

EXPERT FINDING AND FREE LEGAL AID



HAS THE NEW 2019 LAW ON FREE LEGAL AID
FACILITATED THE ACCESS TO FREE EXPERT FINDING FOR PERSONS
WHO HAVE BEEN GRANTED SECONDARY LEGAL AID?

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LIST OF ABBREVIATIONS:

LFLA	Law on Free Legal Aid
FLA	Free legal aid
LLP	Law on Litigation Procedure
LEF	Law on Expert Finding
ENER	Unique national electronic register of regulations of the Republic of North Macedonia
RNM	Republic of North Macedonia
MANU	Macedonian Academy of Sciences and Arts
FOSM	Foundation Open Society Macedonia
MYLA	Macedonian Young Lawyers Association

INTRODUCTION

The extension of the scope of services intended for persons granted with secondary legal aid¹ was among the significant novelties introduced by the 2019 Law on Free Legal Aid (LFLA)². In addition to access to a lawyer³ (whose remuneration and costs are borne by the budget), secondary legal aid also includes exemption from: court fees and costs related to court proceedings *in line with the law*, administrative fees and expertise finding costs. The purpose of the reform was to provide as many citizens as possible with access to quality, fair and just trial.

A key step forward, and at the same time a challenge in extending the scope, was the exemption from the costs for expert finding. Unlike the exemption from court and administrative fees, which is realized by force of law, due to the nature of the work in the expert finding⁴ it was necessary for a model to be conceptualized and established through which expert finding will be performed, and the costs will be covered by the state budget. The solution applied in the LFLA was for the expert finding to be provided

through the Bureau for Forensic Expertise⁵ in line with the Law on Expert Finding, and the costs to be covered from the budget of the Ministry.⁶

Whether the new LFLA will contribute to facilitating the access to justice for underprivileged citizens depends to a large extent on how the provision for exemption from expert finding costs will be applied in practice. Access to quality expert finding is essential for success in court and to a lesser extent in certain administrative proceedings. Debt amount, property value, type and severity of injury, type and intensity of mental pain are just a small part of the large number of factual situations for which expert finding is often necessary as proof, so that the party would have prospects for success and exercising the right the party believes to be entitled to. Moreover, the provisions of the Law on Litigation Procedure (LLP) impose an obligation for the expert finding and opinion to be submitted with the lawsuit, i.e. the response to the lawsuit, should the party intends to propose it at all.⁷

In addition to the fact that this is a new solution, which has not been implemented yet, several additional circumstances and processes, some internal some external, justifiably impose the need of enhanced monitoring and situation analysis given the importance of the expert finding in the effectiveness of the overall free legal aid system. The absence of a more detailed regulation of the process, the manner, the dynamics as well as the mutual rights and obligations of: the beneficiary, his/her lawyer, the Ministry of Justice and the Bureau for Forensic Expertise (the Bureau) creates a risk of resorting to ad hoc actions and difficulties for the

¹ [The Law on Free Legal Aid](#) (Official Gazette no. 101/2019) was adopted in May 2019, and its implementation started six months later, in October 2019.

² *Secondary legal aid* is a form of free legal aid provided by a lawyer and includes representation in proceedings before courts, administrative bodies and persons exercising public authority unlike *the primary legal aid* which includes primarily provision of information and advice. The right to secondary legal aid belongs to the persons who meet the requirements and who have obtained a certificate for granted secondary legal aid. The identical form in [former LFLA](#) dated 2009 was named *legal aid in court and administrative proceedings*.

³ The legal aid in court and administrative proceedings under the 2009 LFLA covered only the assignment of a lawyer.

⁴ The expert finding is performed by experts who are third parties, independent and have no interest in the specific dispute, have certain scientific and professional knowledge and are entitled to remuneration and reimbursement of costs for performing the expertise.

⁵ The Bureau for Forensic Expertise is a state administrative body within the Ministry of Justice, with the capacity of a legal entity that, among other things, performs expert finding for the needs of the state bodies.

⁶ Article 13 paragraphs 6 and 7 of the LFLA.

⁷ Law on Litigation Procedure (consolidated text), Official Gazette no. 07/2011. Article 235.

