

LAW ON FREE LEGAL AID

The first six months of implementation



Kingdom of the Netherlands



YUCOM
Lawyers' Committee
for Human Rights

Belgrade • 2020

LAW ON FREE LEGAL AID
The first six month of implementation
Milan Filipović

LAW ON FREE LEGAL AID

The first six months of implementation



Publisher:

Lawyers' Committee for Human Rights – YUCOM
Kneza Miloša 4, 11103 Belgrade
www.yucom.org.rs

For publisher:

Katarina Golubović

Prepared by:

Milan Filipović

Translation

Ljiljana Madžarević

Design and layout:

Dosije studio

Circulation:

100

ISBN 978-86-83209-93-4



Kingdom of the Netherlands



The publication "Law on Free Legal Aid - The first six months of implementation" was created within the project "Free Legal Aid Unpacking " implemented by the Lawyers' Committee For Human Rights - YUCOM with the support of the Embassy of the Kingdom of the Netherlands in Serbia (MATRA). The views expressed in this publication do not necessarily reflect the views of the Embassy of the Kingdom of the Netherlands in Serbia (MATRA).

LAW ON FREE LEGAL AID
**The first six months of
implementation**

Table of contents ►►

I	Introduction	7
II	International legal and political framework	9
III	National legal and political framework	12
IV	Adoption of the Law on Free Legal Aid	15
1.	Position and work of the associations	16
2.	Bylaws	25
3.	Availability of free legal support	28
4.	Availability of free legal aid	29
V	Implementation of the Law on Free Legal Aid	35
1.	Availability of free legal aid services	35
2.	Availability of information on provision of free legal aid	40
3.	Issuing of decisions on free legal aid requests	41

4.	Decisions of the Ministry of Justice on the complaints	46
VI	Harmonization of the procedural laws	48
1.	The Civil Procedure Law	48
2.	The Criminal Procedure Code	50
VII	Final conclusions and recommendations	53
1.	To the Ministry of Justice and the National Assembly of the Republic of Serbia	53
2.	To the local self-government units	54
3.	To the Ministry of State Administration and Local Self-Government	55
4.	To the courts	55



I Introduction

There are numerous obstacles faced by the citizens in their attempts to access justice, and the challenges in implementation of the reform processes are large and complex. Why do not citizens use the court system to protect their rights? Is it due to high costs or long duration of the proceedings? Or, is it a lack of trust in the judiciary? The answers to these questions, as well as possible solutions are given in the Action Plan for Chapter 23, which combines three topics important for access to justice: basic human rights, judiciary and fight against corruption. The planned activities, ranging from constitutional changes in the judiciary, through disciplinary responsibility of judges and prosecutors, distribution of court cases, to the adoption of the Law on Free Legal Aid, are part of a complex puzzle, and its completion will provide equal opportunity to access the court, to expect a fair trial within a reasonable time and speedy and efficient execution of the court decisions for all the citizens, regardless of their financial status.

The first step is to create opportunities for the citizens to receive information about their position, rights and obligations and opportunities for judicial protection. Obtaining this information could direct citizens towards peaceful settlement of disputes, and enable the overburdened judiciary to provide citizens with a quality and fast trials in cases where a peaceful solution is not possible. The precondition for fulfilling of this task and building a comprehensive and functional system of free legal aid is the establishment of free legal aid services in local self-governments, which are the foundation of such a system. The focus of this research are the first six months of application of the Law on Free Legal Aid and the work of services and individuals in charge of providing free legal aid in the cities and municipalities in Serbia, with special reference to the position of associations in the system of free legal aid.



II International legal and political framework

International documents on human rights ratified by Serbia present an integral part of its constitutional order and oblige it to create preconditions for respect for all human rights, which constitute the corpus of the right to a fair trial. The right to a fair trial is one of the foundations of the rule of law, which guarantees everyone access to court, a fair trial within a reasonable time, right to an interpreter or translator, as well as public access. The crucial precondition to achieve fair trial is access to legal aid for those who cannot afford it, regardless whether it is a criminal or civil procedure. Among numerous international documents that are relevant for this right, first, we highlight the Universal Declaration of Human Rights,¹ International Covenant on Civil and Political Rights², European Convention for the Protection of Human Rights and Fundamental Freedoms³ and Convention on the Rights of the Child⁴.

► **International Covenant on Civil and Political Rights**

The right to a fair trial is guaranteed by Article 14.

“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

- 1 Universal Declaration of Human Rights, UN General Assembly, 10 December 1948, available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/cnr.pdf
- 2 International Covenant on Civil and Political Rights, UN General Assembly, 16 December 1966, available at: [http://www.unhcr.rs/media/Medjuna-rodni%20pakt%20o%20gradjanskim%20i%20politickim%20pravima%20\(1966\).pdf](http://www.unhcr.rs/media/Medjuna-rodni%20pakt%20o%20gradjanskim%20i%20politickim%20pravima%20(1966).pdf)
- 3 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols no. 11 and 14, Council of Europe, November 1950, available at: https://www.echr.coe.int/Documents/Convention_SRP.pdf
- 4 Convention on the Rights of the Child, UN General Assembly, 20 November 1989, available at: <https://www.unicef.org/serbia/media/3186/file/Konven-cija%20o%20pravima%20deteta.pdf>

► **European Convention for the Protection of Human Rights and Fundamental Freedoms**

The right to a fair trial is guaranteed by Article 6.

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so

require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The right to legal aid is generally guaranteed by international documents only in criminal proceedings. However, through the practice of the institutions in charge of their implementation, the attitude that this right includes other procedures has crystallized.

In its practice, the European Court of Human Rights has taken the stand that when deciding on legal aid in civil matters, the following factors must be considered: importance of the subject of the case for the party⁵, complexity of the relevant law or proceeding⁶, ability of the requesting party to actively represent himself/herself⁷ and existence of the legal basis for mandatory attorney.⁸

In its **General comment no. 32**⁹, along with Article 14 of the International Covenant on Civil and Political Rights, the UN Committee for Human Rights encouraged the States to, along with the criminal proceedings, provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it.

As the member of the Council of Europe, Serbia is obliged by numerous resolutions and recommendations¹⁰ of this institution regarding the right to legal aid:

-
- 5 Steel and Morris vs. the United Kingdom,, application no. 68416/01, judgement of May 15, 2005, para. 61; P., C. and S. vs. the United Kingdom, application no. 56547/00, judgement of July 16, 2002, para. 100
 - 6 Airey vs. Ireland, application no. 6289/73, judgement of October 9, 1979, para. 24
 - 7 McVicar vs. the United Kingdom, application no. 46311/99, judgement of May 7, 2002, para. 48–62 Steel and Morris vs. the United Kingdom, application no. 68416/01, judgement of May 15, 2005, para. 61
 - 8 Airey vs. Ireland, application no. 6289/73, judgement of October 9, 1979, para. 26 Gnahoré vs. France, application no. 40031/98, judgement of September 10, 2000, para. 41
 - 9 General comment no. 32, Article 14, Right to Equality before the Courts and to a Fair Trial, UN Human Rights Committee, 23 August 2007, available at: https://digitallibrary.un.org/record/606075/files/CCPR_C_GC_32-EN.pdf
 - 10 Resolution (76) 5 on Legal Aid in Civil, Commercial and Administrative Matters, Resolution (78) 8 on Legal Aid and Advice, Recommendation no. R(81) 7 of the Committee of Ministers to member states on the Measures Facilitating Access to Justice, Recommendation no. R(93) 1 of the Committee of Ministers to member states on Effective Access to the Law and to Justice for the Very Poor.

- ▶ **Resolution of the Committee of Ministers (78) 8 on Legal Aid and Advice** specifies that no one should be prevented by economic obstacles from pursuing or defending his/her rights before any court determining civil, commercial, administrative, social or fiscal matters. This Resolution outlines the principles of the foundation of free legal aid and evaluation of needs in a specific case, relation between the right to a free attorney and exemption from the costs of the proceeding, the right to a complaint against the decision based on the request for legal aid and financing of free legal aid by the state.
- ▶ **Recommendation no. R(93) 1 on Effective Access to the Law and to Justice for the Very Poor** emphasizes the need to expand the possibilities of obtaining free legal aid to civil, administrative, commercial and courts of other competences, and recommends examining of the possibility for the civil society organizations to provide aid to the poor citizens in respect to access to the court before national and international jurisdictions.

As the country on its way towards the EU membership, and with the obligation to harmonize its legislation with the EU *acquis communautaire*, the following is also significant for Serbia

- ▶ **Charter on Fundamental Rights of the European Union** in its Article 47 guarantees the right to an effective remedy before a tribunal and a fair trial.

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

III National legal and political framework

Article 67 of the **Constitution of the Republic of Serbia** guarantees that, under the conditions stipulated by the law, legal aid shall be provided by legal professionals and legal aid services with the units of local self-government. This does not mean that only legal professionals and legal aid services with the units of local self-government are authorized to provide free legal aid, since the Constitution authorizes the legislator to regulate the exercise of this right in a way that would establish an efficient and effective free legal aid system. The obligation to establish a system of free legal aid is closely linked to compliance with the following rights guaranteed by the Constitution of the Republic of Serbia:

- ▶ Right to a fair trial¹¹
- ▶ Special rights of persons charged with criminal offense¹²
- ▶ Prohibition of discrimination¹³

Up until the adoption of the **Law on Free Legal Aid**, the system of free legal aid was fragmented. The exercise of this right was possible only to a limited extent through the application of procedural laws and in those municipalities that had established free legal aid services. The laws relevant to this matter are:

- **Criminal Procedure Code**¹⁴ that regulates exercising of the right to mandatory defense,¹⁵ right to defense of the poor,¹⁶ right to an attorney of the injured party as a subsidiary prosecutor,¹⁷ as well as the right to exemption from the obligation of compensation of the award and costs of the defense attorney, or representative of the injured party.¹⁸
- **Law on Underage Perpetrators of Criminal Offences and Criminal Legal Protection of Underage Individuals**¹⁹ that stipulates the right to mandatory attorney of an underage individual.²⁰

11 Art. 32, Constitution of RS.

12 Art. 33, Constitution of RS.

13 Art. 21, Constitution of RS.

14 "Official Gazette of RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019

15 Art. 74, *ibid.*

16 Art. 77, *ibid.*

17 Art. 59, *Ibid.*

18 Art. 59, *Ibid.*

19 "Official Gazette of RS", no. 85/2005

20 Art. 154, Law on Underage Perpetrators of Criminal Offences and Criminal Legal Protection of Underage Individuals.

- **Law on Misdemeanors** that stipulates the possibility of exemption from the duty of compensation of the costs of misdemeanor proceeding.²¹
- **Civil Procedure Law**²² regulating the possibility of the exemption from the costs of the proceeding²³, as well as providing free legal representative,²⁴ if that is required for the protection of the interest of the parties. The provisions of the Civil Procedure Law shall apply to non-adversarial procedure, enforcement and security procedure, and the procedure in administrative dispute.
- **Law on General Administrative Procedure**²⁵ that also regulates a possibility of the exemption from the costs of the proceeding.²⁶
- **Law on Legal Profession**²⁷ and **Law on Local Self-Government**²⁸ that stipulates that provision of free legal aid is the competence of²⁹ bar associations, and respectively the competence³⁰ of local self-governments.
- **Law on Asylum and Temporary Protection**³¹ that guarantees the right to free legal aid and representation³² to asylum seekers.
- **Law on Prevention of Domestic Violence**³³ that guarantees the right to free legal aid³⁴ for the victims of domestic violence and victims of criminal offences based on that law.

Strategies and action plans adopted by the Republic of Serbia are also important for the adoption of the Law on Free Legal Aid:

- **National Judicial Reform Strategy for 2006–2011 period**, which provided that the new law would establish a comprehensive system of legal aid that would provide more effective assistance to defendants in civil and criminal proceedings and provide a standardized way of determining the criteria for provision of legal aid. The strategy particularly emphasizes the importance

21 Art. 145, Law on Misdemeanors.

22 “Official Gazette of RS”, no. 72/2011, 49/2013 – Decision of the Constitutional Court, 74/2013 – Decision of the Constitutional Court, 55/2014, 87/2018 and 18/2020

23 Art. 168, Civil Procedure Law.

24 Art. 170, *ibid.*

25 “Official Gazette of RS”, no. 18/2016 and 95/2018 – authentic interpretation.

26 Art. 89, Law on General Administrative Procedure.

27 “Official Gazette of RS”, no. 31/2011 and 24/2012 – Decision of the Constitutional Court.

28 “Official Gazette of RS”, no. 129/2007, 83/2014 – other law, 101/2016 – other law and 47/2018

29 Art. 66 paragraph 1 item 7, Law on Legal Profession.

30 Art. 20 paragraph 1 item 11, Law on Local Self-Government.

31 “Official Gazette of RS”, no. 24/2018

32 Art. 56, Law on Asylum and Temporary Protection.

33 “Official Gazette of RS”, no. 94/2016

34 Art. 30, Law on Prevention of Domestic Violence.

that free legal aid will have for finding new, more efficient and cheaper ways of resolving disputes, which would significantly relieve courts and judges and increase the efficiency of the judicial system.³⁵

- **Strategy for the Development of Free Legal Aid in the Republic of Serbia** of 2011, which envisaged the establishment of a legal aid system that would optimally meet the needs of citizens and contribute to the establishment of the rule of law and the realization of the legal order, restoring citizens' trust in the judicial system of the Republic of Serbia and further progress in the process of association to the European Union.³⁶
- **Action Plan for Chapter 23**³⁷, which, as part of the strengthening of procedural guarantees, envisages a number of activities, related to the adoption of the Law on Free Legal Aid, including the implementation of training of providers, the implementation of information campaign and the harmonization of procedural laws.

35 National Judicial Reform Strategy for 2006–2011 period, National Assembly of the Republic of Serbia, May 2006, pg. 17, available at: https://arhiva.mpravde.gov.rs/images/strategija_reforme_pravosudja_cir_no1.pdf

36 Strategy for the Development of Free Legal Aid in the Republic of Serbia, Government of the Republic of Serbia, September 2010, pg. 1, available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2010/74/1/reg>

37 Action Plan for Chapter 23, Negotiating Group for Chapter 23, April 2016, available at: http://www.bezbednoparagraphorg/upload/document/akcioni_plan_23.pdf

IV Adoption of the Law on Free Legal Aid

After the right to legal aid was guaranteed for the first time by the Constitution of the Republic of Serbia of 2006, the citizens of Serbia waited for full 12 years for the adoption of a law that would regulate the manner of exercising of this right in practice. The goal of the adopted Law on Free Legal Aid is to provide all the citizens with effective and equal access to justice. The Law was adopted 7 years after the adoption of the Strategy for the Development of Free Legal Aid in the Republic of Serbia of 2011, and after drafting of several laws on free legal aid. These did not bring results due to opposing views of different free legal aid providers, and hesitations of the state to accept significant expenses due to the application of the Law. As stated in the Strategy:

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

[...]

