aid, it seems that the main edge of the control of the provided legal aid is directed towards provision of secondary legal aid, and it may be doubted to which extent the rather broad (but unsupported) right to primary legal aid will be effectively controlled and enforced. No specific provisions on refusal of primary legal aid or its inappropriate delivery are contained in the DLAA, and some of the provisions in the act are not quite suited for such situations (eg. the right to have another provider determined by the Quality Control Commission). The sanctions are also problematic, in particular in respect to attorneys, where no direct power to impose disciplinary sanctions or fines does exist.

Regarding secondary legal aid, irrespective whether it is requested for legal advice, individual action, drafting of simple legal documents or representation, all applicants have to undergo a quite complex and demanding administrative process before the bodies of legal aid administration.

Although the exact amounts and criteria for compensation of individual forms of legal aid are at present not known, the experiences from similar jurisdictions (Croatia, Slovenia) demonstrate that such a demanding process is, if at all, appropriate only for the most complex and expensive forms of legal aid (eg. for full-fledged legal representation in complex cases before tribunals of different level). For simpler actions and for advice the need to undergo such a process may often be overkill. In the latter situations, such process is a disproportionate burden both for the applicants, legal aid providers and for state administration. The result may be unnecessary delays and costs, which can ultimately hinder the realization of the right of access to a court.

The experience has also showed that the time limits contained in the legislative text, insofar they impose an obligation for the organs of legal aid administration, are often disregarded as unrealistic. Therefore, it is safe to assume that there will be cases in which the decision on applications will be processed for several months or more.

The multi-level procedure of high formality will also raise doubts whether applicants who are in need of legal aid will be capable for effective participation in the proceedings, or whether and how will they be able to request and receive legal aid for the process of deciding on their legal aid application. At this stage, it seems that its introduction does not guarantee that the best practices will be followed, in particular regarding the need to have a clear and well organized system which is easily accessible for applicants. It also seems that obtaining legal advice and assistance under this system may be regarded as unnecessarily complex and burdensome (see II.B.7 for best legal aid practices).

Some criticisms may be addressed to the substantive process of decision-making. It is already stated that flexible eligibility criteria and open standards of economic eligibility may be in line with the approach of the ECtHR, but also contain a high degree of discretionary decision-making, which may lead to unpredictability and may run against the principle of uniform application of law (see *supra,* III.B.2). Another part of the screening process relates to the provision which authorizes the competent legal aid administration bodies to reject "manifestly ill-founded" applications (Art. 35 para 1 p 3). Here, it is again questionable to which degree will the administrative authorities of legal aid be able and qualified to assess appropriately whether a claim is manifestly ill-founded. In more complex cases such assessment would need a rather more thorough presentation of the case than the one that will be in front of the legal aid administration, and sometimes it would only be possible to see whether the case is manifestly ill-founded if the applicant's case was already analyzed, supplied by appropriate statements and documents and presented by a lawyer. Although these criticisms are not absolute, one has to warn about the possible dangers that could occur, as the DLAA does contain only very general provisions in this regard.

6. CONTRIBUTIONS

For cases in which it is established that the applicant "has some funds that can partially pay the costs of legal aid services", it may grant legal aid, but require that applicant bears the costs "in proportion to the established economic status, and based on established criteria and scales in the act of the Minister" (Art. 38/2).

The collected contributions can apparently also be used for financing of the legal aid providers; under Art. 55/5, it is left as an option, but subject to the criteria and scales which will be later determined by an act of the Minister of Justice.

Evaluation:

From the perspective of best practices in legal aid, the system of contributions can be evaluated positively (see inter alia CoE Resolution (78)8, Appendix, p. 2). A legal aid system that demands middle-income people to carry ordinary legal service costs themselves is not in conflict with human rights if it protects against exorbitant costs that exceed their

economic capacity. Contributions may serve to cover a broader segment of population and keep the costs of the legal aid system down. It should, however, be secured that the contributions are not such that they would, as such, come in conflict with the requirements of Art. 6 ECHR, eg. by requiring payment that would be too high ("no undue hardship" for the user).

In the DLAA, however, the system of contributions is only announced, without any details regarding their proportion to the overall costs of legal services provided, the economic status of the applicants, and the limits (maximum contributions in percentage or absolute monetary ceilings). As there is virtually nothing that one could comment on expect the most general declaration of principle, in this expertise it can only be suggested that before the enactment of the law a more detailed proposal of the system of contribution be elaborated. In any case, a well-designed legal aid system should take the architecture of the contributions very seriously, both because of their potential to lower the costs / broaden the coverage (also discouraging ill-founded applications) and because of the potential dangers for impairing access to justice, if contributions are regulated inappropriately. Therefore, although details regarding the systems of contributions need not necessarily be in the LAA, it is not justified to leave the enactment of the rules on contributions for implementing regulations which will be passed only after the law will come into force.

7. BODIES RESPONSIBLE FOR LEGAL AID SYSTEM, QUALITY CONTROL

According to the organisational scheme of the DLAA, the main body responsible for the management of the overall system of legal aid is the Ministry of Justice (see Art. 43 para 2).

In addition, the latest draft foresees establishment of a special commission – the Appeal Commission – which should consist of three members appointed by the Serbian Government. The members are nominated, one each, by the Ministry of Justice, Ministry of Human and Minority Rights, and Ministry of Labour and Social Policy. This body, which has a non-renewable mandate of 4 (four) years, is competent to receive appeals by the legal aid applicants, and has to decide them finally within 15 days from receipt of the appeal. The Commission is obliged to submit annual reports on its work to the Government and the Ministry of Justice.

As to the internal organisation of legal aid administration within the Ministry of Justice, the DLAA provides that respective territorial administrative offices will be established as district units in Belgrade, Novi Sad, Kragujevac and Niš. These territorial units are competent to receive the applications for (secondary) legal aid, screen the applicants and cases for eligibility and issue decisions (referrals) awarding or denying the right to legal aid in individual cases.

The Ministry also establishes the Commission for Quality Control, composed of five members: two "experienced attorneys" nominated by the Bar Association, one

representative of the legal aid offices of local government (nominated by the Ministry for Human and Minority Rights, State Administration and Local Self-government), one member nominated by the legal aid providers from civil sector, and one member is jointly nominated by independent regulatory bodies. The role of the Quality Control Commission is to carry out the control of legal aid providers (Art. 46, para 1) and report to the Ministry of Justice on the findings. The Commission may issue "mandatory instructions for all providers in order to achieve unified practice and higher quality of legal aid provision". It receives the annual reports from legal aid services of local administration, from the Bar Association, and from the individual registered associations. The methods of control are only generally regulated, and do not differ as to various providers and types of legal aid (see Art. 48). It is not clear whether the control deals only with secondary legal aid or whether and how it relates to provision of primary legal aid.

The sanctions for negligent provision of legal aid or professional misconduct are, however, different in respect to different providers. To the providers employed in legal aid services (lawyers of the legal aid offices of local administration?) and in CSO's, may be sanctioned by temporary withdrawal of the authority to provide legal aid. The Ministry can also delete these providers from the registry of legal aid providers. However, for the attorney (members of the Bar), no direct sanctions are available, and it is only up to the autonomous disciplinary proceedings by the Bar to decide whether and what disciplinary sanctions should be imposed.

Evaluation:

Although some states award the leading role in the system to the Ministry of Justice, it would be more appropriate to have established a separate, independent body which would take care of legal aid. The comparative practice shows that manifold competences and obligations of the Ministry of Justice may lead to a situation in which the running of legal aid system is viewed as a secondary, less important task, which may have adverse consequences on its operation. Moreover, the proper management of a legal aid system is a demanding activity, which needs good planning, study of needs, active research and monitoring of the situation, close cooperation with a multitude of actors, many of them from the civil sector etc. The structure and institutional setting of the Ministry of Justice is not well adjusted to such demands, and may easily lead to the bias towards some elements of the system (eg. the professional legal structures with whom the Ministry otherwise has day-to-day dealings).

This is by no means mitigated by the fact that some members of legal aid administration are elected among the "external" actors (lawyers, members of other ministries, CSO's and independent regulatory bodies). These members are all appointed by the Minister of Justice, and their function in the system is limited, also because of their strong dependence on the administrative services of the Ministry (see *infra* on Quality Control Commission).

The main bodies of first instance to which legal aid applicants should turn to acquire referral for legal aid are the district units of the Ministry of Justice in four larger cities of Serbia. In this report it was already stated that the system of referrals through state administrative bodies generally is a challenge in terms of securing speed, accessibility and ease of use for the applicants. Even disregarding the general criticisms towards the systems of referrals (vouchers, *upute, uputnice*), this territorial organisation causes very deep concerns. Keeping in mind the experiences from Croatia (which is half of the size of Serbia), where 21 state administrative offices and several field offices were still subject to serious criticisms as to their availability and closeness to those who are most in need, the Serbian scheme with only 4 (four) points for issuing referrals may for many be insufficient to secure access to justice. For legally most illiterate parts of populations who live in villages which are far away from the four urban centres, the need to apply to an legal aid office before even approaching the local court may be an impassable impediment (e.g. if a peasant from a village in Southern Serbia would wish to apply to a local court unit in Bosilegrad or Surdulica, he/she would need to travel over 4 hours to Kragujevac only to submit legal aid application). The number of legal aid bodies may be contrasted with the number of court: even after the successfull rationalization of the number of courts, there are 64 court of general jurisdiction in Serbia. The only way to keep processing of legal aid applications by four centres in line with legal aid standards would be in a massive support to various legal aid organisations which would as "outsourced" services of the Ministry collect, fill-in the applications for the applicants, submit them to the offices exchange the information regarding the applicants' status and deliver the processed referrals to the applicants. Although the DLAA provides that the applications may also be submitted indirectly (see Art. 32 para 3) through the local legal aid offices, through the lawyers or other registered legal aid providers, this is not sufficient for various reasons: as assistance in processing legal aid applications is not regarded to be a form of legal aid which would be supported by the State, no funding is available for organisations that would undertake these activities that require significant efforts; legal aid offices of local administration are better suited to provide legal aid directly instead of double referral; there are no guarantees of coverage of the entire territory; most needy applicants are not even in position to recognize the nature of their problem and need a pro-active approach instead of bureaucratic barriers etc.