Ministry of Justice.⁸ On the other hand, the Bureau does not have experts or equipment in all areas in which the beneficiaries might need expertise.⁹

Two additional processes are also important and may impose the need to adjust the model accepted in the LFLA. Firstly it is the process of adopting a new law on expert finding planned within the Strategy for Reform of the Judicial Sector. The strategy envisages a revision of the expert finding system through deetatisation of the system and the abolition of the Bureau for Forensic Expertise.¹⁰ The second process is the adoption of a new Law on Litigation Procedure where one of the goals is a profound reform in terms of witness finding as means of evidence.¹¹

The intention of this document is to identify and analyze key issues and challenges that have occurred in practice when applying the exemption from the costs for expert finding of the secondary legal aid beneficiaries. In addition, the document reviews the parallel processes that are ongoing and have an impact on the witness finding. Based on the analysis, the document formulates recommendations for overcoming the identified problems.

⁸ LFLA nor the bylaws regulate: who submits the request for expert finding; the deadline within which it should be conducted; what if the Bureau does not have an expert in a certain area; what are the accompanying documents that the expert should submit to the Ministry, etc.

⁹ Example: Expert finding in the field of molecular biology (DNA) that is necessary in the procedures for establishing paternity.

¹⁰ Strategy for Reform of the Judicial Sector 2017–2022. Measure no. 2.4.6-1.

¹¹ [Draft-Bill on Litigation Procedure](#).

II METHODOLOGY USED

When preparing this document, the main research goal which was set by the authors was the identification of the issues and challenges faced by the Ministry of Justice when applying the provision on exemption from the costs for expert finding. In order to achieve the respective goal, the work of the authors was aimed at answering the following questions:

1. To what extent is the existing legal framework regarding the exemption from the costs for expert finding comprehensive and sufficiently defined?;
2. What have the experiences been so far?;
3. What would be the impact of abolishing the Bureau for Forensic Expertise;
4. What would be the impact of the planned amendments to the Law on Litigation Procedure.

The methodological approach included review, description and analysis of the relevant legal framework, analysis of cases in which expert finding was performed as well as review of relevant strategic documents and published draft laws. Part of the data was collected through direct insight into cases where the request for secondary legal aid was submitted by the Macedonian Young Lawyers Association, and part through requests for information to the Ministry of Justice and the Bureau for Forensic Expertise. The document also relies on data presented and discussed at the meetings of the National Coordinative Body for Free Legal Aid.

The low number of cases in which expert finding has been conducted limits the conclusions of the research. In addition, the fact that the final text of the planned new laws on expert finding and litigation procedure is still unknown should be taken into account, and the conclusions presented in this document are based on the latest published versions.

III CONTEXT—LEGAL FRAMEWORK AND PROCESSES

1. Law on Free Legal Aid

1.1 Extending the scope of secondary legal aid

The 2019 LFLA expanded the scope of secondary legal aid. Unlike the previous law, under which the free legal aid (FLA) beneficiaries had only access to a lawyer whose services were paid from the state budget, with the new law they also gained an exemption from paying:

- ▲ court fees and costs related to the procedure *in accordance with law*¹²;
- ▲ expert finding costs; and
- ▲ administrative fees.

The need to expand the scope of free legal aid has been repeatedly emphasized by the professional public and civil society organizations.¹³ This problem was also identified by the Ministry of Justice as one of the reasons why a new law was needed.¹⁴ As a result of this, it was not uncommon for a person who had a lawyer assigned for conducting a court proceeding, but was unable to cover the costs for the expert finding, which had to be submitted together with the lawsuit, to withdraw his/her request, which brought into question the justification and existence of the free legal aid in the manner regulated by this Law.

¹² Since there is no reference to the law, it can be concluded that LFLA refers to the procedural laws which, among other things, regulate the costs of the procedure, primarily the Law on Litigation Procedure (Art. 145-169) and the Law on General Administrative Procedure (Article 68).

¹³ *How can the citizens of the Republic of Macedonia receive a quality Law on Free Legal Aid ?!* (2012); [An urgent and substantial amendment to the Law on Free Legal Aid is needed](#) (2014);

¹⁴ Ministry of Justice, [Regulatory Impact Assessment Report on the Draft Law on Free Legal Aid](#), Skopje, 2018.

1.2 Performing expert finding in line with LFLA

The expert finding for the persons who have been granted secondary legal aid will be performed through the Bureau for Forensic Expertise, and the costs will be covered by the budget of the Ministry of Justice. Special provisions governing the manner and procedure for conducting the expert finding are not provided nor have they been left for further regulation in a by-law.