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

The Strategy recognized the unavailability of legal aid and the inefficiency of courts as two most significant obstacles in access to justice for the citizens. Accordingly, the division was adopted to primary legal aid³⁸, which would be available to all with the aim of raising the level of legal information and preventing the filing of unfounded lawsuits, and secondary legal aid³⁹, which would be available only to those who met the conditions. The Law on Free Legal Aid introduces a division into free legal support and free legal aid in narrower sense, which largely follows the initial concept of the Strategy.

38 Providing general legal information, initial legal advice and drafting of the submissions.

39 Providing legal advice, drafting of the submissions and representing in court.

Free legal support (primary legal aid) includes providing general legal information, filling out forms, compiling the documents of notaries, and mediation in resolving disputes.⁴⁰ Free legal aid in narrower sense (secondary legal aid) includes the provision of legal advice, drafting of submissions, representation and defense. A significant difference and deviation from the Strategy is the classification of writing of the submissions only as legal aid in narrower sense, which has made this service available only to those who meet the conditions. Free legal advice, on the other hand, is also available to persons who do not meet the conditions, but it is fully available only in municipalities that employ graduated lawyers who have passed the bar exam in the free legal aid services. In all other municipalities that employ only graduated lawyers, this possibility is limited to administrative proceedings only, while in other proceedings they can only provide general legal information.

1. Position and work of the associations

The Law on Free Legal Aid stipulates that free legal aid in narrower sense (secondary legal aid) is provided by legal professionals, free legal aid services and associations in relation to the application of laws regulating discrimination and asylum.⁴¹ On behalf of associations, free legal aid is provided by attorneys, while graduated lawyers employed in associations and local self-government units can provide free legal aid within the limits of procedural laws.⁴² In addition to providers of free legal aid in narrower sense who are authorized to provide free legal aid (primary legal aid), the support can also be provided by notaries, intermediaries and faculties. This division has left out some traditional providers of free legal aid, such as trade unions, the Protector of Citizens, the provincial and local Ombudsmen, despite the fact that provision of free legal aid constitutes a significant part of their job.

During the long process of adoption of the Law on Free Legal Aid, one of the most controversial issues was how the associations could continue to provide free legal aid to vulnerable citizens, as they had done for more than 20 years before the adoption of the Law and without state support. The associations took over this job before the right to legal aid was guaranteed by the Constitution, and continued in the period in which this right, despite constitutional guarantees, was inaccessible to the majority of citizens. In addition to many years of experience and achieving a high level of specialization, the associations have built a special relationship of trust with users. Often, these associations are the only place where they can receive not only legal but also psychosocial help and support. Certain laws provide associations with active legitimacy to initiate a dispute or the possibility of representing the parties. **(Law on Prohibition of Discrimination, Law on Asylum and Temporary Protection, Law on Public Information and Media,⁴³ Law on Personal Data Protection,⁴⁴ Law**

40 Drawing up a notary document and mediation in resolving disputes are provided only to persons who meet the conditions.

41 Art. 9 paragraph 1, 2, Law on Free Legal Aid.

42 Art. 9 paragraph 3, 4, *ibid.*

43 “Official Gazette of RS”, no. 83/2014, 58/2015 and 12/2016 – authentic interpretation

44 “Official Gazette of RS”, no. 87/2018

on Protection of Consumers⁴⁵). It has been adopted in the court practice that the associations are permitted to file a request for initiation of misdemeanor proceedings in connection with the application of the **Law on Free Access to Information of Public Importance** in the capacity of the injured party.⁴⁶

For the first time, the role of associations in providing free legal aid was significantly limited by the adoption of the **Civil Procedure Law⁴⁷** in 2011. Before this law, with the exception of pettifoggers, all individuals with legal capacity could provide representation in the court. After 2011, this possibility was limited to the attorneys only, until the decision of the Constitutional Court⁴⁸ of 2013, by which the provision of Article 85 para. 1 of the Civil Procedure Law was declared unconstitutional. When rendering its decision, the Constitutional Court took into account the practical examples listed in the constitutional review initiatives of persons who could not afford the attorney and due to illness and age were unable to personally take action in the proceedings, and lost the right to protection before the court in civil proceedings. Examples of disproportionately and unjustifiably high costs in simple procedures such as enforcement based on utility debts were also taken into account. On that occasion, the Constitutional Court took the position: “that the prescribed restriction referred to in Article 85, paragraph 1 of the Civil Procedure Law in the choice of a proxy, so that he/she “must be an attorney”, does not provide an effective right of access to court, but it limits the Article 67 of the Constitution that guarantees the right of citizens to receive legal aid not only from the attorneys, but also from legal aid services established in local self-government units.” The Constitutional Court particularly reviewed the fact that the Law on Free Legal Aid had not been adopted, and: “found that the restriction referred to in Article 85 para. 1 in the part: “who must be an attorney” was not a legitimate restriction, or proportionate or necessary, thus being inconsistent with Article 20 of the Constitution. This also applied to the right to a fair trial under Article 32 of the Constitution, which was also inconsistent with Article 36 para. 1 of the Constitution, i.e. equality of protection of rights before courts and presented a form of indirect discrimination of citizens based on their financial statuses, which is prohibited by Article 21 of the Constitution.”

With the amendments to the Civil Procedure Law from 2014, the possibility of representation was extended to close blood relatives, graduated lawyers who passed the bar exam and were employed in a local self-government unit, i.e. a trade union when it comes to labor disputes. The Proposal⁴⁹ was sent against these amendments to the Civil Procedure Law for the assessment of the legality and constitutionality

45 “Official Gazette of RS”, no. 62/2014, 6/2016 – other law and 44/2018 – other law

46 “Official Gazette of RS”, no. 120/2004, 54/2007, 104/2009 and 36/2010)

47 “Official Gazette of RS”, no 72/2011, 49/2013 – Decision of the Constitutional Court., 74/2013 – Decision of the Constitutional Court., 55/2014, 87/2018 i 18/2020)

48 Decision of the Constitutional Court of the Republic of Serbia luz-51/2012 of 25.3.2013, available at: <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/8915/?NOLAYOUT=1>

49 Proposal for assessment of the constitutionality and legality of Article 85 para. 2 and 3 of the Law on Civil Procedure of 13.6.2014, Commissioner for Protection of Equality, available at: <http://ravnopravnost.gov.rs/pred-log-za-ocenu-ustavnosti-i-zakonitosti-clana-85-st-2-i-3-zakona-o-parnici-nom-procedure/>

of the Commissioner for the Protection of Equality, who thought that the relevant provisions constituted a violation of Art. 21 of the Constitution of the Republic of Serbia, which prescribed the prohibition of discrimination. This Proposal, as well as 13 other initiatives for the assessment of legality and constitutionality, were rejected, i.e. dismissed in 2014, by the Constitutional Court.⁵⁰

The Constitutional Court concluded that the right to access court, by its nature, implied the unrestricted freedom of each party in the proceedings before the first instance court to choose whether someone would represent them in a litigation, but not the unlimited right to choose who would represent them in that proceeding. It is further stated that the disputed provisions do not significantly limit the party's ability to freely choose a proxy, nor do they violate the principle of equality in exercising the right of access to court for those parties that: "do not have the financial means to pay for an attorney and live in places where either there is no free legal aid service or that service does not have lawyers with passed bar exam, or they do not have blood relatives in direct line, i.e. brothers, sisters or spouses, or they have them but they do not want to represent them, or they are unacceptable for the party as representatives, because it is in the competence of the legislator to prescribe who can be the party's proxy in civil proceedings, moving within the constitutional guarantees and principles, which cannot be observed in the absolute or abstract sense, which is precisely what was requested by the Proposal through the presented hypothetical life situations." This is in contradiction with the previously mentioned decision of the Constitutional Court of 2013.

The Bar Associations disputed the possibility of associations providing free legal aid from the standpoint of Art. 67 of the Constitution, which guarantees the right to legal aid by claiming that it authorizes only the attorneys and local self-governments, regardless of the fact that most municipalities and bar associations in anticipating the Law, had not used that power for many years, although there was a clear need of the citizens. This narrow interpretation, which placed emphasis on the authorization of legal aid providers, instead on exercising of the right of citizens to legal aid, is contrary to Art. 18, paragraph 3 of the Constitution of the Republic of Serbia. According to the Constitution, the provisions on human and minority rights are interpreted so that they improve the values of a democratic society, in accordance with applicable international standards on human and minority rights, and the practices of international institutions that monitor their implementation. It is important to keep in mind the place that Article 67 has in the Constitution – it is among the economic and social rights, which is why it is important, above all, to take into account the needs of the beneficiaries of this service, not just the providers. Due to all the above, this provision of the Constitution should be interpreted more broadly – that it prescribes which entities are obliged to provide legal aid, but not to prohibit other qualified entities from providing it.

At the end of 2018, **UN Special Rapporteur on the Independence of Judges and Lawyers Diego Garcia-Sayán**⁵¹ expressed his concern to the Republic of Serbia

50 Decision of the Constitutional Court of the Republic of Serbia luz-347/2014 of 18.12.2014, available at: <http://www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/12097/?NOLAYOUT=1>

51 Mandate of the Special Rapporteur on the Independence of Judges and Lawyers, Address to the Republic of Serbia, December 10, 2018, available at: https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL_SRB_1_2018.pdf

that certain provisions of the Law on Free Legal Aid presented a deviation from the obligations that Serbia had undertaken by ratifying international agreements in the field of human rights. Among other things, he stressed that the exclusion of non-state actors from the provision of free legal aid may constitute a violation of Art. 14 of the International Covenant on Civil and Political Rights, especially when state programs are not sufficient to adequately respond to the needs of the national population. In his address, the Special Rapporteur made a number of recommendations to the Republic of Serbia, the most important of which is that the right to legal aid should be available to all those who come in contact with the law, but they do not have sufficient funds to pay for legal aid. He also stated that, in accordance with the international standards on the provision of free legal aid, the state should recognize the role of civil society organizations, community organizations, religious and non-religious charities, professional bodies and associations, and the academia.

One of the arguments mentioned against the possibility of associations providing free legal aid, the absence of a quality control mechanism was pointed out, which was introduced by the Law on Free Legal Aid. This possibility was also disputed by the unsubstantiated designation of lawyers employed in the associations as pettifoggers, although they did not take compensation from the citizens for provision of this service. The attorneys who cooperated with the associations were threatened by initiation of disciplinary proceedings and deletion from the attorneys' directory for violating the rules on loyal competition. Their appearances in the media on important human rights topics were viewed through the prism of a ban on advertising,⁵² thus, they were also publicly accused of violating this prohibition.

Given the extremely small number of associations, attorneys and lawyers working in the field of human rights, compared to the total number of attorneys, it seemed that the reason for the strong opposition of bar associations lied in the fear that full inclusion of the associations in the Law on Free Legal Aid would result in the emergence of numerous associations associated with the state (GONGO), which would take over the promising business of free legal aid from the hands of the attorneys. Since the introduction of the system of public notaries, without extensive consultations with the professional public, was followed by the attorneys losing part of their work and their strike in 2014, it seemed that such a possibility was not ruled out. With this in mind, YUCOM, as one of the leading organizations providing free legal aid, in order to reach a compromise and start the process of adopting of the Law, accepted the position that the work of the associations did not have to be financed from the state budget.

Public debate on the Draft Law on Free Legal Aid

The last and long awaited public debate for the adoption of the Law on Free Legal Aid was organized in a very short period⁵³ during August 2018. Despite the lack of time, numerous associations active in this area prepared and sent comments⁵⁴ on

52 Art. 24, Law on Legal Profession.

53 Although the information was published on the website of the Ministry of Justice a few days earlier, the Office for Cooperation with Civil Society notified the civil society organizations on Friday, August 3, 2018, that they could have sent comments on the Draft by Monday, August 6, 2018.

54 Table of comments on the Draft Law on Free Legal Aid, available at: <https://www.mpravde.gov.rs/files/Tabela%20komentari%20javna%20rasprava.docx>

the Draft to the Ministry of Justice. Most of the essential comments of the civil society, including those regarding the status of the associations, did not find their place in the adopted Law. However, a significant concession based on comments was made by increasing the number of persons who, based on their status, can exercise the right to free legal aid, and the Law on Free Legal Aid included 13 items dedicated to vulnerable groups who could exercise this right. At the suggestion of YUCOM, the right of children to free legal aid was extended to court proceedings, while the right was recognized to all persons with disabilities, and not only to those who use the accommodation service in the social protection system, as stated in the Draft.⁵⁵ According to the conducted research, when it comes to the members of vulnerable groups, the largest part of the submitted and approved requests also referred to children and persons with disabilities. Linking the right to legal aid to very restrictive conditions when it comes to social assistance or child allowance, as a substantial shortcoming of the Law, was not removed, despite numerous objections from civil society.

Inconsistency between the Law on Free Legal Aid and the explanations of the Government

The adopted Law has limited the possibility of associations to provide free legal aid in the narrower sense, and only based on the provisions of the law governing the right to asylum and the prohibition of discrimination.⁵⁶ The explicit enumeration omitted other laws that give associations active authorization to initiate proceedings or possibility to represent their clients. According to the Ministry of Justice, in its responses to civil society comments during the public debate, this restriction does not affect the rights that associations have under other laws. On the other hand, associations are given the opportunity to provide free legal support within the goals for which they were founded. This way, the long-term work of associations, which in the absence of the Law on Free Legal Aid, provided free legal aid to victims of domestic violence, human trafficking, persons with mental disabilities and other vulnerable groups, was formally limited. Explanation of the Government⁵⁷, which was sent with the Draft Law to the parliamentary procedure, states quite the opposite, that is, that associations could continue with their work without any obstacles.

In December 2018, the Humanitarian Law Center submitted an initiative to the Constitutional Court to review the constitutionality⁵⁸ of a number of articles of the Law on Free Legal Aid, including Article 9, which refers to providers of free legal aid. The initiative disputes the circle of beneficiaries defined by the Law on Free Legal Aid, because it excludes persons who are in a state of social vulnerability, but do not meet the strict requirements for social assistance, as well as other persons who,

55 Draft Law on Free Legal Aid, available at: <https://www.paragraf.rs/dnevne-vesti/200718/200718-vest14.html>

56 The attorneys provide free legal aid on behalf of the associations (Art.9, paragraph 3), while graduate lawyers can provide free legal aid only within the powers determined by law for law graduates, which regulates the relevant procedure (Art.9, paragraph 4).

