



'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

Skopje, 2015

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'



“This project was realized with the support of the grant scheme by Network 23, a project, which was funded by the European Union. The authors are responsible for the contents of this document (this annex) and in no way, they don't reflect the views of the partners organizations that implementing Project Network 23 and the European Union”.

CONTENTS

| | |
|---|----|
| List of abbreviations | 4 |
| Introduction | 5 |
| 1. Subject and purpose of the analysis | 5 |
| 2. Methodological approach | 6 |
| 3. Domestic and international standards for legal aid | 7 |
| 3.1. THE UNITED NATIONS' DOCUMENTS: | 8 |
| 3.2. DOCUMENTS OF THE COUNCIL OF EUROPE: | 8 |
| 3.3. DOCUMENTS OF THE EUROPEAN UNION: | 9 |
| 4. Normative models and practical experience in the implementation of the Law on Free Legal Aid (hereinafter LoFLA) in the Republic of Macedonia and other countries. | 9 |
| 5. Analysis of the results of field research..... | 10 |
| 6. Cost-benefit analysis for the implementation of the Law on Free Legal Aid. | 16 |
| 6.1. Cost-benefit analysis | 16 |
| 6.2 Analysis of costs | 17 |
| 6.3 Analysis of benefits..... | 21 |
| 7. CONCLUSIONS..... | 24 |
| 8. RECOMMENDATIONS..... | 25 |
| 9. Literature..... | 26 |
| 10. Appendixes: | 27 |
| Appendix 1. Survey of the level of awareness and access of citizens to the right to free legal aid. | 33 |
| Appendix 2. Conducting semi-structured interviews with lawyers, judges and court administration. ... | 35 |
| Appendix 3. Questions which were asked during the discussion of focus groups with 10 potential citizens for asylum of FLA. | 36 |

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

List of abbreviations

| | |
|--------------|---------------------------------|
| CBA | Cost- benefit analysis |
| FLA | Free legal aid |
| MN | Montenegro |
| IEP | Institute for European Politics |
| MoJ | Ministry of Justice |
| RO | Regional offices |
| RM | Republic of Macedonia |
| SFLA | Service for legal aid |
| LoFLA | Law on free legal aid |

Introduction

'Analysis of the implementation of the Law on free legal aid including analysis (cost-benefit analysis) of the costs of its implementation with special focus on the gender perspective' is a document that Association for Equal Opportunities Equal Access prepared it within the project Network 23 with a financial support of the Institute for European Politics (EPI)-Skopje in partnership with the Helsinki Committee for Human Rights of the Republic of Macedonia and the Centre for Change Management.

The analysis aims through research to present the experience of free legal aid as a mechanism that is available to vulnerable categories of citizens, especially the woman who in the realization of their rights before the courts and the state institutions are facing financial difficulties or different types of discrimination.

In the analysis, it's given an attention to the relevant domestic and international standards of legal aid as an integral part of conventions for human rights and the recommendations of the United Nations and the Council of Europe. Also it's contained a comparative overview of the legal models of free legal aid in Montenegro, Croatia and Slovenia and the practical experience of applying LoFLA in the Republic of Macedonia.

It's presented an analysis of the results of field research, which has used the combined method of research, secondary analysis and poll. Furthermore, it has been made an analysis of benefits and costs as an approach in making economic decisions in order to estimate the implementation of the Law on free legal aid where the process involves comparing of the total cost to total revenue in the process of implementation of this law.

The conclusions and recommendation to overcome and eliminate barriers and weakness in the system of free legal aid in Macedonia, are given and will be referred to the competent institutions in order to build a more efficient system in which citizens can fully realise their right to equal access to justice and to identify active and positive solutions aimed at improving LoFLA.

1. Subject and purpose of the analysis

The subject of analysis is the application of the Law on free legal aid including a cost analysis of its implementation with special focus on the gender aspect.

The analysis aims through consideration of the application of this law and the comparative review with the countries of the region to provide guidance on effective application of the Law on free legal aid and ensuring the right to equal and effective access to the justice for vulnerable categories of citizens with special focus of women.

Additionally, by considering the costs and benefits, the analysis suggests possible ways which would lead to its greater efficiency.

The data about financial information is with certain restrictions, only the direct costs of the Ministry of Justice in the implementation of LoFLA are used, and they include award of attorneys, compensation for citizens' associations that provide previous legal aid, days for free legal aid and a plan published in the public press.

By the technique of comparison to estimate the values and their monetization, certain costs are calculated such as:

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

-an average salary of employees in regional offices, communication costs (telephone, postage, internet), technical equipment (computers and printers), utility costs (electricity, heating, water), office equipment (desks, chairs) and materials for work– paper, toner and etc.

At the same time, there is no evidence of the costs for offices, equipment and others which are located in the premises / offices of the regional offices of the Ministry of Justice. So as a result of that it's not sufficiently detailed and precise the analysis of the costs by categories, i.e. it is not possible to make accurate monetization of capital costs and running costs.

In addition, the cost of training of a qualified personnel that is necessary to be set up and to ensure effective implementation of the Law on free legal aid (such as specialised citizens' associations, lawyers and the staff in the regional offices of the Ministry of Justice), is not included in the analysis due to the lack of reliable data and the time limits in making this analysis.

The analysis doesn't focus on the cost of the courts, and therefore there is limited perception of the impact of important qualitative results, such as equal access to justice and fair trial and judicial protection.

In this analysis, we will use the term cost-benefit analysis (CBA). The philosophy of the cost-benefit-analysis defined in the so-called 'Pareto's progress'. This choice is done by optimizing the benefits. In the same definition of the cost-benefit-analysis, it is said that it is an estimate of the social willingness to accept the size of the cost (damage) in relation to the benefit which particular measure or policy would ensure for the society.

2. Methodological approach

Research method

In the development of the subject to this analysis is used integrative approach. For collecting data and analysis of the obtained results was used combined method of research, secondary analysis and poll.

Used techniques:

1. Analysis of the content of the documentation (regulations, reports from relevant institutions, domestic and international standards on free legal aid, normative models and practical experiences in the application of the Law on free legal aid in the Republic of Macedonia, and other countries, and other relevant data). In the analysis of documents particular importance is given to the normative models and the practical experience in the application of the Law on free legal aid in the Republic of Macedonia and other countries such as Montenegro, Croatia and Slovenia and the importance is also given to the reports of data about the costs for implementation of LoFLA by the Ministry of Justice. Literature was provided in the period from November to December 2014.
2. The field research was conducted in three selected municipalities of Kumanovo, Tetovo and Bitola, multicultural cities with their specificities:
 - the largest number of submitted requests for free legal aid, and
 - by registered civil associations that offer previous legal aid

The field research was consisted of:

- Conducting semi-structured interviews with 21 people of which 11 lawyers, 8 judges and 2 representatives of the court administration¹.
- Three focus groups are held in 3 cities with a total of 35 citizens as a potential applicants (women, victims of domestic violence and people who are in social risk)².

¹In Tetovo were interviewed: 3 lawyers, 1 judge and 1 from the court administration; in Kumanovo were interviewed: 3 lawyers, 5 judges, and in Bitola were interviewed: 5 lawyers, 2 judges and 1 from the court administration.

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

- The survey was conducted with 151 citizens in 3 cities about the degree of the awareness and citizens' access to the right to free legal aid.³

This activity is conducted in the period from November 2014 to February 2015.

3. Domestic and international standards for legal aid

Legal aid is the basis for ensuring equal access to the justice, which guarantees equality before the law and the right to a fair trial.

In the Republic of Macedonia, the legal framework that regulates legal aid comprises The Constitution, Laws and ratified international conventions.

In article 12, paragraph 3 of the Constitution of Macedonia where it is regulated the right to liberty and security of person, it is also guaranteed the right to an attorney in police and court procedure of the person who is summoned, detained or deprived of liberty.

A very identical provision is incorporated in Article 70, paragraph 1, item 3 of **The Code of Criminal procedure**, that contained the right of the accused to defend himself or herself in person or through legal assistance of his /her own choice and if he or she fails, to be assigned a free counsellor.

In the article 75 of this law, it is regulated **the defence of the poor**, which is assigned at the request of the accused if his/her economic situation cannot bear the costs of defence, when there are no conditions for mandatory defence and when the interests of justice require that and particularly the severity of the criminal offence and the complexity of the case. The costs of this defence are borne by the Budget of the Republic of Macedonia.

Furthermore, in the articles 53 of this law it is regulated the victims' right of counsel, which is borne by the budget before giving testimony or statement or submission of property claim, if there are severe psychophysical damage or serious consequences of criminal offence.

By **The law on justice for children**, it is guaranteed the right to free legal aid in the procedures to protect the rights and interests of the child before the Ministry of Internal affairs and the Centre for Social Work in cases and under established conditions by the Law on free aid.

The Law on Free Legal aid regulates the free legal aid to people, who because of their financial situation, could not achieve the guaranteed rights by the Constitution and laws, without endangering their own sustenance and the sustenance of the members of their family who live in the same household. The Law's purpose is to ensure equal access of the citizens and other persons specified in this law to the institutions of the system, for introduction, realization and providing effective legal aid, in accordance with the principle of equal access to the justice.

Articles 163-166 of **The Civil Procedure** contain provisions for relief from the expenses of the proceedings to the party, who with his general financial standing is not able to bear these cost without detriment to his/her necessary support and the necessary support of his/her family. Exemption from expenses of procedure encompasses exemption from payment of fees and exemption from the advance payment for the expenses of witnesses, experts, insight and judicial listing. When the party is completely exempted from these costs, the funds of the Court shall pay an advance for the costs of witnesses, experts, translators, and interpreters, for inspections and issuance of judicial notice, as well as the costs of the assigned attorney.

The Republic of Macedonia is a contracting party to the international convention on human rights of the United Nations and the Council of Europe and they are part of the legal order in accordance with the article 118 of the Constitution of Macedonia. Legal aid is an integral part of international standards for

²In focus groups participated: Tetovo –12 people, in Kumanovo - 10 people and in Bitola - 13 people.