Exemption from the costs for expert finding goes by the force of law with the very certificate with which secondary legal aid is granted and every person to whom the secondary legal aid is granted is entitled to such exemption.¹⁵ Whether it will be necessary to present the expert finding as evidence shall be assessed exclusively by the lawyer as an expert who is obliged to represent the rights and interests of the party. The Ministry of Justice can only assess the justification of the request/application for secondary legal aid in line with the Art. 21 of the LFLA as well as whether the costs for providing legal aid are disproportionately high compared to the value of the dispute in accordance with Art. 22.

In the absence of special provisions, the general regulations governing the expert finding, *the Law on Expert Finding* regarding the work of the Bureau for Forensic Expertise and the remuneration and the Law on *Litigation Procedure* concerning the rules on the use of this evidential means in a specific court proceeding, are relevant for the provision of expert finding in cases in which secondary legal aid is approved. This two laws, particularly the sections that are important for the expert finding are subject to ongoing reform in line with the Strategy for Reforms of the Judicial Sector, and draft-laws have been prepared, but have not been adopted yet.

¹⁵ Art. 13 para. 5, 6 and 7 of the LFLA.

1.3 Significance of expert finding as a means of evidence to the beneficiaries of secondary legal aid

Expert finding is an evidential mean used in legal proceedings when, for the purpose of establishing or clarifying certain relevant fact, expert knowledge is required and the decision-making body (court or state body) does not have such expertise¹⁶. The process of expert finding¹⁷ includes preparation of an expert finding and opinion prepared based on application of scientific and professional methods, technical achievements, professional knowledge and experience in certain areas¹⁸, as well as its presentation at a hearing or before a competent authority.

The success in the procedure itself, and the success in proving certain fact, largely depends on the content and the quality of the performed expert finding. The expert finding is performed by experts who are third parties, have no interest in the specific dispute, have certain scientific and professional knowledge and are entitled to remuneration and compensation of costs for performing the expertise. When certain person, due to his/her financial situation, is not able to cover these costs, and there is no mechanism for these costs to be covered by the state, the access to justice to the respective person is limited.

2. Law on Expert Finding

2.1 Mandate of the Bureau for Forensic Expertise

The Law on Expert Finding (LEF) regulates the performance of the process, the entities that perform the expert finding, the fee and the compensation of costs, the Chamber of Expert Witnesses, as well as the competence of the Bureau for Forensic Expertise. According to the LEF, the Bureau is a special state administration body within the Ministry of Justice¹⁹ that performs expert findings for the needs of courts and public prosecutor's offices, state bodies, public enterprises, companies and state funds as well as natural and legal entities²⁰.

The expert finding and evaluations are usually performed by the experts employed in the Bureau for Forensic Expertise²¹, but when necessary the Bureau can hire external collaborators in relevant field²² as well as conclude a cooperation agreement with another body of the state administration, state body, higher education institution, scientific institution or professional institution²³. The Bureau has experts in the field of **economy, traffic and construction**²⁴ while for the other areas it engages one of the 261 external collaborators listed in the list²⁵ published on the website of the Bureau. According to the Bureau, there are certain difficulties in obtaining expertise in the field of geodesy because the experts did not agree with the cost set by a separate government decree.

¹⁶ For instance, type of injury or level of mental pain in the procedures for damage compensation; area and description of construction facility in property ownership disputes; value of monetary claims and interests in debt-related disputes, etc.

¹⁷ Article 2 of the Law on Expert Finding.

¹⁸ According to the Law on Expert Finding, expert finding can be performed in the following areas: material, accounting and financial operations; medicine (psychiatry, neuropsychiatry, surgery, gynecology, cardiology, orthopedics, etc.); veterinary medicine; construction and architecture; electrical engineering; information technologies; mechanical engineering and traffic; agriculture, forestry and water management; graphology; geodesy; mining; technological engineering; chemical and biological engineering; molecular biology and genetics; toxicology and drugs; ballistics; environmental protection and ecology; protection of cultural heritage; protection of copyright and other related rights and intellectual property rights; and other areas.

¹⁹ The Bureau for Forensic Expertise was established under the Law organizing the State Administration Bodies, as a body of the state administration within the Ministry of Justice.