57 Proposal of the Law on Free Legal Aid, available at: <https://www.paragraf.rs/dnevne-vesti/301018/301018-vest7.html>

58 Initiative for initiating proceedings for the review of constitutionality and legality, Humanitarian Law Center, December 25, 2018, available at: http://www.hlc-rdc.org/wp-content/uploads/2019/01/anonimizovana_Redacted1.pdf

according to the criteria from the ECtHR practice,⁵⁹ could exercise the right to legal aid. The constitutionality of Article 9 of the Law on Free Legal Aid is challenged due to the dilemma whether Article 9, paragraph 3, allows associations to hire an attorney to provide free legal aid within the purposes for which they were established, i.e. in the proceedings not associated with discrimination and asylum. In anticipation of the answer of the Constitutional Court, an affirmative answer to this question can also be found in the answer⁶⁰ of the Government of the Republic of Serbia to the UN Special Rapporteur on the Independence of Judges and Lawyers of January 16, 2019.

Restrictions regarding work of graduated lawyers

An important issue regarding the application of the Law on Free Legal Aid is the limitation of the ability of graduated lawyers to provide free legal aid in accordance with the procedural laws. This restriction is quite logical since it is not possible to change the provisions of procedural laws by this Law, however, it practically emphasizes the unequal position of graduated lawyers who have passed the bar exam and are employees in a municipality⁶¹ and those employed in an association. Namely, employees in a municipality have the authority to represent citizens before the courts in accordance with the provisions of the Civil Procedure Law, while employees of an association are not allowed to do so. This unjustified distinction should certainly be regulated when harmonizing the Civil Procedure Law.

Another question is whether graduated lawyers (with or without passed bar exam) employed in associations can provide legal advice and write submissions (forms of legal aid in narrower sense) within the goals of the association, and outside the application of laws governing discrimination and asylum. Namely, this possibility was disputed by the bar associations, referring to the provisions of the Law on Legal Profession, which defines the provision of legal advice and the writing of submissions as part of the legal aid provided by the legal profession.⁶² According to that standpoint, graduated lawyers can practically provide legal advice, write submissions and represent parties only in administrative proceedings and proceedings before the Constitutional Court, since the only requirement for a proxy in these proceedings is possession of legal capacity. However, in the response⁶³ of the Republic of Serbia to the UN Special Rapporteur⁶⁴ on the occasion of the adoption of the Law on Free Legal Aid, it is

59 Urbšienė and Urbšys vs. Lithuania, no. 16580/09, judgement of November 8, 2016.

60 Responses of the Republic of Serbia to observations of the Special Rapporteur on the Independence of judges and lawyers, January 16, 2019, Government of Serbia, available at: https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL_SRB_1_2018.docx

61 Or a union when it comes to labor disputes of a union member (Article 85 of the Civil Procedure Law).

62 Art. 3 paragraph 1 item 1, 2, Law on Legal Profession.

63 Responses of the Republic of Serbia to observations of the Special Rapporteur on the Independence of judges and lawyers, Government of Serbia, available at: https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL_SRB_1_2018.docx

64 Mandate of the Special Rapporteur on the Independence of Judges and Lawyers, Address to the Republic of Serbia, December 10, 2018, available at: https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL_SRB_1_2018.pdf

primarily stated that associations could hire attorneys to provide free legal aid within the objectives of their actions, and outside the field of discrimination and asylum. The response then emphasizes that the status of graduated lawyers, despite the provisions restricting their work by procedural law, actually allows associations working in the field of human and minority rights to directly provide free legal aid in the field of legal protection (women victims of domestic, partner and sexual violence, the rights of the LGBT community, Roma, children, persons with disabilities and others).

Bearing in mind the research that showed that more than three quarters⁶⁵ of the approved requests for free legal aid have been directly implemented by the local self-government service, despite the fact that less than half⁶⁶ of the local self-governments employ graduated lawyers who have passed the bar exam, it can be concluded that local self-governments have taken the position that graduated lawyers are authorized to provide legal advice and write submissions in all types of the proceedings. Otherwise, the work of the services would be paralyzed due to the shortage of graduated lawyers who have passed the bar exam. This could be interpreted so that pursuant to the provisions of Art. 9 paragraph 4 of the Law on Free Legal Aid, graduate lawyers employed in associations have the same authority. However, neither the explanation of the Government sent with the Draft Law to the parliamentary procedure, nor the communication with international human rights institutions are legally binding acts, and we should wait for the resolution of this problem which has brought the work of associations and local governments into a state of legal uncertainty. Therefore, we should wait for the decision of the Constitutional Court regarding the submitted initiative for the assessment of the constitutionality and legality of the provisions of this Law.

Obligation to provide free legal aid

One of the questions that was asked was the obligation of associations that are not financed from the state budget to provide free legal aid to every person who is referred to them by a local self-government unit. If we take into account the narrower interpretation of the Law, local self-government units could only refer persons whose requests are related to discrimination and asylum. However, in the practice of YUCOM, citizens have been verbally referred in regards to a number of legal issues unrelated to these two fields. Possible reasons for refusal of the beneficiaries are listed in Art. 21 of the Law on Free Legal Aid:

- if the person conditions the provision of free legal aid by the final outcome or success in the procedure
- if the person does not behave towards the provider within the limits of the law
- if there is a conflict of interest between the beneficiary and the provider or a person working on the provision of free legal aid with the provider, in accordance with the law governing the prevention of conflict of interest
- if free legal aid is granted contrary to this law

By rejecting the beneficiaries for the reasons that cannot be placed under any of the above, the association as a provider of free legal aid risks deletion from the register due to illegal implementation of the Law and further inability to legally provide free legal aid. If the state's authority to prescribe who can be a beneficiary and who can provide free legal aid could be justified, it is completely unjustified to oblige

65 78%

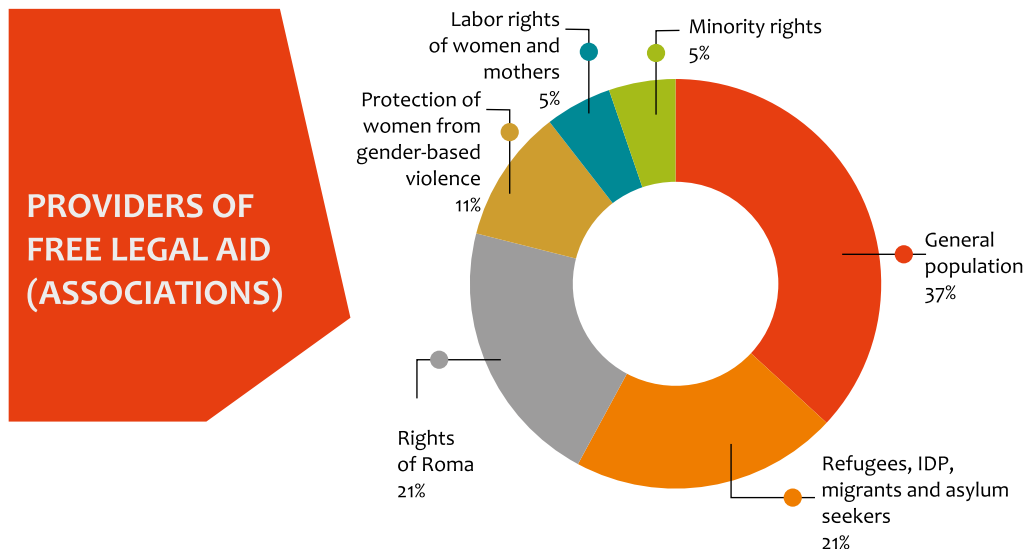
66 40%

the associations of citizens to provide free legal aid to any person sent by a local self-government unit if its work is not financed from the state budget. This is important because the reasons for the refusal do not explicitly state the overburdening of free legal aid providers, which seriously violates the independence of associations whose main activity may be selection and representation of cases of strategic importance for changes in regulations and practices, so called strategic litigation. These and other doubts could have been avoided by clearly stipulating that the Law on Free Legal Aid applies only in cases when the provision of this service is financed from the budget. Although this was one of the proposals of the associations, as well as an amendment⁶⁷ to the Draft Law on Free Legal Aid, the application of the adopted Law on Free Legal Aid is not limited to those cases.

Registration of associations in the register of providers of free legal aid and support

So far, 19 associations have been enrolled in the list of registered providers of free legal aid⁶⁸, and their work is focused on:

- general population (7)
- rights of refugees, internally displaced persons, migrants and asylum seekers (4)
- rights of Roma (4)
- protection of women from gender-based violence (2)
- labor rights of women and mothers (1)
- minority rights (1)

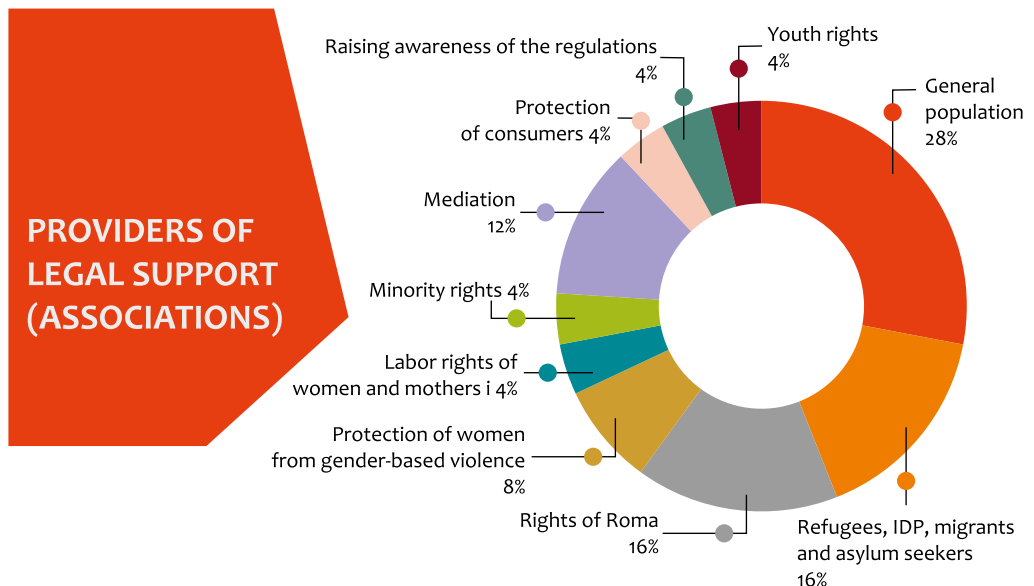


67 Amendments to the Proposal of the Law on Free Legal Aid, available at: https://otvoreniparlament.rs/uploads/akta/7_pdf.pdf

68 List of registered free legal aid providers, available at: <https://www.mpravde.gov.rs/files/Spisak%20registrovanih%20pruzalaca%20besplatne%20pravne%20pomoci%20azuriran%202018.05.docx>

Usually, the associations only have one person registered to provide free legal aid, while the maximum number of registered persons at one association is eight. Apart from the fact that they work in the conditions of legal uncertainty, the concern is raised due to a small number of organizations registered to deal with certain important topics, and their work cannot be simply replaced by an attorney from the list who has no specialized knowledge, experience working with the vulnerable groups or trust of community members. This situation could lead to a reduction in the number of members of vulnerable groups who will seek protection of their rights, but may also reduce the effectiveness of their representation in court by the attorneys which the Law does not provide with financial incentives to specialize in working with a particular vulnerable group.

The list of registered providers of free legal support⁶⁹ includes 24 registered associations, of which 17 were registered on the list of free legal aid providers and 7 were registered only on the list of free legal support providers, as follows:



- associations of mediators (3)
- consumer protection association (1)
- association for raising citizens' awareness of positive regulations (1)
- youth rights association (1)
- association of general type (1)

The register shows visible absence of various traditional providers of free legal support, such as trade unions and religious charities. The list also includes 45 mediators in resolving disputes and 16 notaries public.

⁶⁹ List of registered free legal support providers, available at: <https://www.mpravde.gov.rs/files/Spisak%20registrovanih%20pruzalaca%20podrska%20azuriran%2012.05.docx>

2. Bylaws

The Law on Free Legal Aid provides for the adoption of bylaws within 6 months of the adoption of the Law. Although the period of one year between the adoption and the beginning of the implementation of the Law on Free Legal aid was supposed to be used for conducting trainings and preparation, the Ministry of Justice adopted the bylaws five months late, i.e. only a few days before the beginning of the application of the Law on October 1, 2019. The following were adopted:

- Rulebook on the procedure for payment of the fee for free legal aid and the manner and procedure of returning the received funds⁷⁰
- Rulebook on the manner of keeping records of administrative bodies of local self-government units on requests for approval of free legal aid and free legal support⁷¹
- Rulebook on referring of the applicants to the providers of free legal aid⁷²
- Rulebook on the organization and manner of conducting training for the application of the Law on Free Legal Aid⁷³
- Rulebook on the appearance and more detailed content of the application form for approval of free legal aid⁷⁴
- Rulebook on the manner of keeping records on provided free legal aid and free legal support⁷⁵
- Rulebook on the manner of entry in the Register of Free Legal Aid Providers and keeping the Register⁷⁶
- Regulation on the tariff for the provision of free legal aid⁷⁷

Rulebook on referring of the applicants to the providers of free legal aid contains a provision (Article 2, paragraph 1) on referral, based on which it is not clear whether before making a decision on approval of the request and referring to an attorney who is a provider, the applicant is only orally referred to providers that

70 Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/80/4/reg>

71 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/14/reg>.

72 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/13/reg>

73 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/12/reg>

74 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/11/reg>

75 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/10/reg>

76 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/9/reg>.

77 Available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/uredba/2019/74/4>

are not financed directly from the budget (service in the local self-government units and associations). This ambiguity may be the reason for a number of oral referrals of applicants to associations, although it is quite clear that such an interpretation is not right, i.e. that the local self-government unit has the obligation to make a decision on referral of a user to a specific provider.

Rulebook on the appearance and more detailed content of the application form for approval of free legal aid provides for a form of as many as nine pages, which is problematic considering that the most frequent users are people in a state of social vulnerability, which is often related to low education and literacy. This is also noted in the study on the impact of the new Law on Free Legal Aid on civil society organizations⁷⁸ of the partners of Serbia, recommending introduction of a simplified form. Although the Law provides for the possibility of oral submission of the requests in the form of minutes, it should be taken into account that the bodies that come in direct contact with the citizens, such as social work centers, often verbally reject requests without conducting appropriate proceedings.⁷⁹

Restrictive conditions for financial social assistance and child allowance leave many socially vulnerable citizens out of the scope of this right. The Law on Free Legal Aid guarantees the right to free legal aid to persons already meeting conditions for receiving financial social assistance or child allowance as well as persons who would meet those conditions if they would have to pay for legal aid. The Rulebook prescribes more lenient conditions compared to the Law on Social Protection, and introduces the concept of existential endangerment, which is a step in the right direction. This means that any person who would be existentially endangered by paying legal aid would be eligible for free legal aid. However, it seems that the lack of clear criteria for estimating the costs of the procedure, as well as the manner of formulating the conditions within the list of evidence submitted by the applicant, leaves a wide discretion to the person deciding on the request. The Rulebook prescribes the following conditions:

1. The income of an individual does not exceed the minimum salary or the income of the family does not exceed the sum of two minimum salaries. This is a significant deviation from the conditions for financial social assistance, because it could be obtained by an individual who, after paying for the costs of legal aid, would have the remaining amount lower than the minimum that provides financial security (financial social assistance of 8,465 dinars).⁸⁰
2. A real estate owned by the applicant serves as residential space or is used for performance of work activity that supports the applicant or member of the

78 Study: The Impact of the Law on Free Legal Aid on the Work of Civil Society Organizations, Partners Serbia, 2020, available at:<http://www.partners-serbia.org/wp-content/uploads/2020/05/Uticaj-no-vog-Zakona-o-BPP-na-OCD-Partneri-Srbija.pdf>

79 In the practice of providing free legal support by YUCOM, social assistance beneficiaries often complain that employees of social work centers rudely reject and expel from their offices, and they do not have the opportunity to submit a formal request and initiate proceedings.