The Appeal Commission, appointed by the Government, is exclusively composed of the nominees of various ministries. Since, by its nature, the appeal commission should be the operative body of second instance, the semi-professional capacity of the three public servants from different sectors who have to jointly act as a quasi-independent tribunal may cause problems, both in terms of efficiency, as in the terms of capacity to act impartially and competently. It is not much of a comfort that against their decision an administrative suit before the Administrative Court may be launched, as such a proceedings is complex and lengthy. It would also raise the issue of what kind of legal aid is available for the unsuccessful legal aid applicants that disputes the decision of legal aid administration.

The Quality Control Commission is also a body that, by its composition, does not guarantee the operative day-to-day performance of its functions. As a body composed of delegates of particular actors of differing interest, it seems more suitable for general debating of issues from different perspectives than for uniform enforcement of legal aid standards. Having said that, it should be warned that for separate types of legal aid, i.e. for legal advice and legal representation (or specific sub-types, such as legal assistance in labour law cases etc.) separate procedures, adjusted to the needs of the specific area, are desirable. The quality standards should not, however, depend on the professional status of the provider (whether a lawyer is self-employed, employed by a public office, by a civil society or by a law firm), but on the functions performed within a legal aid system. For the same functions (eg. a particular type of legal advice, or a particular type of other legal work, including representation before specific bodies and in specific proceedings) uniform quality control mechanisms, uniform approach and uniform sanctions should be established. This is currently not the case in the DLAA. Moreover, it seems that the QCC has the weakest authorities in respect to the providers with the broadest authorities (attorneys – members of the Bar). This is not only illogical, but also creates an impression of illegitimate bias.

The authorities of the Quality Control Commission are stretching only to legal aid providers, and not to legal aid administration. This means that the QCC will not and may not control the quality of the services of district units of Ministry of Justice which are processing legal aid applications. In such a way, the essential part of the system (one of the rare parts for which the QCC may, by its composition, be competent), will remained outside of the controlling system. On the other hand, the QCC, although being the body within the ministry of the central government, is competent to control the legal aid offices of the autonomous units of local self-government. All these elements indicate that the overall design of the quality control, at this level of legislative plans, still suffers from imbalances which need further consideration.

8. FINANCING

Under Art. 55 para. 1 of the DLAA, “the funds for organising and providing legal aid shall be provided from the budget of the Republic of Serbia, the Autonomous Province and local self-government units, the organizations entrusted with public authorities, from co-payments for provision of partly free (subsidized) secondary legal aid, and from donations (national and international financial aid).”

The primary legal aid is, as explained before (see *supra* at III.B.4), not financed from the legal aid budget. Within the public authorities at the State level, the primary legal aid is financed on the regular budgets of respective institutions.

The budget for (secondary) legal aid is allocated from the level of central government to be managed by the Ministry of Justice. It is being used for administrative expenses of establishment and maintenance of the legal aid system, and for the payments of

contributions for secondary legal aid providers from civil sectors (CSO's, clinics). At least 40% of the budget has to be spent on such contributions, and up to 10% may go for the administrative expenses of processing legal aid applications.

The legal aid offices of local government are financed from the budgets of the local administration and autonomous provinces. The ratios are: up to 30% should be allocated for legal aid offices, and at least 70% for the expenses of legal aid providers (attorneys and other providers of secondary legal aid).

The legal aid providers from the civil sector (CSO's and clinics) should be financed by local and central government budgets in rations 70/30 percent.

Evaluation:

As explained in the introduction (see *supra* at III.A), it is almost impossible to assess the system without more detailed plans regarding the expenditures from the public funds, both at central and local level. Keeping in mind the best practices and data on legal aid expenditures in the region, it should be expected that in this stage at least 10 to 15 million Euros will be allocated to legal aid budget at the annual level. Yet, no available documents so far mention any concrete sums. There are also no concrete calculations regarding the costs per case (CPC), regarding the shares of particular actors in the system, or regarding the supplemental finances available from other sources. Therefore the following evaluation is largely hypothetical, as it deals with fragmentary information and reflects only on a few available norms of the DLAA.

The attempt to set the rations (percentages) for allocation of available funds is in principle commendable, just as the clear setting of the maximum levels of expenditures on administration of the system and other expenses not directly linked to concrete legal system. It seems, though, that the level of administrative expenditures is still high (at the central level, the administrative expenses of processing applications are set at up to 10%, but to this percentage one should add up to 50% of the budget, as the actual expenditures for legal aid are not minimum of 90, but minimum of 40%; costs such as expenditures for fees of members of QCC or the Appeals Commission should also be treated as administrative costs).

Finally, the position of the DLAA that primary legal aid should not be supported from the public budget is not in line with the European and international standards and best practices of legal aid which require that legal advice be an equally important element of the legal aid system which supplements legal aid in narrow sense (see *supra* at II.B.3). Even though the primary legal aid is narrowly construed, the lack of any public funding for it may be an impediment in providing access to justice. It is not to be expected that such a regime would provide a good quality of primary legal aid, and that the choice of providers providing it would be sufficient.

It seems that the chosen methods of financing may go against the availability of legal advice even there where legal advice is considered to be an element of secondary legal aid. As emphasized before, it is so far unknown what will be the criteria for remuneration of particular legal aid activities. If, however, any kind of secondary legal aid would require submission of application to the competent organ (district field office of the Ministry), the availability of legal advice would be significantly reduced, as every person seeking legal advice would also have to undergo a complex and lengthy process of eligibility checking, just as if the most complex and expensive forms of legal representation are requested. It is already stated that a need to go through an process of *a prior* administrative checking for legal advice is overkill (see *supra* III.B.3.ii, III.B.5). The similar requirement led in Croatia to a situation under which, as found out by independent research, the legal aid centres engaged in providing legal advice could not get more than 0,5 % of their overall legal aid activities in providing legal advice recognized and funded by the system. Unless a different model of financing will be in place for provision of legal advice (including the legal assistance in drafting of documents and other legal aid counselling outside of representation before the courts), the same is to be expected in Serbia.

There may be an opportunity that, instead of *per case* financing on the basis of vouchers a continuing system of project financing is introduced (as usual in similar situations in the other countries). In Art. 26a DLAA an option of **annual public tenders** opened to all legal aid providers from the civil sector is provided (accompanied, though, by very demanding conditions – see *supra* III.B.3.ii). However, it is questionable to which level this option of public tenders is compatible with the unexceptional requirement that a referral based on individual application is issued for every singular case of legal aid (including all forms of legal advice except those considered to be primary legal aid for which no money is available anyway).

C. SUMMARY OF THE FINDINGS

The introduction of an integrated system of legal aid, regulated by a single piece of legislation, might have a positive impact on the protection of procedural human rights, in particular the right of access to justice. The DLAA may be a good step in this direction, but it also has serious deficiencies, which need to be remedied. In the present form, the DLAA partly seems to work more in favour of establishing or strengthening the professional monopolies and exclusivity of certain groups of legal professionals than in favour of enhancing access to justice for all segments of society (especially the underprivileged ones) by securing a harmonious and collaborative environment in which all those capable of participating in the system are encouraged and supported.

The **good sides of the DLAA** are the following:

- the intention to regulate comprehensively all elements of legal aid in a single act;

- the attempt to include various legal problems from the area of criminal, civil, constitutional and administrative law;
- the coverage of various types of proceedings, including litigation, extra-contentious proceedings, and mediation proceedings;
- relatively short list of legal problems that are excluded from the support from legal aid scheme;
- the opportunity to view financial status of the applicant in the light of concrete circumstances of the case;
- the inclusion of both legal aid and legal advice in the scope of legal aid provided under the DLAA;
- the inclusion of various legal aid providers, such as legal aid offices of the local administration; attorneys – members of the Bar association; various associations from civil sector; legal clinics at the faculties of law; mediators; notaries; trade unions; etc.
- the fact that the associations and legal aid services of the local administration are (at least partially) authorized to provide secondary legal aid, including some forms of representation;
- the wish to ensure that the funds available for financing of the legal aid system come from diverse sources, both from the central budget and from the budget of local self-government, as well as from the other sources.