²⁰ Art. 43-a of LEF

²¹ Art. 43-k of LEF

²² Art. 43-j of LEF

²³ Art. 43-d of LEF

²⁴ Source: <http://bsv.gov.mk/uslugi/vestacenje/>

²⁵ <https://bsv.gov.mk/sorabotka/nadvoresni-vesti-lica/>

2.2 Compensation for the performed expert finding

The Bureau for the expertise performed upon the request of legal and natural entities is entitled to a remuneration and compensation of costs, whereas for the expertise performed for the needs of state bodies, public enterprises, the Bureau is entitled to compensation for the actual necessary costs. The external collaborators of the Bureau are also entitled to remuneration and compensation. The amount of the remuneration i.e. the actually incurred costs are calculated in line with the decrees adopted by the Government:

- ▲ [Decree on the manner of calculating the amount of compensation for the actual necessary costs for the expertise performed by the Bureau for Forensic Expertise for the needs of the state administration bodies, public enterprises and state-owned joint stock companies](#) (Official Gazette no. 131/2015)
- ▲ [Decree on the remuneration and compensation of the external collaborators of the Bureau for Forensic Expertise](#) (Official Gazette no. 131/2015)

The decrees define the minimum and maximum amount of the remuneration i.e. the compensation, as well as the factors that determine the amount (complexity of the expertise; the time required for data collection; study of the submitted documentation and data; application of appropriate methodology for the area of expertise, etc.).

2.3 Planned abolition of the Bureau for Forensic Expertise

The current legal framework is subject to ongoing reform envisaged in the [Strategy for Reform of the Judicial Sector](#). The Strategy projects a revision of the court forensic system through deetatization of the system and the abolition of the Bureau for Forensic Expertise.²⁶ The reasons for this are the need to abandon the role of the state (Ministry of Justice) as an actor in the system of expert finding in the courts, in order to ensure equal treatment of all entities providing expert finding on the market. This change, according to the Strategy,

would prevent the existence of unfair competition in the area of expert finding and would overcome the problem of non-compliance with the principle of “equality of arms” and impartiality in the expert finding.

However, despite this, [the bill](#) which was prepared and published on the Unique national electronic register of regulations of the Republic of North Macedonia (ENER)²⁷ does not provide for the abolition of the Bureau for Forensic Expertise and there is no clear explanation in the regulatory impact assessment report whether the ministry has abandoned the idea of abolishing the Bureau for Forensic Expertise. The fact that the bill has not been adopted by the Government and has not been submitted to the Parliament does not help in determining whether the Bureau will or won't remain as a body that performs expert findings. This is extremely important for the free legal aid because the abolition of the Bureau will entail a revision of the way in which access to expert finding is regulated for persons who have been granted secondary legal aid.

3. Law on Litigation Procedure

3.1 Expert finding and opinion with a lawsuit—LLP from 2011

The use of expert finding as evidence is regulated in the Law on Litigation Procedure. The amendments to the LLP from 2010²⁸ took a rigid approach according to which the expert finding will be presented as evidence only if the party filing the lawsuit (including the response to the defendant's lawsuit) submits the expert finding of the expert witness²⁹, unlike the LPP from 2005 under which the expert finding was performed at the proposal of the party (no later than the preparatory hearing), and the expert witness was appointed by the court. The only exception allowed is in the case when the party proposes expert finding, but the party shows that it is probable that there are facts or circumstances due to which they cannot obtain the expert finding and opinion.

²⁷ https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=54953

²⁸ Law Amending the Law on Litigation Procedure, Official Gazette of RM no. 116/2010.

²⁹ Art. 235 para. 1 of the LLP

²⁶ Measure no. 2.4.6-1 of the Strategy.

This amendment actually determined the filing of the lawsuit and the response to the lawsuit as deadlines until when the parties may not only propose, but also submit to the court the expert finding and expert opinion.³⁰ A subsequent proposal for expert finding as evidence would be rejected.³¹ In other words, the decision whether or not to submit an expert opinion was left to the party, regardless of the fact that it could be impossible to assume which of the facts will be decisive, and whether an expert finding is essentially necessary as evidence.

This solution has been criticized by the professional and scientific public. The non-compliance of this limitation with the right of the parties to present all the facts and evidence on which they base their allegations by the time of the preparatory hearing³², the unfavorable position of the defendant who has a period of 15 to 30 days (in context of Article 269 para. 2 from the LLP) to submit an expert finding for which a reasonable time of preparation is 45-60 days³³, furthermore the fact that the parties at the beginning of the litigation cannot know whether the court will need an expert finding and whether the defendant will dispute anything at all³⁴ are only part of the problems identified in the application of this provision.