80 12,697 dinars for a family of two and 15,236 dinars for a family of three (two parents and a child).

family, or the household of the applicant. This is also a significant deviation from the stricter conditions⁸¹ for social financial assistance.

3. A vehicle owned by the applicant is used for performance of independent work activity or its value is lower than 3060 EUR.⁸² However, one of the conditions for financial social assistance is for the value of all movable assets, which may be disposed of without threatening the existence, not to surpass the amount of 420 EUR.⁸³

An absolute threshold set for family income discriminates against members of large families for no apparent reason. In that sense, the right could be exercised by a member of a family of three who earns two minimum wages, but not a member of a family of five who earns three minimum wages, although he is existentially threatened to the same or greater extent. The Rulebook does not include expenses for renting an apartment, which increase with the number of family members. The main shortcoming is more restrictive formulation of the conditions in the Law on Free Legal Aid, which introduces the possibility of different interpretations, but also the possibility to harmonize the Rulebook with the Law and additionally limit the right to free legal aid.

Regulation on the tariff for the provision of free legal aid envisages a special tariff that is significantly lower than the standard attorneys' tariff, as well as maximum amounts for certain types of proceedings. For example, the entire defense in misdemeanor proceedings is charged with 30,000 dinars, while according to the regular attorneys' tariff, only the reward for drafting of the appeal is 51,000 dinars. The provision that conditions the payment of the award, i.e. the costs of drafting of the constitutional appeal⁸⁴ or revision⁸⁵ by the success of the proceeding is particularly discouraging. In addition, the payment is completely excluded if a constitutional appeal is filed against an individual act or action that violates or denies the constitutionally guaranteed human or minority rights and freedoms of several persons who are in the same legal situation.⁸⁶ Namely, the provision of Art. 87 of the Law on the Constitutional Court stipulates that if an individual act or action violates or denies the constitutionally guaranteed human or minority rights and freedoms of several persons, and only some of them have filed a constitutional appeal, the decision of the Constitutional Court shall also apply to persons who have not filed a constitutional appeal, if they are in the same legal situation.

-
- 81 If there are no other real estates, except for residential space that meets the needs of the individual, i.e. the family, and land in the area of up to 0.5 hectares (Art. 82 paragraph 1 item 1 Law on Social Protection).
 - 82 The applicant receives free legal aid if the vehicle is used for self-employment or the value of the vehicle does not exceed the annual amount of the minimum income determined by the Government in accordance with the law (Art. 6 paragraph 6 item 4 of the Rulebook)
 - 83 If an individual or family member does not own movable property, the use or alienation of which, without endangering basic living needs, may provide funds in the amount of six times the amount of financial social assistance that would be determined under this law at the time of applying for financial social assistance (Art 82 paragraph 1 item 3 Law on Social Protection)
 - 84 Tariff number 16
 - 85 Tariff number 12
 - 86 Tariff number 16

Although it is clear that the amount of the tariff is subordinated to the financial sustainability of the Law on Free Legal Aid, the question of the effectiveness and the motivation of attorneys can rightly be raised. Together with the significant limitation of the ability of the associations to provide free legal aid, the absence of additional incentives for the establishment of free legal aid services in municipalities, the low tariff may jeopardize the effectiveness of the entire free legal aid system.

3. Availability of free legal support

Having in mind that a significant number of municipalities are not entered in the register of free legal aid providers, it is questionable when free legal support will be widely available to all the citizens. The legal obligation of municipalities to provide free legal aid is clearly defined by the Law on Free Legal Aid⁸⁷. The law leaves a period of one year from its adoption to implement it so that municipalities can establish free legal aid services.

In the report of the Ministry of Justice⁸⁸ on the first six months of the implementation of the Law on Free Legal Aid, it was estimated that enough time had passed for the municipalities to prepare, and that the Ministry of Justice would conduct extraordinary supervision after March 31, 2020. The question, however, is whether all local self-governments are able to set up their own free legal aid services without additional economic incentives.

Uneven economic development can have a major impact on the availability of services financed from the budget of local self-government. A good example are social protection services, which are often unavailable in underdeveloped municipalities where there is the greatest need for them. Thus, in many municipalities, the citizens do not have access to services such as supported housing or personal escort services for children with special needs.⁸⁹ According to information published on the website of Red Cross of Serbia, soup kitchens funded from municipal budgets, in 2016/2017 cycle, were only available in 76 out of 167 municipalities.⁹⁰ This was also noted in the Strategy for the Development of the Free Legal Aid System in the Republic of Serbia, which, within the specific goals and measures, states the provision of sustainable financing of the free legal aid system in order to create conditions for equal access to justice throughout the Republic of Serbia, taking into consideration the differences in poverty levels. Although the Law on Free Legal Aid prescribes the possibility of project financing, it did not take into account this goal, especially in the part related to free legal support (primary legal aid) by prescribing a sustainable model of financing of the

87 Art. 58 paragraph 2, Law on Free Legal Aid

88 Report of the Ministry of Justice on the implementation of the Law on Free Legal Aid, Ministry of Justice, March 2020, available at: <https://www.mpravde.gov.rs/files/lzvestaj%20o%20sprovodjenju%20ZBPP%201.okt%20do%2031.%20marta.pdf>

89 Mapping of social protection services under the jurisdiction of local self-government units in the Republic of Serbia, Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, December 2016, available at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/12/Mapiranje-usluga-socijalne-zastite.pdf>

90 Red Cross of Serbia, Number of users in 2016/2017, available at: <https://bit.ly/31GdacR>

work of free legal aid services of local self-governments. We should not lose sight of the fact that before the adoption of the Law on Free Legal Aid, some municipalities financed the work of their services through the payment of services to persons who do not meet the requirements for free legal aid in the amount of 20% to 50% of the attorney's fees. The model of co-financing of legal aid, although mentioned as one of the possible ones in the Strategy and earlier drafts of the Law⁹¹, it was not included in the final version of the Law on Free Legal Aid.

For now, the part of municipalities that are not entered in the Register still employ graduated lawyers who have been trained to decide on the citizens' requests for free legal aid. The role of associations in providing free legal support can be complementary in the areas of their specialization, but it cannot be a substitute for a functional free legal aid service within a local self-government unit.

According to the Law on Free Legal Aid, free legal support can be provided by public notaries, mediators and law faculties and associations,⁹² while free legal aid can be provided by attorneys, legal aid services in local self-government units and associations based on the provisions of the law governing the right to asylum and the prohibition of discrimination.⁹³

4. Availability of free legal aid

Providing general legal information and filling of the forms as types of free legal support and legal advice as a type of free legal aid, may be provided to persons who do not meet the conditions. However, the right to other types of free legal aid and support can be exercised only by persons who meet the conditions for social assistance or child allowance, persons who meet the conditions for these social benefits due to payment of legal aid, as well as members of vulnerable groups listed in item 13 of the Law. By tying the exercise of rights to restrictive conditions for social assistance or child allowance, a significant part of persons in a state of social vulnerability remain outside the scope of this Law. This is also a deviation from the broader criterion set in the Strategy, which speaks of persons of low financial status, i.e. the provisions of the Civil Procedure Law relating to the right to exemption from payments of court fees and the right to a free attorney.⁹⁴ This shortcoming of the Law was corrected by linking the conditions for exercising of the right to free legal aid to broader concept of existential threats in the Rulebook on the appearance and more detailed content of the application form for approval of free legal aid. However, for the reasons of legal certainty, the provision of Article 4 para. 1 item 2 of the Law on Free Legal Aid, which, unlike the Rulebook, explicitly links this basis for exercising of the right to the formal conditions for social assistance and child allowance should be amended.

91 Law on free legal aid, the draft text, Ministry of Justice, 2011, available at:https://arhiva.mpravde.gov.rs/images/Radni%20tekst%20Zakona%20o%20besplatnoj%20pravnoj%20pomoci%2006_12_2011_latinica.doc

92 Art. 12, Law on Free Legal Aid.

93 Art. 9, Law on Free Legal Aid.

94 In accordance with the Civil Procedure Law, the right to exemption from court fees can be exercised by persons who, according to their general financial situation, are not able to bear them (Art. 168 paragraph 1 of the Civil Procedure Law), while the right to free attorney can be exercised by persons who meet the previous criteria, if it is necessary for the protection of their rights (Art. 170 paragraph 1 of the Civil Procedure Law).

CONDITIONS FOR RECEIVING FINANCIAL SOCIAL ASSISTANCE ⁹⁵	CONDITIONS FOR CHILD ALLOWANCE ⁹⁶
<ol style="list-style-type: none"> 1) if there are no other real estates, except for residential space that meets the needs of the individual, i.e. family, and land in the area of up to 0.5 hectares; 2) if the individual or family member has not sold or donated real estate or waived the right to inherit real estate, or if a period has elapsed in which, from the market value of immovable property sold, donated or waived the right to inherit, he could secure assistance within the meaning of this law; 3) if the individual, i.e. a family member does not own movable property, the use or disposition of which, without endangering basic living needs, could provide funds in the amount of six times the amount of financial social assistance that would be determined under this Law at the time of applying for financial social assistance; 4) if the individual, i.e. family member has not concluded a contract on lifelong support. 	<p>The right to child allowance can be exercised if the applicant, i.e. members of his/her family, do not have cash and other liquid assets (realized through the sale of real estate, shares, bonds and other securities, etc.) in the amount exceeding the amount of two average salaries per employee in the Republic, without taxes and contributions, per family member, and according to the last known data at the time the application is submitted.</p> <p>If the applicant, i.e. members of his/her family have cash and other liquid assets in the amount greater than the amount of two average salaries per employee in the Republic of Serbia, without taxes and contributions, per family member, and according to the last known information at the time of application, the applicant cannot exercise the right to child allowance for a period proportional to the number of months received by dividing the total amount of these funds by the average salary per employee in the Republic of Serbia without taxes and contributions.</p> <p>The right to child allowance can be exercised if the applicant, i.e. members of his/her family, do not own real estate on the territory of the Republic of Serbia or abroad, except for residential space where the family lives, which cannot be larger than a room per household member increased by another room.</p> <p>Notwithstanding paragraph 1 of this Article, the right to child allowance may be exercised if the applicant, i.e. members of his/her family, who earn income from agriculture, do not own real estate on the territory of the Republic of Serbia or abroad, except for residential space where the family lives, and which cannot be larger than a room per household member increased by another room and other necessary economic buildings in an agricultural household and land in an area of up to two hectares per family member.</p> <p>Exempt from para. 1 and 2 of this Article, the right to child allowance may be exercised if the applicant, i.e. members of his/her family, in addition to the residential space in which the family lives, own other real estate on the territory of the Republic of Serbia and abroad, ideally not more than 20 square meters, acquired as a gift and in accordance with the regulations on inheritance.</p> <p>Exempt from para. 1 and 2 of this Article, the right to child allowance may be exercised if the applicant, i.e. members of his/her family, in addition to the residential space in which the family lives, own a garage and rented business space (lease) not exceeding 20 square meters.</p>

95 Art. 82, Law on Social Protection.

96 Art. 7, 8, Law on Financial Support for Families with Children.

The expansion of groups of marginalized and vulnerable citizens who can exercise their right based on their status, in relation to the Draft, is a concession made based on the comments from the civil society. The Law specifically emphasizes children as a vulnerable group, who can exercise this right on the basis of one general item and two items that refer to certain situations in which they may find themselves.

The absence of clear criteria for estimating the costs of legal aid is an obstacle for exercising of the rights for persons who, due to the payment of the same, would meet the conditions for social assistance, i.e. child allowance. Namely, if we take the available data on the average duration⁹⁷ and costs⁹⁸ of litigation proceedings and conditions for these social benefits, we come to the conclusion that free legal aid on this basis is not available even to persons receiving a minimum wage. However, the Ministry of Justice has introduced a broader notion of existential vulnerability in the Rulebook on the form on contents of the application form for free legal aid. The authorized person in the local self-government is bound by less restrictive conditions when assessing the existential threat.⁹⁹ This change was also reflected in the decision-making of local self-governments on requests, and most of them were resolved in favor of the applicants (809 adopted, 23 rejected).

The Law on Free Legal Aid also introduces restrictions on the provision of free legal aid that are not justified. This refers to the prohibitions provided for in Art. 7 of the Law on Free Legal Aid, which prohibit the provision of free legal aid in certain cases under the threat of a high misdemeanor penalty. Although the misdemeanor penalty refers only to cases when free legal aid is financed from the budget,¹⁰⁰ violation of the ban is the basis for deletion from the register of providers¹⁰¹ in other situations.

97 According to the data of the Supreme Court of Cassation and the Annual Report on the Work of Courts in the Republic of Serbia for 2018, the average duration of proceedings before the basic court was 323 days.

98 According to the explanation of the Draft Law on Free Legal Aid, the average costs of legal aid in litigation proceedings before the basic court are 75,329 dinars.

99 The applicant receives free legal aid if the real estate serves as residential space or the real estate is used to perform business activities that serve to support the applicant or a family member, or the joint household of the applicant (Art. 6 paragraph 3 item 1); the applicant receives free legal aid if the vehicle is used for self-employment or the value of the vehicle does not exceed the annual amount of the minimum wage determined by the Government in accordance with the law (Art. 6 paragraph 4 item 4); the applicant receives free legal aid if the applicant's income does not exceed the minimum wage determined by the Government in accordance with the law (Art. 6 paragraph 3 item 1); the applicant receives free legal aid if the income of family members or joint household does not exceed the sum of two minimum wages determined by the Government in accordance with the law (Art. 6 paragraph 4 item 4).

100 Art. 58 paragraph 1 item 1, Law on Free Legal Aid.

101 Art. 19 paragraph 1 item 4, *ibid*.

Cases when free legal aid is not allowed

Article 7

Provision of free legal aid shall not be permitted the in the following cases even if the person fulfils the conditions for provision of free legal aid (Article 4):

- 1) commercial disputes;
- 2) procedure for registration of legal entities;
- 3) procedure of compensation of damages for defamation of honor and reputation;
- 4) proceedings before a misdemeanor court, if the misdemeanor is not punishable by imprisonment;
- 5) procedure in which the value of the dispute would be in an obvious and significant disproportion to the costs of the procedure;
- 6) procedure in which it is obvious that the applicant for free legal aid has no chance of success, especially if his expectations are not based on facts and evidence presented or are contrary to positive regulations, public order and good customs;
- 7) in case there is an obvious attempt to abuse the right to free legal aid or some other right.

