

TRIPLE A FOR CITIZENS:
ACCESS TO INFORMATION, ADVICE AND ACTIVE HELP
COUNTRY REPORT SERBIA
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TRIPLE A FOR CITIZENS:
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-Country report Serbia-

1. Executive Summary

This Country Report on the system of information, announcement and active assistance to citizens in Serbia is the result of researches conducted by the Lawyers' Committee for Human Rights within the framework of the project "Triple A for citizens - access to information, advice and active help". The conducted research includes an analysis of the legal framework in the areas of information, citizens consulting, and free legal aid providing. The Report provides an insight on obligations pertaining to information and advice providing in existing Serbian regulations. It also provides a list of legal aid providers recognized by law in various procedures before state institutions and courts.

The Report reflects the current state of free legal aid regulation and offers commentaries on the draft law on free legal aid that has been elaborated by the working group of the Ministry of Justice in its previous composition. The commentary stems from empirical data on citizens' needs for various views of free legal aid that have been identified during YUCOM's work in this area for many years but also through a survey¹ it conducted in December 2012.

An efficient system of free legal aid, that should be the objective of the new Law on free legal aid, cannot be established without view into current practice of legal aid provision in Serbia. Although there is no unified legal framework in Serbia, legal aid provision is based on various legislative regulations or citizens' needs. Thus local self-government units, lawyers, non-governmental organizations, law clinics and syndicates qualify as potential free legal aid providers. It has also been assessed that citizens' advice and free legal aid provision form part of the work of independent institutions - the Ombudsman and the Commissioner for the protection of equality. Within the framework of the conducted research, data were collected enabling to draw conclusions on the geographical dispersion of free legal aid providers. Besides, the Report includes richful data about users of each service as well as areas covered by free legal aid provision. Included are also free legal aid providers' opinions about advantages and drawbacks of the legal framework for the purpose of building an effective and efficient system. These opinions, as well as data received during the reasearch, formed a basis for the formulation of recommendations aimed at developing public policies but also activities in the civil society sector with a view to consolidate and improve quality of the system of legal aid providing.

¹ Results of the research may be seen at: http://yucom.org.rs/upload/vestgalerija_103_9/1363187570_GSO_BPP%20veliki%20_web.pdf

2. Preface – Introduction to the Project

The project Triple A for citizens - access to information, advice and active help - is a project implemented in the framework of the European Commission's Partnership programme for Civil Society organisations². The implementing partners are as follows: the lead organisation European Citizen Action Service (ECAS), Belgium; National Foundation for Civil Society Development (NFCSD), Croatia; Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Civil Rights Program (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; Association of Civil Society Development Centre (STGM), Turkey; Law Centres Network (LCN), UK; National Association of Citizens Advice Bureaux (NACAB), Romania; National Association of Citizens Information Services (NACIS), Ireland.

The Triple A project aims to encourage non-governmental organisations to provide information, advice and active help to citizens on their rights in the Western Balkans and Turkey. It also seeks to promote the role of civil society in giving citizens a voice and holding governments to account. By aggregating the complaints and evidence they receive, citizens' information and legal advice services should be able to influence government policy on key reforms and their implementation. The immediate objective is to spread the citizens' advice concept to Western Balkans and Turkey.

Providing assistance to citizens is an important service in its own right, but it should not be seen as an end in itself. Preventative or problem-solving action can help solve individual problems, but there is a general interest in using this experience to seek solutions for those who do not approach the service. The experience of Triple A can be analysed and turned into evidence that can serve as the basis for advocating for changes in law and policy.

In the framework of the project two key preparatory activities are envisaged:

- Mapping of the existing citizens assistance and free legal advice organisations in the region through the use of surveys and face to face interviews;
- Feasibility study which should propose models for effective provision of services in the Western Balkans and Turkey.

These activities will be followed by an open call for proposal to civil society organisations to submit projects for sub-granting. The selected pilot projects (two per country making ten in total) should help embed the Triple A concept in the Western Balkans and Turkey and create the forefront of sustainable citizen oriented services. The projects will benefit from a series of capacity building activities constituting in three study visits to assistance and advice services in the United Kingdom, Romania and Ireland and a mentoring scheme which will

² Regional and Horizontal Programmes Ref. EuropeAid/132438/C/ACT/Multi.

bring experts from the EU to the region to help set up and run the services on the ground.

The second stage of the projects will depend on the results and impact of the ten pilot projects. The extension of the sub-granting to Macedonia and Montenegro, which are currently not covered by the project, would be the most logical development. Creation of a regional network of citizens' advice and active helps services would also constitute a useful and necessary step should the Triple A concept prove its worth and generate tangible results in the five countries.

TRIPLE A FOR CITIZENS

- ACCESS TO INFORMATION, ADVICE AND ACTIVE HELP -
IS THE ORGANISING FRAMEWORK AND STRATEGY FOR THE PARTNERSHIP:

ACCESS TO INFORMATION:

Everyone has an equal right to “come to our door”, irrespective of income, status, language or belief and be treated with dignity and respect. People should be able to find and access information about their rights in the most convenient way possible. Equal access requires reaching out to those most in need as a result of having a modest income or being in vulnerable situations because of a disability, social exclusion, or other reason.

ADVICE: CITIZENS

must find a free, personal, independent, confidential and impartial service they can trust. This can take the form of self-help manuals or interactive tools to resolve an issue through preventative action. In certain circumstances, however it is necessary to go into individual circumstances to find a solution face-to-face. In all cases, citizens should receive the same high level of service and care.

ACTIVE HELP:

Citizens should not be left in situations of impasse, or having to start the whole process over again each time they seek assistance. In a small number of cases it is necessary to go further often in cooperation with more specialised services (i.e. in debt, housing or social entitlements), pro-bono legal support or assistance towards preparing an administrative or judicial appeal. There is consensus that the one-stop shop is the right approach since many citizens have a range of interrelated questions, i.e. about housing, social benefits, their wages or pension and expect to find at least a first answer without being sent from one service to the next. This is also the approach favoured by funders, particularly at a time of cuts in public expenditure. The trend is to encourage more advice services to come together and also for smaller ones to merge into larger units with wide geographical scope in order to achieve economies of scale.

3. Historical context of citizens information and assistance services

General citizens' information and assistance services do not exist in Serbia. However, in the past ten years, the conditions for establishing citizens information services have been laid through the country's accession to the European Convention of Human Rights (ECHR) (2004), and adoption of the new Constitution of the Republic of Serbia (2006), as well as of the Law on Free Access to Information of Public Importance (2004), the Law on local self-government (2007) and the Law on Associations (2009). As a result, a fragmented system citizens information services currently exists, which is not coordinated or regulated.

3.1. OBLIGATIONS OF PUBLIC AUTHORITIES TO PROVIDE INFORMATION

The rationalization and improvement of citizen's free access to information has been a concern since in existence since the time of the Socialist Federal Republic of Yugoslavia. The 1974 Yugoslav constitution represents a first attempt to institute a social system of information³. However, the possibility of assessing the implementation of this constitutional provision and the practical functioning of the service remains difficult due to the general unavailability of public data in this regard.

Since then, the right of citizens to freely access information has been constantly reaffirmed in subsequent Serbian Constitutions. Hence, Article 10 of the 1990 Serbian Constitution provided that "The work of state administrative agencies shall be accessible to the public. Limitations to this right shall be regulated by law". However, this provision retained a purely theoretical value and were not implemented in practice until 2004, when first Law on Free Access to Information of Public Importance⁴ was adopted.

3 Article 75 (Right to legal assistance) provides that:
"Social information system provides a coordinated record collection, processing and presentation of data and facts relevant to the monitoring, planning and directing of social development and the availability of information about these data and facts. Activities in the field of social information systems are of particular public interest."

4 Law on Free Access to Information of Public Importance, Official gazette of the Republic of Serbia, no. 120/04. Available at <http://www.poverenik.org.rs/en/pravni-okvir-pi/laws-pi/881-zakon-o-slobodnom-pristupu-informacijama-od-javnog-znacaja-preciscen-tekst-sl-glasnik-rs-12004-5407-10409-i-3610.html>

In order to ensure the application of the right of free access to information of public importance, the law has established a Commissioner for Information of Public Importance.⁵ The Commissioner started operations on 1st July 2005 and the institution's mandate has since been extended to the protection of personal data.

This institution has advocated for recognition of the right to information under the current Constitution of Serbia. The right to information is recognised by Article 51 of the 2006 Serbian Constitution which declares that: "Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organisations with delegated public powers, in accordance with the law."