The party that did not have the funds to cover the costs (before the adoption of the 2019 LFLA) for expert finding in advance, had two options left. To try, if the expert witness agreed, to postpone the payment for the service until the end of the procedure or to request full exemption from payment of the procedure costs along with the lawsuit (Article 166 of the LLP) and thus to try

to present it probable that there are facts or circumstances due to which they cannot obtain the expert finding and opinion (Article 235 paragraph 2 of the LLP). However, since both ways were unpredictable, faced with such problems, the parties often decided not to continue with the procedure.

3.2 Returning to the previous solution—The planned amendments to the LLP

Having in mind the identified problems, the Strategy envisaged enactment of a new Law on Litigation Procedure³⁵, which, among other things, should overcome the problem with the mandatory expert finding. The draft law³⁶, which was prepared and published on ENER, to a certain extent restores the model of the 2005 LLP. The court will admit evidence at the proposal of a party in which the subject of the expertise is presented and proposes a certain person for an expert, and the court appoints the expert with a decision. The draft law also provides for the possibility expert finding to be determined without a proposal by a party, if the court deems it necessary. Additionally, there is an opportunity for the party to submit a written expert finding and opinion to the other party for consideration and this finding and opinion can be admitted as evidence by the court. The draft law is in a phase in which the public debate has been completed and it will soon be submitted to the Government for endorsement and proposed to the Parliament for adoption.

The proposed solution has certain implications regarding the expert finding for the persons to whom the secondary legal aid is approved. The party will have to nominate a specific person for an expert witness which implies certain communication between the party and its lawyer with the Bureau where the expert will be identified. Furthermore, there is a possibility for the opposing party to reject the proposal, after which the expert witness will be determined by the court randomly from the register of experts in which the Bureau experts or their external collaborators may or may not be included. Also, the option for the court to assign an expert finding without a proposal by a party raises the issue who will bear the costs for the expertise.

³⁰ Chavdar, K. Chavdar, K. (2016) *Commentary on the Law on Litigation Procedure*, Skopje, Akademik. P. 529.

³¹ Case-law of the Court of Appeals Bitola no. 486/15 dated 06.03.2015.

³² Janevski, A. Zoroska—Kamilovska, T. (2012) *The amendments to the litigation and enforcement legislation of the Republic of Macedonia, challenges and problems in the application thereof, with proposals to improve the situation de lege ferenda*, Business Law, Journal of Theory and Practice of Law, Year XIII, no. 26, 2012, p. 28-37.

³³ Nacikj, G. (2012) *Use of expert finding as a means of evidence in line with the novelty in the LLP from 2010*, Skopje, Pravnik no. 246/2012.

³⁴ Dimovska, A. (2012) *Practical problems in the application of the amendments to the LLP*, Skopje, Business Law no. 26/2012.

³⁵ Strategy for Reform of the Justicial Sector. Measure 5.4.1-5.

³⁶ [Draft Bill on Litigation Procedure](#) published on ENER on 14.9.2020

IV PROBLEMS AND CHALLENGES RELATED TO THE EXEMPTION FROM THE EXPERT FINDING COSTS IN PRACTICE

▲ Low number of cases in which exemption from costs for expert finding is provided

According to data from the Bureau, by 2020 (inclusive) a total of three (3) requests for expert finding were received for beneficiaries of secondary legal aid, but there is no data on the areas in which the expertise was performed. For comparison, from the beginning of the application of the LFLA in October 2019 until June 2020, the Ministry of Justice approved secondary legal aid in a total of 117 cases. The very low number of cases in which expert finding has been realized can be attributed to the nature of the cases for which secondary legal aid has been granted (e.g. temporary measures for protection against domestic violence or divorce proceedings that usually do not require expert finding). However, even if this is taken into account as a reason, the impression remains that the number is very low and that expert finding is not applied in all the cases where needed.

▲ Insufficient and unprecise regulation of the manner, the procedure and the deadlines for provision of expert finding and opinion

The Ministry of Justice has faced certain challenges arising from the insufficiently detailed regulation on the manner, procedure and deadlines for provision of expert findings and opinion by a body or expert who will perform the procedure. The absence of a by-law or an agreement between the Ministry and the Bureau that will regulate these issues creates problems in practice. As areas that are particularly necessary to be regulated are the deadlines for the preparation of the expert finding, the procedure, the supplement to the expertise, the testimony before the court. The problem remains if there is a need for super expert finding.