³The questionnaires were distributed to : Tetovo – 51 people, in Kumanovo - 50 people and in Bitola - 50 people.

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

human rights and is contained in the following conventions for human rights and the recommendations of The United Nations and The Council of Europe.

3.1. THE UNITED NATIONS' DOCUMENTS:

- Article 11, paragraph 1 of **The Universal Declaration of Human Rights (1948)** guarantees the right of presumption of innocence and in a public trial at which the defendant has all the guarantees necessary for his/her defence.
- Article 14, paragraph 3, point d) of **The International Covenant on Civil and Political Rights (1966)** contains the defendant's right to defend himself/herself or to have a defence counsel, and if the defendant doesn't have a defence counsel he will be informed of his/her right and when interests of Justice require, to be assigned a defence counsel ex officio free if he or she has no possibility to pay.
- According to **General Recommendation No. 28** of Committee for elimination of all forms of discrimination against the woman based on article 2 of **the Convention on the elimination of all forms of discriminations against the woman (1979)**: ...State parties must ensure that the woman has access to admissible, accessible and timely remedies, legal advice and assistance, which are necessary for implementing a fair trial by a competent and independent judgement.
- Article 40 of **the Convention on the Rights of the Child (1989)** regulates provisions for juvenile justice and guarantees the right to legal or other appropriate assistance in the preparation and presentation of the defence of every child alleged as or accused of violation of the Criminal Code.

3.2. DOCUMENTS OF THE COUNCIL OF EUROPE:

- **European Convention for Protection of Human Rights and Fundamental Freedoms (1950):** Article 6, paragraph 3, point c) regulates the defendant's right to a fair trial with the following minimum rights: to defend himself in person or with an attorney of his own choice and if he/she doesn't have sufficient means to pay for a legal assistance, then to be given him/her free one ,when the interests of justice so require.

The right to assistance of counsel and to free legal aid for victims, in accordance with the conditionals provided for in national law are guaranteed in these conventions:

- **Convention of the Council of Europe on Action against Trafficking in Human Beings (2005),**
- **Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) and**
- **Convention of the Council of Europe on preventing and combating violence against women and domestic violence (2011).**
- **European Agreement on the transmission of applications for legal aid (1977) and Additional Protocol (2001):** This agreement regulates the right of every person resident in the territory of one Party may submit a request for legal aid in civil , commercial and administrative matters in the territory of another Contracting Party where he has a permanent residence. Each Party to this Agreement designates one or more organs to carry these requests to the authorities in the country. However, the agreement provides an opportunity to reject the transfer of the request if it is obvious that it isn't done in good faith.
- **Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims:** By this recommendation, states should provide effective recognition and observance of the victim rights of security, dignity and to take into account the negative effects of crime against victims. In accordance with item 6.4. among other things, they have right to receive information about the ability of legal advice, legal aid and any other sort of advice.

3.3. DOCUMENTS OF THE EUROPEAN UNION:

- **Charter of Fundamental Rights of the European Union (2000):** Article 4 guarantees the right to an effective remedy and fair trial. In order to ensure effective access to justice in paragraph 4 of this article it is regulated the right of access to legal aid for those who because of insufficient recourses, such assistance is necessary to ensure effective access to justice.
- **Council Directive 2003/8/EC of January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes:** This Directive regulates the right of an individual to appropriate legal aid in cross-border civil and commercial matters and it doesn't apply in cases in the area of customs, tax and administrative cases. It includes: pre-litigation advice with a view to achieve agreement before the start of court proceedings, legal advice and representation in court and exclusion (or partial) costs of the procedure for the recipient. The Member State in which the applicant has a domicile or residence in accordance with the provisions of this Directive, gives or provides legal aid.

4. Normative models and practical experience in the implementation of the Law on Free Legal Aid (hereinafter LoFLA) in the Republic of Macedonia and other countries.

In the preparation of analysis, models and practical experiences are being compared in implementing the Law on Free Legal Aid in the Republic of Macedonia, Montenegro, Croatia and Slovenia.

Law on free legal aid in the Republic of Macedonia was adopted in the Republic of Macedonia in 2009 and started applying on 1 June 2010. In 2011 and 2013 changes and amendments were adopted to this law.

The right to free legal aid is guaranteed to the citizens of the Republic of Macedonia with permanent residence in the Republic of Macedonia and who are beneficiaries of social aid , beneficiaries of right to disability allowance who do not have other incomes as profit or income from real estate, beneficiaries of lowest monthly pension who living in family community with two or more family members that are maintained by them and families or a single parent with one or more underage children who exercise the right to child allowance.

Right to free legal aid is for a child at risk and child for whom there are grounds to suspect that he/she has committed an act that the law provided it for a crime or offense in the procedures for protecting the rights and interests of the child to the Ministry of Internal Affairs and the Centre of Social Work in cases and under conditions determined by the justice for children. In addition, the right to free legal aid is guaranteed to asylum seekers, person who has been granted asylum, internally displaced persons, and displaced or expelled persons who in the Republic of Macedonia has a domicile, foreign citizens, person without citizenship, who legally resides in the country and a citizen of a state member of the European Union.

The Law regulates the following forms of free legal aid: preliminary legal aid and legal assistance in administrative and court procedures. Preliminary legal aid is provided by regional units of the Ministry of Justice and authorized associations, while lawyers provide legal assistance in court and administrative procedures.

The request for free legal aid is granted in any court and administrative procedures, if it resolves the issue of interest for legal aid and rights covering social, health, pension and disability insurance, labour

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

relations, children protection, victims of domestic violence, protection to victims of criminal acts, protection of victims of human trafficking, recognizing the right of asylum and property rights issues.

It cannot be approved if the applicant or a member of his family who lives in the same household has a property that reaches or exceeds five gross monthly average salaries paid in the Republic of Macedonia in the previous month.

The application for free legal aid is submitted in person or by mail to 34 regional units of the Ministry in the prescribed form. It's also enclosed with the application, a written statement of the material and social status of the applicant and family members that live in the same household, and as well as permission for review of data on their financial condition. The Minister of Justice decides about the submitted request.

Free legal aid is financed from the Budget of the Ministry of Justice. Financial assets are allocated to the payment of the award given to lawyers for legal assistance in accordance with the Tariff for awards and compensation for the work of lawyers reduced by 30% and compensation costs of the authorized citizens 'association for the preliminary granted legal aid in accordance with the tariff for compensation costs for the operation of citizens' associations to perform preliminary legal aid.

In **Montenegro** Law on Free Legal Aid has been implementing since January 1, 2012. As forms of legal aid are defined: legal advice (legal notification and legal advice), making submissions and advocacy by taking procedural actions in the court, public prosecution, the Constitutional Court and the procedure for extrajudicial dispute resolution .

Law on Free Legal Aid in **the Republic of Croatia** was adopted in 2008 and was amended twice in 2011. In 2013, a new law on free legal aid was adopted and entered into force on 1 January 2014. The law regulates the primary and secondary legal assistance and legal aid providers are: lawyers, authorized associations, trade unions, legal clinics and departments of state administration in municipalities.

In **Slovenia**, the Law on Free Legal Aid was adopted in 2001 and the amendments to this law were enacted in 2004 and 2008. LFA may be granted for legal advice, legal representation and other legal matters defined by this law, all forms of judicial protection before all courts of general jurisdiction, specialized courts, the Constitutional Court of the Republic of Slovenia, institutions and persons in Slovenia responsible for extrajudicial dispute resolution as well as exemption from payment of the costs of court procedures. LFA is approved by the President of the District Court and provided lawyers and notaries.

5. Analysis of the results of field research

By adoption of the Law on free legal aid⁴ , for the first time in the Republic of Macedonia has been established the right to free legal aid with purpose to provide equal access of citizens and other persons to institutions of the system, introduction, realisation and providing effective legal aid, which is in accordance with the constitution's principle of equal access to justice. The main objective of the Law on free legal aid is efficient and effective provision of the access to justice for socially venerable groups of citizens. When the right to free legal aid is more accessible to socially, vulnerable categories of citizens, we can say that the state provides effective legal assistance, in accordance with the principle of equal access to justice for all its citizens.

The research, which was conducted in Bitola, Kumanovo and Tetovo through the survey about the level of awareness and availability of this right to citizens, structured interviews with lawyers, judges and court administration from Basic Courts in these three cities and discussion of focus groups with citizens

⁴ 'Official gazette of the Republic of Macedonia ' No.161/09).

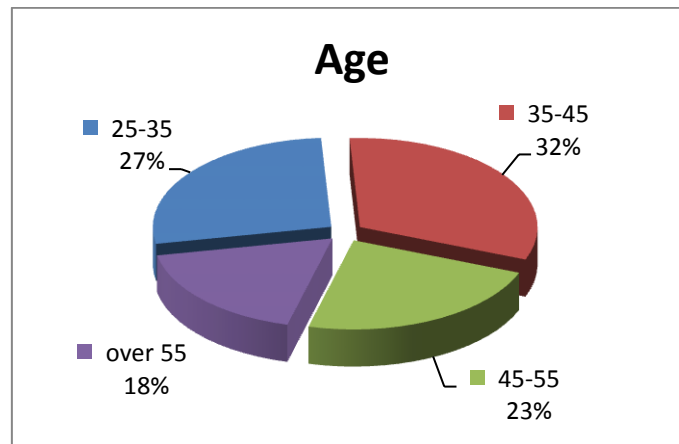
'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

who are potential applicants for free legal aid and is in fact about the assessment of the effective implementation of the Law on free aid.

In the survey were included 151 citizens, and 33% of respondents were from Kumanovo, 34% in Tetovo and 33% in Bitola of the total number. According to gender were surveyed 41% male, and 59% female respondents.