Thanks to the work of the institution, with strong support from NGOs, the provision has been praised by the Council of Europe, has been fully applied in practice. All holders of public authority are obliged to appoint a person to act on the demands of citizens and legal persons⁶, and regularly publishes information sheets on work.⁷

In addition, the Digital Agenda Administration of Republic of Serbia has developed one-stop-shop e-government web portal <http://www.euprava.gov.rs> that contains information on public services, ministries and agencies, and provides e-services to the public⁸.

Ministries, although they have their own website, rarely have an information helpline that can provide assistance to citizens to exercise the rights within their areas of responsibility.⁹ In this respect, the survey conducted revealed that 43% of all respondents stated that information published on government's websites is not well presented and does not provide adequate instructions on resolving problems. Moreover, 81% of respondents felt that the existing information being provided by the government is too complicated to be understood.

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- 5 After adoption of the Law on Personal Data Protection (2008), the Commissioner's title was changed in 2009 to the Commissioner for Information of Public Importance and Personal Data Protection. The Commissioner's website can be accessed at: <http://www.poverenik.org.rs/>
- 6 Article 38 par. 1: "The responsible person in a public authority shall appoint one or more officials to respond to request for free access to information of public importance"
- 7 Article 39 par. 1: "A government body shall at least once a year publish a directory containing key facts about its operations(...)"
- 8 On this portal, citizens can access the content such as e-services, news, frequently asked questions, etc. Electronic services can be searched by multiple criteria - the life situation, alphabetical order, as well as the competent authority in charge of the implementation of the service.
- 9 Our research revealed that only one out of 16 Ministries in Serbia - the Ministry of Labour, Employment and Social Policy - has established an information center (est. 2008) through which the public can obtain information about their employment and social rights. The information provided covers labour law rights, social entitlements, family protection, the protection of persons with disabilities and veterans, domestic violence, pensions and disability insurance.

3.2. OBLIGATIONS OF PUBLIC AUTHORITIES TO PROVIDE ADVICE

The 2006 Serbian Constitution, following European and international best practices, guarantees the right to legal aid for every individual (Article 67¹⁰) and elevates the right to legal representation to the level of a constitutionally guaranteed human right. Under the Serbian Constitution the right to legal assistance, including free legal aid, is to be exercised in accordance with conditions laid down by law.¹¹

The obligation to provide legal representation under Article 67 of the Constitution is directed towards the local self-government and legal professionals and is designed to function as an independent and autonomous service. While our study revealed that some municipalities in Serbia had already established free legal aid services in the '70s, '80s, most of the existing services were created after the adoption of the current Constitution.

According to the data from one **previous survey** conducted into the work of municipal legal aid organs in Serbia,¹² during the period 2001-2006 legal aid agencies were set up in a quarter of municipalities located on the territory of the Republic of Serbia. The survey found that these agencies engaged between one and three persons to deal with legal matters, while another one or two persons dealt with administrative and technical affairs. The survey showed that municipalities primarily give advices.¹³

In 2008, pilot projects were implemented in eight municipalities in accordance with "the Spanish institutional model" whereby free legal aid services were provided to citizens residing in these municipalities on the basis of agreements reached with local bar associations. In the autonomous province of Vojvodina, this model has been successfully implemented following the conclusion of an

10 Article 67 (Right to legal assistance) provides that:
"Everyone shall be guaranteed right to legal assistance under conditions stipulated by the law.
Legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal assistance offices established in the units of local self-government in accordance with the law.
The law shall stipulate conditions for providing free legal assistance."
An official English translation of the Serbian Constitution is available here:
http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en

11 See further, Strategy for free legal aid system development in the Republic of Serbia (Official Gazette of the Republic of Serbia, 05 No.: 750-7292/2010, 7 October 2010).

12 Kosanovic, S., 'A survey into the work of municipal legal aid services in Serbia' ('Istrazivanje o radu opstinskih sluzbi pravne pomoci u Srbiji') in Gajin, S., Vodinelic, V., Kosanovic, S., Cavoški, A., Knezevic Bojovic, A., Reljanovic, M., Legal Aid (Pravna pomoc), CUPS, Belgrade, 2007, p. 227-289.

13 Types of service: Advices - 85.680; Submissions - 14.280; Procedural - 7.140; Other - 35.700; Total - 142.800.

agreement between the Executive Council of Vojvodina and the autonomous province of Vojvodina and covers the territory of the entire northern province.¹⁴

When it comes to the legal profession, free legal assistance, in practice, amounts to the provision of mandatory defense in criminal proceedings under the Criminal Procedure Code.

3.3. EVOLUTION OF CIVIL SOCIETY IN PROVIDING ASSISTANCE

The civil wars of the 1990s in the former Yugoslavia, led to the emergence in Serbia of a large number of refugees, defectors, victims of violence and torture. Since then, a number of anti-militarist organizations¹⁵ have been providing information, counseling and legal assistance to victims of war. One study¹⁶ from 2003 identified 18 organizations in Belgrade that provided direct assistance and support to victims of domestic or sexual violence, trafficking and torture as well as violence against children. The common characteristic of these legal aid providers is that they have advocated for legislative initiatives. As a result of their efforts conscientious objection was instituted (and helped to the professionalisation of the Serbian army), amnesty was granted to political prisoners, the incidence of torture in prisons and detention centers was reduced, the criminal offence of domestic violence was introduced into Serbian legislation and numerous changes were made to Serbian family law.

After 2005, the majority of these organisations reoriented their services towards assisting victims of discrimination, mobbing and violence against women. Only a few organizations are now engaged in assisting internally displaced persons and the Roma. After 2008¹⁷, some of these NGOs also started to provide legal assistance to returnees upon readmission as well as to asylum seekers.

14 See: Strategy for free legal aid system development in the Republic of Serbia (Official Gazette of the Republic of Serbia, 05 No.: 750-7292/2010, 7 October 2010.

15 These organisations include Centar za antiratnu akciju, Helsinki Committee for Human Rights (Helsinki odbor za ljudska prava), Medjunarodna mreza pomoci, Srpski demokratski forum, Komitet pravnika za ljudska prava, Grupa 484, Danish Refugee Council (Danski savet za izbeglice), Norwegian Refugee Council (Norveski savet za izbeglice) and Beogradski centar za ljudska prava itd.

16 Sanja Milojevic and Biljana Mihic, Organizations that provide assistance to victims of crime in Belgrade (*Organizacije koje pružaju pomoc zrtvama kriminaliteta u Beogradu*) Available at: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370301037M.pdf>

17 Agreement between the Republic of Serbia and the European Community on the readmission of persons residing without authorization came into force in January 2008. In the last seven years, 8,824 people were repatriated from the EU to Serbia.

4. Legal Framework for Citizens Information & Assistance Services

The survey conducted under this project revealed that 70% of all respondents felt that existing laws do not provide a sufficiently comprehensive legal framework for the provision of information, advice or active help to the public. Indeed, 82% of respondents expressed the view that the current legal framework creates obstacles to the provision of information and assistance to citizens. In this connection, it is appropriate to examine in further detail the many legislative texts that currently govern or impact the provision of information and assistance services to citizens.

4.1. DISSEMINATION OF INFORMATION TO THE PUBLIC

As mentioned above, dissemination of information to the public is regulated by Law on Free Access to Information of Public Importance (2004). Article 39 of the Law provides that a government bodies should publish a report containing key facts about their operations at least once a year.¹⁸

18 Article 39 provides that:

“A government body shall at least once a year publish a report containing key facts about its operations, in particular:

- 1) Description of its powers, duties and internal organization;
 - 2) Information on the budget and means of work;
 - 3) Information on the types of service it directly provides to interested parties;
 - 4) Procedure for submitting a request to the government body concerned or for lodging a complaint against its decisions, actions or omissions;
 - 5) Review of requests, complaints and other direct measures taken by the interested parties, as well as of decisions made by the government body concerned upon received requests and complaints and/or responses to other direct measures taken by interested parties;
 - 6) Information on the manner and place of storing information mediums, type of information it holds, type of information it grants access to and the description of the procedure for submitting a request;
 - 7) Names of the heads of the government body, descriptions of their powers and duties and procedures for their decision-making;
 - 8) Rules and decisions of the government body concerning the transparency of its operations (working hours, address, contact phones, logo, accessibility for persons with special needs, access to sessions, permissibility of audio and video recording, etc.), as well as any authentic interpretation of these decisions;
 - 9) Regulations and decisions on exemptions or limitations of the transparency of work of the government body, with relevant rationale.
- A government body shall grant an interested party access to its report free of charge or issue such party a copy of the report, against the reimbursement of necessary costs.”