The **negative sides of the DLAA** are the following:

- unfinished nature of the legislative project (many key elements are unknown at the time of completion of this expertise, since they are left for the later implementing regulations);
- the definitions of legal problems covered are centred around various proceedings, very little or no space is left for legal advice and assistance in legal transactions, negotiations and other extra-procedural methods aimed at out-of-court dispute settlement;
- vagueness of the eligibility criteria, a lot of space for discretionary decision-making;
- inability to assess the reach of the regular eligibility criteria (the population covered by the legal aid system);
- high chances that the competent bodies will not be able to assess in an appropriate manner whether applications are “manifestly ill-founded”;
- lack of any budget from public funds for primary legal aid;
- inappropriate and exaggerated requirements for registration of legal aid providers from civil sector (associations, clinics);
- linking of registration of legal aid providers to the availability of funds and a series of opinions;
- linking of registration of legal aid providers from civil sector to the established inability of the attorneys to cover certain legal needs;
- fully voluntary nature of registration of the members of the Bar for participation in legal aid cases;
- the requirement that only graduated lawyers with Bar exams and experience participate in the provision of legal aid provided by legal aid services of the local government;

- legal prohibition for legal aid services to provide legal aid in “more complex and specialized matter” (also: the vague and unclear language of the restriction);
- processing of legal aid application in a multi-level procedure which may be ineffective and require legal aid for procedure of applying for legal aid
- overly difficult conditions for granting the right to legal advice (for which the same complex and demanding procedure is used as for court representation in difficult cases);
- system of contributions is only announced, not elaborated;
- chief body for management is the Ministry of Justice instead of a separate independent body (eg. Legal Aid Fond);
- territorial network of legal aid administration limited to only four cities;
- the Appeal Commission and the Quality Control Commission do not promise by their composition an effective day-to-day work;
- lack of uniform authorities and sanctions in respect to quality control of different legal aid providers - the least powers of the QCC exist in respect to the attorneys as providers with the broadest authorities;
- the QCC has no power to assess the quality of work of legal aid administration.

D. RECOMMENDATIONS

Based on the above stated findings, this expertise gives the following recommendations:

1. Before enacting the DLAA, the main elements of the implementing regulations have to be elaborated and presented, so that they may be taken into account when evaluating the draft. In particular, the available public budget and its desirable distribution have to be agreed upon and become an integral part of the legislative project.

2. The legal problems covered by the DLAA have to be detached from the (sole) context of legal proceedings; the out-of-court legal advice and assistance in negotiations and drafting of extra-procedural documents have to be expressly included.

3. Eligibility criteria should be more precisely determined. Although a flexible approach has to be maintained for cases where such criteria are not met, the economic threshold should be clearly determined, also for the purpose of determining the scope of coverage of population by legal aid.

4. The criterion of lack of prospects for the application (manifestly ill-founded applications) has to be controlled or applied by a body that is familiar with the case and the subject-matter (eg. in the court cases - the courts or court employees).

5. Primary legal aid should generally also be sponsored from public funds. The model for compensation for provided legal advice has to be reworked.

6. No separate process of filing applications with the legal aid administration for every case is appropriate for the provision of legal advice, therefore the financing of legal advice should be based on public tenders and evaluated by annual reports provided *ex post facta.*

7. The registration of legal aid providers should be simple and relieved of excessive requirements. The registration as such should not depend on available public budget and permission of the other providers.

8. All members of Serbian Bar should in principle have the right and the duty to have legal aid cases assigned to them. The options for refusal of legal aid should be separately elaborated and adjusted to the specific context.

9. The supplemental requirements on qualification of legal aid providers should not depend on the professional status and type of the legal aid providers. The limitations (or, better, guidelines) are only advisable if they are adjusted to the type of legal aid case, irrespective of the status and type of legal aid provider (eg. for complex court representation a Bar exam and experience are in principle needed, but assistants of the lead lawyer may be involved without them; for representation in simple court cases and in administrative proceedings a supervision by a person with a law degree may be required; for other type of legal work such as drafting or advice, some substantive knowledge of the legal problem suffices).

10. System of contributions has to be clear, effective and elaborate.

11. The roles and compositions of chief bodies for administration of legal aid system should be rethought, keeping in mind that independence and separation from the Ministry would be desirable.

12. The network of legal aid administration should be extended; the assistance in filling out legal aid forms and submitting them to the authorities have to be recognized and financed as a separate form of legal aid.

13. The authorities regarding control and sanctioning of legal aid providers should be equal and uniform for all providers, without discrimination on the basis of their professional role or status.

14. The quality control has to be stretched to the legal aid administration, as well as to all other forms of legal aid, including those dealing with costs of proceedings and initiatives for streamlining and simplifications of the relevant procedures.

Prof. Dr. Alan Uzelac

Zagreb, February 27, 2011

IV. APPENDIX: DRAFT LEGAL AID ACT (FEBRUARY 2012)

This is the text of the DLAA as received by the Ministry of Justice on 16 February 2012

Legal basis for drafting the Law:

Art. 67, Para. 3 and Art. 21 of the Constitution of the Republic of Serbia,

International Treaties,

The Strategy of the Development of the Free Legal Aid System in the Republic of Serbia

LAW ON FREE LEGAL AID

Subject of the Law

Art. 1

This Law shall regulate the exercise of the right to free legal, the concept and of free legal aid, providers of free legal aid (hereinafter: provider), beneficiaries of free legal aid (hereinafter: beneficiary), the requirements and procedures for exercising the right to free legal aid, organization and management of the free legal aid system, quality control of the free legal aid provision, as well as other important matters relevant for the functioning of the free legal aid system.

This Law shall not be implemented in cases where provision of free legal aid is not financed in a manner provided by this Law.

The objective of the Law

Art. 2

The objective of this Law shall be to provide each citizen with effective access to justice, under equal conditions, the rule of law and citizens equality in the proceedings before courts, administrative authorities and other public authorities before which individual rights, obligations and interests are exercised, or prior to initiation of these proceedings and external to the proceedings.

The objective of this Law referred to in Para 1 of this Article shall be performed through the establishment of effective and sustainable free legal aid system in the Republic of Serbia.

The provisions of this Law shall be interpreted and applied in line with the objective of this Law referred to in Para 1 of this Article.

The Concept of the Right to Free Legal Aid

Art. 3

The right to free legal aid, in line with this Law, is the right to legal services exercised by the beneficiary, free of charge or by partial payment (with participation), funded from the budget of the Republic of Serbia, public authority body, or by the local self-government unit, under the conditions and procedure prescribed by this Law.

The person, who is approved the right to free legal aid in line with this Law, in the form of representation or defense, under the provisions of this Law, shall be entitled to exemption of the court procedure fees, regardless whether such request was posed during the proceedings, as well as the right to exemption of payment for the cost of procedure to the opposite party if the case or other proceedings were lost, in proportion to the approved right (full or partial legal aid).

In case when free legal aid is implemented on the basis of some other law, the provisions of this Law shall be applied only to the issues that are not regulated by that other law.

Types and Forms of Free Legal Aid

Art. 4

Free legal aid can be provided in the form of primary or secondary legal aid , in accordance with this Law.

Primary legal aid can also be provided concurrently with the provision of secondary legal aid, in line with this Law.

The forms of free legal aid shall include:

1) provision of general legal information, initial and other legal advice;
2) legal aid in drafting motions and legal documents
3) legal aid in initiating legal procedures and participating in mediation procedures;
4) right to legal representation before courts of law, administrative authorities and other bodies that decide on rights, obligations and legal interests of an individual in the particular case.
5) holding informational session with the mediator or the implementation mediation procedure

Exemption of payment for the cost of procedure may be requested independently or concurrently with the form of legal aid referred to in item 4 of this Article.

Free legal aid can be provided in the form referred to in Para 3 of this Article, or only by individual actions that form the substance of the legal aid form, in line with this Law.

Explanation of Particular Terms in the Law

Art. 5

Particular terms utilized in terms of this Law have the following meaning:

Primary legal aid is the right of the legal aid beneficiary to general legal information, initial and other legal advice, in any legal matter, which shall be exercised on the basis of a request addressed to the free legal aid provider, free of charge;

Secondary legal aid is the right of the legal aid beneficiary to the drafting of documents and motions, to initiation and participation in the mediation procedure, to defence and representation before courts of law, administrative authorities and other bodies, as well as in the procedures for peaceful settlement of disputes, which shall be implemented under the conditions of this Law;

General legal information constitutes instructions and information, general and in principle, on the regulation of the particular area of law and the manner and procedure for implementation of a specific right or obligation and legal interest approved by law;

Initial and other legal advice refers to the information on legal status of a person, the legal regulations pertaining to a particular legal matter, the information on the reasons for initiating proceedings before court of law or other public authority regarding disputed right, methods of achieving peaceful settlement of a dispute, the information pertaining to the course of proceedings before of law or other public authority - jurisdiction, procedure rules, cost of procedure, the manner of enforcement of the decision and the possibility of obtaining free legal aid, as well as legal aid in completing of forms and drafting simple documents and motions on behalf of the beneficiary;

Legal advice represents a detailed explanation of the manner and possibilities of settling a specific legal issue pertaining to a particular legal matter;

Drafting motions comprises the drafting of legal acts to initiate judicial proceedings or to be submitted in a particular stage of these proceedings, for which a decision on legal aid has been issued by the competent body (drafting legal actions, requests, proposals, petitions, legal remedies before national bodies, the European Court for Human Rights and the UN contracted bodies;

Drafting legal documents means shaping up legal affairs and regulating legal relations for which a mandatory legal form is proscribed by law;

Representation is a set of legal actions that a legal aid provider undertakes, upon the given power of attorney issued on the basis of the decision on granted legal aid, before the court of law, other governmental institution or independent body, in the administrative proceedings or an administrative dispute, criminal, litigation, misdemeanour or enforcement proceedings, as well as the acts of drafting and submitting written motions, and provision of legal advice pertaining to a specific case;

Defence means representation of a defendant in the proceedings before court of law or other public authority in criminal or misdemeanour procedure, out of mandatory defence.