▲ The Bureau for Forensic Expertise cannot provide expertise in all areas that might be required

Experience to date has shown that the Bureau for Forensic Expertise, as a body through which the expert findings for the beneficiaries of secondary legal aid are performed, is not able to provide expertise in all areas that might be needed. The Bureau has internal experts in the fields of economy, traffic and construction, while for all other areas it is necessary to hire an external collaborator. There is a problem in providing external collaborators to perform expert finding in the field of geodesy.³⁷ One of the reasons for the problem is the discrepancy in the amount of the remuneration and the reimbursement of the costs determined by the Decree that refers to the Bureau on the one hand³⁸ and the Tariff List for performing geodetic works³⁹ on the other. Expert finding procedures in this area include surveys, allotments, physical divisions and are necessary in real estate disputes. The inability to provide skilled experts to the beneficiaries of secondary legal aid deprives them of access to court proceedings.

³⁷ Source: <https://ovp.gov.mk/wp-content/uploads/2020/12/Identifikuvani-problemi-Pristap-do-pravda.docx>

³⁸ Decree on the remuneration and compensation of the external collaborators of the Bureau for Forensic Expertise (Official Gazette no. 131/2015)

³⁹ [Tariff for the amount of the fee for the performed geodetic works by the sole traders authorized surveyors and the trade companies for geodetic works](#)

A significant problem is the inability of the Bureau to provide expertise in the field of molecular biology (DNA) necessary in paternity disputes, which disproportionately affects disadvantaged and vulnerable categories of persons. These analyses are performed by specialized laboratories, such as the Research Center for Genetic Engineering and Biotechnology "Georgi D. Efremov", within the Macedonian Academy of Sciences and Arts, Zan Mitrev Clinic, Institute of Forensic Medicine and other laboratories that have the necessary equipment. The fee for such an analysis ranges from 18,000-32,000 denars. In MANU the service costs 18,300 denars (for child, mother and father), and for each subsequent member there is an additional payment of 6,100 denars.

The Bureau has not concluded a cooperation agreement with the Macedonian Academy of Sciences and Arts or other institutions that have equipment, professionals and special devices for preparing these expert findings. Failure to resolve this practical issue affects the rights of children and further delays litigation and court procedures related to establishing paternity. Such is the case with the minor N.S. from Skopje, who was born during a marriage that did not actually exist. The paternity of the child is not disputed at all neither by the registered parent (who unequivocally agrees that the child is not his), nor by the biological parent (who unequivocally agrees that the child is his), nor by the mother.

The case of the juvenile NS started in 2017, the child was 14, when a request for exercising the right to FLA in a procedure for disputing and establishing paternity was submitted through MYLA. The request was approved and a lawyer was appointed who would represent the party free of charge. A lawsuit was filed to challenge paternity using the mechanism of the Law on Litigation Procedure for exemption from court fees, proceedings costs and exemption from the costs for expert finding (i.e. for DNA analysis). The court partially accepted the proposal, rejecting the proposal for exemption from expertise costs.

After the entry into force of the new LFLA, in 2020, the mother SS of the minor NS once again through MYLA submitted another request for FLA, this time only for exemption from the costs for expert finding— DNA analysis, in order to determine parental kinship. Through an authorized regional department of the Ministry of Justice, a certificate for approval of the request was issued.

However, the DNA analysis in this case has been stopped. It is because the institution that performs this expertise has no real obligation to perform it free of charge for the party because in practice there is no official cooperation between these two institutions.

▲ The planned abolition of the Bureau for Forensic Expertise calls completely into question the applicability of the current model

The uncertainty about the existence of the Bureau, which is planned to be abolished under the Strategy, imposes the need of a model that would fill the gap that would arise with the abolition of the Bureau as a body that performs expert witnessing for the beneficiaries of secondary legal aid. The Strategy envisages a revision of the court forensic system through deinstitutionalisation of the system and the abolition of the Bureau for Forensic Expertise. On the other hand, the bill that was drafted and published on ENER does not provide for the abolition of the Bureau for Forensic Expertise and there is no clear explanation in the regulatory impact assessment report whether the ministry has abandoned the idea of abolishing the Bureau for Forensic Expertise.