4.2. RIGHT OF ACCESS TO INFORMATION

The right of access to information is guaranteed by the Constitution (Article 51¹⁹) as further expressed in the Law on Free Access to Information of Public Importance. According to Article 5 of the Law everyone has the right to be informed whether a public authority holds specific information of public importance and whether such information is accessible to the public. The right to access information of public importance involves being allowed to examine a document containing such information, being entitled to make a copy of that document, and being entitled to receive a copy of such document on request, by mail, fax, electronic mail or other method. Pursuant to Article 16 a public authority must, within 15 days of receiving a request for access to the information, inform an applicant whether it holds the requested information and grant access to the document containing the requested information. Failure to respond to the request may be challenged before the Commissioner for Information of Public Importance and Personal Data Protection. Public authorities may refuse access in certain circumstances, including if publication of the information would pose a risk to the life, health or safety of another person or the information would seriously jeopardise the public interest as further prescribed by Article 9²⁰.

4.3. LEGAL PROFESSION AND REPRESENTATION IN COURT PROCEEDINGS

The legal profession provides legal aid as an independent service as prescribed by law. Court proceedings and the representation of clients is in general

19 Article 51 declares “Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organisations with delegated public powers, in accordance with the law.”

20 Article 9 reads as follows:
A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Threaten, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously jeopardise national defense, national and public safety, or international relations;
- 4) Substantially undermine the government’s ability to manage the national economic processes or significantly impede the fulfillment of justified economic interests;
- 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.

reserved to lawyers as members of the bar. The Law on the Legal Profession²¹ organises the work of lawyers, the conditions of the practice of law, the rights, obligations and responsibilities of lawyers, trainee lawyers and the organisation and operation of the bar associations. Further rights and duties of lawyers are contained in various laws as examined further below.

a. Civil procedure

Civil procedure in Serbia is regulated by Civil Procedure Law (2011). In previous history, the parties could be represented by themselves as well as anyone who has full legal capacity, at first and second instance proceeding (before municipality and district courts). However, party must be represented by a lawyer in the review proceedings and in the proceedings initiated for writ of certiorari, before Supreme Court of Cassation.²²

Civil Procedure Law which was adopted in 2011 provided that parties may undertake actions in the proceedings personally or through representative, who must be the lawyer.²³ Nevertheless, a trainee lawyer may represent a party according under Article 88 if the trainee is working under the supervision of the instructed lawyer and the instructing party agrees to it.

By the decision that came into force on 5 June 2013²⁴, the Constitutional Court established that the provision of the Article 85, Paragraph 1 in the part stating “who must be the lawyer” was unconstitutional.

In the explanation of the decision establishing unconstitutionality of the provision of the Article 85 Paragraph 1 in the part stating “who must be the lawyer”, the Constitutional Court has stated that the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe do not explicitly mention the right to access to court, but that this right is inseparable from the guarantees provided in the Article 6, Paragraph 1 of the European Convention on Human Rights. Besides, in the explanation, the Constitutional Court has also stated that prescribing the obligation that a party must be represented exclusively by a Bar-admitted lawyer poses the obligation on the State, on the other hand, to secure a system in which one can effectively enjoy the right to legal aid. Contrary to that, and since the Law on Free Legal Aid has not been adopted, the Court has established that the obligation of representation by a Bar-admitted lawyer in civil proceedings represents a form of

21 Law on the Legal Profession of 2011 (Zakon o advokaturi; Sl. glasnik RS”, br. 31/2011 i 24/2012 - odluka US). An unofficial english version of the law is available on the website of the Serbian Bar Association: http://www.advokatska-komora.co.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf.

22 Civil Procedure Law (2004, amended 2009). Available at http://www.anticorruption-serbia.org/component/docman/doc_download/25-civil-procedure-law

23 Article 85 para 1 of Civil Procedure Law of 2011.

24 Decision of Constitutional Court of Serbia of March 23rd, 2013 Odluka Ustavnog suda Srbije IYs-51/2012 od 23.05.2013. Available at: <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/8915/?NOLAYOUT=1>

indirect discrimination of citizens on the grounds of their financial position. The Constitutional Court has further established that limitations from the Article 85, Paragraph 1 of the Civil Procedure Law in the part stating “who must be a lawyer” is not legitimate, proportional or necessary. Thus, it is not in accordance with the Article 20 of the Constitution or the right to a fair trial from the Article 32 of the Constitution. It further does not comply with the Article 36 Paragraph 1 of the Constitution which envisages equal protection of rights before courts, and represents a form of indirect discrimination on the grounds of financial position which is prohibited by the Article 21 of the Constitution. Due to interrelatedness of Paragraphs 1 and 2 of the Article 85, the Constitutional Court has established that the Paragraph 2 of the same Article of the Civil Procedure Law is unconstitutional.

b. Criminal procedure

According to Article 73 of the Criminal Procedure Code²⁵ a person who is accused of a criminal offence can only be represented by a lawyer. He can be replaced by a trainee lawyer only in cases the prosecution is conducted for a criminal offence with a stipulated penalty of up to five years of imprisonment.

c. Administrative proceedings

In administrative proceedings, according to Articles 47 and 48 of Administrative Procedure Law²⁶ a party may freely choose their representative in the proceedings, provided that the representative is a person enjoying full legal capacity. A lawyer is not necessary.

d. Asylum law

Article 10 of the Law on Asylum²⁷ provides that a person claiming asylum in the Republic of Serbia is entitled to free legal aid and representation from the United Nations High Commissioner for Refugees or NGOs which are offering legal aid to refugees. Article 11 guarantees the right to be assigned an interpreter in case the asylum seeker does not speak the language of the procedure. The claimant may request the services of an interpreter of their own choice but at their own expense.

e. Constitutional proceedings

Constitutional appeal may be submitted against an individual act or action of state authorities or organizations vested with public authority that violate or deny human and minority rights and freedoms guaranteed by the Constitution,

.....
25 Criminal Procedure Code of 2011 (Zakon o krivicnom postupku; Sl. glasnik RS, br. 72/2011, 101/2011 i 121/2012).

26 Administrative Procedure Law of 1997 (Zakon o opstem upravnom postupku; Sl. list SRJ, br. 33/97 i 31/2001 i “Sl. glasnik RS”, br. 30/2010).

27 Law on Asylum of 2007 (Zakon o azilu; Sl. glasnik RS”, br. 109/2007).

when other legal remedies have been exhausted or are not prescribed or where the right to their judicial protection has been excluded by law. Constitutional appeal may also be filed even if all legal remedies have not been exhausted, in cases where the applicant's right to a trial within a reasonable time was violated.²⁸

Constitutional appeal may be submitted by everyone who believes that his/her human or minority rights and freedoms guaranteed by the Constitution have been violated or denied by an individual act or action of a state authority or organization vested with public authority. Constitutional appeal can be submitted on behalf of the persons referred to in paragraph 1 of this article, on the basis of their written authorization, by other natural i.e. legal persons, state and other authorities in charge of the monitoring and exercise of human and minority rights and freedoms.²⁹

In brief, in constitutional appeal proceeding, party can be represented by itself or anyone with full legal capacity.

4.4. FREE LEGAL AID

Article 67 of the Serbian Constitution³⁰ guaranteed everyone the right to legal representation under conditions to be laid down by law. While the Constitution provides that legal representation is to be provided by "legal professionals" and "legal assistance offices established in the units of local self-government", other legal aid providers are not mentioned. However, this does not necessarily mean that other providers are forbidden from offering free legal aid. The constitutional provision does not prohibit the adoption of regulations allowing other entities to provide legal aid. Instead, Article 67 mandates the legislature with the power to establish the principle of legal assistance in an effective way concerning lawyers and local authorities. Therefore other providers of legal aid which form part of civil society can also participate in the implementation of this constitutional right as indeed they should.

Despite its importance as a constitutionally recognised human right, at present free legal aid does not appear to be adequately regulated in Serbia. For instance, adequate public data concerning the funding of legal aid and the num-

28 Article 82 of Law on the Constitutional Court of 2007 (Zakon o ustavnom sudu; Sluzbeni glasnik RS» br. 109/2007, 99/2011). Available at: <http://www.ustavni.sud.rs/page/view/en-GB/237-100030/law-on-the-constitutional-court>

29 Article 83 of Law on the Constitutional Court of 2007 (Zakon o ustavnom sudu; Sluzbeni glasnik RS» br. 109/2007, 99/2011). Available at: <http://www.ustavni.sud.rs/page/view/en-GB/237-100030/law-on-the-constitutional-court>.