The State has a legitimate right to prescribe requirements and limitations regarding the spending of budget funds, as long as it does not impose restrictions that are arbitrary, discriminatory or that constitute violation of other human rights. However, introducing a prohibition to provide free legal aid is contrary to international standards and is particularly problematic for associations that traditionally provide free legal aid in these cases. In addition, in accordance with Article 15 of the Law on Free Legal Aid, these prohibitions apply even to free legal support.

In its response to the civil society's comments concerning these prohibitions, the Ministry of Justice mainly cited comparative legal experiences. However, they undeniably affect the possibility for associations to provide legal aid to the human rights defenders. The prohibition practically includes the legal aid related to registration of associations providing human rights protection, as well as the legal aid to defenders prosecuted for misdemeanors related to organization of public gatherings. Associations have an active authorization to initiate procedures related to hate speech and protection of rights and interests of minors; however, the prohibition of procedures related to defamation of honor and reputation formally excludes this possibility. During the public debate, the Ministry of Justice stated that Article 7 does not actually affect active authorization of associations regarding the Law on Public Information and Media. One of the important activities of associations may be conducting of strategic litigations, therefore the prohibitions referred to in Articles 5 and 6 are especially problematic because the lack of prospects of success and disproportion between the dispute value and cost may present significant elements of the strategic litigation definition.

In addition to the unclear reason for introduction of this misdemeanor, consistent application of this provision may result in deletion from the registry for banal reasons. For example, someone may be punished for provision of general legal information contrary to the prohibition to provide free legal aid related to registration of legal entities, which could simply mean a referral to the Serbian Business Registers Agency.¹⁰²

102 The Law on Free Legal Aid strictly prohibits provision of legal aid and support in relation to the registration of legal entities.

If the goal of the prescribed misdemeanor responsibility is to protect the budget, it is unclear why the provision of free legal aid and support is treated as misdemeanor if there is no actual damage to the budget. When it comes to regular financing, direct provider of free legal aid cannot charge for that service without a decision on the approved free legal aid and a referral to a specific provider. It is hard to imagine a situation where at the same time municipal staff would mistakenly approve legal aid as per client's request and a direct service provider would mistakenly provide that legal aid contrary to the provisions of the Law on Free Legal Aid. If such actions would constitute a criminal offence of Abuse of Official Position, there is a risk of application of the *ne bis in idem* principle between the misdemeanor and the criminal offence, due to their similar factual descriptions. In case of project financing, more efficient budget protection may be achieved through control of contract execution and possible termination with the refund.

Adoption of the Law on Social Cards¹⁰³ could expedite the procedure for exercising the right to free legal aid of the citizens who are close to being in existential danger, but it could also increase the number of rejected citizens in case of application of extremely strict social assistance requirements. Namely, this Draft Law aims to facilitate citizens' access to social protection services through consolidation of databases on their assets and incomes, as well as prevent potential misuse. This Law introduces a problematic concept of mapping of so-called related parties, that is, family members and other persons who have the obligation to support social assistance applicants, such as former spouses. In practice, this could lead to a situation where a condition for approval of free legal aid request would be filing of an alimantation lawsuit against these persons.¹⁰⁴ Similar laws in the Netherlands¹⁰⁵ and Denmark¹⁰⁶, which served as a model for the Serbian law, were harshly criticized since it turned out that the computer algorithms used to detect social assistance misuse were biased, that is, they disproportionately targeted certain vulnerable groups.

Prior to the adoption of the Law on Free Legal Aid in 2018, provision of these services to the citizens was regulated by decisions of the local self-government units based on the provisions of Article 67 of the Constitution of the Republic of Serbia and Article 20 of the Law on Local Self-Government, which provided aid in the form of free legal advice and drafting of submissions. Free legal aid was provided in the form of court representation by graduated lawyers with bar exam employed in the municipality, or by attorneys in accordance with the agreements with local bar associations. The practical possibility of obtaining free legal aid was limited only to

103 Draft Law on Social Card, available at: <https://www.paragraf.rs/dnevne-vesti/070619/070619-vest16.html>

104 Article 84, Law on Social Protection.

105 Welfare surveillance system violates human rights, Dutch court rules, Guardian, February 5, 2020, available at: <https://www.theguardian.com/technology/2020/feb/05/welfare-surveillance-system-violates-human-rights-dutch-court-rules>

106 The Welfare State Is Committing Suicide by Artificial Intelligence, Foreign Policy, December 25, 2018, available at: <https://foreignpolicy.com/2018/12/25/the-welfare-state-is-committing-suicide-by-artificial-intelligence/>

the municipalities with organized provision of this service either through the offices or individuals employed in municipal administrations.

The Law on Free Legal Aid limits the possibility of provision of legal advice and drafting of submissions as forms of legal aid by municipalities to graduated lawyers with bar exam who can represent clients in court. On the other hand, graduated lawyers may provide free legal support, as well as free legal aid in administrative procedures. As shown in practice, in case of the majority of approved requests (78%), municipalities provided the aid by themselves, without referral to the attorneys, although only small number of those municipalities (40%) employs graduated lawyers with bar exam.

The possibility for establishment of functional free legal aid offices at the municipalities, with adequate number and structure of employees, is limited by lack of budget resources, and by application of the Law on Means of Determining the Maximum Number of Public Sector Employees. With adoption of the Law on Free Legal Aid, local self-governments are no longer able to charge the persons who do not meet the requirements for legal services, as a way of ensuring financial sustainability of their work. In addition, the lack of labor force with adequate qualifications may also be a problem. Despite the fact that there is definitely a sufficient number of unemployed graduated lawyers on the labor market, the lack of labor force mobility and adequate incentives for transfers to smaller municipalities may present a serious obstacle. The problem may be even more obvious when it comes to the graduated lawyers with bar exam who could fully assume provision of free legal aid and representation in court.

Regardless of the fact that lower tariff rates apply as per the Law on Free Legal Aid, it is reasonable to assume that hiring municipal staff with appropriate qualifications could result in significant budget savings, without reducing the quality of the service provided, which would also be significant from the aspect of financial sustainability of the Law. Otherwise, there is a possibility that in the event of extensive spending of the municipal budget, the person responsible for issuing decisions on the citizens' requests would be under pressure not to make these decisions before the legal deadline, and to limit the use of budget resources to few citizens who would file a complaint to the Ministry of Justice for the so-called silence of the administration. Another indicator of poor practice may be a potential increase of the "silence of the administration" in relation to the number of requests submitted.

V Implementation of the Law on Free Legal Aid

1. Availability of free legal aid services

With adoption of the Law on Free Legal Aid, establishment of free legal aid offices is clearly defined as obligation of all local self-government units, and violation of that obligation is threatened with misdemeanor liability. Having in mind that the period between adoption and the beginning of implementation of the Law was left for fulfilment of this obligation, the main task of this research is to answer the questions about establishing and functioning of the free legal aid offices. Special attention is given to the question of whether the free legal aid offices are equally accessible, that is, whether they can meet the needs of all citizens of the Republic of Serbia for this kind of service.

In order to reduce significant differences and allow equal access to free legal aid to all citizens, the lawmakers chose to introduce state subsidies of 50% for certain forms of free legal aid. These apply to the fees for attorneys, public notaries and mediators, and are not subsidies for the work of free legal aid offices in local self-government units. This is a departure from the specific objectives and measures in the Strategy for Development of the Free Legal Aid System in the Republic of Serbia, which focus on ensuring financial sustainability of the free legal aid system while respecting the differences in the level of regional development. Lack of sustainable financing model for the free legal aid offices in local self-governments may be one of the largest obstacles to adequate implementation of the Law. Possibility of cooperation with other service providers that could provide funding from donations may offer certain flexibility, but it is not a permanent solution.¹⁰⁷ It is important to note that the Action Plan for Chapter 23 contains the activity 3.7.1.3 which anticipates adequate allocation of budget to fund the free legal aid system, in particular when it comes to obligations of the local self-government units. Although a continuous impact assessment was planned in order to assess and evaluate the costs of running a free legal aid system, no deadlines have been established for this since the adoption of the Law.

Out of the 167 units of local self-government in the Republic of Serbia¹⁰⁸ covered by the research on implementation of the Law on Free Legal Aid, 125 of them are enter in the Register of Free Legal Aid Providers¹⁰⁹ maintained by the Ministry of

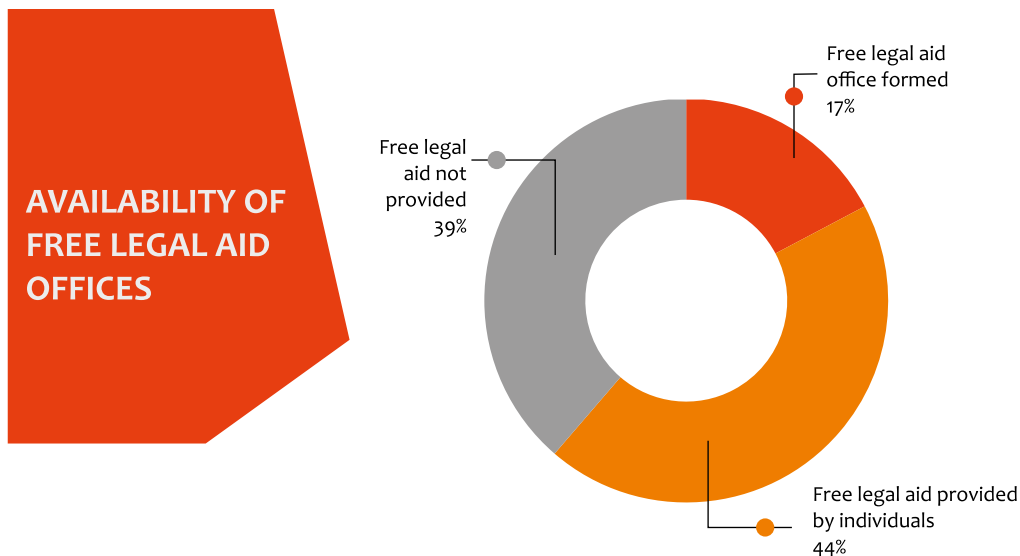
¹⁰⁷ Through a project implemented by the Balkan Center for Migration in cooperation with 24 local self-governments, for the first time, the citizens in underdeveloped municipalities had an access to free legal aid, through the model of co-financing of job position in charge of provision of free legal aid in the municipality.

¹⁰⁸ Excluding the Autonomous Province of Kosovo and Metohija.

¹⁰⁹ List of registered free legal aid providers, available at: <https://www.mpravde.gov.rs/files/Spisak%20registrovanih%20pruzalaca%20besplatne%20pravne%20pomoci%20azuriran%2018.05.docx>

Justice. YUCOM sent requests for access to information of public importance to all local self-government units. Due to the introduction of state of emergency and the reduced level of activities in municipalities, 129 responses were received.¹¹⁰ The scope and quality of the responses varied significantly, but only few municipalities explicitly refused to fully or partially respond to our request.¹¹¹

Out of the total number of responses received, only 31 municipalities state that they have an established office for providing of free legal aid, while in 73 municipalities this service is provided by individuals from other organizational units of municipal administration. Some municipalities and towns that provide free legal aid to citizens are not entered in the Register. In certain cities, provision of free legal aid is organized at municipal level (i.e. Belgrade), while in others it is at the city level (i.e. Novi Sad and Nis).



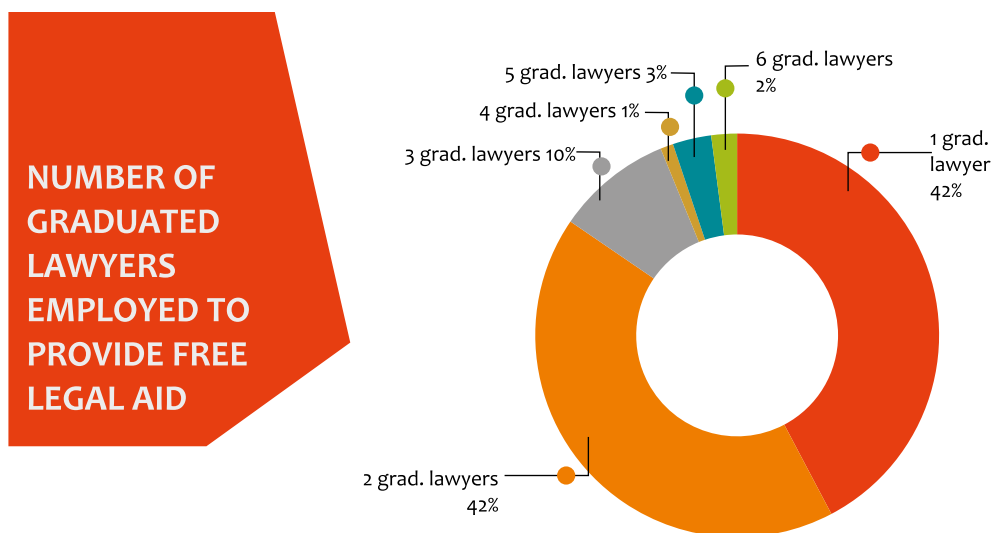
In their response, certain municipalities said that they had at least one graduated lawyer who completed the training for assessment of free legal aid requirements, without having a single graduated lawyer providing this service to the

¹¹⁰ For research purposes, local self-government units that failed to respond to the request for access to information of public importance have been recorded as not providing free legal aid.

¹¹¹ Among them is the City of Zrenjanin that replied to some of our questions, but refused to provide statistical data on implementation of the Law on Free Legal Aid, citing the Ministry of Justice's instruction stating that they were not obligated to provide data on implementation of this Law. Zrenjanin is not entered in the Register of Free Legal Aid Providers, so the data requested are not available even in the Ministry of Justice's report on implementation of the Law.

citizens. As a reason for this, some municipalities cited the limitations imposed by the Law on Means of Determining the Maximum Number of Public Sector Employees.¹¹²

The research has shown that most of the municipalities and towns providing free legal aid in an organized manner have a small number of employed graduated lawyers working on these tasks, and that, most often, their number does not correspond the size of municipality or the number of municipality residents. A major problem and an obstacle to efficient provision of free legal aid is the fact that provision of free legal aid is often not their only duty (63%). There are usually one (42 municipalities) or two employed graduated lawyers (43 municipalities), while three graduated lawyers work in ten municipalities, four graduated lawyers in one municipality, five graduated lawyers in three municipalities and six graduated lawyers in two municipalities.¹¹³ Most often, these are graduated lawyers; fewer municipalities employ graduated lawyers with bar exam (40%), and only 14 municipalities state that they also employ administrative staff to support provision of free legal aid services.