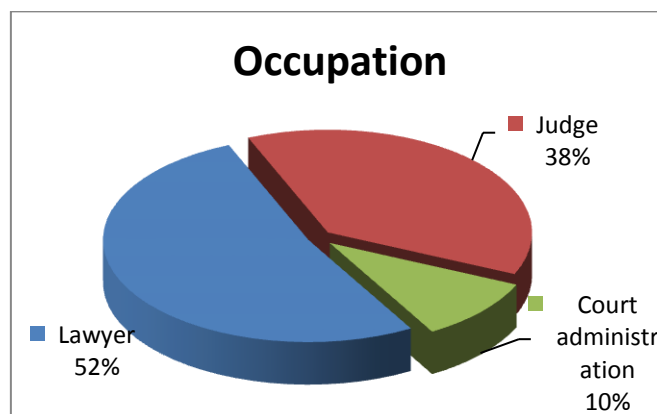
The dominant age group of respondents is from 35 to 45 years old, included with 32%, and the smallest number is the number of persons, who are over 55 years old and it's 18%.

Figure 1: Percentage of respondents by age



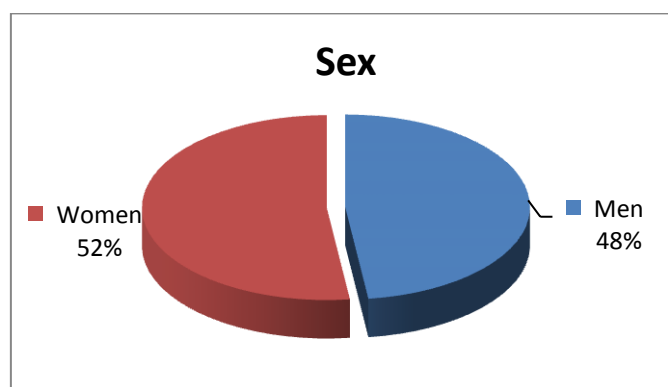
Variety of semi structured interviews were conducted with total of 21 respondents, and 52% of them are lawyers, 38% judges and 10% are court administration.

Figure 2: Occupation of the persons who are interviewed.



About the gender 52%, are women, and 48% are men.

Figure 3: Sex of the interviewed persons



Focus groups are attended by 35 persons of which 77% are women and 23% men, potential applicants of the right to free legal aid and women victims of domestic violence.

Starting from the thesis that the right to free legal aid may be used only in a case when citizens are informed and aware of the possibilities, which are offered, we examined the level of information and familiarity of the citizens of the Free Legal Aid.

The research has shown that a higher percentage of the population, or 74% of respondents don't know at all that there is a law on free legal aid, versus to 26% of respondents who have information about the existence of this law. This shows a low level of awareness of citizens, so that's why the lawyers, judges and court administration talk how it is necessary to work on the implementation of the law and to make a greater awareness of citizens and its promotion by state authorities.

'I've been informed about this law by the social worker at the Centre for Social Work and send me where to turn'- the answer of one of the participants of the focus group.

'I know something, partly, but that's not enough to me to decide to ask for free legal aid'- the answer of one of the participants of the focus group in Kumanovo.

Some of the participants in the focus groups, registered at the Centre for Social Work as victims of domestic violence or recipients of social assistance, were also not familiar with this law and were not informed by the employers of the centres for social work.

The respondents who were informed of the existence of the Law on Free Legal Aid or 56% of them knew about the way of acquiring the right to free aid legal versus to 28% who didn't know how they could become clients of FLA; to this question 15% of the respondents didn't give any response.

It is important to point out that it is not small the percentage of respondents (28%), who despite the fact that they were informed of the existence of LoFLA, they were not familiar with the way of acquiring this right and where to turn to.

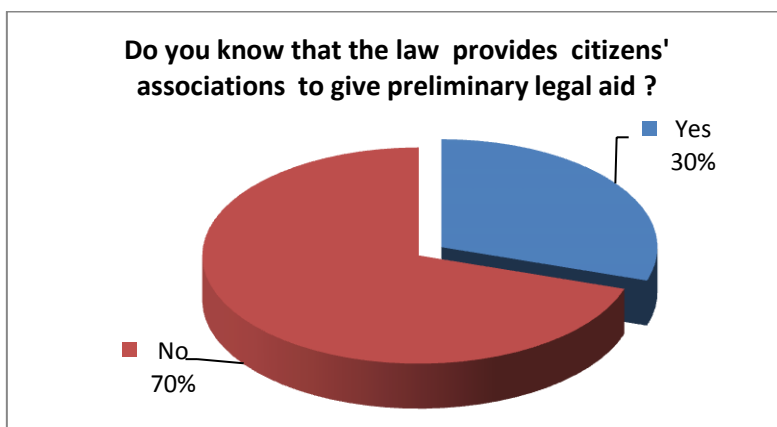
It's very interesting the fact, that some of those people who said they were familiar with the right to free legal aid, state that it could be used by the Ombudsman. In these cities there are offices of Ombudsman and the people recognise them as institution that care about their rights and provide free legal assistance.

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

Especially it's worth to mention the high percentage of respondents from Kumanovo, 64% of the total informed citizens who said they knew how to become users of LoFLA. If this is in correlation with the total number of submitted applicants in 2013 (27 applications), and 2014 (35 applications) it can be concluded that there is probability that a higher percentage of the respondents were users of this right or lawyers and citizens' associations from Kumanovo were more active, as it was recorded in registers of providers of free legal aid in the Ministry of Justice.

Regarding the possibility of the citizens' associations to provide preliminary legal aid under certain conditions in accordance with LoFLA, a larger percentage of respondents about 70% answered they didn't know what the Law provided, while 30% of them knew about the possibility that the citizens' associations provided preliminary legal aid.

Figure 4: Awareness of citizens about the possibility of the citizens' associations to provide legal aid.

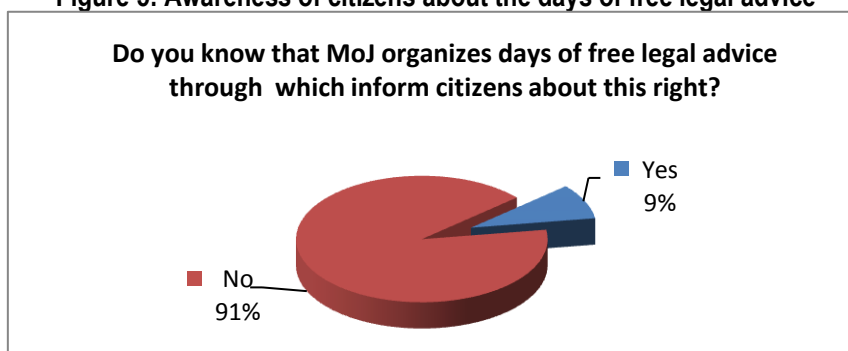


The participants who responded positively to the legal possibility of the citizens' associations to provide preliminary legal aid only 60% of them said they knew the citizens' associations in their town which give preliminary legal aid, 37 % of them didn't answer this question and 2% said that they didn't know which citizens' associations in their town give preliminary legal aid.

As we can notice 80% of respondents from Kumanovo said they knew which citizens' associations from their city give FLA, this again suggests a greater awareness of the citizens of this city compared to Tetovo and Bitola.

According to the Law on Free Legal Aid, Ministry of Justice in cooperation with the Bar Association, the Notary chamber, the Chamber of executors and the Chamber of Mediators organizes quarterly maintenance days of legal advice to citizens on issues of mediation, the attorney, notary and execution. Following the answers of the respondents, it's obvious that 91% of them don't know at all that Ministry of Justice conducts such activity, indicating the need for greater involvement of Ministry of Justice for the promotion of the law.

Figure 5: Awareness of citizens about the days of free legal advice



'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

About the obstacles that citizens are faced because of insufficient information, it's also obvious from the fact that some of the respondents, who stated they knew about this law, otherwise they didn't know where to turn to, where to submit the applications, and in that context pointed out that the applications were submitted in the District courts or unions.

From the total number of responders (151), 81%, said they didn't submit applications for FLA, 11% said they applied for free legal aid, and 7 % didn't give any answer.

Only 7 of 17 respondents who said they applied, answered that they submitted applications to the local office of the Ministry of Justice in their town and 3 respondents submitted applications to the authorized citizens' association in their city.

Most of participants of focus groups, although they needed legal aid, they didn't use this right, only two of them addressed to regional offices of Ministry of Justice to receive free legal aid. One of them received legal advice and a counsel was assigned for property dispute.

It was shared negative experience where a legal counsel disturbed indecently the party, whose representative he/she should be.

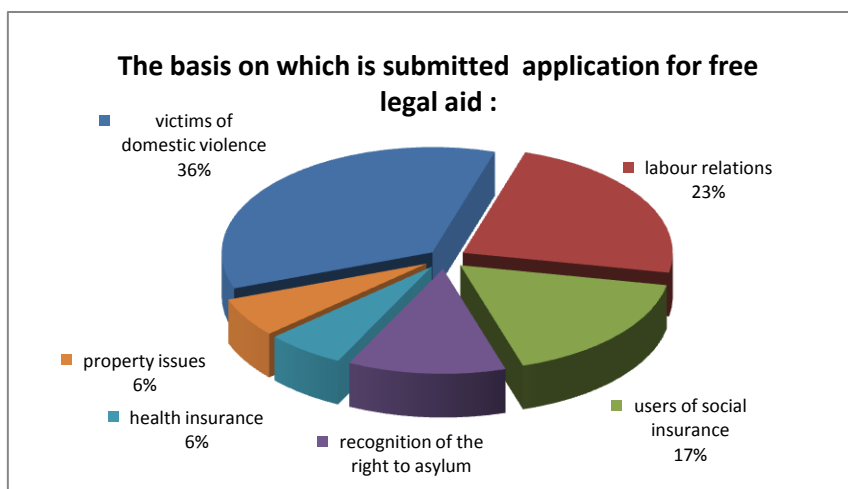
'The lawyer, who was assigned to me, wasn't interested while I was talking to him he interrupted me many times, he wrote a complaint and that was everything he did. I haven't seen him since then and we haven't talked on the phone.' - the answer of one of the participants of the focus group in Tetovo

For the small number of submitted applications for FLA lawyers, judges and court administration, it is believed that the number of applicants for FLA (882 applicants in 2010 when the Law on FLA comes into force) is not realistic and does not meet the needs of potential applicants.