30 Constitution of Republic of Serbia of 2006 (Ustav Republike Srbije (08.11.2006); Sl. glasnik RS", br. 98/2006). Available at: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

ber of cases is not presently available.³¹ There are serious gaps and limitations in the exercise of the right of access to justice. On the whole, these are the result of an inadequate legal framework and limited financial resources intended for free legal aid.³² According to the latest available research, only 11% of parties in court proceedings have made use of the available exemptions from court costs. 47% of those interviewed were not even aware that free legal aid exists. Persons with a more educated background are more likely to know about free legal aid and therefore make use of it: 14.8% of users of legal aid had an elementary school diploma, 10.4% of users had some a high school diploma, while 45.2% of users had a higher-level diploma and 29.6% of users had a college or university degree.³³ These findings are of particular significance when giving consideration to the implementation of existing and future provisions for free legal aid when it comes to the dissemination of information on legal aid.

4.5. EXISTING PROVISIONS ON LEGAL AID

At present, the law only provides for free legal aid in the area of criminal law. Due to the absence of a legal framework covering legal aid in civil proceedings, civil and administrative disputes do not currently benefit from legal aid.

a. Criminal proceedings

Criminal Procedure Code regulates free legal aid in criminal proceedings.

FLA in criminal proceedings can be divided into 2 main groups – 1. FLA in mandatory defence in which the state is obliged to provide a lawyer despite of financial status of defendant and 2. Defence of Poor Persons – in which state is obliged to provide a lawyer on the base of financial status of defendant.

31 Proposed reforms to the system of legal aid currently beign formulated will hopefully change this regrettable situation. Under the draft law on free legal aid, discussed further below, the responsible ministry will need to keep records of legal aid cases in electronic form source of information as well as details of legal aid providers. This should make it will possible in future to undertake analys of free legal aid which it is not present possible to do, due to a lack of sufficient publically available data.

32 Strategy for free legal aid system development in the Republic of Serbia of 2010 (Strategija razvoja sistema besplatne pravne pomoci u Republici Srbiji, Sl. glasnik RS”, br. 74/2010).

33 Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, SeConS, 2013. Available at: http://www.yucom.org.rs/upload/vestgalerija_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf

1. *Mandatory Defense.* If in the cases of mandatory defense³⁴ no defense counsel is chosen, the public prosecutor or the president of the court before which the proceedings are being conducted shall issue a ruling. By this ruling they appoint defense counsel for the remaining part of the proceedings, according to the order on the roster of attorneys provided by the competent bar association.³⁵

When criminal proceedings are discontinued or charges are dismissed or a defendant is acquitted, it will be pronounced in the ruling or judgment that the costs of the criminal proceedings (including the fee of the defense counsel and proxy) are covered from the budget funds of the court.³⁶

When a court convicts a defendant, it will pronounce in the judgment that he is required to indemnify the costs of the criminal proceedings.³⁷

2. *Defence of Poor Persons.* Defendants in criminal proceedings may apply to the court for a lawyer to be assigned to them if they cannot afford the services of a lawyer. The defendant has, according to Article 77 of the Criminal

34 Article 74:

“The defendant must have a defense counsel:

1) if he is mute, deaf, blind or incapable to conduct his own defence 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; 8) from the beginning of the negotiations with the public prosecutor on the conclusion of the agreement 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”

35 Art. 76 of Criminal Procedure Code of 2011.

36 Art. 265 of Criminal Procedure Code of 2011.

37 Art. 264 of Criminal Procedure Code of 2011.

Procedure Code³⁸, the right to apply for legal aid in cases when he is accused of a criminal offence that carries a term of imprisonment of over 3 years or if reasons of fairness require it. With the application the defendant must provide proof of his financial status. Lawyers are appointed according to the roster kept by the local bar association and will be compensated by the courts for the provision of legal aid. Once assigned, a lawyer may be excused from providing legal aid if the financial state of the defendant changes so that a lawyer would not have been assigned in the first place.

There is insufficient data on the number of legal aid lawyers assigned to represent indigent defendants. According to existing research from 2005, 14% of defendants who have been convicted of a criminal offense which is punishable by up to ten years of imprisonment did not have any legal representation, 54% of the defendants had no counsel when they gave their statement to the investigating judge, 46% of the suspects were not represented during the pre-trial investigation and only 11% of defendants received legal aid based on the ground of indigence.³⁹

b. Law on the Legal Profession

The Law on the Legal Profession⁴⁰, Articles 66, mandates the Bar Association of Serbia and local bar associations to organize free legal aid. Foreign lawyers who are registered with the Serbia Bar Association are excluded from the possibility to offer legal aid under Article 26 of the law. On this basis, the local bar association of the province of Vojvodina has adopted rules on the provision of legal aid by members of the Bar Association of Vojvodina⁴¹.

According to the rules citizens have a right to free legal aid if their income is below the threshold determined by the Executive Council. All members of the Vojvodina bar association have the right to provide free legal aid and can apply for registration provided no disciplinary measures have been taken against them and they have signed a statement that they accept the rules on free legal representation. Lawyers who provide legal aid are entitled to a fee of 40,00 Euros per procedure converted to RSD.

38 Criminal Procedure Code of 2011 (Zakon o krivicnom postupku; Sl. glasnik RS, br. 72/2011, 101/2011 i 121/2012, 32/2013, 45/2013).

39 Report on the provision of legal aid, PILI, 2005; Strategy for free legal aid system development in the Republic of Serbia of 2010..

40 Law on the Legal Profession (Zakon o advokaturi; Sl. glasnik RS", br. 31/2011 i 24/2012 - odluka US). An unofficial version of the law is available on the website of the Serbian Bar Association: http://www.advokatska-komora.co.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf.

41 Rules of free legal representation by an attorney of the Bar Association of Vojvodina adopted on 12 September 2008 available at: <http://www.akv.org.rs/novost.html?id=53>.

c. Reform of legal aid

Proposals are under way to reform legal aid and a draft Law on Free Legal Aid⁴² (DLLA) has been developed by previous working group. While a further separate working group involving civil society began a review of the draft in May 2013, it is expected that the main elements of the current draft will be retained.

The DLLA will considerably expand the scope of legal aid beyond criminal proceedings and will cover civil, administrative, and constitutional proceedings as well as mediation and proceedings before regulators and independent agencies. Certain proceedings will continue to be excluded⁴³.

While Article 67 of the Serbian Constitution provides for legal assistance to be provided by lawyers and local authorities, the DLLA clarifies that providers of free legal aid will include not only lawyers and legal aid services established in local self-government units, but also notaries, mediators, associations and other forms of civil society organizations (in particular NGOs), trade unions, legal clinics at law faculties and consumer protection organisations. Individuals and entities will only be allowed to provide legal aid if they are on the register of legal aid providers. However, the registration process will differ according to whether or not the provider of legal aid is a member of the legal profession⁴⁴.

42 Draft law on Free Legal Aid (nacrt zakona o besplatnoj pravnoj pomoći) was available at www.mpravde.gov.rs however, during the writing of this publication, new working group provided us with new draft that is still not available online.

43 Article 34 of the DLAA will exclude proceedings before commercial courts, the procedure for obtaining construction and other licenses in an administrative procedure, registration of commercial entities, citizens' associations and foundations, compensation of immaterial damages for the offence of honor and reputation (*povredu casti i ugleda*), and proceedings in connection with applications for a reduction in child support following a failure to pay. It is questionable whether all these exceptions are justified. For example, the exception applying to the compensation of immaterial damages is questionable considering that in most cases of discrimination and similar wrongful acts, the only adequate remedy may be such remedies. Discriminated groups are often also economically marginalized and therefore including legal aid in such cases may well be necessary. Likewise, a failure to pay child support may result from temporary financial difficulties of the debtor resulting from unemployment. It would be preferable for the Ministry to examine each application based on the applicant's individual circumstances rather than laying down a blanket exclusion.

44 The rules concerning the registration of legal aid providers operates a clear distinction between lawyers and other legal aid providers. All lawyers will be allowed to register for free legal aid, without a further quality check, provided the applicant has not been the subject of with disciplinary sanctions (similar to current model of the bar association of the Vojvodina). The application for registration will be processed by the local bar association. The applicant lawyer will be required to confirm their acceptance of the rules of professional ethics and indicating their field of legal expertise if relevant. A list of registered legal aid lawyers will then be provided to the Ministry of Justice by the bar association.