Cost of procedure refers to the costs incurred for the party during the proceedings before the court, administrative body or other public authority, that refer to exemption of payment for the court fees and administrative tax, the cost of evidence presentation or other procedural actions such as: expertise, examination of witnesses, crime scene investigation, an official release outside the court building, announcements, securing the costs of the proceedings, interpreters, translators, mediators, and the cost of representation by an attorney as a provider, etc.;

Legal Aid Applicant is any individual who has submitted an application for secondary legal aid to the competent body (hereinafter: Applicant);

Legal Aid Beneficiary is any individual who uses any form of legal aid, as established by this Law (hereinafter: Beneficiary);

Legal Aid Provider is an attorney at law, notary, the mediator, the legal aid service established in local self-government units, as well as associations and other forms of organizations (e.g. NGOs, trade unions, legal clinics, organizations for consumers' protection, etc.), who provide legal aid in line with this Law and are entered in the Integral Register of the legal aid providers;

Public authority body is a state body, a body of Autonomous Province and of local self-government units in the system of state administration and local self-government, as well as bodies with public authority, which decide upon individual rights, obligations and interests.

BASIC PROVISIONS

Basic Principles of the Free Legal Aid System

Art. 6

The basic principles of the free legal aid shall be:

- equal accessibility to the right to free legal aid, in line with this Law, and prohibition of discrimination, regardless of personal attributes of the provider and beneficiary of the services;
- the principle of professional performance of the provider and respect of dignity of beneficiary;
- orientation towards the needs of beneficiaries of free legal aid and organization of the system in accordance with the established priority needs;
- encouragement of general legal informing and counselling;
- encouragement of peaceful settlement of disputes;
- efficiency, cost effectiveness, and sustainability of the system;
- utilization and enhancement of all existing capacities (experts and means) in the area of the free legal aid provision and encouragement of the partnership and coordination among providers;
- enhancement of partnership and coordination in providers' work;
- transparency of all types of activities in the management, leadership and decision making within the free legal aid system;
- continuous monitoring of the beneficiaries' needs;
- supervision and improvement of the quality of the free legal aid services;
- encouragement of various forms of research in the free legal aid system.

Types of Procedures in which the Right to Free Legal Aid Is Exercised

Art. 7

The right to free legal aid shall be exercised in the proceedings deciding upon individual rights, obligations and interests approved by the law, in criminal proceedings, misdemeanour, civil, out-of-court and enforcement proceedings, administrative proceedings and disputes, in the procedure on the constitutional appeal, in the procedure of enforcement of

criminal sanctions, mediation, and in other procedures before independent or regulatory bodies.

The right to free legal aid in the proceedings referred to in Para 1 of this Article until the final decision in regular proceedings or proceedings on extraordinary legal remedies for which it was requested, or until the end of enforcement proceedings initiated for settlement of claims established in due process, or independently.

The right to free legal aid in the proceedings referred to in Para 1 of this Article in which it is decided on rights, obligations and interests of individuals before international courts and bodies, shall be implemented in line with this Law, if not regulated otherwise by the confirmed international agreements.

1. Beneficiaries of the right to legal aid

Art. 8

Any person shall be entitled to primary legal aid, in any legal matter, based on request (verbal or written) addressed to the free legal aid provider.

Under the conditions established by this Law, international agreement or generally accepted rules of international law, the person whose rights, obligations and legally established interests are decided upon before the court of law or other body in the Republic of Serbia, or the person whose rights, obligations and legally established interests are subject of mediation, or legal matters that documents drafting, shall be entitled to secondary legal aid.

2. Requirements for Granting the Right to Free Legal Aid

Art. 9

Primary legal aid shall be approved to everyone under equal conditions.

The right to secondary free legal aid shall be approved by the decision of the competent body of the Ministry that decides upon the right to free legal aid (hereinafter: the competent body) on the basis of the following criteria:

1) economic status of the legal aid applicant and his/her household members;
2) obligation of observing the equity principle
3) obligations deriving from the confirmed international agreements of the Republic of Serbia.

Economic Status of the Beneficiary

Art. 10

The right to free secondary legal aid shall be exercised by an individual who, given his/her economic status and economic status of the members of his/her household, could not

afford to pay for legal aid without jeopardizing his/her own support and support of the household members or persons he/she is legally obliged to support.

In terms of Para 1 of this article, household members shall include spouses, unmarried partners, children, adopted children and other relatives living with the applicant or supported by the applicant.

The basis for establishing economic status shall include: ownership on movable and immovable property, regular and ad hoc earnings, and other income at the time of submitting the application.

It shall be considered that the applicant's economic status is jeopardized as referred to in Para 1 of this Article, if the applicant is a social aid beneficiary, on the basis of the decision of the competent body in line with the provisions regulating rights in the area of social protection, or if the average monthly income per applicant's household member does not exceed a double amount of the minimum level of social security, and if it is established that the applicant's necessary expenditures exceed the income.

When establishing the economic status, the income and property of those household members, who are the opposed party in the case for which the applicant seeks free legal aid, shall not be taken into consideration.

Written Statement on Economic Status

Art. 11

The economic status of the legal aid applicant and his/her household members shall be established on the basis of a written statement and attached documents.

The written statement shall be submitted to the competent body and shall contain information on the economic status of the applicant, as well as the consent of the applicant and his/her household members for obtaining information and verifying data on economic status and other data quoted in the statement, which are necessary for deciding on the request. In the written statement, the applicant shall guarantee for authenticity of submitted information, under personal responsibility.

The written statement on economic status is an integral part of the application for granting the right to free legal aid, whose contents of the form shall be prescribed by the act of the Minister.

Together with the written statement, the applicant shall also submit documents related to the property referred to in Para 3 Article 10 of this Law to demonstrate his/her economic status.

If the applicant is unable to provide documents referred to in Para 4 of this Article, the free legal aid service shall obtain data on economic status ex officio.

Obtaining and Verification of Information

Art. 12

The competent body may obtain information or perform verification of the data on economic status from the applicant's written statement with the state bodies and other organizations that maintain records of the necessary data, before bringing the decision on the

request, or after that, if any suspicion arises about authenticity of data on which the decision on approving free legal aid is based.

All bodies and organizations entrusted with the records keeping of the data referred to in the Article 11 are obliged to provide all the necessary information at the request of the competent body.

The procedure of collection and verification of information shall be regulated by the act of the Minister.

Presumption of the Jeopardized Economic Status

Art. 13

Economic status of the applicant, who was granted legal aid in some other case in past six months, shall not be re-established.

The Duty of Information on Changes of the Economic Status and Review of the Decision

Art. 14

From the date of submitting the application for legal aid, the beneficiary is obliged to inform the competent body of all the changes that might affect the right and the scope of the granted legal aid within 15 days since such a change has occured.

The competent body shall review ex officio the right to free legal aid if it discovers some new circumstances which indicate the reasons for cessation or change of the scope of the approved right.

Based on the established facts referred to in Para 2 of this article, the competent body shall pass a decision on the cessation or change of scope of the approved right to legal aid.

The Cessation of the Granted Right to Free Legal Aid

Art.15

The right to free legal aid shall cease in the following cases:

- execution of service by the provider
- beneficiary's death
- when the competent body establishes that the beneficiary has quoted incorrect data pertaining to the requirements for granting the right
- if the circumstances relevant to the requrements for granting the right have changed.

The competent body may decide to grant the right to free legal aid to the inheritor of the deceased beneficiary whose property was already assessed, without the procedure of reestablishing his/her economic status, if such person pursues the same proceedings.

In case when the right to legal aid was approved on the basis of incorrect data or it was unfoundedly used due to hiding of the change of facts and circumstances, the person who has unfoudedly used the approved free legal aid shall be obliged to pay for the incurred cost.

In the decision of the competent body establishing that the right to free legal aid shall cease on the basis of Para. 3 of this article, the amount and the deadline for paying the cost shall also be established.

The decision of the competent body establishing the cessation of the right to free legal aid and bounding the beneficiary to compensate the Republic of Serbia for the free legal aid cost, has legal enforcement power and shall be delivered to the competent court or other government agency ex officio, for the purpose of forcible enforcement..

Against the decision referred to in Para 5 of this Article, an appeal may be filled to the Minister of Justice.

The final decision may be disputed in administrative proceedings.

The Equity Interest as a Criterion

Art. 16

The right to free legal aid may be granted if the equity interest requires protection of rights and interests that are based on law or if such aid is of invaluable importance for effective access to legal protection.

The equity interest shall be assessed for each specific situation and in particular in regard to:

- importance of the object of proceedings (rights or goods that are protected or claimed) for the applicant, and particularly the level of possible punishment, the amount of indemnity claim, type of dispute, and similar;
- factual complexity of the case or complexity of regulations that are applied in the proceedings, especially if a great number of laws is applied in the proceedings, if there are many participants in the proceedings, if the application of law requires specialized expertise, and similar;
- ability of the applicant to defend and represent the rights and interests by him/herself based on the age, mental or physical health condition, literacy, affiliation to vulnerable groups, family situation, economic status, and similar;
- economic power or monopolist position of the opposed party on the market;
- the need to ensure legal and equal legal protection in the proceedings.