Out of 17 respondents who applied for free legal aid, 6 are women, victims of domestic violence.

In 4 cases the basis for seeking legal assistance is the area of labour relations, 3 respondents submitted an application in the field of social insurance, in other 2 respondents as basic is the need of recognition of asylum and one respondent as a ground specified health insurance and property issues.

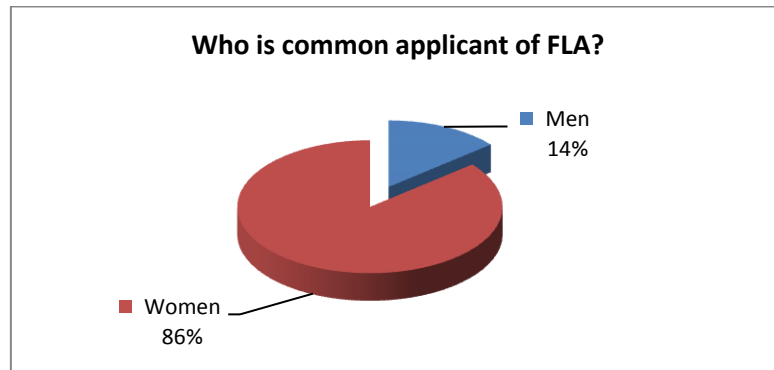
Figure 6: The basis on which is submitted application for free legal aid.



'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

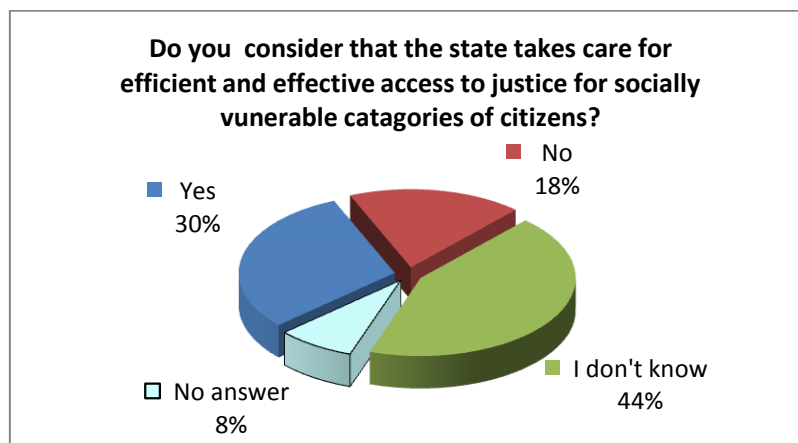
The practice of lawyers, judges and court administration says that women are more common applicants to the right to FLA, or 86% of the total number of respondents, while 14% of them said that in their practice as common applicants to FLA appear men, which have more information and access to institutions.

Figure 7: Structure of common applicants of FLA in practice and by gender



Generally, citizens are not convinced that the state takes care to provide access to justice for all its citizens, regardless of their social status. Most of the respondents 43%, said they didn't know whether the state provides access to justice for socially vulnerable groups, 30% of them answered yes, 17% believe that the state doesn't care to provide efficient and effective access to justice for socially vulnerable categories, and 8% of the respondents didn't give any response. This shows that the state or the institutions should pay more attention to the promotion of this law and greater public visibility of the work of the institutions and organizations responsible for implementing LoFLA.

Figure 8: The attitude of the citizens about state's care for efficient and effective access to justice for socially vulnerable categories of citizens.



Lawyers, judges and representatives of court administration as a major obstacle in the application of LOFLA point out that:

- Law on free legal aid is mixed with the Law on Advocacy by which the lawyers are obliged to help the poor party, who is unable to pay the fee for a lawyer in full amount. (24% of respondents),

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

- Long approving procedures and slowness of law (19% of respondents)
- Judges are not sufficiently familiar with LoFLA, there is no confidence in the courts about the handling of lawyers, difficult payment of the costs for practicing law on FLA by lawyers (9 % of respondents) and
- Respondents with no response (38% of respondents).

'And this law is just another piece of paper, I don't believe that I will get free legal aid'- the answer of one present person on the focus group in Bitola.

Interviewed lawyers (10%) believe that it is a slow procedure for the determination of another lawyer when the client is not satisfied with the lawyer who is assigned. It is also a problem the cost of court fee borne by the party and the conflict or non-compliance with other laws therefore they propose to examine the existence of LoFLA.

Regarding the efficiency of the procedure and the influence of the period of 8 days in which Ministry of Justice is acting on the request for free legal aid, 57% don't agree that this is appropriate or the time limit partially fits. While 43% believe that this period allows achieving efficient legal aid to citizens in accordance with the principle of equal access to justice.

Considering that, criteria for obtaining the right of FLA should lead to a real and effective use of this right, the answers to 62% of respondents indicate that they are not appropriate and are rigid, while 38% of them said that criteria match the real situation. Moreover, they stress the need for greater flexibility and objective approach by respecting the principle of fairness in deciding upon requests and respect for urgency in dealing with the requirements in practice.

Remarkable is the answer of all interviewed, which underlines the need for more training for judges, lawyers and representatives of associations of citizens for a better knowledge of FLA right which would provide more efficient and effective access to justice for people who need free legal aid.

6. Cost-benefit analysis for the implementation of the Law on Free Legal Aid.

6.1. Cost-benefit analysis

Cost-benefit analysis in this context is defined as an approach for making economic decision in order to assess the implementation of the Law on free legal aid. According to this, the process involves comparing the total cost to total revenue in the process of implementation of this law, in order to choose the best or the most profitable option. Cost-benefit analysis (CBA) is usually a tool, which is used by decision makers to identify the costs and the benefits of regulation, in financial terms, for the society as a whole. This includes not only direct costs and benefits, but also any superficial effect that a certain law or regulation can impose on society.

In evaluating the effects on society, the analysis includes costs and benefits to industry, government, citizens, communities, the environment and the economy as a whole. This analysis takes into account costs which arising directly from the implementation of the Law on free legal aid and for which there are available information, but it has been made assessment of real costs that still need to be taken with reserve.

Costs for which there are available information:

- Award of a lawyer for a given legal aid under tariffs for lawyers' working reduced by 30% (Article 36 of LoFLA);

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

- Authorized Association in accordance with the tariff for reimbursement of the costs of the work of associations for preliminary legal aid. (Article 37 of LoFLA);
- Days of Free Legal Aid– quarterly organise days of free legal aid (Article 39 of LoFLA);
- Plan published for 3 months (Article 39, paragraph 2 of LoFLA).

6.2 Analysis of costs

According to the annual report of the Ministry of Justice⁵ on the implementation of the Law on free legal aid, it is evidential that there is a rise in submitted applications to the regional departments of the ministry. In the table below it can be seen that the trend of increase in submitted applications has been significantly higher in 2004 than the previous years, or 270 applications were submitted, of which 114 were approved.

Table No. 1 Statistical data on implementation of LoFLA 2011-2014

| Period | Submitted applications | Resolved applications | Approved applications | Rejected applications | Stopped procedures |
|-----------------------|------------------------|-----------------------|-----------------------|-----------------------|--------------------|
| 07.07.2010-24.03.2011 | 118 | 74 | 29 | 42 | 3 |
| 25.03.2011-31.03.2012 | 154 | 172 | 64 | 91 | 17 |
| 01.04.2012-31.03.2013 | 180 | 196 | 68 | 126 | 2 |
| 01.04.2013-31.12.2013 | 160 | 162 | 75 | 81 | 6 |
| 01.01.2014-31.12.2014 | 270 | 254 | 114 | 140 | 11 |
| Total | 882 | 858 | 350 | 480 | 39 |

Most applications are submitted in the regional units:

2013 - Skopje (30), Kumanovo (27), Bitola (23) and Tetovo (19)

2014 - Skopje, (51) in 2014 Kumanovo (35), Tetovo (28), Bitola (19), the same as the previous year.

Most of the approved applications relating to resolve the property issues, then protection of victims of domestic violence and protection of children, while other areas of law such as social security, pension, social security, health insurance and labour relations are less represented.

The Budget of the Ministry of Justice in 2013 paid 414.409,00 MKD to 29 lawyers and 4 authorised associations involved in the procedure of providing free legal aid. It was given a payment of an amount of 18.800,00 MKD to Authorized associations for a preliminary legal aid and also it was paid a reward of 395.609,00 MKD to lawyers for legal aid.

In 2014 the Budget of the Ministry of Justice paid 356,292,00 MKD more than the previous year or a total of 770.701,00MKD, for 37 lawyers and 5 authorised associations involved in the procedure of providing free legal aid. It was paid to Authorised associations an amount of 22.600,00 MKD for preliminary legal aid, and to lawyers reward of 748.101,00 MKD for legal aid.