Legal aid providers such as NGOs and university legal aid clinics will be subject to more onerous requirements⁴⁵.

The award of legal aid will also be subject to conditions. Indeed, legal aid will only be granted if it is in the “interests of justice” to do so or where legal aid is of “invaluable importance for the effective protection” of the applicant. The assessment of that fact has to be determined in each case by taking into consideration the specific circumstances of each applicant, based on an extensive list of factors⁴⁶ to be taken into account. Despite the discretion which the relevant Ministry would enjoy in awarding legal aid, this criteria offers a sufficient basis for determining whether the interests of justice and importance of the case. It further allows the relevant Ministry to have due regard to any dissimilarity between the situation of the parties and their ability to obtain effective legal protection. This should hopefully enable the relevant Ministry to make a just decision in each case.

The DLLA differentiates between first-tier and second-tier legal aid. **Primary legal aid** is the right of the legal aid beneficiary to general legal information, initial and other legal advice, in any legal matter, which shall be exercised on the basis of a request addressed to the free legal aid provider, free of charge. **Secondary legal aid** is the right of the legal aid beneficiary to the drafting of documents and motions, to initiation and participation in the mediation procedure, to defence and representation before courts of law, administrative authorities and other bodies, as well as in the procedures for peaceful settlement of disputes, which shall be implemented under the conditions of this Law.⁴⁷

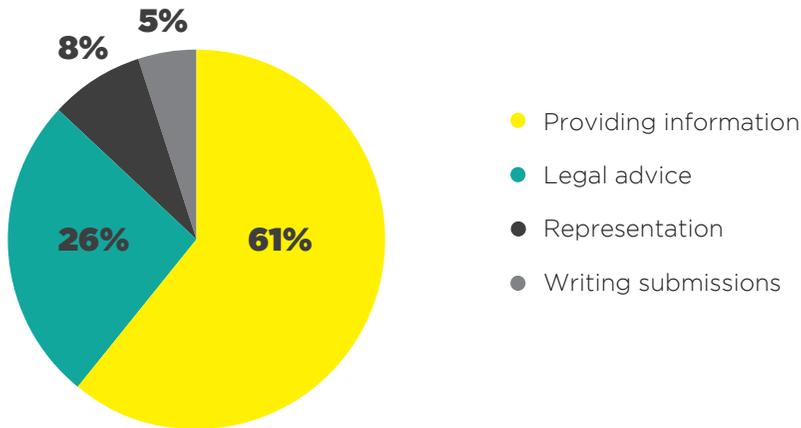
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45 On the other hand, other legal providers have to follow a different, more onerous, procedure. In order to register, other providers have to furnish details of their legal status, identify the expertise of their staff, provide a list of technical equipment needed for the work and as well as a financial plan. They also have to employ the services of at least one lawyer having at least three years of experience who must supervise the provision of legal aid. University law clinics will also have to state the number of professors, students and other persons who are part of the clinic. The Ministry of Justice will then assess registrations according to the need for legal aid where this is not being satisfied by lawyers and local authorities. The applicant's financial plan will also be subject to approval. These additional requirements could be considered as constituting obstacles that may prevent effective access to justice.

46 These factors are derived from the case law of the European Court of Human Rights. They include the importance of the rights or value of goods that are subject of the dispute, the level of possible punishment, the amount of any indemnity claim, the type of dispute, and the factual difficulty of the case, its legal complexity. Other factors to be considered include the number of participants, if the applicant is unable to defend and represent his rights and interests himself based on his age, mental or physical health condition, literacy, affiliation to vulnerable groups, family situation, economic status, and whether the opposing party is in an economically stronger position so that legal aid is needed to ensure the equal legal protection of the parties in the proceedings.

47 Art. 5 of DLAA.

The DLLA does not foresee that first-tier legal aid will be funded in contrast to second-tier legal aid. This is regrettable given that the latest research⁴⁸ reveals that 61% of free legal aid consisting in information and advice has been offered at the first-tier level whereas only 8% consists in representation constituting second-tier legal aid.⁴⁹



Under such circumstances the lack of compensation for the provision of first-tier legal aid could constitute a significant obstacle to the exercise of the constitutional right to legal assistance⁵⁰. It should also be borne in mind that effective first-tier legal aid may prevent the necessity for second-tier legal aid by solving problems without the need for court intervention and potentially lowering the total cost of legal aid to the state budget.

48 Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, SeConS, 2013. Available at: http://www.yucom.org.rs/upload/vestgalerija_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf

49 61% of FLA beneficiaries stated that they obtained information, 26% got advice, 8% obtained free representation and 5% got help through writing submissions.

50 Furthermore it is not clear what the reasoning is for regulating the first-tier legal aid when the state will not provide compensation. This may be incompatible with international standards, since the draft act may have the effect of restricting the ability of citizens to have access to information regarding their rights, which should not be the monopoly of the government or the legal profession (see for example Council of Europe Resolution (78) 8 on legal aid and advice, March 2, 1978).. If first-tier legal aid is not covered by the state's legal aid budget, legal aid providers other than lawyers or local authorities will come under increasing financial restraints thereby affecting their long-term survival. In the long run, this could hamper the ability of the public to have access to effective legal assistance in accordance with Article 67 of the Serbian Constitution.

As regards second-tier legal aid, this can only be provided by associations and other forms of organisations such as law clinics on the basis of a decision of the competent organ of the Ministry.⁵¹

Legal aid will be subject to a financial requirement⁵² that applicants demonstrate that they cannot otherwise afford legal assistance.⁵³ This will be determined on the basis of the applicant's written application and supporting documents.⁵⁴

Funding. Art. 56 paragraph 1 DLLA regulates that the Funding of legal aid will come from a variety of sources including the budgets of the Republic of Serbia, the autonomous provinces local authorities, local governments as well as from charges derived from users who only benefit from partially-free legal aid as well as domestic and international donors. The question of funding will be key in determining how effective the new legal aid system will be.

51 This creates a potential conflict of interest and more generally calls into question the independence of the process of awarding second-tier legal aid. It is not unreasonable to foresee circumstances where the Ministry may be the opposing party, for example when challenging decisions relating to welfare benefits. A better solution would be to create an independent commission or board comprising representatives of the various ministries, legal aid providers and the ombudsman of the Republic of Serbia to oversee decisions to award legal aid.

52 Nevertheless the determination of financial status is at the discretion of the responsible body. The applicant's financial status will be determined according to income and assets, including the ownership of property at the time of the application. Where the applicant is in receipt of social assistance, the financial requirement will be met if the average monthly income of other members of the household is not more than double of the minimum level of social assistance and if it is determined that the applicant's expenses exceed his income. Since the law does not provide any concrete figures, the decision to award legal aid will need to be determined on a case-by-case basis. It would be preferable for a standardized approach to be adopted either by including specific provisions in the law itself, or by requiring the Ministry of Justice to lay down specific regulations.

53 The financial requirement will be assessed by reference to the applicant's financial status and that of his household. The applicant will have to show that he cannot afford the costs of legal aid without jeopardizing his livelihood and that of his household and dependents. The law defines the household as including the applicant's spouses, unmarried partners, children, adopted children, and other relatives of the applicant or his dependents. While the law only mentions unmarried partners (term: "izvanbračni partneri"), no reference is made to same-sex couples. While there is no possibility for same-sex couples to marry or enter into a civil union in Serbia, it is likely that the recent case law of the European Court of Human Rights would require them to be afforded the same rights as unmarried mixed-sex partners. Moreover, the DLAA requires legal aid to be granted without discrimination. According to Article 13 of the Law Prohibiting Discrimination (Zakon o zabrani diskriminacije Srbije; Sl. glasnik RS, br. 22/2009), discrimination on the basis of sexual orientation is unlawful.

54 In some cases the applicant may not be able to provide the necessary documentation even though he might objectively be in need of legal aid. This may be the case of internally-displaced persons who are unable to provide adequate documentation.

5. Availability of Citizens Information & Assistance Services

Aside from lawyers, the survey conducted has revealed that information, advice and assistance is also currently being offered by municipalities, associations and NGOs, the Ombudsman of the Republic of Serbia, the Commissioner for protection of equality, trade unions and law clinics of university faculties of law.

5.1. MUNICIPALITIES

The information contained below reflects responses from 160 municipalities that participated in the survey.

At the local level, a municipality is responsible for providing free legal aid to its residents. Art. 20, para. 1 sub-para,31, of the Law on Local Self-Government⁵⁵ requires the local authorities to offer legal aid in accordance with the Constitution and other legal provisions.