It shall be considered that the equity as a condition for entitlement to free legal aid is always fulfilled if the application is submitted by:

1) a child without parental care, or a child who is not provided with adequate representation in the proceedings under the regulations governing such proceedings, (or, to add this:

child in the proceedings establishing paternity or maternity, the change of the name, and the proceedings for the protection and exercise of other rights of the child);

ALTERNATIVE FOR 1)

"every child"

2) the person on whom forcible hospitalization is imposed; *(**alternative** to add here also: `` person against whom proceedings for partial or complete deprivation or restoration of legal capacity are in progress)*

3) the person who is a victim of war crimes

4) the person who is a victim of human trafficking;

5) the person who is a victim of family violence;

6) the person who is a victim of discrimination

7) person against whom proceedings for partial or complete deprivation or restoration of legal capacity are in progress

Upon receiving the application, the competent body shall, with no delay, request the opinion of the court, i.e. from the body before which the proceedings are conducted, about the circumstances referred to in Para 1 of this article, who are obliged to provide information within 8 days. If the court or the administrative body is officially informed about the submitted application, it shall, ex officio, furnish the competent body with its opinion. The decision on the request for free legal aid on the basis of equity shall be made within 8 days from the reception of the court's opinion, or the opinion of the body before which the proceedings take place.

The competent authority may decide upon the request for recognition of right on the basis of equity without the opinion of the court or body before which the proceedings take place.

Based on the equity interests, the partially granted legal aid may be also be granted.

In the case of partly paid legal aid, the amount of co-payment shall be determined in accordance with applicant's ability to pay, according to the criteria established by the act of the minister

Article16a

If the court of law or an administrative body before which the proceedings take place, is informed that the party has submitted the application to the competent body, it may bring a decision to temporary grant the right to legal aid, pending the final decision on the right to legal aid, if the applicant indicates it is likely, in line with the criteria predicted by law.

If the decision referred to in Para 6 of this Article is made, the court or body before which the proceedings take place shall, within the given application also decide upon appointing free representative among the providers, on the basis of previously obtained opinion of the beneficiary, in line with this Law. The decision shall be submitted to the competent body without delay.

An appeal to the decision on temporary granting the right to legal aid is not allowed.

ALTERNATIVE:

Competent court shall decide upon granting the right to free legal aid on the basis of equity criterion.

Obligations deriving from the confirmed international agreements of the Republic of Serbia as a condition for granting the right to free legal aid

Article17.

The right to free legal aid shall be granted to the beneficiary on the basis of confirmed international agreements of the Republic of Serbia.

LEGAL AID PROVIDERS

Methods of providing legal aid

Art. 18

Legal aid providers shall be determined by this law in order to enable legal aid to be accessible, professional and effective, according to the needs of beneficiaries and the objective of this Law referred to in Article 2.

Primary legal aid shall be provided free of charge and for secondary legal aid, the providers shall be paid in the amount and the manner in line with this law.

Legal aid provider cannot charge beneficiary for the legal aid cost, except in case of partial payment. Any agreement entered between legal aid provider and beneficiary for award for services or compensation of necessary expenditures during provision of legal aid shall be void.

Providers' Records on Rendered Services

Art. 19

All legal aid providers shall be obliged to keep records on the rendered legal aid services, particularly on the number of beneficiaries and the form of provided legal aid. Records shall be kept on the basis of *referral for free legal aid provision, received from the competent body or otherwise.*

On the basis of individual providers’ records, the Ministry shall keep integral register of the providers and rendered services.

The method of records keeping shall be regulated by the act of the minister.

Providers of Primary Legal Aid

Art. 20

Attorneys provide primary legal aid to the beneficiaries on the territory of the Bar in which they are registered, in line with the law and statute of the Bar.

Primary legal aid shall be provided by attorneys individually, in their offices, or through the Bar in which they are registered, in special premises, for certain categories of beneficiaries, for certain proceedings or certain fields of law, under the requirements referred to in Para 1 of this Article.

Notaries and mediators provide primary legal aid in line with the law and the statute of the Bar in which they are registered.

Legal aid services in the self-government units shall be obliged to provide primary legal aid in line with this Law.

Associations and other forms of organizations, as well as 'legal clinics' established by the university of law, may provide legal aid under the conditions envisaged by this Law and based on the decision of the competent body..

Public authority bodies on all levels, deciding upon the rights, obligations and legally established interests shall be obliged to provide legal aid within the scope of their regular activities, in line with this Law.

Primary legal aid providers may jointly organize legal aid provision on the basis of contract, but the agreement cannot indorse or exclude legal obligation of legal aid provision of specific providers.

Primary legal aid may be also organized through call-centres that shall be established for the entire territory of the Republic of Serbia, Autonomous Province or for the local self-government units. Organization and work of the call-centers shall be determined by the act of the minister.

The Obligation of Primary Legal Aid Provision in the Proceedings before Public Authority Bodies

Art. 21

The court of law or the public authority body before which the proceedings are conducted shall be obliged to educate each party in the proceedings about the right to free legal aid, when performing the first procedural action in the proceedings.

The part in the proceedings is entitled to request information on exercising the right to free legal aid.

Primary Legal Aid Provision before Public Authority Bodies Out of Procedure

Art. 22

All public authority bodies, within the scope of their activities, shall be obliged to organize primary legal aid provision, or certain forms of primary legal aid or related actions

and shall appoint an authorized person for permanent or ad hoc legal aid provision and it shall also organize supervision over such services or a person. The authorized person for legal aid provision shall be a graduated lawyer with experience in legal affairs.

All public authority bodies shall ensure all the necessary technical conditions for legal aid provision and in particular: information desks or suitable space for receiving clients, printing info sheets and forms, roadmaps for exercising the right in the proceedings, information via internet, registry of regulations applied before that body, technical equipment for fast communication with beneficiaries, other providers and competent body etc.

Minimal technical conditions and integral standards for the manner of legal aid provision by public authority bodies shall be regulated by a legal act issued by the minister, within the scope of their activities.

Secondary Legal Aid Providers

Art. 23

Secondary legal aid shall be provided by the bar attorneys in the form of legal advice, drafting motions and documents, representation and defence before the court of law and other proceedings, in line with the Law. Attorneys are entitled to compensation for the provision of secondary legal aid.

Legal aid Services at the self-government units may provide secondary legal aid in the form of representation in line with the law, if it is provided by graduated lawyer with the Bar exam and experience in representation, if the case does not involve a complex legal matter that requires specialized legal knowledge and where significant number of regulations are applied and if in the particular case representation does not involve conflict of interest or jeopardizes beneficiary's interest in other way.

Notaries shall provide secondary legal aid in the form of drafting motions and documents in line with this Law and the law governing notary.

Mediators shall provide secondary legal aid in the form an informative session or conducting mediation procedure, in line with this Law and the law governing mediation.

Associations, other forms of organizations and legal clinics may provide specific forms of secondary legal aid only on the basis of the decision of the competent body and under the requirements provided by this Law.

Providers may sign an agreement to jointly provide secondary legal aid.

The Integral Registry of Legal Aid Providers

Art. 24

Ministry of Justice (hereinafter: Ministry) maintains the integral Registry of Free Legal Aid Providers (hereinafter: Registry).

The Registry is maintained as a unique public electronic database.

The content, method of entry and process of registration shall be specified by the act of the Minister.

All legal aid providers, in terms of this Law, as well as the form of legal aid some provide, shall be entered into the Registry, based on the decision of the Ministry.

Bar Association of Serbia shall submit to the Ministry the integral list of attorneys-providers to be entered into the Registry.

The provision referred to in Para 4 shall be applied for association of mediators and notaries as well.

The local self-government unit shall submit to the Ministry the general act on the establishment of the legal aid service and forms of legal aid it provides, to be entered into the Registry.

Associations and other forms of organizations shall be entered into the Registry ex officio, based on the decision of the Ministry, in line with this Law.

When applying for entry into the register, individual providers may declare in which proceedings, legal fields or categories of beneficiaries they can not provide legal aid due to insufficient training or for other legitimate reasons.

The decision of the Minister to enter or delete the provider from the register shall be final and it can be disputed in an administrative procedure.

The provider shall be deleted from the register in the following cases:

- based on the fact of death, termination of employment or removal from the appropriate registry of associations, of the provider who is a natural person, or upon termination of provider which is a legal entity;
- based on the final decision of the Commission for Quality Control, which is determines that the provider who is a natural person negligently or unprofessionally provided legal aid, causing damage to the beneficiary; if significant damage has occurred for beneficiary due to negligent or unprofessional conduct of the provider who is a natural person, association or other form of organization in which the person is employed may be removed from the register;
- based on the final decision of the disciplinary commission of a public authority or the association whose member the provider is, issuing a disciplinary measure to the provider who is a natural person for serious breach of discipline causing damages to the beneficiary.

Special Requirements for Attorneys for Entry into the Registry

Art. 25

An attorney shall be entitled to provide free legal aid in line with this Law, under the condition he/she has not been punished in the disciplinary procedure.

An attorney who wishes to provide free legal aid shall submit an application to the Bar Association where he/she is registered.

When applying, an attorney shall be obliged to give a written statement that he/she accepts the obligation of free legal aid provision, and shall fully adhere to the Codex of Professional Attorney Ethics and the law when providing free legal aid.

Along with the statement referred to in Para 3, an attorney shall also submit evidence on acquired experience and specialized knowledge in certain legal field (certificates etc.) in which he/she aims to provide free legal aid.