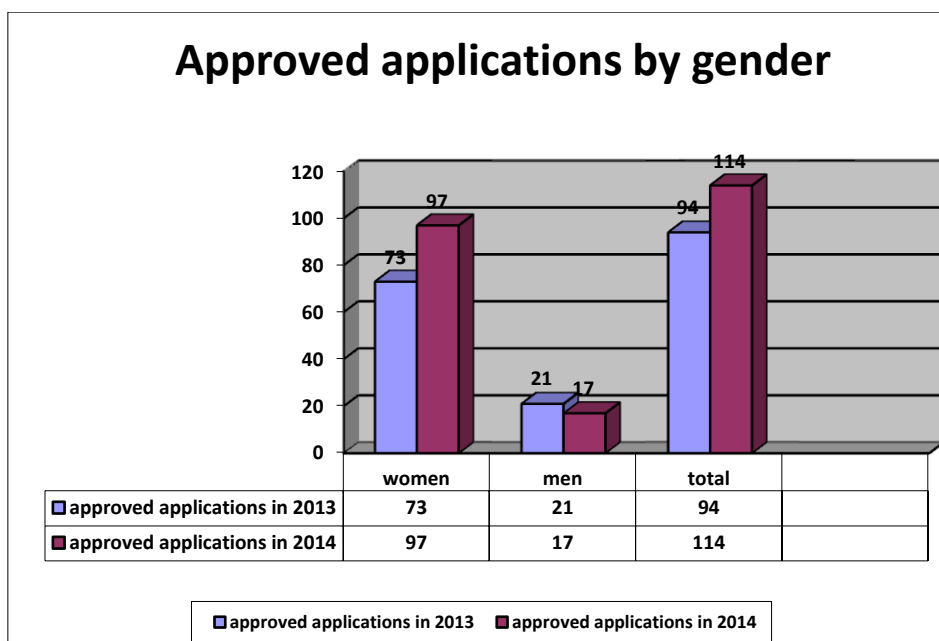
⁵www.justice.gov.mk

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

The analysis of the report shows that the total number of submitted applications for the period from the entry of the Law into force to December 2014, compared with countries in the region⁶, is really small, especially if we take the fact that one third of the population in Macedonia living below the poverty level⁷, and the reasons for the application mentioned above, arising precisely from the socio-economic deprivation, poverty and social exclusion that exist in the country.

In terms of gender-separated data, for those who have submitted an application for those who accomplished the right to free legal aid, from total 94 approved applications which were being resolving from 2003 until March 2014⁸, 73 applications were submitted by woman and only 21 by man. From 1.01 to 31.12.2014 from the total of 114 citizens who were granted free legal aid, 97 were woman and 17 were men.

Figure No. 9 Approved applications by gender



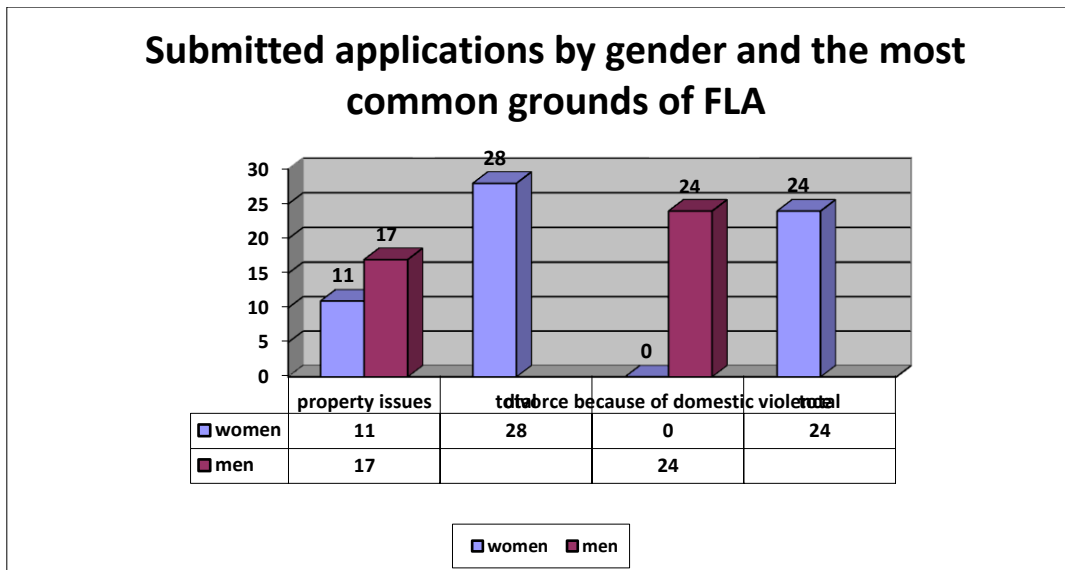
The most common bases for granting free legal aid are property legal matters (28) and divorce because of domestic violence (24). All 28 submitted applications on the bases of divorce, victim of domestic violence and divorce and protection of children and youth were submitted by women. In the property legal issues from a total of 28 submitted requests, 11 were submitted by men 17 by women.

⁶In the Republic of Croatia, a country with twice more population, in the first year after the entry of their law into force, were submitted 4.283 applications, while in the next year, in 2010, the number of applications increased to 8.755⁶. In the Republic of Bulgaria, in the first year of the implementation of the law on free legal aid, legal aid was approved in more than 29.000 individual cases.

⁷The State Statistical Office in 2011 the percentage of poor people in the Republic of Macedonia was 30.4% (<http://www.stat.gov.mk/PrikaziSooptenie.aspx?rbtxt=37>).

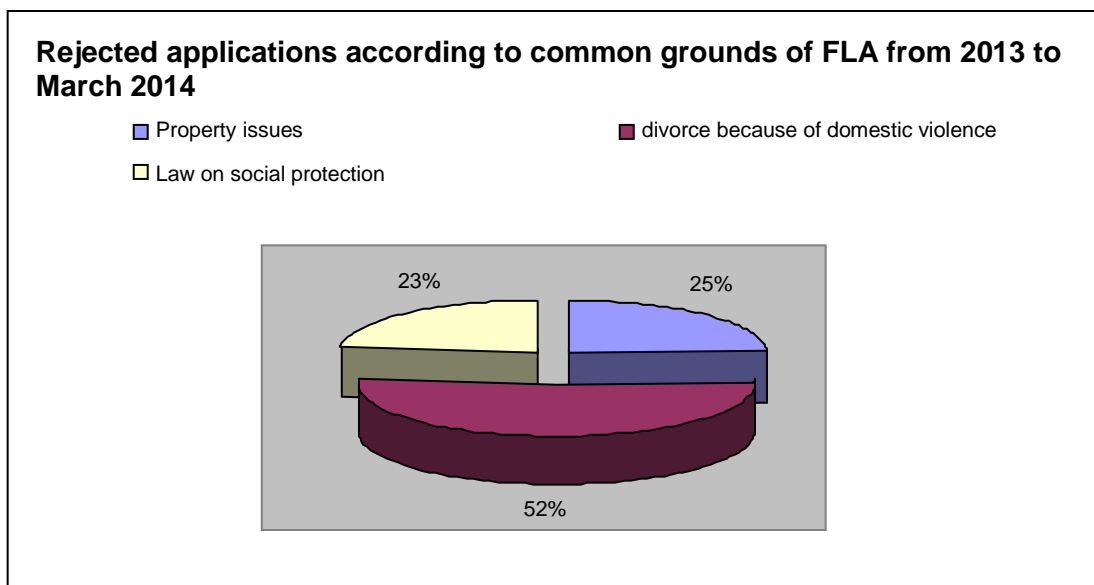
⁸ Report on the implementation of the law on equal opportunities for women and men, Ministry of Labour and Social Policy

Figure No. 10 Submitted applications according to the most common grounds of FLA (2013 March 2014)



And in situations where the applications for free legal aid are rejected, the reasons for initiating the requests again refer to issues of family, divorce (34), property and legal matters (16) and requirements in order to realise any right in the area of social security (15).

Figure No. 11 Rejected applications according to common grounds of FLA (2013-March 2014)



It should be pointed out that the data in the annual report for the implementation of the Law on Free Legal Aid of the Ministry of Justice in 2013 and 2014 don't have data divided by gender, that indicating to non-application of the Law on Equal Opportunities for Woman and Man.

Such gender-separated statistics with depth analysis of the reasons for submitted applications and monitoring of other social parameters and indications can be a solid basis for building comprehensive strategies, together with other institutions to overcome social disparities and at the same time to

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

improve access to services, which this aid offers to those who need it most, in the case of women. In fact, data from the Ministry of Interior indicate an increase in the number of victims of domestic violence by 16,1% in the first six months of 2014, compared with the previous year. The perpetrators are mostly men, the most frequent causes of violence are addiction of the vices, jealousy and poverty becomes a dominant and important factor⁹ in these socially deviant behaviour.

Table No. 2 Costs that arising directly from the Law on Free Legal Aid

| Information about costs | Explanation/resource | 2013 | 2014 |
|---|---|--|---------------------------------------|
| Total budget for LoFLA in 2013 and 2014 by the Ministry of Justice on citizens' associations and lawyers. | Ministry of Justice | = 414,409,00 | = 770.701,00 |
| Numbers of employees in regional offices (average salary for the Head of Department – 30,000,00 average salary for advisor 24,000,00) | Estimated number of RO 34 where would be engaged at least 2 people ,one for a head and one advisor or 68 people | Estimated for 34 regional offices annually = 22.032.000,00 | |
| Number of citizens' associations that gave services | Report by the Ministry of Justice for 2013 | for 4 associations = 18.800,00 | За 5 здруженија = 22.600,00 |
| Number of engaged lawyers - | Report by Ministry of Justice for 2013 | 29 lawyers = 395.609,00 | 37 адвокати = 748.101,00 |
| Days for free legal advice- 2 days | In 2013the legal advice were given by staff at local offices, notaries and executors of that regional office | = No costs | |
| Communication costs (telephone, postage, Internet) | 800,00 MKD monthly limit for the head of department | Estimated annually = 326.400,00 MKD | |
| utilities (electricity, heating, water) | On average 10.000 MKD per regional unit | Estimated annually = 408,000,00 MKD | |
| Technical equipment (computers, printers,) | According to the methodology these costs are not taken into account | Not calculated | |
| Office equipment (desk, chairs...) | According to the methodology these costs are not taken into account | Not calculated | |
| Materials for work – paper, toner... | According to the methodology these costs are not taken into account | Not calculated | |
| Posts in public press | Published in the | | |

⁹www.mvr.gov.mk

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

| | | | |
|--|--------------------------------------|----------------------------|----------------------------|
| | municipalities on the bulletin board | = No costs | |
| Total estimated cost for the implementation of LoFLA (ESTIMATED BUDGET) : | | = 23.180.809,00 MKD | = 23.537.101,00 MKD |

6.3 Analysis of benefits

To the regional offices of the Ministry of Justice for the period from 01.04.2013 to 31.12.2013 were adopted 162 decisions. The number of approved applications is 75, the number of rejected requests is 81, and for 6 submitted applications the procedure was stopped with a conclusion, because of cancelling of the party-submitted applicant from further procedure and are adopted 2 conclusions to stop the use of the right to free legal help due to changing the circumstances.