The Constitutional Court of Serbia has held⁵⁶ that it is unconstitutional for a municipality (in this case the district of Palilula in the capital Belgrade) to organise legal aid outside the municipal administration, either in cooperation or through other institutions, in this case through lawyers as members of the bar. The Constitutional Court found that the municipality has no legal authority to discharge its duty to provide legal assistance on other institutions and that the absence of legal aid to citizens in the municipality itself represents a violation of the right to legal assistance under the provisions of Article 67 of the Constitution.

Geographical coverage. The Republic of Serbia consists of central Serbia and two autonomous provinces of Vojvodina and Kosovo.⁵⁷ In Serbia, there are 167 local self-government units including Cities' municipalities. 67 of them have legal aid services as special unit within municipality. 65⁵⁸ of them do not have legal aid services as special unit within municipality. 28 of them reported that they

55 Law on Local Self-Government of 2007 (Zakon o lokalnoj samoupravi; Sl. glasnik RS⁵, br. 129/2007)..

56 Decision of Constitutional Court IUI 45/2009 of February, 18th, 2010 (Odluka Ustavnog suda, IUI broj 45/2009 od 18. februara 2010. godine, objavljena u Sl. glasniku RS, br. 55/2010 od 6. avgusta 2010. godine).

57 The situation in Kosovo is not further discussed this report but is the subject of a separate report under the Triple A project.

58 Five of them reported that they have closed their special legal aid services.

do not have legal aid service as special unit but they said that free legal aid is provided by 1. all lawyers employed in municipality, 2. head of municipality administration, 3. the municipality public defender. Most municipalities within the capital city of Belgrade⁵⁹ are reportedly offering free legal aid. In some cases, legal aid may be targeted to certain groups. For example, the office for youth affairs of the City of Belgrade is offering free legal aid to all persons under age of 30.⁶⁰

Outside of Belgrade, free legal aid is offered as well. In the autonomous province of Vojvodina, 20 of 45 municipalities have legal aid services as special unit within municipality. 9 municipalities do provide legal aid to citizens, but do not have special unit. 16 municipalities do not provide free legal aid.

In central Serbia, the municipalities of Boljevac, Bajina Basta, Backa Topola, Bela Palanka, Bosilegrad, Bujanovac, Cacak, Cicevac, Doljevac, Gadzin Han, Golubac, Jagodina, Knic, Kragujevac, Krusevac, Lebane, Leskovac, Loznica, Mali Idjos, Merosina, Nis – Pantelej, Nis – Crveni Krst and Nis – Palilula, Nis-Niska Banja, Nis-Medijana, Novi Pazar, Odzaci, Paracin, Petrovac na Mlavi, Pirot, Pozarevac, Smederevo, Tutin, Uzice, Valjevo, Vranje, Vrbas, Zajecar, Zabaljal, Zagubica, Zitoradja are reportedly offering legal aid.⁶¹

Most of municipalities reported that they have one employee in special unit.

Based on the collected survey data, there is significant disparity in provision of legal assistance between urban and rural areas throughout Serbia. This situation is especially noticeable in the less developed areas, where there is a higher risk of poverty and social exclusion, where the presence of NGOs is limited and therefore where potential needs may be significant.

Number and categories of users. YUCOM's research showed that the most municipalities' legal aid services do not have statistical data on number and categories of users. Regarding the number of users, this varies greatly across the municipalities.

The six biggest cities in Serbia had organized FLA in different ways.

Belgrade City does not have central FLA service, but most of Belgrade municipalities established FLA services. Some of Belgrade municipalities reported: 2000 beneficiares per year (Zvezdara), 6128 beneficiares in 2012 and 4135 in 2013 (Zemun), 2700 beneficiares in 2012 (Vracar), 1416 beneficiares per six month in 2012 (Obrenovac), 1100 beneficiares per year (Surcin), 5502 beneficiares per year (New Belgrade), 2694 beneficiares in 2012 (Mladenovac) and 2200 beneficiares per year (Cukarica).

59 Namely the municipalities of Barajevo, Vozdovac, Vracar, Grocka, Zvezdara, Zemun, Lazarevac, Mladenovac, Novi Beograd, Obrenovac, Palilula, Rakovica, Sopot, Stari Grad, Cukarica and Surcin.

60 Belgrade Youth Office which opened in May 2009: <http://www.kancelarijazamlade.rs/en/#office>.

61 YUCOM contacted 170 municipalities in Serbia in August 2013, by phone or request for free access to information. Also, 19 municipalities were included in filling questionnaire developed within the project Triple A.

City of Novi Sad established Bureaux for providing free legal aid as special organization. It has provided 6635 advices - 4197 oral advices and 2438 submissions (including suits and appeals in criminal and private matters) in year 2012. Right to obtain FLA have citizens within social welfare system. Other citizens could obtain the legal aid by paying 50% of lawyer tariff.

City of Kragujevac has central FLA service within City administration and seven city's offices. They reported that they had 12374 beneficiaries in 2012. They reported that they provide FLA to all citizens in administrative procedure before pension fund, centers for social affairs and in court cases dealing with domestic violence.

City of Nis does not have central FLA service, but five municipalities established FLA services.

City of Leskovac has special unit within City administration that reported 627 beneficiaries in 2012.

City of Subotica provides FLA through Bar association in Subotica that is free of charge. In 2012, they had 61 cases, and by August 2013 they have had 83 cases.

Regarding other smaller cities, Pancevo, Kraljevo, Sabac, Sremska Mitrovica do not FLA services.⁶²

Regarding municipalities, according to available data, Sremski Karlovci formed FLA unit in September 2012. Right to obtain FLA have citizens within social welfare system, pensioners with income below law limit, and unemployed persons in case of labor dispute. Other citizens could obtain the legal aid by paying 50% of lawyer tariff. They have had 71 cases per year. Vrbas municipality provide FLA through Municipality Public Defender and they had 711 cases per year (85% without charge). Ruma municipality have 90 beneficiaries per year. Kikinda municipality reported 768 cases in 2012 (516 of them were within social welfare system), Bor reported that do not have statistical data on numerous oral advices, but they had 237 submissions. Raska reported that they had 13 requests in 2012 and 2 in 2013, Blace reported that they provided 156 oral advices and wrote 96 submissions in labour and family matters.

Regrettably no data is available from centralised government to estimate the numbers of users receiving legal assistance from municipalities on a nation-wide basis.

Nature of assistance. Above research illustrates the important role which municipalities play in providing first-tier legal aid. While municipalities could offer legal representation in court proceedings, the services provided consist in verbal consultations and written advice. Of course when acts of the authority are

⁶² Cacak reported 206 beneficiaries, Novi Pazar reported that they provided 453 advices in 2012, and 1551 in 2013.

in question applicants may turn to NGOs or unions. Especially as 15% state that they don't trust lawyers in that respect.⁶³

Sources of funding. In the survey, most municipalities reported that they derived funding mainly from state or local self-government sources (over 75%). They also generated their own resources from charges collected from providing legal assistance to the public.

Municipalities stated that people within social welfare system had right to free legal aid⁶⁴, for other categories of users charges may be imposed. Some municipalities charge up to 50% of the standardised fee charged by lawyers for consultations from the public.⁶⁵

5.2. NGOS

The information contained below reflects research undertaken for this project and incorporates responses received from 40 NGOs that answered the survey questionnaire.

Geographic coverage. 21 NGOs provide their services on a national-wide basis, 13 NGOs at a regional level, and 14 NGOs at a local level.⁶⁶ Eight NGOs⁶⁷ (out of ten) provide legal representation on a national level, one NGO provides such services on a regional level, while one NGO provides on local level (Belgrade). Regarding average size, 31,43% NGOs have 1-5 employees, 34,29% NGOs have 6-10, 17,14% NGOs have 11-25, 14,29% NGOs 26-50, 2,86 51-100, and no NGOs have more than 100 employees.

Number and categories of users: The number of users varies from a few to 14,000 users per year⁶⁸.

Following categories of users were identified from the survey responses: employed (5), unemployed persons (13), consumers (1), persons with disabilities (16), women (17), children or young people (20), elderly people (9),

63 Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, SeConS, 2013. Available at: http://www.yucom.org.rs/upload/vestgalerija_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf

64 Every municipality has own decision that regulate the scope of beneficiaries of FLA.

65 Ibid.

66 Some NGOs provide service on multiple level.

67 IAN, YUCOM, ASTRA, CHRIS, Sandzak Committee for Human Rights, Praxis, AS Center for suport of young people leaving with HIV/AIDS, Committee for Human Rights-Leskovac, Center for Human Rights - Nis.