The Bar Association of Serbia shall form an integral list of attorneys providers based on the lists of attorneys received from local Bar Associations and shall submit the list to the Ministry. When drafting the list of attorneys-legal aid providers, the Bar Association of Serbia shall pay attention to their professional reputation in terms of Para 1 of this Article, based on which they can be distinguished as providers in specific fields or disciplines.

The provisions of this Article shall be applied accordingly to the entry of mediators and notaries into the Registry.

Special Requirements for Entry into the Registry of the associations, other forms of organization and legal clinics

Član 26.

Associations, other forms of organizations and legal clinics established at universities may provide free legal aid if they are entered into the integral Registry.

Associations, other forms of organizations and legal clinics established at universities submit the request for entry into the Registry to the Ministry.

When submitting the request for entry into the Registry, associations and other forms of organizations shall submit documents confirming the requirements for provision of free legal aid, and in particular:

- decision on entry into the Registry of the associations ;
- evidence on experience and specialization of the employees and hired staff for free legal aid provision in the specific field;;
- evidence on employment of at least one lawyer with Bar exam and experience in representation of at least three years, who shall supervise the provision of legal aid;
- evidence on meeting the requirements in terms of technical equipment for legal aid provision, if budget funds are not planned to cover rent of official premises as well;
- financial plan.

When submitting the request for entry of the legal clinic into the Registry, the University of Law that established the legal clinic shall submit:

1) evidence on the establishment of the legal clinic and working experience;
2) working program of the legal clinic ;
3) the field in which legal clinic is specialized in for legal aid provision;
4) total number of engaged professors, students, attorneys and other lawyers in implementing the program of the legal clinic, as well as the statements of their readiness to provide certain forms of free legal aid if entered into the Registry;
5) name of the lawyer with Bar exam and experience in representation before judicial

bodies who shall be responsible for supervising legal aid provision;
6) evidence on meeting the requirements in terms of technical equipment for specific form of legal aid provision,
7) financial plan

Along with the request, the analysis of the beneficiaries' needs for the provision of free legal aid shall also be submitted.

Decision on Entry into the Registry of the associations, other forms of organization and legal clinics

Article 26a

If the Ministry decides to adopt the request referred to in Article 26 of this Law, it shall concurrently allow the entry into the Registry of the association, other forms of organization and legal clinics, if it determines the need for free legal aid provision and if the funds from the budget of the Republic of Serbia or the budget of autonomous province and local self-government units are allocated.

The need referred to in Para 1 of this Article exists if it is established that the Bar and local self-government units can not ensure the accomplishment of the objectives referred to in Article 2 of this Law, that is the availability and adequate quality of free legal aid to the beneficiaries belonging to vulnerable social groups and if satisfying such need is socially justified. The Ministry, autonomous province and local self-government units *may once per year, mutually determine the need* referred to in Para 6 of this Article, *regardless of the submitted request, based on a public tender or otherwise, and for the purpose of budget planning and joint financing of the provider to satisfy this need, in line with the special Law.*

Prior to deciding upon the request, the Ministry can obtain an opinion from the Bar Association of Serbia and local self-government units in which the beneficiaries reside. If the beneficiaries are on territory of several local self-government units *or on the* whole *territory of Republic of Serbia, it shall also obtain an opinion of the Ministry for Human and Minority Rights, state administration and local self-government, or other ministry competent for the field in which provision of legal aid refers to. Opinion can also be requested from a temporary government body established for the purpose of counseling regarding implementation of the free legal aid system.*

The decision on adopting the request shall determine to which providers the budget funds of the Republic of Serbia will be allocated, in what amount, for which purpose, types, forms or specific actions of free legal aid to be provided, the beneficiaries, if the established need is specific and the period of providing free legal aid services.

The Law on general administrative procedure shall be applied when deciding upon the request..

The decision on the request is final and may be disputed in an administrative procedure.

Rights and Obligations of Legal Aid Providers

The Obligation of Diligent and Qualitative Legal Aid Provision

Art. 27

The provider shall be obliged to provide free legal aid in line with this Law, in diligent, high quality manner and in accordance with the rules of profession and expertise.

Negligent or evidently poor quality legal aid provision shall be the reason for sanctions imposed by this Law.

Negligent or evidently poor quality legal aid provision involves:

- Provision of free legal aid by omitting certain actions or legal terms, or by taking actions contrary to the general rules of the profession, due to which the beneficiary did not exercise his right or interest in the proceedings
- unjustified refusal to provide legal aid, beyond the reasons provided by law;
- charging the beneficiary directly for provided legal aid, or arranging a fee with the beneficiary;
- Provision of free legal aid by breaching the obligations and standards established by this law.

Negligent or evidently poor quality legal aid provision shall be determined in the process of quality control for the time of free legal aid provision or on the basis of the effects of the provided legal aid, in line with the provisions of this Law.

The Obligation of Keeping Professional Secret

Art. 28

All legal aid providers shall be obliged to keep in confidence anything entrusted to them by a beneficiary in line with the Law on Personal Data Protection..

Ungrounded Refusal of LA Provision

Art. 29

The legal aid provider must not refuse to provide legal aid unless such refusal is in accordance with the reasons envisaged by this Law.

The provider may refuse to provide free legal aid if by its provision he/she would engage in a conflict of interest or breach the principles and provisions of the general act or code of conduct of the Bar, association or other form of organization.

The provider is obliged to inform the competent body on the circumstances referred to in Para 2 of this Article.

The Manner and Procedure for Exercising the Right to Legal Aid

Exercising the Right to Legal Aid

Art. 30

Exercising the primary legal aid shall be free for everyone, under equal conditions, regardless of the beneficiary's personal characteristics, economic status and the provider.

Any person shall be entitled to the primary legal aid on the basis of request which will be provided in duration of max. 60 minutes. The request may be submitted in a verbal, written manner or electronically.

The beneficiary is not entitled to demand the courts or state authorities before which the proceedings take place primary legal aid services that include drafting simple documents and motions on his/her behalf.

The right to secondary legal aid shall be implemented on the basis of the decision of the competent body, in line with criteria and procedures established by this Law.

The procedure and exercising the right to free legal aid for the illiterate, deaf, and immobile persons who do not understand the language in official use shall be regulated by the act issued by the Minister.

State’s responsibity for damage

Art. 30a

For the damage suffered by the beneficiary as a result of improper and negligent provision of legal aid by lawyers, mediators, notaries, associations, other forms of organization and legal clinics that are entered into the Registry, the Republic of Serbia is responsible, where the damage can not be fully compensated from the insurer or provider.

For the damage suffered by the beneficiary caused by an employee in the service, the Republic of Serbia shall be held responsible, if it can not be fully compensated from the autonomous province authorities or local self-government unit, who founded the service.

The Procedure for Exercising the Right to Secondary Legal Aid

The Application

Art. 31

The application for granting the right to free legal aid (hereinafter: application) shall include:

1) name, ID number, permanent address or the address of temporary residence of the beneficiary and his/her household members;

2) description of the legal matter for which free legal aid is requested;

5) requested type and scope of legal aid;

6) data on the economic status of beneficiary and his/her household members, in line with the Article 11 of this Law;

7) data on the fulfilment of other conditions in line with this Law.

It is mandatory that the application contains the beneficiary's statement on his/her economic status and the consent of the beneficiary and his/her household members.

If the applicant can not be identified on the basis of data referred to in Para 1, other evidence can be used for that purpose.

If the application is not complete, the competent body shall order the applicant to complete the application within 8 days.

If the applicant cannot submit data referred to in Para 4 of this article, and the competent body does not obtain the necessary data, the competent body shall pass a decision on dismissal of the application as incomplete.

If the applicant cannot submit data referred to in Para 1 items 3 and 4 of this article and the evidence confirming these facts, the competent body shall determine the necessary facts in other way.

If the applicant does not respond to the order referred to in Para 3 of this article and the competent body does not obtain necessary data,

All legal entities in disposal of the data necessary for deciding on the application are obliged to provide this data to the competent body upon their request without delay and free of charge. Data can also be provided in electronic form, in accordance with the law.

Submission of the Application

Art. 32

The application for exercising the right to secondary legal aid shall be submitted to the competent body.

The application for exercising the right to secondary legal aid may also be submitted in the form prescribed by the Ministry.

The application shall be submitted to the competent body directly by the applicant, through legal aid services, through an attorney or other provider entered into the Registry.

Primary legal aid providers shall inform the beneficiary on the possibilities to exercise the secondary legal aid, if they find such legal aid justified for the particular case, assist the applicant in completing the application, selecting the attorney or other provider. If the primary legal aid provider considers that secondary legal is not justifiable for the beneficiary or the evidence indicates that the beneficiary does not meet the requirements for exercising the right to legal aid in line with this Law, it shall issue a signed statement on these facts to the beneficiary at his/her request, which shall be submitted to the competent body, in which case the provider is not obliged to to assist the beneficiary in completing the application.

The legal act of the Minister, regulating the activities of the competent body, shall determine the criteria for maximum scope of legal aid services assigned to an attorney or mediator during one budget year, taking into account the circumstances of the legal matter.

Service of the application to the court or other body before which the proceedings take place

Art. 33

The application, that is, the decision of the competent body shall be submitted without delay to the court or other body before which the proceedings take place.

In the event that the application for the right to free legal is submitted, the deadline for performing an action which influences the right of the party starts from the day of delivery of the decision on the application for free legal aid, unless the decision on the provisional recognition of the right was made.