In 2014, 254 decisions were adopted from which 114 were approved applications and 140 applications were rejected, while for 7 applications the procedure was suspended with conclusion, because of cancelling the party party-submitted applicant who submitted application from further procedure and were adopted 4 conclusions to stop the use of the right to free legal aid due to changing the circumstances.

Most of the approved applications refer to resolve property issues, then protection of victims of domestic violence and protection of children and juveniles, while other areas of law such as social security, pension, social security, medical insurance and labour relations are underrepresented.

Analyzing the implementation of the law on free legal aid, and at the same time detecting the benefits for the community and the individual, we come to the fact that it is almost impossible these benefits to be quantified. That's why, generally the benefits of LoFLA will be presented by a qualitative aspect.

Implementation of LOFLA in the Republic of Macedonia, ideally should provide benefits for all citizens on national level for free legal aid, who fulfil conditions provided in the Law.

Our purpose in the analysis is to identify the benefits of LoFLA and see whether we can quantify them, but in this section, we won't get into the analysis of whether the conditions provided by Law are responsive to the real needs of citizens which they are faced, living in poverty and social exclusion.

The law should specially address the needs of socially endangered and those citizens who live below the poverty level, in conditions of social exclusion and socio-economic deprivation. Taking into account the socio economic conditions in the Republic of Macedonia, there is big possibility of growing the number of citizens who live below the poverty level, which will increase the number of those who need free legal aid, i.e. those that are expected to benefit from the implementation of LoFLA.

Based on the reports of the Ministry of Justice as well as the reports and analysis of civil society organisations for implementation of LoFLA, experiences of the countries in the region and wider in aspect of the right to free legal aid, below are listed a variety of potential benefits of implementing LoFLA, namely:

- providing free legal aid to citizens who because of the living conditions, they can't provide it;
- providing equal access to justice for persons who, due to poverty or social exclusion are not able in qualitative and effective way to realise their constitutionally and legally guaranteed rights;
- introduction, realization and providing effective legal aid;
- utilization of capacities and experiences of civil sector in facilitating access to justice for citizens;

Generally, LoFLA should provide equal access to citizens and other persons specified in this law to institutions of the system, introduction, realization and providing effective legal aid, in accordance with the principle of equal access to justice. The main challenge in terms of implementation of LOFLA is to

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

guarantee that these potential benefits will become reality for the citizens of Republic of Macedonia who live in conditions of poverty and social exclusion.

The budget allocated to the Ministry of Justice for LoFLA in 2013 is 414.409, 00MKD intended for compensation of lawyers and citizens' associations, and if the amount is divided by the total number of inhabitants of RM¹⁰ the result will be an average of about 0,20 MKD per capita. This amount is higher if you take into account the estimated total budget for the implementation¹¹ of LoFLA calculated in this analysis in the part of costs, and is around 11,23MKD per capita. In 2014 the amounts are increasing minimum to 0,37 MKD per capita or to 11,40MKD from the estimated budget.

In Republic of Macedonia, according to the State Statistical Office, in 2013 there were 34.612 households recipients of social financial aid and 8.233 of them were women holders of households with a total number of household members (with holders) 131.185 and 59.708 of them are women. If you make a relation between recipients of social financial aid and the budget of LOFLA for 2013, it can be concluded that recipients of social financial aid would receive on average about 11.00MKD per household or about 50,00MKD for women holders of household. Of course, these amounts are higher if we take into account the total estimated cost for the implementation of LoFLA made in this analysis, 669,73MKD per household, or approximately 2.815,59 MKD per woman holder of household. And the benefit is also for the members of households.

In 2014, there is no data available for recipients of social financial aid.

However, the numbers show that the effectiveness of the money spend is lower if we take in account that only 75 people in 2013, or 114 in 2014 from the applicants of free legal aid received it. If we compare the number of citizens who realized this right with the budget of the Ministry of Justice of 414,409,00 MKD in 2013, on average every applicant for free legal aid should get around 5.525,00MKD, or 5.676,00MKD for women applicants (73).

In 2014 the total budget increased but also it was increased the number of approved applications, so from 770.701.00MKD total budget, on average each applicant should receive 6.760,53,00 MKD or if you take the number of women who realised this right (97) on average they should receive 7,945,00MKD.

In this segment, these amounts are increasing when we compare them with the estimated budget for implementation of LoFLA about 309.077, 00MKD per applicant or 317.545,00 MKD for women applicants in 2013, while in 2014 to 206.465,00 MKD, or 242.650,00MKD on average for women applicants.

Of course, here should be taken into account so-called neutral benefits, for which employees in the regional units invested effort and time proceeding in relation to the total number of submitted applications, for adoption of solutions, no matter whether they are granting solutions, rejecting solutions or the procedure was stopped at some stage of the processing of applications.

| Formulas for the calculations of benefits (material) | | |
|---|---|--|
| Separated funds on average per capita of RM | Separated funds on average per capita of RM | Budget of LoFLA in 2014 divided by the number of residents of RM |
| According to the estimate of the population in RM there are 2 064 032 inhabitants. State Statistical Office of RM | According to the estimate of the population in RM there are 2 064 032 inhabitants. State Statistical Office of RM | $770.701,00 : 2\ 064\ 032 = 0,37$ MKD per capita ESTIMATED BUDGET $23.537.101,00 : 2064032 = 11,40$ MKD per capita |

¹⁰According to the estimate of the population (on 30.06.2013), in the Republic of Macedonia made by the state statistical office in RM there are 2 064 032 inhabitants. The percentage share of women and men in the total population is almost equally, 49.9% of the population are women in 2014, and 50.1% are men.

¹¹In 2013 estimated budget in this analysis is 23.180.809,00 and in 2014 is 23.537.101,00 MKD.

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

| | | |
|--|--|---|
| <p>Obtained funds on average of applicant of budget of LoFLA and of ESTIMATED BUDGET for implementation of LoFLA</p> | <p>Obtained funds on average of applicant of budget of LoFLA and of ESTIMATED BUDGET for implementation of LoFLA</p> | <p>Number of approved applications 114 of which 97 are women / total budget for 2014 for LoFLA = average per applicant</p> <p>770.701,00 : 114 = 6.760,53,00 MKD average per applicants or</p> <p>770.701,00 : 97= 7,945,00 MKD average per applicants women</p> <p>ESTIMATED BUDGET 23.537.101,00 : 114 = 206.465,00 MKD average per applicants</p> <p>23.537.101,00 : 97 = 242.650,00 MKD average per applicants women</p> |
| <p>Average means provided of the total budget for LoFLA in 2013 for recipients of social assistance. The total number of households members¹² 34,612 of which holders are women 8,233 With total number of household members (with holders) 131,185 of which 59.708 are women.</p> | <p>Average means provided of the total budget for LoFLA in 2013 for recipients of social assistance. The total number of households members¹³ 34,612 of which holders are women 8,233 With total number of household members (with holders) 131,185 of which 59.708 are women.</p> | <p>No data is available for 2014 for recipients of social assistance.</p> |

From the above information it can be concluded that LoFLA has a positive effect at an individual level for citizens in need.

Generally, it can be concluded that the benefits of LoFLA are greater for women than men, having in mind the bigger number of women who realised this right in relation to men. However, the funds provided for the realization of this right are insufficient, particularly if we make comparison with the tariff advocacy and duration of procedures.

¹² Source: State Statistical Office

¹³ Source: State Statistical Office

7. CONCLUSIONS

- In the Republic of Macedonia, there is a broad legal framework that allows equal access to justice, equality before the law and right to a fair trial;
- It's undisputed the positive effect of the implementation of LoFLA at an individual level but also at the community level;
- It's limited the accessibility for realization of the right of free legal aid to citizens because of lack of awareness of citizens about the existence of LoFLA;
- There isn't sufficient utilization of the capacities of the employees in the regional offices of the Ministry of Justice and associations that provide preliminary legal aid;
- LoFLA doesn't provide an equal access of citizens to the institutions in the system and doesn't allow effective legal remedies because of long procedures;
- There is no confidence in the courts for the handling of lawyers;
- The lawyers are faced with problems of recovery for the service they provide and that influence the quality of given service;
- The level of cooperation and coordination between all parties involved in the system for FLA is unsatisfactory;
- It's noticeable lack of education and insensitivity of employees in regional offices, courts and lawyers who are in charge of its practice;
- It's small the number of submitted and approved applications for LoFLA because of inadequacy with the needs of potential applicants of this right;
- Women have a greater benefit in realization of this right, and that indicates of their difficult position in society.