Approximately 65% of municipalities emphasize that they do have an adequate space for efficient organization of work, whereas in only 46% of cases that space is accessible to persons with disabilities. Only one self-government unit stated in its response that the reason for an inadequate space was inability to conduct confidential conversations with parties, although we can assume that in practice this is not a rare case.

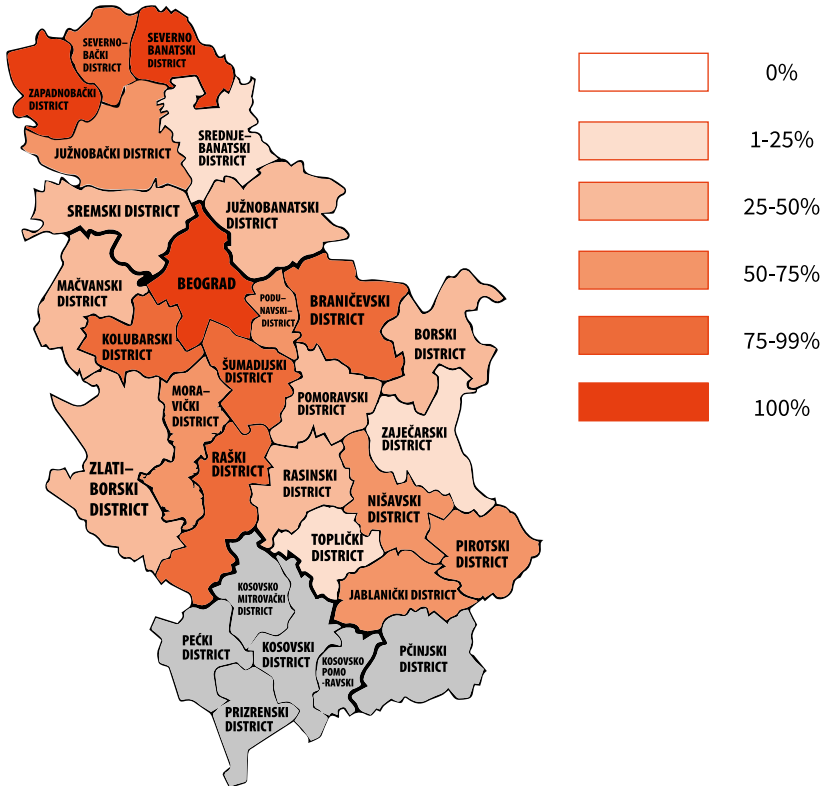
The question of whether the offices or individuals providing free legal aid in local self-government units are evenly distributed may be answered by looking at the percentage of the municipalities and towns in each of the 22 administrative districts in Serbia that provide this service. The research has shown evident variations, from

¹¹² "Official Gazette of the RS", No. 68/2015, 81/2016 – decision of the Constitutional Court and 95/2018

¹¹³ Some municipalities failed to provide data on the number of law graduates working on provision of free legal aid.

the Severnobački District with 100% of municipalities providing free legal aid to the Zaječarski District with 25% of municipalities providing this service.

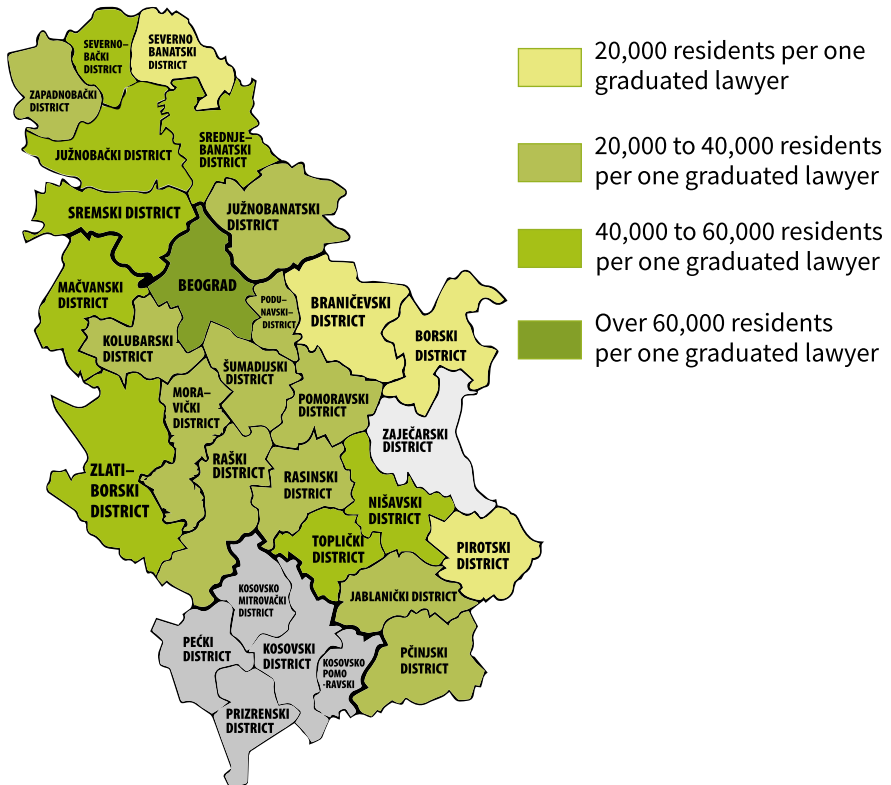
PERCENTAGE OF LOCAL SELF-GOVERNMENT UNITS PROVIDING FREE LEGAL AID



Since the most significant part of the free legal aid provided by the municipalities and towns is the free legal aid provided to all citizens without prior verification of the conditions met (general legal information and legal advice), it should also be available to the citizens from neighboring municipalities and towns, especially if it is provided by phone or email. In this case, attention should be paid to the workload of graduated lawyers employed in municipalities. Heavy workload of direct service providers (due to their insufficient number and other duties they most frequently perform) may seriously affect the quality of services provided. Differences in workloads are visible if we look, for example, at the Municipality of Zagubica and the City of Leskovac. Although the City of Leskovac has ten times more residents than the Municipality of Zagubica, according to the responses received, only one graduated lawyer works

on free legal aid activities. If we observe the proportion of the number of residents and the number of employed graduated lawyers in a district, the graduated lawyers in Belgrade have potentially the heaviest workload while those in Severnobanatski District have the lightest workload. Workload may depend on numerous factors, including the actual needs of the citizens, availability of information on free legal aid services and the level of cooperation with other providers. The associations entered in the Register of Free Legal Aid Providers that provide free legal aid at national level do not have sufficient capacities to reduce the consequences of this disparity, and they are not permitted by the Law to provide free legal aid to the same extent as the municipalities. At the same time, most of the associations provide free legal aid to vulnerable categories of population, but not to the general public.

POTENTIAL WORKLOAD OF GRADUATED LAWYERS PROVIDING FREE LEGAL AID IN THE LOCAL SELF-GOVERNMENT UNITS



Citizens living in the municipalities without organized provision of free legal aid are primarily denied access to general legal information and legal advice, but they can also be indirectly denied access to representation in court. Namely, important element of implementation of the Law on Free Legal Aid is the issue of its financial sustainability. Adequate access to information and advice may reduce the number of initiated court proceedings, and thus reduce municipal costs. In addition, establishment of free legal aid offices and hiring of graduated lawyers with bar exam

may result in significant savings compared to attorneys' fees in the court proceedings that would potentially be initiated. The research has shown that 40% of the municipalities organizing provision of free legal aid also employ graduated lawyers with bar exam who can represent citizens in court.

2. Availability of information on provision of free legal aid

During the research on availability of free legal aid services conducted in 2016¹¹⁴, the Lawyers' Committee for Human Rights noticed a problem with availability of information on free legal aid services. Namely, information about these services was often not easily accessible, and upon our search of municipal websites and information booklets and in response to our requests for information of public importance or our phone calls, we often received different and confusing information. As shown by the research presented here, information on provision of free legal aid services is still mostly available only to the individuals who come in person to the municipal building, that is, to the information window (60%). Surprisingly small number of municipalities and towns share this type of information on their websites (40%). In 20% of the cases, such information is available in the information booklet, and in 21% of the cases it is available in other locations (registry office, notice board, free legal aid office, etc.)

When asked if they informed their citizens of the beginning of implementation of the Law, 73% of the municipalities gave affirmative response and stated that this was done through public information media (print and electronic media). When it comes to providing information to vulnerable groups that, as per the Law on Free Legal Aid, have the right to free legal aid, there are less municipalities with information campaign focused on these groups (26%). Municipalities that informed the members of vulnerable groups mostly did that through the centers for social work. Only two municipalities informed the social protection institutions and institutions for execution of criminal sanctions. At YUCOM's suggestion related to revision of the Action Plan for Chapter 23, the Ministry of Justice has amended the free legal aid information campaign activity in order to include vulnerable categories covered by the Law.¹¹⁵

Request for provision of free legal aid may be submitted via forms, verbally with the minutes, as well as electronically.¹¹⁶ However, it is noticed that the Register of Free Legal Aid Providers contains a lot of private email addresses (gmail, yahoo, etc.), which could be problematic in case of dismissal of these persons, so it would be best to use email addresses from the municipality domain (i.e. bpp@opština.rs, pravnapomoć@opština.rs, etc.).

Free legal aid request forms are most often available in municipality buildings (83%), either in free legal aid offices (52%), at information windows (33%), on websites (13%) or elsewhere (24%).¹¹⁷ In 13% of the municipalities, free legal aid is provided in languages of national minorities, while in 7% of the municipalities the forms are also

114 Access to Justice: Providing Information, Counsel and Free Legal Aid, YUCOM, 2016, available at: <http://www.yucom.org.rs/wp-content/uploads/2016/11/Pristup-pravdi-publikacija-YUCOM-srpska-verzija.pdf>

115 Activity 3.7.1.5.

116 Article 27, paragraph 2, Law on Free Legal Aid

117 Registry office, notice board, reception desk.

translated into these languages. Availability of forms used to be a problem especially at the beginning of implementation of the Law, which was noticed by YUCOM while providing free legal support to citizens.

Another important issue for implementation of the Law on Free Legal Aid is application of the bylaws that more closely regulate the procedure for exercising of this right. Rulebook on referring of the applicants to the providers of free legal aid¹¹⁸ in its Article 2, paragraph 1, stipulates that the applicant should first be referred to a registered provider not financed directly from the municipal or state budget. It is interesting that in 18 cases, the local self-government units referred the citizens verbally, and in 22 cases they referred them in the decision issued for approval of their free legal aid request.

3. Issuing of decisions on free legal aid requests

According to the data received from local self-governments, in the period covered by this research, the municipalities received 2,548 requests from citizens for free legal aid approval. Obvious discrepancies between the data obtained and the data from the Ministry of Justice's report¹¹⁹ show the initial difficulties in keeping of the statistics. 2,280 requests were approved, while 61 requests were issued a denial. In 207 cases, decision was not made within the legal deadline, thus, in accordance with the Law on Free Legal Aid, they are considered denied (so-called "silence of the administration"). In certain number of cases (60), the citizens failed to submit additional documents, which was deemed as if they abandoned the request. The report of the Ministry of Justice on implementation of the Law states that certain number of applicants cancelled their request, that is, withdrew their request, and these were mostly victims of domestic violence.

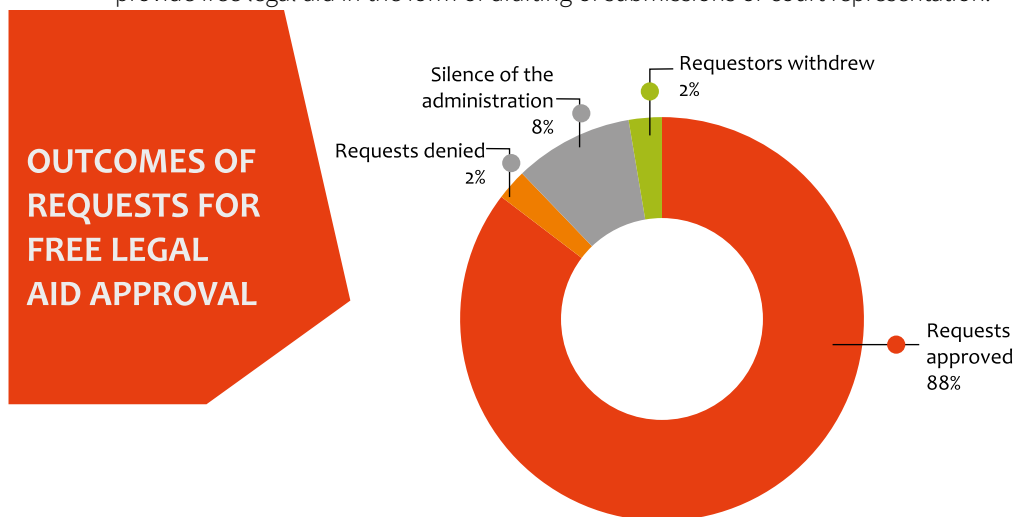
In order to assess efficiency of implementation of the Law on Free Legal Aid, the number of approved requests (1,902)¹²⁰ must be compared to some benchmark, whether it is the number of beneficiaries who received this service in the year prior to entry into force of this Law, or the estimated number of beneficiaries cited in the explanation submitted to the National Assembly together with the Draft Law. In the long process of adoption of the Law on Free Legal Aid, it was noted that there was a problem with keeping reliable statistical data on free legal aid provision. Since there is no reliable data on the number of free legal aid beneficiaries in the previous year, we must rely on the assessment made by those who drafted the law. According to the assessment given in the explanation of the Draft Law on Free Legal Aid, the number of potential beneficiaries is 648,328 and the number of potential court cases is 94,820. In this explanation, estimated number of the citizens that could exercise this right was limited only to court cases, so it was estimated that it would be necessary to provide funds for 32,000 court cases per year. Compared to this number, only 416 beneficiaries were referred to attorneys during the first six months of implementation of the Law.

118 Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/13/reg>

119 The report of the Ministry of Justice states that some municipalities showed legal advice as approved free legal aid requests, even though it is not required to submit request to obtain legal advice. Such practice led to recording of a disproportionately large number of requests in smaller municipalities.

120 Data from the report of the Ministry of Justice.

When it comes to the forms of free legal aid that require approval, we found the data that on average, each municipality approved just a bit over 3 requests per month.¹²¹ If we take into account all forms of free legal aid and support, we come to the total number of 13,654 persons who received these services, or, on average, per municipality, around 18 cases per month.¹²² Compared to the estimated number of potential number of beneficiaries, the number of persons who actually exercised this right is on the level of a statistical error. The research results show that potential beneficiaries are still not sufficiently informed about the existence of this service. The proportion between the provided free legal support and free legal aid is encouraging since it shows that free legal aid offices are working on disseminating general legal information. A small number of submitted requests related to public notaries and mediators can be problematic, and it shows the need for specific work in this area. Compared to the total number of approved requests (1,902), relatively small number of citizens was referred to attorneys (416), which means that in the rest of the cases local self-governments were able to provide free legal aid in the form of drafting of submissions or court representation.