The Reasons for Dismissal of the Request

Art. 34

The competent body shall dismiss the request as unlawful if it establishes that the request refers to:

1) proceedings before commercial court;
2) the procedure for obtaining construction and other licenses in an administrative procedure;
3) registration of commercial entities, citizens' associations and foundations;
4) compensation of immaterial damages for the offence of honour and reputation;
5) procedure against the legal action for decreasing child's support when the person bound to pay the alimony failed to do so.

The competent body shall dismiss the request if its approval would be in opposition to the objectives of this Law referred to in Art 2, or if the applicant conditions legal aid provision with success of final outcome.

The Reasons for Rejecting the Application

Art. 35

The competent body shall reject the application if:

1) the applicant does not meet the requirements established by this Law;
2) the submitted initial act of the applicant would have been dismissed as untimely;
3) the applicant would obviously not be successful in the proceedings.

Analogue Application of the Law on General Administrative Procedure

Art. 36

The provisions of the Law on General Administrative Procedure shall be applied in the procedure before the competent body and appeal proceedings.

The Deadline for the Decision on the Application

Art. 37

The competent body shall decide on the application within 15 days from the date of receipt of the application.

The competent body shall consider the applications in the order they have been received, unless the case of urgency requires otherwise.

The Decision on the Approval of the Application

Art. 38

When the competent body establishes that the applicant meets the requirements of this Law, it shall issue a decision on granting the right to free legal aid.

When the competent body establishes that the applicant has some funds that can partially pay the costs of legal aid services, it may approve the provision of free legal aid to the applicant, provided that he/she shall bear the costs, in proportion to the established economic status, and based on established criteria and scales in the act of the Minister.

The Contents of the Decision

Art. 39

The decision on the approval of the right to free legal aid shall mandatory establish the type, specific legal aid actions, scope of the right to legal aid, as well as the legal aid provider.

The decision referred to in Para 1 of this article can establish that the applicant will pay his/her portion of the charge (participation) for legal aid provision in instalments or after he/she collects the claim from the procedure for which he/she was provided free legal aid.

The decision referred to in Para 1 contains referral for utilization of free legal aid and it shall be delivered to the beneficiary and the court or administrative body before which the proceedings for which the application was submitted take place.

On the basis of the referral referred to in Para 3 of this article, the provider’s compensation is performed for the legal aid services and records referred to in the Article 19 of this Law are kept.

The content of the referral shall be determined by the act of the Minister.

Appeal proceedings

Art. 40.

The decision of the competent body can be appealed, within 8 days after reception.

The Appeal Commission decides upon the appeal.

The decision upon the appeal shall be made within 15 days.

The decision in second instance is final and it can be disputed in administrative proceedings.

The Appeal Commission

Art. 41

The members and the president of the Appeal Commission shall be appointed by the Government of the Republic of Serbia

The Appeal Commission has the president and two members. The Ministry of Justice proposes the president to the Government, among the employees in the Ministry. One member of the Commission is proposed by the Ministry of human and minority rights, administration and local self-government among its employees, while the other member is proposed by the Ministry of Labour and Social Policy among its employees.

The Government appoints deputies of the president and the members of the Commission in line with the Para 2 of this article.

The Appeal Commission has a secretary and the administrative service who perform the administrative service for the Commission.

The president, members of the Commission and the secretary are entitled to a reward and compensation for their work, in accordance with the special act of the Minister. The deputy shall be compensated in accordance with the engagement.

The mandate of the members of the Appeal Commission is 4 years, without re-election.

The membership shall cease by death, mandate expiry, dismissal by the Minister, negligent or unprofessional work performance or resignation by the member.

The Government’s decision on dismissal is final and it can be disputed in administrative proceedings.

The Commission shall adopt rules of procedure.

The Commission shall submit annual report to the Government and Ministry of Justice.

Reward and Compensation of Free Legal Aid Costs

Art. 42

If the beneficiary is fully or partially successful in his/her request in the dispute or the proceedings, he/she will be obliged, after collecting the claim, to compensate the budget from which the costs were paid, for the cost of the provided legal aid in proportion to his/her success in the dispute.

If the beneficiary loses the lawsuit for which legal aid has been granted, he/she shall not be obliged to compensate the costs of the provided legal aid.

In case referred to in Para 2 of this Article, the costs of the proceedings shall be compensated to the other party from the budget of the Republic of Serbia, or the budget of the Autonomous District and local self-government, based upon the decision of the competent body and depending on the permanent residence of the beneficiary or other determining criteria.

Secondary legal aid provider is entitled to reward and compensation of the expenses.

The calculation of the reward shall be performed on the basis of the decision of the competent body, in line with the bylaw (hereinafter: rate) of the Minister of Justice. The rate list shall establish the reward for the provider in one-time amount according to the circumstances of the proceedings.

Upon provision of services, the provider shall submit the fulfilled referral and the request for reward and compensation of the occurred expenses to the competent body, as well as the relevant attachments. Calculated compensation may be increased or decreased for justified reasons, related to prolonged duration and complexity of the proceedings without providers influence. The competent body may decide to pay the provider an advance reward and compensation of the expenses during the proceedings, in case there are reasonable grounds.

The competent body shall decide upon the request referred to in Para 5 of this article within 15 days from receiving the request.

The decision upon the request referred to in Para 5 of this article if final and has enforcement power.

ORGANIZATION OF THE LEGAL AID SYSTEM

Art. 43

The organization of the free legal aid system shall be comprised of the Ministry of Justice, Appeal Commission and legal aid providers.

The Ministry shall be responsible for management of the free legal aid system, the establishment of the bodies deciding upon the right to free legal aid, quality control of free legal aid provision (Quality control Commission) and other affairs in line with this Law.

The Appeal Commission is founded by the Government.

The providers shall be organized in such a way to provide accessibility of free legal aid to everyone under equal conditions in line with this Law. Several local self-government units may establish a joint service for deciding upon the right to free legal aid, based in the administrative district.

Administrative authorities competent for deciding on the right to free legal aid

Article 44

The Ministry shall establish the district units in Belgrade, Novi Sad, Kragujevac and Nis for deciding on the right to free legal aid

Applicants residing in the territory of appellate courts in Belgrade, Novi Sad, Kragujevac and Nis shall submit the application in the district units of the Ministry established in these cities.

Other competencies of the Ministry

Article 45

Along with the competencies referred to in Art 44 Para 2 of this Law, the Ministry of Justice shall:

1) establish, and sustain the free legal aid system in the Republic of Serbia;

2) coordinate and harmonize legal aid system in cooperation with the ministry in charge of local government;

3) establish the plans for the improvement of the free legal aid system and for expanding the access and scale of free legal aid, according to the needs of citizens and financial possibilities;

4) encourage the cooperation with providers and beneficiaries within the free legal aid system;

5) establish standards, indicators and procedures for quality assurance and development of professionalism in providing free legal aid;

6) develop the procedure for quality evaluation of all types of providers' activities, methods for research of various aspects of quality, and methods for establishing standpoints and opinions of different beneficiary target groups;

7) maintain the integral Registry, perform the entry of legal aid providers in the Registry and delete the providers from the Registry of legal aid providers;

8) establish the common rate list for calculation of the reward for legal aid providers;

9) provide information, issue publications, and manage its website;

QUALITY CONTROL OF LEGAL AID

Art. 46

Quality control of legal aid provision shall be carried out by the Commission for Quality Control that is founded by the minister of justice (hereinafter: Commission for Quality Control) by nominating Commission members.

Commission for Quality Control shall have five members, out of which two of them are experienced attorneys proposed by the Bar Association of Serbia, one is a representative of the services for legal aid provision in the local self-government units, proposed by the Ministry for Human and Minority Rights, State Administration and Local Self-government, one member is an expert in free legal aid provision proposed by the providers from associations and other forms of organization, and one member is jointly proposed by independent regulatory bodies.

Minister shall also appoint the deputy president and the members of the Commission in a way referred to in Para 2 of this Article.

The Commission has a secretary and the administrative service that perform administrative duties.

The president, members and the secretary shall be entitled to reward and compensation of the expense for the work in the Appeal Commission and t*he amount shall be determined by the act of the Minister. The deputy shall be compensated in proportion t the engagement.*

Term in the office of the Commission for Quality Control members shall be 4 years, with no right to the second nomination in succession.

Membership in the Commission for Quality Control may end by death, elapse of the term of office, dismissal by the Minister, due to irregular and neglectful performance, or by resignation of the Commission member.

The decision of the Minister on dismissal of the Commission for Quality Control member shall be final and can be disputed in administrative proceedings.

The Commission for Quality Control shall develop Set of Rules for its activity.

Duty to Report

Art. 47

The Commission for Quality Control shall perform regular control of the quality of provided legal aid and the provider in terms of this Law and on the basis of collected data shall submit the annual report to the competent ministry on the performed quality control.

The Commission for Quality Control shall form opinions and issue mandatory instructions for all providers, in order to achieve unified practice and higher quality of free legal aid provision.

Legal Aid Services shall submit the annual report to the Commission for Quality Control.

Serbian Bar Association shall submit to the Commission an annual report, based on individual reports submitted by the attorneys who provided free legal aid.

Association and other forms of organization, which are entered in the integral register of providers of free legal aid shall submit to the Commission for Quality Control individual annual reports.

All annual reports shall be submitted to the Commission for Quality Control to 15th February next year.