8. RECOMMENDATIONS

- It takes additional efforts and involvement of all relevant institutions and organizations in the implementation of legislation towards equal access to justice and the realization of guaranteed equality before the law.
- To improve the coordination and cooperation between the parties involved in the system for LoFLA;
- To intensify the promotion of the Law on free legal aid in order to raise awareness for realization of the right of FLA, particularly for: the manner, conditions and the procedures for the realization of this right, the benefits offered by the law and for the providers of FLA that will improve the accessibility of this right;
- More efficient and transparent providing of access to the justice for socially venerable groups with special focus on women;
- More trainings are needed for the employers in regional offices, judges, lawyers, and representatives of citizens' associations for the implementations of the Law on Free Legal Aid;
- To encourage and stimulate particularly the women for realization of the right to free legal aid for themselves and their children;
- To provide more funds in the budget;
- To start an initiative for amendments to LoFLA towards facilitating the procedure for obtaining the right of FLA for women victims of domestic violence;

9. Literature

- The Constitution of the Republic of Macedonia
- Law on Criminal procedure (Official Gazette of RM No.150/2010)
- Law on Civil Procedure (Official Gazette of MK No.7/2011) ,
- Law on Justice for Children (Official Gazette of MK No.148/2013),
- Law on Free Legal Aid (Official Gazette of MK No.161/09 and 185/11 and 27/2014) and
- Fundamental documents - human rights
- The Law on Free Legal Aid (Official Gazette RS, No. 48/01, 50/04,96/04, 23/08, 15/14)
- The Law on Free Legal Aid (Official Gazette CG No.20/2011)
- Law on Free Legal Aid (NN: 143/2013),
- Cross country comparison of regional mechanisms for delivery of free legal assistance-World Bank Multi-Donor Trust Fund for Justice Sector Support-January 2014
- Guide to cost-benefit analysis of investment projects Structural Funds, Cohesion Fund and Instrument for Pre-Accession, European Commission , Directorate General Regional Policy, 2008
- Cross country comparison of regional mechanisms for delivery of free legal assistance, World Bank Multi-Donor Trust Fund for Justice Sector Support, January 2014
- <http://www.environment.gov.au/system/files/resources/da10a766-2ef7-4989-b202-edac0f5d6f3e/files/economics-cost.pdf>
- Social protection of children, youth and adults, 2013-2014 State Statistical Office , <http://www.stat.gov.mk/Publikacii/2.4.14.15.pdf>
- Women and men in the Republic of Macedonia, State Statistical office, 2014
- <http://www.nbpp.government.bg>
- Annual report of the implementation of the Law on Free Legal Aid in 2013, Ministry of Justice, www.justice.gov.mk

Annual report of the implementation of the Law on Free Legal Aid in 2014, Ministry of Justice, www.justice.gov.mk

10. Appendixes:

RELEVANT PROVISIONS OF THE DOMESTIC AND INTERNATIONAL LEGAL DOCUMENTS FOR LEGAL AID

- The Constitution of the Republic of Macedonia:

Article 12 paragraph 3 :

The freedom of the man is inviolable. Nobody's freedom can be restricted, except by a court decision or in cases and procedures determined by law.

Anyone who is summoned, apprehended or detained of freedom must be immediately informed with the reasons for the summons, apprehension or of freedom and on the rights established by law and he/she can't be forced to make a statement. The person has a right to an attorney in police and court procedure.

- Law on Criminal procedure:

Article 53: Rights of the victim: paragraph 3 point 1: In accordance with special regulations, the victim of crime that entails a prison sentence of at least four years is entitled to: .. counsellor borne by the budget before giving a statement or testimony or submission of property claim, of the victim has severe psychophysical damage, or serious consequences of criminal offence.

Article 55 paragraph 1 item 1: Special rights of victims of crimes against sexual freedom and morality, humanity and international law:

The victim of crimes against sexual freedom and morality, humanity and international law, besides the rights of Article 53 of this Law, the victim has also the following rights: .. before the proceeding to talk to a free counsellor or attorney, in a case where the victim participate in the procedure as a damaged party ;

Article 70 paragraph 1 line 3: Rights of defendant

Every defendant has the following fundamental rights:

- to be prosecuted in his presence and to defend himself / herself in person or with the assistance of a counsel of his own choice, and if he/she can't afford one ,then a counsel to be assigned free of charge when the interests of justice so require ,

Article 75: Defense of poor

(1)When there are no conditions for obligatory defense, and the accused because of his / her economic standing can't bear the expenses for defense, it may be assigned a counsel on his request, when the interests of justice require that, particularly the severity of the criminal offence and the complexity of the case. In the request, the accused can suggest certain lawyer for a counsel from the list of lawyers in the relevant Community law.

(2) For the request of paragraph (1) of this Article, the Judge of the preliminary procedure decides, i.e. the Chairman of the Chamber, and the President of the Court shall assign the counsel.

(3)The expenses for defense stipulated in paragraph (1) of this Article shall be borne by the Budget of the Republic of Macedonia.

- Law for free legal aid:

Article 1: With the Law for free legal aid is regulated the right to free legal aid, the procedure in which it is accomplished, the beneficiaries, the conditions and the way of its realization, the providers of free legal aid, decision-making bodies, the protection of the right to free legal aid, the financing and

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

supervision of its implementation, the organization of days for free legal advice, free legal aid in over-border disputes, as well as supervise of the implementation of the provisions of the law.

Article 2 paragraph 1: The purpose of the law is to provide equal access of citizens and other persons defined with this Law, to the institutions of the system, in order to introduce, realize and to provide effective legal aid, in accordance with the principle of equal access to justice.

- Law on Civil Procedure:

Article 163: Exemption from payment of procedural costs

1) The court will exempt from paying the expenses of the procedure the party, who with his / her general financial condition is not able to bear these costs without detriment to his / her necessary support and the necessary support of the family.

(2) The exemption from paying the expenses of the procedure includes exemption from fees and exemption from the advance payment for the expenses of witnesses, expert witnesses, insight and judicial listing.

(3) The court may release party only from fees if with the payment of fee would be significantly reduced the funds for support of the party and the party's members.

(4) During the process of making the decision on exemption from paying the costs of the procedure, the court shall carefully evaluate all the circumstances, and particularly shall take account the value of the dispute, the number of people who are supported by the party and the revenues of the party and members of party's family.

Article 166: When the party is completely exempted from paying the expenses of the procedure (член 163 paragraph (2)), The funds of the Court shall pay an advance for the costs of witnesses, experts, translators, interpreters, for inspection and issuance of judicial notice, and the costs of assigned attorney.

DOCUMENTS OF THE UNITED NATIONS:

- Universal Declaration of Human Rights:

Article 10:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his / her rights and obligations and of any criminal charge against him / her.

Article 11 paragraph 1:

Everyone who is charged with a penal offence has the right to be presumed innocent until proved his guilty according to law in a public trial, at which he/she has had all the guarantees necessary for his / her defense.

- International Pact on Civil and Political Rights:

Article 14 paragraph 3 item d: Any person who is charged with criminal offense has completely equal right at least to the following guarantees:

To be present at the hearing and to defend himself / herself or to have a counsel of his own choice; and if he/she doesn't have a counsel to be informed of his right to have it and always when the interests of justice require to be assigned a counsel ex officio for free if he /she has no possibility to pay;

- Convention for the Elimination of all forms of discrimination against women:

Article 2: States Parties condemn the discrimination of the women in all its forms, they agree to pursue by all appropriate and available and means and without any delay, the policy of eliminating discrimination against women and for that purpose, they undertake to:

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

c) to establish legal protection of the rights of women on equal bases with men and through competent national tribunals and other public institutions to ensure the effective protection of women against any act of discrimination:

According to General Recommendation No 28 of the Committee on the Elimination of All Forms of Discrimination against Women crucial obligations of States parties under Article 2 of the Convention: ...States parties must ensure that women have access to admissible, accessible and timely remedies, legal aid and assistance necessary to implement a fair trial by a competent and independent judgment, where it is appropriate.

- Convention on the Rights of the Child:

Article 40, paragraph 2b:

Every child alleged as or accused of having infringed the penal law at least to provide the following guarantees:

ii: to be informed promptly and directly of the charges against him / her and if appropriate, through his / her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his / her defense ,

iii: to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate aid and, unless it is considered not to be in the best interest of the child, particularly taking into account his or her age or the situation of his/her parents or legal guardians;

DOCUMENTS OF THE COUNCIL OF EUROPE:

- European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 6 paragraph 3-c: The right to a fair trial: Every defendant has the following minimum rights: to defend himself in person or an attorney of his own choice and if he/she has no sufficient means to pay for an attorney, to be given free one when the interests of justice require that;

- Convention of the Council of Europe to combat human trafficking Article 15 paragraph 2: Each party shall provide in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided in its internal law
- Convention of the Council of Europe for the Protection of Children against Sexual Exploitation and Sexual Abuse .

Article 31 paragraph 3: Each party shall ensure that victims have access to legal aid, where is possible to be free, when it is possible for them to have the status of parties to criminal procedures.

- Convention of the Council of Europe on preventing and combating violence against women and family violence (Istanbul Convention)

Article 57 – Legal aid

Parties providing the right to legal advice and legal aid for victims under the conditions provided by their internal law.

DOCUMENTS OF THE EUROPEAN UNION:

- Charter of Fundamental Rights of the European Union

Article 4: The right to an effective remedy and fair trial:

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

Everyone whose rights and freedoms are guaranteed by Union law, have been violated, has right to effective remedy before a court in accordance with the terms contained in this article.

Everyone has the right to a fair and public trial within a reasonable time by an independent and impartial court established by law.

Everyone will have the opportunity to be advised, to defend and to be represented.

Legal aid will be available for those who because of insufficient funds such aid is necessary to provide effective access to justice.

COMPARATIVE EXPERIENCES FOR FREE LEGAL AID IN MONTENEGRO, CROATIA AND SLOVENIA

Montenegro

The free legal aid in accordance with the legal provisions include: completely or practically cover of the costs of legal advice, drafting of written and representation in procedure before court, Public Prosecutor's Office and the Constitutional Court of Montenegro and in the procedure for setting disputes out of court and exemption from payment of costs of court procedure.¹⁴

Right of FLA can be realized by: a citizen of Montenegro, stateless person who legally resides in the country and a person who applies for asylum in Montenegro, a foreigner with permanent residence or with a permit for temporary residence and another person in accordance with an international agreement.

A person can realized this right if: he is a user of material security of the family or any other right to social protection in according with the law, a child without parental care, person with disabilities, a victim of crimes of family violence and human trafficking and persons with weak financial situation.

The approval of any form of FLA means exemption from paying the expenses of the procedure, in accordance with the law and excluding the cost of attorney and proxy.