68 I.e. Balkan Center for Migration and Humanitarian activities have had 14000 requests, Praxis have had 13025 requests.

migrants/refugees/asylum seekers (7), displaced persons and returnees (9), Roma (14), healthcare patients (7), claimants of welfare benefits (14), war veterans (3), lesbian, gay or bisexuals (6), and the general public (15). 57.58% NGOs provide assistance to the general public. Apart from that, through this survey it is identified that most covered categories by NGOs activism are: children or young people - 60,61%, Women - 51,52%, Person with disabilities - 48,48%, Roma people - 42,42%, claimants of welfare benefits - 42,42%, Unemployed persons - 39,39%.

The survey also provided a snapshot of the methods used to provide assistance. 85% NGOs provide service in the office (face by face), 80% NGOs provide service by phone, 92% by e-mail, and 8% online including chats.

Recent research showed that Internet is not channel for requesting and getting legal advice. Research showed that 76% of free legal aid users did not use the Internet to search for information, which shows the need to enhance the use of this medium to communicate information on free legal aid. At the same time the task must be improving legal information on the Internet considering that only 16% of those getting advice online found the information is useful.⁶⁹

Nature of assistance. Of the 40 NGOs that answered the survey questionnaire, 77% NGOs provide access to information, 70% NGOs provide advice by skilled advisers or by lawyers, 57% NGOs provide active help and 27% NGOs monitor government activities. Of those providing active help, 58% NGOs provide legal assistance (such as help in making an appeal to administration or court), 15% NGOs provide legal representation (which allows clients to be represented by lawyer in court), 61% NGOs undertake campaigning and advocacy for changes to law and policy, 18% NGOs provide assistance in using alternatives to court (such as mediation or conciliation).

In terms of the subject matter of the assistance which these NGO's services provide, the breakdown is as follows: criminal law (30%), immigration/asylum (17%), housing advice (27%), human rights (83%), education (53%), healthcare (43%), social security (60%), employment and labour rights (50%), elections and voting (13%), consumer (0%)⁷⁰, tax (3%), debt advice and bankruptcy (3%), other

69 Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, SeConS, 2013, p. 50. Available at: http://www.yucom.org.rs/upload/vestgalerija_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf

70 While only one NGO responded that they provide help to consumers, it should be noted that many more NGOs provide such assistance but which did not respond to the survey questionnaire. Consumer protection is regulated by a specific law on consumer protection. The Ministry of External and Internal Commercial Affairs provides information and advice in this area, and it finances some registered NGOs that provides active help in this area. According to the special register held by this Ministry, there are 27 NGOs (national and local) that cover Vojvodina and central Serbia (but excluding Western and Eastern Serbia).

(23%). Other advice include: torture, trafficking, ecology, children rights, LGBT rights, rights of victims..

Free legal aid is also provided by several NGOs who retain lawyers and other qualified professionals. The Lawyers' Committee for Human Rights (YUCOM) for instance is providing legal advice concerning violations of human rights, torture, discrimination and domestic violence. Other NGOs providing legal aid include: (a) The Network of the Committees for Human Rights in Serbia -CHRIS also in the same areas of activity, (b) "Praxis" provides advice to refugees and internally displaced persons, (c) "Grupa 484" also assists refugees and internally displaced persons, (d) "Udruzenje gradjana Srpski demokratski forum" provides assistance to refugees from Croatia, (e) "Balkanski centar za migracije i humanitarne aktivnosti" assists refugees, (f) "Ekumenska humanitarna organizacija iz Novog Sada (EHO)" advises the Roma minority, internally displaced persons from Kosovo and returnees from western Europe, (g) "IAN" assists refugees and internally displaced persons, (h) "Inicijativa za razvoj i Saradnju (IRS) Srbija" concentrates on the legal and economic problems of refugees, (i) "ASTRA" focuses on human trafficking (especially regarding children and women) and (j) "Iz kruga" on the protection of women with disabilities.

Sources of funding.

The 65% of NGOs stated that they are mainly funded through donations (mostly international and foreign sources). Only 10% of NGOs are mainly funded by Government or local-self-government. Resources and funding continues to pose a general problem for civil society in Serbia. The need to obtain financing through third parties represents a challenge and poses a problem in terms of maintaining the independence of civil society and protecting it from the influence of third parties, whether they be the government or international donors. Moreover, the targeted nature of the assistance which NGOs provide can also be explained by the limited resources which NGOs are able to access and the fact that they are not directly funded by the state.

5.3. OMBUDSMAN

The Law establishing the Ombudsman mandates this institution with the protection of the rights of citizens⁷¹. The Ombudsman was established in 2005 and has the authority to control whether the rights of citizens are being respe-

71 Law establishing the Ombudsman (Zakon o Zastitniku gradjana; Sl. glasnik RS⁷¹, br. 79/2005 i 54/2007). The Ombudsman's website is available at <http://www.ombudsman.rs/>. <http://www.ombudsman.rs/index.php/lang-en/o-nama/normativni-okvir-za-rad/643-2009-10-27-16-01-21>

cted by the public authorities. The office of the Ombudsman is also provided official recognition in Article 138 of the Serbian Constitution⁷².

The Ombudsman is empowered to launch investigations following the receipt of a complaint from citizens or may do so on his own initiative, and may also issue recommendations to the public. The Ombudsman acts as an influential institution in the delivery of legal assistance. The Ombudsman is appointed by the National Assembly for a period of 5 years⁷³ and enjoys immunity as a member of parliament. The Ombudsman's services are provided free of charge to citizens.

The high number of cases and topics of different public importance tends to a degree that maybe was not necessarily foreseen at the time of the adoption of the Law establishing the Ombudsman. This further demonstrates the demand for free legal aid in Serbia.

Types of violated rights and their number in the total number of complaints⁷⁴

AREA	NUMBER OF VIOLATED RIGHTS
Economic, social and cultural rights	2112
Right to good administration	1790
Civil and political rights	963
Child rights	669
Right of persons deprived of liberty	209
Right of national minorities	119
Right of persons with disabilities	58
Gender equality	55
Total	4474

72 Article 138 provides that

“The Ombudsman shall be independent state body who shall protect citizens’ rights and monitor the work of public administration bodies, body in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been delegated. The Ombudsman shall not be authorized to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor’s Offices. The Ombudsman shall be elected and dismissed by the National Assembly, in accordance with the Constitution and the law.

The Ombudsman shall account for his/her work to the National Assembly.

The Ombudsman shall enjoy immunity as a member of the National Assembly. The National Assembly shall decide on the immunity of the Ombudsman.

The Law on the Ombudsman shall be enacted.”

73 Article 4 para 6 of Law on the Protector of Citizens of 2005: “The Protector of Citizens is appointed for a period of five years and the same person may be elected at most twice in succession.”

74 The Protector of citizens, Annual Report for 2012. Available at: <http://www.ombudsman.rs/attachments/Annual%20Report%202012.pdf>

5.4. COMMISSIONER FOR EQUALITY

The Law Prohibiting Discrimination⁷⁵ establishes the position of the Commissioner for Equality. The Commissioner is appointed by the National Assembly for a period of 5 years⁷⁶, and enjoys immunity as a member of parliament. The Commissioner is tasked with the investigation of allegations of discrimination and offers legal assistance to citizens who have been victims of discrimination. Following his investigation, the Commissioner may issue recommendations which are not binding and also has standing to bring proceedings before the courts. The Commissioner provides services to the public free of charge.

From the 1st of January and the 31st of December 2012, a total of 602 new cases were registered. Regarding the 2012 new cases, 465 are complaints, 117 are recommendations to achieve equality, 6 are requests to initiate court proceedings, 5 are lawsuits, and the rest is opinions on draft laws, legislative initiatives or criminal charges and proposals to the Constitutional Court.

Out of 216 complaints whose procedure initiated, 160 were rejected. For 29 procedures, no discrimination was found. On the other hand, discrimination was identified in 27 procedures and appropriate recommendations were made.