The Manner of Performing Quality Control

Art. 48

Quality control of the legal aid shall be performed by:

- direct control at the place of providing free legal aid;
- review of the records on the free legal aid services;
- questionnaire on beneficiaries', courts' or bodies before which the proceedings take place on satisfaction with the provided legal aid service;
- beneficiaries' complaints;
- internal control;
- and other methods identified by the Commission for Quality Control.

When a judge or an authorized person of the body before which proceedings take place finds that legal was provided negligently and unprofessionally, he/she shall lodge a complaint to the Commission for Quality Control, in order to establish negligent and unprofessional legal aid provision.

The complaint for establishing negligent and unprofessional legal provision can be also submitted to the Commission for Quality Control by the legal aid beneficiary when he/she considers that his/her right or interest was breached by the legal aid provider's action.

Initiation of the Procedure for Establishing Liability

Art. 49

Commission for Quality Control shall ex officio initiate the control procedure to establish liability of providers for neglectful or unprofessional provision of legal aid.

The Commission for Quality Control shall inform the provider and the legal aid beneficiary on the initiated procedure. It shall simultaneously request all necessary explanations and additional information to be delivered within 8 days.

When the Commission for Quality Control finds it necessary, it may request that the provider and beneficiary submit their statements on essential facts.

In the control proceedings, the provisions of the Law on general administrative proceedings shall be applied.

Measures

Art. 50

If negligent or unprofessional legal aid provision by the provider is established, the Commission for Quality Control shall issue a decision and simultaneously pronounce the measure.

The Commission for Quality Control may pronounce reprimand, or, in case of serious form of neglectful or unprofessional provision of legal aid which resulted in damages for the beneficiary, the provider employed in the legal aid service or an association or other form of organization may be prohibited to continue free legal aid provision temporarily, or the proceedings may be initiated before the competent ministry to delete the provider from the Registry.

Regardless of the procedure for determining the liability of provider from Para 1 of this Article, if the provider is a lawyer, in the proceedings before the competent Bar Association his/her disciplinary liability for disciplinary misconduct can be determined, in line with the act of the Bar..

If the Commission for Quality Control finds that there is no negligent or unprofessional legal aid provision by the provider, the Commission shall issue a conclusion on termination of the procedure.

Providers' right to appeal

Art. 51

The provider may lodge an appeal to the Ministry against the pronounced measure by the Commission for Quality Control within 8 days from the day of the receipt of the decision on the pronounced measure.

The Ministry shall decide upon the appeal within 15 days from the day of the receipt of appeal.

The decision of the Ministry shall be final.

The provider may initiate the administrative procedure against the decision of the Ministry by which the appeal is rejected.

Appointment of another provider

Art. 52

If negligent or unprofessional legal aid provision by the provider is found by the Commission's decision, the beneficiary shall be entitled to the other legal aid provider, without delay, in line with this Law.

The competent body shall appoint other provider within 3 days from the receipt of the decision of the Commission for Quality Control.

The provider, who is found negligent and unprofessional in providing legal aid in the final decision, shall have no right to charge expenses for all the undertaken legal aid actions.

Administrative Supervision and Supervision over Law Implementation

Art. 53

The ministry of justice shall supervise the implementation of this Law, through an authorized person

In performing supervision, the Ministry shall be authorized to review all the records of the providers, and request reports from the courts and other state bodies where legal aid is provided in terms of this Law.

Authorized officials of the ministry are obliged to keep as professional secret all information they learn while performing supervision.

In case irregularities are determined in the process of supervision, the Ministry may issue a decision requesting removal of these irregularities in specific deadline in line with the Law on Administrative Proceedings.

Report of the Ministry

Art. 54

The Ministry shall prepare an annual report on the situation in the area of free legal aid, within the regular reporting to the Government.

The report contains evaluation of the current state in exercising the right to free legal aid in the Republic of Serbia; actions undertaken to advance and control the system; data on total number of cases in which legal aid was provided, forms and types of legal aid; planned activities; utilized resources and evaluation of the necessary resorces; and other matters relevant for FLA in the Republic of Serbia.

Financing Legal Aid System

Art. 55

The funds for organising and providing free legal aid shall be provided from the budget of the Republic of Serbia, the Autonomous Province and local self-government units, the organizations entrusted with public authorities, from co-payments for provision of partly free (subsidized) secondary legal aid, and from donations (national and international financial aid).

The state bodies and institutions entrusted with public authorities shall fund primary free legal provision that they perform as their regular activity from the budget of the Republic of Serbia, or from their own resources.

The funds from the budget of the Republic of Serbia shall be allocated to the Ministry of Justice for covering the expenses of the establishment, management and maintenance of the free legal aid system, that is: the establishment and work of regional bodies and commissions, and for payments of the partial participation in the expenses for funding the compensation of the secondary legal aid providers from the associations, other forms of organization and legal clinics, in line with the Article 26 of this law. The structure of the

expenses shall be determined in a way to ensure at least 40% of the budget funds for the compensation of the providers referred to in Article 26 of this Law, while maximum amount of 10% shall be provided for the material expenses of the decision-making process upon the request for free legal aid.

The funds from the budget of the Autonomous Province and local self-government units shall be allocated for the work and equipment of legal aid services, in the amount of maximum 30% of the planned budget funds for that year, as well as for compensation of awards to secondary legal aid providers and for financing the providers referred to in Para 26 of this Law in the amount of at least 70% of the planned budget funds for that year. The providers referred to in Para 26 of this Law that provide legal aid in accordance with this Law, shall be financed for provision of legal aid services on the territory of the Autonomous province or local self-government unit in the amount of 70% from the budget of the Autonomous Province and local self-government unit allocated for that purpose and 30% from the budget of the Republic of Serbia allocated to the Ministry of Justice for the purpose referred to in Para 3 of this Article. In case the Autonomous province or local self-government unit are unable to provide budget funds for the provision of free legal aid, the resources shall be allocated from the budget of the Republic of Serbia.

Providers of secondary legal aid can also be financed from the participation determined by the competent body of the ministry and paid by the beneficiary in case the right to partially paid legal aid has been approved. The criteria and scales for determining the amount of partial compensation is determined on the basis of an act of the Minister.

The donations for funding the providers shall be allocated from the budget of the Republic of Serbia, the Autonomous province or local self-government unit, in line with the special law.

The provider shall be obliged to enter in the referral the amount of the paid compensation and date of payment, and shall also submit to the competent body evidence on the performed payment. The payment shall also be entered into the records on the provided services.

XI. PENALTY PROVISIONS

Art. 56

The beneficiary of legal aid shall be fined in the amount between 10,000 and 100,000 dinars if he/she:

1) provides false data in the statement referred to in Article 11 of this Law
2) fails to act in accordance with the obligation referred to in Article 14 of this Law.

Legal aid provider shall be fined in the amount between 10,000 and 200,000 dinars for any of the following:

1) charging the costs of legal aid to the beneficiary, opposite to the Para 3 of the Article 18 of this Law;

2) opposite to the Article 19 of this Law, fails to keep records on the provided legal aid services;

3) opposite to the Article 45 of this Law, fails to submit annual report;

4) opposite to the Para 2 of the Article 48 of this Law, fails to act accordingly to the mandatory instructions of the Commission for control.

XII. TRANSITIONAL AND FINAL PROVISIONS

Article 57

Legal aid services in local self-government units established in accordance with the provisions of Article 20, item 31 of the Law on Local Self-Government shall continue providing legal aid in line with this law.

Services will be established for all local self- governments, or joint service for several local self-government units , within 6 months of enactment of this Law.

Article 58

The bodies and commissions referred to in this Law shall be established within 9 months from entry into force of this Law.

Art. 59

The Minister shall draft by-laws provided for in Art 11 Para 3 (Act on the content of the free legal aid application); Art 12 Para 3 (Act on the work of the services and organization of the call-centers); Art 16 Para 7 (Act on the criteria and the scale for determining the amount of the participation of the applicant for partially paid legal aid); Art 19 Para 3 (Act on records keeping of the providers and the services); Art 22 Para 3 (Act on minimal technical conditions and unified rules of procedure of the public authority bodies in providing primary legal aid); Art 24 Para 3 (Act on the content, method of entry and maintenance of the Integral registry of the free legal aid providers); Art 32 Para 2 (Act on the content of the form for application for free legal aid); Art 32 Para 4 (Act on determining the work of the competent bodies deciding upon the application for free legal aid); , Art 39 Para 5 (Act on the content of the referral for free legal aid provision); Art 43 Para 5 (Act on the amount of the compensation to certain providers) of this law within 8 months of entry into force of this law.

Article 60.

This Law shall come into force 12 months after the date of publication in “Official Gazette of the Republic of Serbia” and its application shall begin 9 months after the date of entry into force.

Upon entry into force of this Law, the following provisions cease to be valid:

- provisions of the Articles 168 to 173 Civil Procedure Code (Official Gazette of the Republic of Serbia, No….)

- provisions of the Article 77 Criminal Procedure Code (Official Gazette of the Republic of Serbia, No….)

- provisions of the Articles 110 do 112. Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, No….)

- provisions of the Articles135 Law on Misdemeanor (Official Gazette of the Republic of Serbia, No….)

- provisions of the Articles 9 to 20 and provision of the Article 38 Law on court taxes (Official Gazette of the Republic of Serbia, No….)

Upon entry into force of this Law, the provisions of this Law shall be applied on the requirements and procedure of exercising the right to certain forms of free legal aid in the proceedings referred to in Para 2.