Services for free legal aid (SFLA) to 15 basic courts perform professional and administrative affairs in the procedure for approval of FLA. Despite this, they provide advice to all interested parties about the possibilities and conditions for realization of this right. The applications are submitted in a form which is available in each court or SFLA, which determines the data for the rights of property, securities and tax obligations of the applicant of the application and his family members.

Competent authority for approval of FLA is the president of the court or the judge who will be authorized by him / her in whose jurisdiction the applicant of application has a domicile or residence.

Lawyers provide all forms of free legal aid in order from a list of lawyers which is composed by the Bar Associations. Legal advice can be provided by SFLA of competent court.

Ministry of Justice of Montenegro performs administrative supervision over the implementation of the law. The authority that conducts the procedure, in which is approved FLA, takes care about the quality of legal aid in the official line.

Legal aid is financed from the Budget of Montenegro.

In 2012 after the first year of the implementation of this law, it was determined that the citizens submitted 428 applications for FLA, and it was approved in 304 cases, and majority of them or 332 cases are beneficiaries the citizens from Montenegro, while 34 are foreign citizens.¹⁵

The largest number of applications for FLA or 263 are approved for legal counseling and representation in the court procedures of first and second instance, then in 50 cases is approved for preparation of

¹⁴ Law on Free Legal Aid (Official gazette MN No.20/2011)

¹⁵Cross country comparison of regional mechanisms for delivery of free legal assistance-World Bank Multi-Donor Trust Fund for Justice Sector Support-January 2014

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

documents /written, legal counseling in 11cases and legal counseling and representation in the procedures before the Public Prosecutor's Office.

Croatia

The purpose of the Law on free legal aid is achieving the equality of all before the law and effective legal protection through access to courts and other bodies on equal terms to the citizens of Croatia and others persons.¹⁶

Beneficiaries of legal aid are: Croatian citizens, a child who has no Croatian nationality and is caught in the Republic of Croatia without escort of adult who is responsible for him/her under the law, foreigners with temporary residence on condition of reciprocity and foreigners with permanent residence , foreigners with temporary protection, foreigners who are illegally residing and foreigners for short stay pending the decision of expulsion orders or decision to return, asylum applicants, asylum applicants and foreigners under subsidiary protection and members of their families who lawfully residing in the Republic of Croatia in the proceedings in which legal aid is not provided by a special law.

Primary legal aid includes: general legal information, legal advice, drafting submissions before public and legal bodies, the European Court of Human Rights and international organizations in accordance with international agreements and working rules of those bodies, representation in procedures before public and legal bodies legal aid for extrajudicial dispute resolution. This legal aid can be provided in any legal work under the following assumptions: if the applicant of the application doesn't have sufficient knowledge to realize his right, the legal aid is not provided on the basis of specific legislation, if the submitted application is manifestly unfounded and if the material conditions of the applicant are such, so that the payment of expert legal advice could endanger the subsistence of the applicant and the members of the household.

Secondary legal aid includes: legal advice, drafting submissions in the proceedings to protect the rights of workers before the employers, drafting submissions in court procedures, representation in court procedures and legal aid in the peaceful resolution of disputes. This kind of legal aid includes exemption of payment of court costs and exemption of payment of costs of proceedings.

Primary legal aid is provided by the departments of the state administration in municipalities, authorized associations and legal clinics and they are authorized to provide general legal information, legal advice and to compile submissions. Secondary legal aid is provided by lawyers.

The person who wants to realize FLA submit completed application form for approval of using a free legal aid to the authority of the state administration in the municipality towards the residence of the applicant of the application.

The approval of legal aid refers to wholly or partially or partially insuring payment of cost of legal aid, depending on the property status of the applicant of the application.

According to the Report of the Ministry of Justice on implementation of free legal aid and the use of funds in 2012, citizens submitted 7068 applications for the FLA where it was approved in 5877 cases.¹⁷

Most of the beneficiaries were the citizens of Croatia: 5775 and 100 were foreign citizens.

In 4936 cases (83,84 %) was given secondary legal aid and in 448 cases (7,62%) primary FLA. In 78,2 % FLA was provided by lawyers while in 21,9% of registered nongovernmental organizations.

In 2012, were funded 12 projects of registered nongovernmental organizations and legal clinics. Within the project to provide free legal aid from the Legal Clinic in Zagreb and registered nongovernmental organizations from the state budget were allocated 24.493.53 Euros to them.

¹⁶The Law on Free Legal Aid(NN: 143/2013)

¹⁷Cross country comparison of regional mechanisms for delivery of free legal assistance-World Bank Multi-Donor Trust Fund for Justice Sector Support-January 2014

Slovenia

The purpose of legal aid according to this Act is realization of the right to judicial protection based on the principle of equality. Free legal aid is the right of the user of fully or partially providing funds necessary to cover the costs of legal aid and the right to exemption from paying the cost of court procedures.¹⁸

The law doesn't determine the issues approved by FLA but stipulates that in the following cases will not be granted: crimes of slander, slander unless the injured person prove the possibility that he or she suffered damage as a result of these cases, in disputes that involving support, in disputes for compensation for material and immaterial damage caused by the insult and slander except the injured party proves that this influenced his material, financial and social situation.

FLA in accordance with the provisions of the law may be granted as regular, special, exceptional and urgent.

Offices for free legal aid in district courts decide about the applications for free legal aid decide. In the procedure for deciding about the applications for FLA is applied administrative procedure.

The funds for implementation of this Law will be provided from the Budget of the Republic of Slovenia. According to statistics in 2012, for FLA before district, administrative and labour courts in the Republic of Slovenia were paid 6.562.466.95 EUR and most of these funds are disbursed to the procedures before the labour courts :333.289.85 while before administrative courts 570.17 EUR.

According to statistics of the Ministry of Justice in the period from 01.01-31.12 2012, FLA was approved in 8380 cases before the courts in the country where the dominating civil proceedings: 6039, operating: 846, criminal: 1032, other issues: 357, criminal offenses related to minors: 5, social: 41 and administrative: 8.¹⁹

The largest number in 4073 cases FLA was approved for exemption from payment of costs била while for legal counseling and representation in the courts of first and second instance in 5375 cases.

Also, from total 16.126 resolved cases before the district, administrative, labour and social courts in Slovenia, FLA was approved in 8380 cases, almost in 50% cases.

¹⁸Law on Free Legal Aid (Official gazette RS, No. 48/01, 50/04,96/04, 23/08, 15/14)

¹⁹Cross country comparison of regional mechanisms for delivery of free legal assistance-World Bank Multi-Donor Trust Fund for Justice Sector Support-January 2014

Appendix 1. Survey of the level of awareness and access of citizens to the right to free legal aid.

1. Town

Kumanovo
Tetovo
Bitola

2. Sex

Man
Woman

3. Age

25-35
35-45
45-55
Over 55

4. Do you know that there is a law on legal aid?

Yes
No

5. (If the answer is yes) Do you know how you can become a beneficiary of free legal aid which is offered by this law?

Yes
No

6. Do you know that the law provides citizens' associations to give legal aid?

Yes
No

7. (If you have answered the previous question with Yes, the following question is for you, if you have answered with No, then go to the next one) Are you informed which associations of citizens in your city provide free legal aid (previous legal aid)?

Yes
No

8. Do you know that the Ministry of Justice organize days of free legal advice, and through them inform citizens about this right?

Yes
No

9. Have you submitted an application for a free legal aid? If the answer is yes, where?

10. About what question you have submitted a request for free legal aid:

- rights in the area of social, health, pension and disability insurance,
- working relationships,
- protection of children and minors,
- victims of domestic violence,
- protection of victims of criminal acts,

'Analysis of the implementation of the Law on free legal aid including analysis of costs (cost-benefit analysis) for its implementation with special focus on the gender perspective'

- protection of victims of human trafficking,
- recognition of the right to asylum and rights of property-legal issues.

11. Do you think that the state takes care of efficiently and effectively ensuring the access to justice for socially vulnerable citizens?

Yes

No

I don't know

Appendix 2. Conducting semi-structured interviews with lawyers, judges and court administration.

1. Town

Kumanovo
Tetovo
Bitola

2. Circle the occupation of your collocutor

Judge
Lawyer
Court administration

3. Sex

Man
Woman

4. Do you consider that the Law on free legal aid in practice provides equal access for citizens and other persons to the institutions of the system, for introduction, realization and providing effective legal aid?

Yes, explain briefly why
No, explain briefly why
Partly, explain briefly why

5. What are the difficulties that you face in applying SFLA? Specify a few gaps in the implementation of SFLA?

6. Do you think that the number of applicants for free legal aid which by entering into force of the Law in 2010 is 612, is real and corresponds to the needs of the citizens?

Yes
No

7. Do you think that the time limit of 8 days in which the Ministry of Justice, acting on applications for legal aid, enables the realization of effective legal aid to citizens in accordance with the principle of equal access to justice?

Yes
No
Partly

8. Do you consider that it needs more training for judges, lawyers and civil associations, so they will be more informed in detail by the law of FLA and would provide more efficient and effective access to justice for persons who have been approved FLA?

Yes
No

9. From your practice, who appears more frequently as an asylum FLA?

Women
Men

10. Do you consider that the criteria for entitlement to free legal aid correspond to the real situation or you consider it is rigid?

Yes, correspond
No, rigid

Appendix 3. Questions which were asked during the discussion of focus groups with 10 potential citizens for asylum of FLA.

1. How the law on free aid can effectively meet your needs? Is the offered aid available to you?
2. Do you consider that the citizens are informed enough about the possibility of realization of the right to free legal aid?
3. Do you know where you can go to have free legal aid?
4. Do you know that days of free legal advice are organized?
5. Do you consider that it is necessary to improve the role of citizens' associations in the promotion of free legal aid, so the information can reach more citizens?
6. Your suggestions to facilitate access to the right to FLA?



This project is funded by the European Union