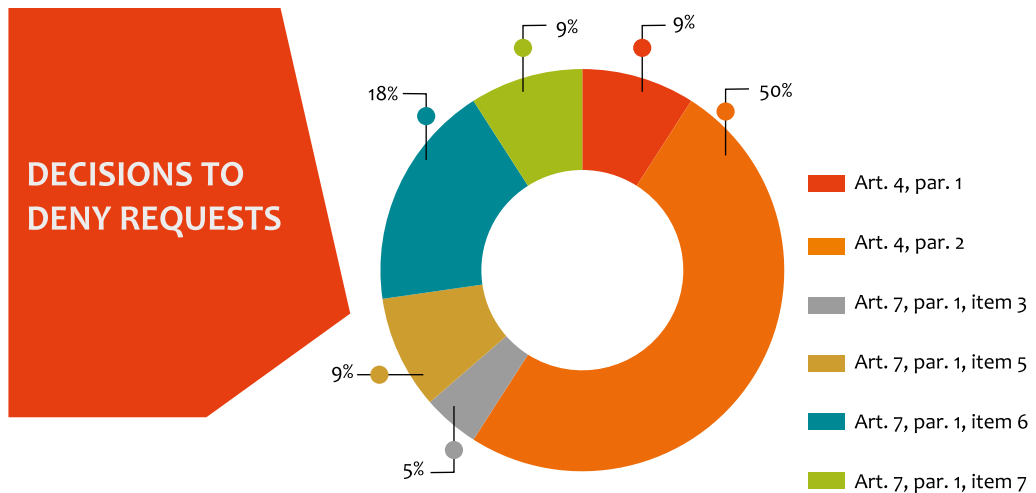
Almost 87% of the citizens' requests for free legal aid have been approved. The municipalities often stated in their responses that they had one request denied, often without specifying the grounds for denial. When the grounds for denial are specified, they are most often related to not fulfilling the requirements when it comes to the citizens who would, by paying for legal aid, meet the requirements for social assistance or child allowance (Article 4, paragraph 1, item 2 of the Law on Free Legal Aid). The ratio of approved and denied requests (809 approved and 23 denied) shows

¹²¹ According to the report of the Ministry of Justice, the highest number of requests was approved by the City of Kragujevac (142 or around 23 per month).

¹²² According to the report of the Ministry of Justice, the highest number of legal information, legal advice and filling out of forms was provided by New Belgrade (3,346, or around 557 per month). This data may be wrong since this municipality stated in its response to our request that it had only two employees providing free legal aid.

that the provisions of the Law, in line with the adopted Rulebook, are interpreted more broadly, to the benefit of the applicants.

Citizens' requests are often denied because the provision of free legal aid is not permitted (Article 7, paragraph 1), as per item 6 referring to the lack of chances for success in the proceedings, and item 7 referring to the misuse of right to free legal aid. In the process of adoption of the Law on Free Legal Aid, the item 6 drew criticism from expert community over the issue of qualifications of the person issuing decisions on these requests and assessing chances for success¹²³ in the proceedings, in which he/she neither is authorized to represent the parties nor has the appropriate experience. In its response to the civil society's comments, the Ministry of Justice states that this is not about assessment of success in the proceedings, but about a situation when it is obvious that a person does not have any chance of success. Citizens' requests were also denied as per item 3 referring to the proceedings related to defamation of honor and reputation, and item 5 referring to the proceedings where the value of dispute is in obvious and significant disproportion to the costs of proceedings.



Art. 4, par. 1 – person meets the requirements for social assistance or child allowance
 Art. 4, par. 2 – with payment of legal aid, a person would meet the requirements for social assistance or child allowance

Art. 7, par. 1, item 3 – proceeding for compensation of damages for defamation of honor and reputation

Art. 7, par. 1, item 5 – proceedings where the value of dispute would be in obvious and significant disproportion to the cost of proceedings;

Art. 7, par. 1, item 6 – proceedings where the free legal aid applicant clearly does not have any chances of success, especially if his/her expectations are not based on the facts and evidence presented, or if they are contrary to positive regulations, public policy and best practice;

Art. 7, par. 1, item 7 – in case of a clear attempt of abuse of the right to free legal aid or some other right.

123 Law graduate with three years of experience.

Vulnerable categories of citizens

In accordance with the Law on Free Legal Aid, in addition to the socially vulnerable citizens, the right to free legal aid may also be exercised by other vulnerable and marginalized groups listed as 13 bullet points (Art. 4, par. 4 of the Law on Free Legal Aid), either on the basis of their status or on the basis of the legal proceedings they are involved in. Those vulnerable groups include:

- children
- persons with mental disabilities
- victims of domestic violence
- victims of torture
- victims of human trafficking
- asylum seekers
- refugees
- persons under subsidiary protection
- internally displaced persons
- persons with disabilities
- persons placed in social protection institution without their consent
- persons in extra-judicial procedure for determination of time and place of birth
- persons affected by eviction

The research paid special attention to how the authorized municipality staff handled the free legal aid requests submitted by members of vulnerable groups. According to the data received, these persons submitted 606 requests, that is, 23.8% of the total number of requests submitted, which is more than the previous estimates from the explanation of the Law stating that vulnerable categories of citizens make around 10.9% of potential beneficiaries of this service.¹²⁴ The most numerous were the requests related to children (324), persons with disabilities (116) and victims of domestic violence (101). The smallest number of requests was in connection with persons placed in social protection institutions without their consent (1) and victims of torture and human trafficking (1). This is understandable since the information and request forms are not equally available to all vulnerable groups of citizens. Namely, the research has shown that only few municipalities focused their free legal aid information campaign specifically on the members of vulnerable groups.

In their responses, municipalities state that vulnerable groups of citizens were informed through centers for social work (17), media (3), social welfare institutions (1) and institutions for execution of criminal sanctions (1). Having in mind the large number of requests related to children's rights, it would be interesting to see whether, and to what extent, children's requests were received and approved regarding the proceedings where they have an active authorization to initiate a proceeding (i.e. labor dispute, emancipation of minors). It should be noted that in the Draft Law, children¹²⁵ and persons¹²⁶ with disabilities had only limited access to the right to free legal aid

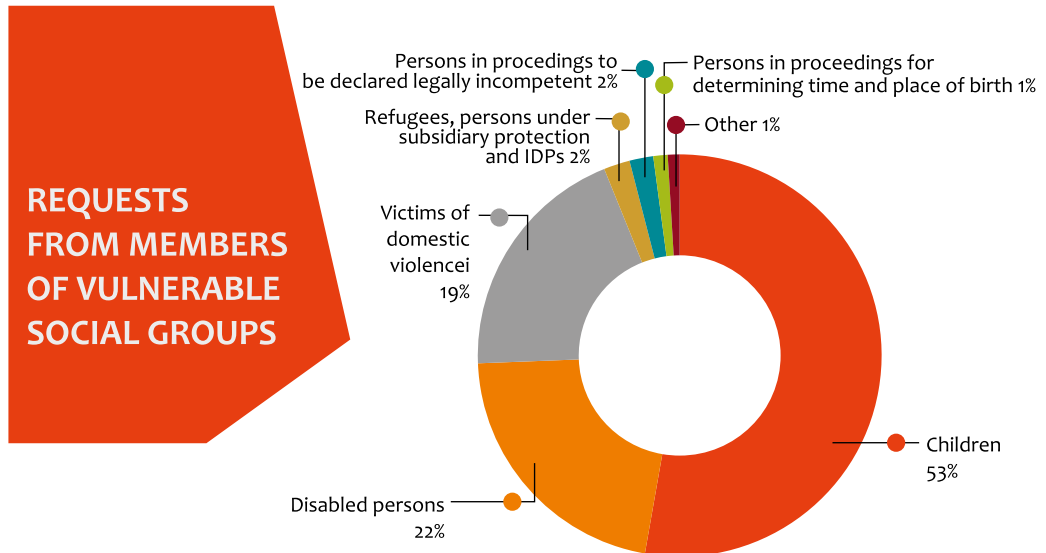
¹²⁴ Explanation of the Draft Law on Free Legal Aid.

¹²⁵ Children were not able to exercise their right in the court proceedings.

¹²⁶ Only persons with disabilities using accommodation services in the social welfare system were able to exercise this right

and that this has been amended after the suggestions of the Lawyers' Committee for Human Rights.

Denials of requests from vulnerable groups are very rare, and according to the data received, the requests were denied to persons with disabilities (5%), victims of domestic violence (3%) and children (1%).¹²⁷ Since in most of their responses, the municipalities failed to cite specific reasons for denial, we can assume that in case of persons with disabilities and children it was done as per Article 7 referring to unpermitted legal aid.¹²⁸ When it comes to denial of requests of victims of domestic violence, the Ministry of Justice stated in its report that there were frequent cancellations, that is, withdrawals of requests, so we cannot exclude the possibility that in these cases, instead of issuing decisions to discontinue the procedure, they would issue decisions to deny requests.¹²⁹ It is important to note that in case of domestic violence, legal aid is practically limited to litigation proceedings for protection from domestic violence and criminal proceedings for the criminal act of domestic violence. This right does not formally include related proceedings such as divorce lawsuits, although custody of children and division of assets are very important elements of protection from domestic violence.



Silence of the administration

The phenomenon of failing to issue a decision on citizens' requests before the legal deadline, the so-called "silence of the administration", is very widespread and presents a systemic problem. The Law on Free Legal Aid introduces an assumption of

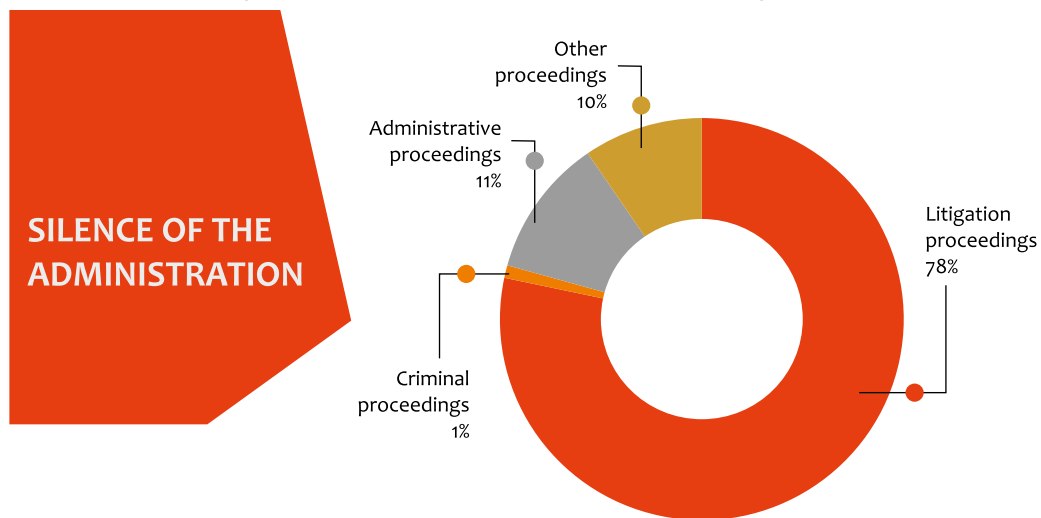
¹²⁷ Requests of victims of torture/human trafficking were denied in 50% of cases, but on the sample of only 2 requests.

¹²⁸ For persons with disabilities, there is a possibility that their status has not been determined in appropriate proceedings, so they cannot prove it.

¹²⁹ If a party withdraws, decision is made to discontinue procedure. However, if, before receiving a decision, requestor informs municipality about new facts that affect the grounds for the request, municipality may issue a denial of request.

negative decision in case the decision is not issued before the legal deadline (“silence of the administration”). In that case, the applicant has an option to file a complaint to the Ministry of Justice. “Silence of the administration” may indicate lack of administrative capacities and it shows the need to engage additional staff to issue decisions on free legal aid requests. However, failure to issue decisions before the legal deadline may be a result of the lack of budget resources of the local self-government unit that may try to prevent draining of finances by denying these services to the beneficiaries who meet the legal requirements. Disproportionately large number of complaints regarding the “silence of the administration” may indicate the need for additional oversight by the Ministry of Justice in a specific unit of local self-government.

One additional problem may be that majority of potential beneficiaries of this service are socially vulnerable persons who are often illiterate or functionally illiterate, thus, it is not very likely that they can draft and file a complaint to the Ministry of Justice. In the period covered by the research, “silence of the administration” accounts for 8% of the total number of the requests submitted, mostly in the litigation proceedings (75%) and the least in the criminal proceedings (1%).



When it comes to the requests where municipality had to issue a decision within three days due to the approaching deadline, or due to causing of irreparable damage,¹³⁰ a small number of such requests was approved (38), but only one such request was denied. There was also a small number (60) of cases where the applicants failed to submit additional documentation before the legal deadline, so these were considered as abandoned requests.

4. Decisions of the Ministry of Justice on the complaints

The Law on Free Legal Aid stipulates a possibility of filing a complaint to the Ministry of Justice as a legal remedy in case of denial of free legal aid request, failure

130 Article 32, paragraph 3, Law on Free Legal Aid

to issue decision before the legal deadline (“silence of the administration”), as well as cancellation of decision to approve free legal aid. Deadlines for issuing a decision by the local self-government unit are eight and three days, and the same timeframe applies to filing of a complaint to the Ministry of Justice. Unique 15-day deadline for issuing a decision on complaint does not allow for avoidance of irreparable damages or missing of deadlines in cases when shorter deadlines apply to issuing of decision, that is, to filing of a complaint within three days.

In a situation where the request is considered as abandoned due to requestor’s failure to submit additional documentation before the legal deadline (Article 32, paragraph 2, the Law on Free Legal Aid), if the legal requirements are met, the beneficiary, in line with the Law on General Administrative Procedure, may request reinstatement or file a complaint to the Ministry of Justice, for purpose of conducting inspection of the work of that local self-government unit.

According to the report of the Ministry of Justice, the total of 87 complaints were filed after denial of request or failure to issue decision before the legal deadline. Most of the complaints were filed by the financial social assistance beneficiaries exercising their free legal aid right based on that status, and majority of those complaints referred to “silence of the administration” in the City of Krusevac (71). In nine cases, the Ministry of Justice made a meritorious decision (two complaints were denied and the first-instance decisions were confirmed, seven were annulled and returned to the first-instance institution for re-evaluation). One complaint was denied due to failure to meet the requirements¹³¹, while others were denied on the grounds of unpermitted legal aid (damage compensation procedure due to defamation of honor and reputation).¹³² Among the cases returned for re-evaluation, in two cases there was an issue with the content of decision,¹³³ while in four cases, the applicants met the requirements for free legal aid (person with disability, person who would meet the requirements for financial social assistance by legal aid payment, and two beneficiaries of financial social assistance).