When looking at the total number of CPE recommendations in 2012, most of them were followed. Only for 6 cases discriminators did not act on the CPE recommendations. In 2011, three lawsuits were filed to get protection from discrimination, and five in 2012. Three procedures were legally closed at the time of writing.⁷⁷

5.5. TRADE UNIONS

Trade unions may provide legal assistance to their members. According to the available data⁷⁸, two national trade unions have their own legal service. Since the mandate of trade unions is the protection of the workforce, the legal assistance provided by them is focused on matters of employment and labour rights and only offer legal assistance to their members and not to the public at

75 Law Prohibiting Discrimination of 2009 (Zakon o zabrani diskriminacije Srbije; Sl. glasnik RS", br. 22/2009).

76 Article 29 of Law Prohibiting Discrimination of 2009:
"The Commissioner shall be elected for a period of five years.
One and the same person may be elected Commissioner twice at the most."

77 Regular Annual report of the Commissioner for the protection of equality, 2012.

78 Lawyers' Committee for Human Rights – YUCOM, SeConS Access to Justice and Free legal aid in Serbia – Challenges and Reform, 2013. http://www.yucom.org.rs/upload/vestgaleri-ja_103_9/1363187570_GS0_BPP%20veliki%20_web.pdf, p.62

large. Trade unions may also face obstruction by the owners or management of the company in fulfilling their legal assistance⁷⁹. According to published research 11% of free legal aid beneficiaries obtained legal assistance from trade unions⁸⁰ and they also reportedly face difficulties in resources and funding⁸¹.

5.6. LAW CLINICS

Law clinics at university faculties of law provide their students with the opportunity to provide pro bono legal assistance to real clients under supervision. This provides another avenue for people in need who cannot afford legal assistance, as well as members of marginalized groups and members of the student body to obtain free legal advice.

Currently a number of universities operate law clinics. The university of Novi Sad⁸² offers free legal advice in the areas of environmental protection and human trafficking. The university of Nis⁸³ runs a law clinic focusing on civil law and the protection of women's rights. The university of Belgrade⁸⁴ operates law clinics on family law, criminal law, asylum law and discrimination, while the two clinics operated by the Private University Union in Belgrade⁸⁵ focus on employment and family law issues⁸⁶. The supervision grants an adequate legal aid though resources and an adequate supervision may also be a challenge for a sufficient legal assistance.

Law clinics tend to be funded by a mixture of the university's own resources and donor funds. The University Union in Belgrade is being financed from revenues derived from the provision of services such as the publication of books and the provision of training. The law clinic at the public law faculty in Nis is donor funded.

79 Ibid.

80 Ibid.

81 Ibid.

82 The University of Novi Sad's law clinic website may be found at <http://ekologija.pf.uns.ac.rs/pravna%20klinika.htm>.

83 The University of Nis's law clinic's website is available at http://www.prafak.ni.ac.rs/index.php?option=com_content&view=article&id=166&Itemid=241&lang=en.

84 The University of Belgrade's law faculty website is available at <http://www.ius.bg.ac.rs/eng/>.

85 The Private University Union in Belgrade's website provides details of the clinics <http://www.pravnifakultet.rs/pravna-klinika.html>.

86 Law clinic of Union University provided 90 advice sessions in 2012.

6. Identified Gaps in Availability of Citizens Information & Assistance Services

The project's objective of establishing a general information service addressing all of citizens' information needs and questions appears particularly relevant in the case of Serbia. Indeed, not only does such a service not currently exist, but the existing institutions and bodies that do provide information and advice have limited capacities and lack mutual coordination. Indeed, 78,4% of the survey respondents stated that existing services of advising citizens do not correspond to citizens' needs for information, advice and active help.

In the absence of a general service that could be regulated by a binding legal framework, information is provided by various actors mainly operating on a voluntarily basis. Such a basis is insufficient to ensure citizens' access to information can be provided in a permanent way to meet demand.

Analysis of the results of the survey conducted for the Triple A Project indicates that active help in Serbia, especially legal representation and assistance in using alternatives to court are provided by few institutions. Results shows that only 14% of all respondents provide mediation and conciliation services and only 23% provide legal representation. When the geographical coverage of assistance services is examined, it is apparent that in the autonomous province of Vojvodina the survey did not identify many providers of legal representation⁸⁷, bearing in mind that the provision of active help in the province by the municipalities under a pilot project with the Bar Association of Vojvodina has now ended. Data on the extent of legal aid provided by the Bar Association of Vojvodina could not be obtained.

Information and advice services are also lacking in rural areas throughout Serbia. It appears that it is mainly major urban areas that benefit from information and advice services. The need for direct accessibility of information and advice services in rural areas is all the more important given the low internet coverage (only 33% of households⁸⁸).

Workers and employed people are the second least represented group among the categories of users of these services. Results of the latest research showed there is a great need for assistance in employment and labour rights.

87 Novi Sad Humanitarian Centre (NSHC) provides pro bono legal assistance to members of marginalized and out-of-reach social groups, such as Roma population and internally displaced persons, in several municipalities of Vojvodina province.

88 Statistical Office of the Republic of Serbia, *Usage of information and communication technologies in the Republic of Serbia, 2012*, p.15.

The survey also makes it apparent that there are very few providers of information and advice on taxes, debt and bankruptcy in Serbia. Quality standards and monitoring appeared to be an issue for a significant number of respondents, with 37.2% stating that they applied no quality standards or measures to the assistance they provided.

A significant number of respondents identified the existence of obstacles that might hamper efforts to enhance the provision of information and advice services to citizens in Serbia. 77% of all respondents felt that donors often hesitate to finance projects, which jeopardises the sustainability of existing NGOs that do provide information and assistance services to the public.

Moreover, there is also a need to convince the government of the benefits of providing such services to the public, since 90% of all respondents considered that there is a lack of interest of the government or local authorities in strengthening the provision of information and advice services to citizens.

On a related note, 82% of respondents also stated that there is the lack of public advocacy and public trust also poses a challenge.

7. Conclusion and Recommendations

In order to improve the system of citizens' information and assistance services in Serbia, a number of recommendations can be formulated.

7.1 Recommendations addressed to the Serbian government:

The state - including relevant ministries and other public institutions - should be encouraged to view existing NGOs as partners in the provision of information to the public.

- The state should consider publishing contact details for these organisations on their websites. It will increase the trust of citizens in both the state institutions and NGOs. It could also help to address donors' hesitance in supporting projects.
- It is also desirable to create a directory of information and advice services that will enable citizens to easily access all information and advice services, free legal aid, the eligibility conditions for obtaining assistance and the contact details of the nearest legal aid service or organization that provides it. It would be desirable to develop this directory as a joint project between all relevant ministries and the various assistance services. It is also necessary to enhance the capacity of public administrations in providing assistance to the public. This will reduce the number of inquiries directed to legal aid services which relate to the provision of basic information and advice and will allow them to dedicate their resources to providing more value-added assistance.
- Legal aid services in municipalities should be reorganised separately from local government in order to avoid conflicts of interest when giving advice to citizens, particularly when the opposing party is a local authority.
- Government should support the development of legal aid services in all local self-governments in Serbia. The Government - particularly the Ministries of Justice and State Administration - should develop special programmes to increase the capacity of municipal legal aid services. Given the differences between the local self-governments, as an interim solution, consideration should be given to the possibility of forming joint services covering several municipalities to reduce costs. Such a solution could also be supplemented by arranging to have lawyers on duty in the municipality on certain days. Also establishing call centres using pre-recorded answers to common questions could be one of the supportive measures.
- The draft Law on Free Legal Aid should be amended to define a broader range of users of legal aid to include victims of human rights violations who are not necessarily socially disadvantaged. The law should be amended to ensure that financial status is not the sole criteria for providing free legal aid to this category.

7.2 Recommendations addressed to Serbian civil society:

- Non-governmental organisations should identify opportunities for closer co-operation and collaboration between CSOs and also between CSOs and other stakeholders and legal aid providers. NGOs should work together in order to improve the legal framework relating to the provision of information and advice to citizens. This will strengthen the impact of their efforts to shape government policy in the field of citizens' rights and access to justice.
- Non-governmental organisations should collaborate in establishing a code of conduct and quality standards for the provision of advice and commit to their respect in order to enhance public confidence in their work.

7.3 Recommendations addressed to donors:

- Donors should assist non-governmental organisations and other providers to enhance their capacity in providing quality free legal assistance, particularly to those belonging to vulnerable groups and other persons in need. Donors should ensure that their funding priorities match the needs of citizens.

7.4 Recommendations addressed to the Serbian national and local bar associations:

The Serbian national and local bar associations should be encouraged to promote the provision of pro bono services by lawyers and law firms in Serbia. The Serbian bar associations should raise awareness of the benefits of public service and encourage lawyers to devote part of their time to providing free legal assistance either individually or through their engagement in non-governmental organisations, trade unions and law clinics of law faculties at university.