131 Article 4, Law on Free Legal Aid.

132 Article 7, paragraph 1, item 3 *ibid.*

133 Article 141, paragraphs 2, 3 and 5, Law on General Administrative Procedure.

VI Harmonization of the procedural laws

With adoption of the Law on Free Legal Aid, there was a question of whether this Law would be just an extension of the existing free legal aid system, or it would be necessary to harmonize the procedural laws in order to establish a new free legal aid system that would ensure protection of citizens' rights in the best way, that would have long-term sustainability and that would respond to the requirements for harmonization of domestic legal system with the European *acquis communautaire*. In the ongoing process of revision of the Action Plan for Chapter 23, YUCOM proposed to the Ministry of Justice to harmonize procedural laws with the Law on Free Legal Aid, and the proposal was accepted.¹³⁴

1. The Civil Procedure Law

The Civil Procedure Law describes possibility for a party to be exempt from the costs of the proceeding¹³⁵ if that party's financial state does not allow it to bear such costs.¹³⁶ When issuing a decision on exemption from the costs of the proceeding, the court shall assess all the circumstances, and particularly take into consideration the value of the subject of the dispute, the number of persons supported by the party, as well as the income and property of the party and its family members.¹³⁷

When a party is exempt from the costs of the proceeding, the court may grant that party free legal representation, if it is necessary for the protection of its rights, that is, if it is prescribed by a specific law.¹³⁸ The Civil Procedure Law prescribes suspension of deadlines for procedural activities until the court issues a decision on the submitted request for free legal representation.¹³⁹ Suspension of procedural deadlines prescribed by this Law is left out of the Law on Free Legal Aid, which is one of the reasons justifying harmonization of both of these laws in order to ensure adequate protection of interests of the parties waiting for the decision on the request they submitted.

Namely, the only protection prescribed by the Law on Free Legal Aid is a shorter deadline for issuing decision on a submitted free legal aid request in case when there is a danger of missing deadlines or irreparable damages.¹⁴⁰ The shorter

134 Civil society comments on the draft of revised Action Plan for Chapter 23, available at: <https://www.mpravde.gov.rs/files/10-%209.%20Komentari%20Organizacija%20civilnog%20drustva%20Osnovna%20prava.docx>

135 Exemption from the costs of the proceeding includes exemption from the payment of court fees and the deposit for expenses of witnesses, expert witnesses, investigations, and court announcements.

136 Article 168, paragraph 1, Law on Litigation Proceeding.

137 Article 168, paragraph 4, *ibid*.

138 Article 170, *ibid*.

139 Article 170, paragraph 3, *ibid*.

140 Article 32, paragraph 3, Law on Free Legal Aid.

three-day deadline for issuing of decision also means a shorter three-day deadline for filing of complaint to the Ministry of Justice,¹⁴¹ but the deadline for the second-instance decision-making remains the same as in the regular procedure (15 days).¹⁴² Having this in mind, it is necessary to include suspension of procedural deadlines so that the parties are given enough time in case of denial of their free legal aid request, that is, the appointed free legal representative is given enough time to get acquainted with the case documentation and provide adequate quality of legal services to the beneficiary.

Important question regarding potential amendments of the Civil Procedure Law is exemption of free legal aid beneficiaries from the costs of the litigation proceeding. Namely, the existing provisions of this Law do not guarantee that every person granted free legal aid would be able to exercise their right to be exempt from the costs of the litigation proceeding. When it comes to socially vulnerable citizens, the standard in the Law on Free Legal Aid is formally more narrow compared to the Civil Procedure Law. However, this flaw is partially corrected with a bylaw, which connects exercising of the right with the state of existential vulnerability. The Civil Procedure Law does not include vulnerable groups which, according to the Law on Free Legal Aid, may exercise their right to free legal aid in exercising their right to exemption from the costs of the litigation proceeding.

The previous analysis done by YUCOM has shown that the court practices regarding exemption from the costs of the litigation proceeding were not uniformed when it comes to the type of costs the beneficiaries were exempt from or when it comes to the evidence required to exercise the right, and that the decisions were often not justified.¹⁴³ In its analysis of the court practices, YUCOM concluded that exercising of the right to free legal aid according to the Civil Procedure Law is made more difficult by lack of deadlines for issuing of decisions on requests for exemption from the costs of the proceeding, which is according to this Law a prerequisite for appointment of free legal representative.¹⁴⁴ Although there were some issues noted in keeping of court records, it may be assumed that there were extremely rare examples of appointment of free legal representative in practice.¹⁴⁵ Thus, a recommendation was made that the Civil Procedure Law should define the deadlines for submission of requests, as well as the deadline for issuing of a special decision since the exercising of free legal aid right prescribed by the Civil Procedure Law depends on it.

141 Article 34, paragraph 3, *ibid*.

142 Deadline is the same as the regular eight-day deadline for issuing of decisions by local self-government unit.

143 Analysis of case-law – Conduct of courts on proposal for court fees exemption in civil proceedings, YUCOM, June 2018, p.2, available at: <http://www.yucom.org.rs/wp-content/uploads/2018/06/Analiza-sudske-prakse-Po-stupanje-sudova-po-predlogu-za-osloba%C4%91anje-od-pla%C4%87anja-sudskih-tro%C5%A1kova-u-parni%C4%8Dnoj-materiji.pdf>

144 Article 170, paragraph 1, Law on Litigation Proceeding.

145 Analysis of case-law – Conduct of courts on proposal for court fees exemption in civil proceedings, YUCOM, June 2018, p. 10, available at: <http://www.yucom.org.rs/wp-content/uploads/2018/06/Analiza-sudske-prakse-Postupanje-sudova-po-predlogu-za-osloba%C4%91anje-od-pla%C4%87anja-sudskih-tro%C5%A1kova-u-parni%C4%8Dnoj-materiji.pdf>

Through harmonization of the Civil Procedure Law, graduated lawyers with bar exam employed in associations should be given the same authorizations as their colleagues in local self-governments, that is, they should be allowed to represent parties in court.

Harmonization of the Civil Procedure Law should solve the issue of suspension of procedural deadlines until the issuing of final decision on request for approval of free legal aid, and the right to exemption from the costs of the litigation proceeding for the persons granted free legal aid in line with the Law on Free Legal Aid. Limitation of the rights to exemption from the costs of the litigation proceeding exclusively to the persons granted free legal aid would not be justified because that right would thus be reduced when it comes to the socially vulnerable citizens. When it comes to the right to free legal representative, existence of two parallel systems is not justified, especially if the system from the Civil Procedure Law is rarely applied in practice, and in light of the Law on Free Legal Aid, amendments and supplements to the Civil Procedure Law should be considered. Amendments and supplements to the Civil Procedure Law should allow graduated lawyers with bar exam employed in associations to represent parties in court.

2. The Criminal Procedure Code

The Criminal Procedure Code defines the cases where the defendant must have a mandatory defense, among other situations, if the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of eight years or more, and if he/she has been taken into custody, or prohibited from leaving his/her abode, or is in detention (Article 74, the Criminal Procedure Code).¹⁴⁶ The Code

146 The defendant must have a defense counsel: 1) if he is mute, deaf, blind or incapable to conduct his own defense successfully – from the first interrogation until the final conclusion of the criminal proceedings; 2) if the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of eight years or more – from the first interrogation until the final conclusion of the criminal proceedings; 3) if he has been taken into custody, or prohibited from leaving his abode, or is in detention – from the moment of deprivation of liberty until the ruling discontinuing the measure becomes final; 4) if he is being tried in absentia – from the issuance of a ruling on an in absentia trial and for the duration of such trial; 5) if the trial is being held in his absence due to reasons he himself induced – from the issuance of a ruling for the trial to be held in absentia until the ruling by which the court establishes that reasons for his inability to stand trial have ceased becomes final; 6) if he has been removed from the courtroom for disturbing the order, until the conclusion of the evidentiary procedure or the termination of the trial – from the issuance of the order on his removal until his return to the courtroom or the pronouncement of the judgment; 7) if proceedings for pronouncing a security measure of compulsory psychiatric treatment are being conducted against him – from the submission of a motion for pronouncing such a measure until the issuance of the decision referred to in Article 526 paragraphs 2 and 3 of this Code or until the ruling pronouncing a security measure of compulsory psychiatric treatment becomes final; 26 8) from the beginning of the negotiations with the public prosecutor on the conclusion of the agreement

also regulates defense of indigent persons, where a defense counsel will be appointed for a defendant who due to his financial status cannot afford to pay the fees and costs of the defense counsel at the defendant's request, if the criminal proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of over three years, or where reasons of fairness demand so (Article 77, the Criminal Procedure Code). The Criminal Procedure Code does not contain general provision on appointment of representative for the injured party, except when the injured party is in the role of subsidiary prosecutor (Article 59, the Criminal Procedure Code). The Law on Juvenile Criminal Offenders and Criminal Legal Protection of Juveniles¹⁴⁷ stipulates that a juvenile who is a victim shall have a legal representative from the first questioning of the defendant and that he/she shall be appointed by the president of the court from the ranks of attorneys with special skills at the expense of the court (Article 154, the Law on Juvenile Criminal Offenders).

Adoption of the Law on Free Legal Aid will primarily help to bridge this gap and allow for appointment of free legal representatives to the injured parties in all other situations where that was not previously possible, and this would be especially justified for the vulnerable groups exercising their right to protection from domestic violence, torture and human trafficking. On the other hand, defense of indigent persons will no longer be limited only by prescribed sentences or by reasons of fairness, but the conditions for social assistance or child allowance would also be taken into consideration, as well as belonging to a certain vulnerable group. As with the Civil Procedure Law, potential harmonization of the Criminal Procedure Code should pay attention to the fact that defense of indigent person should not be connected exclusively to the criteria from the Law on Free Legal Aid in order to avoid further reduction of this right in practice.

Amendments and supplements to the Criminal Procedure Code should expand the scope of special rights of the injured party, and a provision should be added that the injured parties may exercise their right to free legal representative, in accordance with a specific law, regardless of whether they have a procedural role of injured party, private or subsidiary prosecutor. Amendments to the Criminal Procedure Code should also take into consideration suspension of procedural deadlines until the end of the process of approval of free legal aid requests. Potential amendments to the Criminal Procedure Code should not limit indigent person's right to defense only to the persons granted free legal aid as per the Law on Free Legal Aid or the persons meeting the requirements from that Law, since that may narrow the range of socially vulnerable persons who can exercise the right to defense of indigent person.

referred to in Article 313 paragraph 1, Article 320 paragraph 1 and Article 327 paragraph 1 of this Code, until the issuance of a court decision on the agreement; 9) if the trial is held in his absence (Article 449 paragraph 3) – from the moment of adoption of the ruling to hold the trial in his absence, to the adoption of the judicial decision on the appeal against the judgment.

147 Article 154, Law on Juvenile Criminal Offenders and Criminal Legal Protection of Juveniles.



VII Final conclusions and recommendations

Six months after the official beginning of implementation of the Law on Free Legal Aid, many municipalities and towns have still not established their own free legal aid offices. Where the free legal aid is available, it is most often provided by the individuals who also perform other duties. There are no standards regarding the number or structure of employees or adequacy of office space. The Rulebook on the appearance and more detailed content of the application form for approval of free legal aid has expanded the circle of existentially vulnerable beneficiaries outside of the strict requirements for social assistance. Significant number of approved requests is related to members of vulnerable groups, although some categories¹⁴⁸ have not yet exercised this right. The number of requests related to mediation is worryingly low. The connection between the right to free legal aid and the right to exemption from the costs of the proceeding has not been adequately established. Limited human and financial resources of local self-governments are insufficient to ensure equal access to this service to all of their citizens. Attorneys' fees, although significantly reduced compared to regular lawyers' tariffs, can still be too high for the local self-governments in underdeveloped parts of Serbia, and insufficient to motivate attorneys and ensure effective representation. Marginalization of the role of associations and limitation of their ability to provide free legal aid is a missed chance to utilize their potential for creation of comprehensive and functional free legal aid system. Having in mind the lawmakers' assessment of the number of beneficiaries, and the fact that enough time was given to prepare implementation of the Law on Free Legal Aid, the research has found that the current situation cannot be seen as satisfactory. Although the percentage of approved requests, especially when it comes to members of vulnerable groups, is encouraging, the total number of beneficiaries shows the need for implementation of a continuous media campaign. Unclear and imprecise provisions of the Law on Free Legal Aid introduce legal uncertainties in the work of providers and negatively affect availability of free legal aid services. Reasons for such situation must be carefully analyzed in order to find solutions that would ensure that all citizens, regardless of the town or municipality in which they live, have equal access to free legal support, as well as to free legal aid. According to the results of the research conducted, the Lawyers' Committee for Human Rights recommends the following:

1. To the Ministry of Justice and the National Assembly of the Republic of Serbia

The Law on Free Legal Aid and the bylaws

¹⁴⁸ Persons in the process of eviction, children and youth without social accommodation services after the age of 26, and asylum seekers.

- The Law should clearly define the standard of existential vulnerability as a requirement for provision of free legal aid that would not be limited by restrictive requirements for social assistance.
- Amend all unclear and ambiguous articles that create legal uncertainties for providers.
- Adopt a model of financing of free legal aid offices in local self-governments that would ensure their continuous work and adequate quality of service.
- Adopt the standards regarding education and functioning of the free legal aid services in terms of providing sufficient number and appropriate structure of staff, and adequate office space available to persons with disabilities.
- Clearly regulate position of associations and recognize their long-standing work, specialized knowledge acquired and their established relationships with vulnerable and marginalized social groups.

The Civil Procedure Law

- Include suspension of procedural deadlines until issuing of the final decision on the request for free legal aid approval.
- Stipulate that an individual may also be represented by a graduated lawyer with bar exam employed in an association that provides free legal aid.
- Consider amendments to the Civil Procedure Law when it comes to its provisions on appointment of free legal representative in light of the Law on Free Legal Aid.
- Stipulate a deadline for issuing of decision on exemption from the costs of the proceeding.

The Criminal Procedure Code

- Add the right to free legal representative to the rights of the injured party, in accordance with a specific law.
- Include suspension of procedural deadlines until issuing of the final decision on the request for free legal aid approval.

2. To the local self-government units

- Make the information on provision of free legal aid available to the citizens through a continuous media campaign, use of the Internet, social networks and creation of informational posters and leaflets, as well as through availability of forms.
- Include the vulnerable groups that may be beneficiaries of the Law in the media campaign, and make the information and forms available to them.
- Make the free legal aid office space accessible to persons with disabilities.
- Provide free legal support for filling out of the free legal aid request forms.

3. To the Ministry of State Administration and Local Self-Government

- Consider possibility for a simplified submission of free legal aid requests, electronically through e-government portal, or through a specific service that would also contain general information on free legal aid providers (map of free legal aid providers).

4. To the courts

- Put up informational posters and leaflets in the court buildings and information windows in order to make the information on provision of free legal aid available.
- Provide free legal aid forms, as well as support for filling out of those forms.