V CONCLUSIONS AND POLICY RECOMMENDATIONS

Why is it necessary to take measures?

The problems and challenges described above need to be properly addressed through a combination of normative and institutional measures. Failure to take action (status quo) will cause several negative effects. Initially, it will negatively affect the access to justice for the beneficiaries of secondary legal aid, which will make it more difficult to achieve the goal for which the LFLA was adopted. The impression that expert findings and opinions for each required area determined under the LFLA cannot be provided or that the process is protracted will negatively affect the citizens' opinion on the functionality of the system. This will minimize the significant changes and improvements brought by the LFLA from 2019. Insufficient regulation of the expert findings makes the work of the authorized persons in the Ministry of Justice more difficult.

At the same time, the adoption of a new Law on Litigation Procedure is certain, which will substantially change the manner in which the expert finding is admitted as evidence. The proposed solution has certain implications on the expert finding for the persons to whom the secondary legal aid is approved. The party will need to propose a specific person to be an expert witness which implies certain communication between the party and their lawyer with the Bureau through which the expert will be identified. Furthermore, there is a possibility for the opposing party to reject the proposal, after which the court will appoint an expert witness randomly from the register of experts in which the Bureau experts or its external collaborators may or may not be included. Also, the option for the court to assign an expert witness without a proposal by a party raises the question who will bear the costs for the expertise.

The type of measures that will be taken depends entirely on whether the Ministry of Justice will implement the strategic commitment to abolish the Bureau for Forensic Expertise or it will keep the Bureau. Having in mind that at this stage the above has not been clear yet, the recommendations provided by this document are formulated under two assumptions, the first if the Bureau remains, and the second if the Bureau is abolished.

Option 1: The Bureau for Forensic Expertise remains

- ▲ Concluding a Memorandum of Cooperation between the Bureau for Forensic Expertise and the Ministry of Justice

Since the LFLA does not establish a legal possibility to adopt a by-law that would regulate and specify the performing of the expert finding, this matter can be regulated between the two parties. The memorandum would regulate: the manner of initiating expert finding, who can initiate the process, the deadline for performing the expertise, the manner of communication between the Bureau and the beneficiaries of secondary legal aid and their lawyers, the mutual rights and obligations of the Ministry and the Bureau regarding the payment for the performed expertise as well as other matters of importance for the institutions. Based on the memorandum, internal instructions would be prepared for the authorized officials in the ministry, the expert witnesses as well as the lawyers.

- ▲ Concluding agreements / memoranda with the Chamber of Authorized Surveyors and Macedonian Academy of Sciences and Arts (MANU)

It is essential that the system of free legal aid provides access to experts in areas that are important for access to justice for the most underprivileged

citizens. Areas that have stood out in the past period are geodesy and molecular biology. Communication with relevant entities needs to be established for the purpose of concluding agreements/memoranda that will provide access to experts and laboratories in these fields. It has to be emphasized that the costs for these services when performed within the free legal aid system should be discounted analogous to the way in which the lawyer's fee is reduced for these cases.

▲ Alignment of the Law on Free Legal Aid with the new Law on Litigation Procedure

Immediately after the adoption of the new Law on Litigation Procedure, and during the vacation legis period, the Ministry should start aligning the provisions of the LFLA with the LLP. The nomination of an expert and the appointment of an expert witness by the court, if the other party objects, give rise to the obligation of adequate intervention in the LFLA. The content and scope of the amendment will depend on the final version to be voted on by the Parliament.

Option 2: The Bureau for Forensic Expertise abolished

If the intention stated in the Strategy is realized, and the Bureau is abolished, a timely amendment to the LFLA will be necessary, to establish a model based on private expert witnesses. Key guidelines for the amendment are listed below.

▲ Creating a register of expert witnesses similarly to the register of lawyers

Expert witnesses who have a license for forensic expertise would be registered in a special register of expert witnesses for secondary legal aid which would be kept by the Ministry of Justice. The Ministry will take measures to ensure adequate participation of expert witnesses and institutions in the register.

Draft provision on establishing a register of expert witnesses

- (1) *The experts who in accordance with the Law on Forensic Expertise have a license for expert finding shall fill in an application form for registration in the Register of Expert Witnesses for free legal aid and submit it to the Ministry.*

- (2) *A copy of the license issued by the Ministry of Justice of the Republic of Macedonia shall be enclosed to the application.*
- (3) *The form and its content referred to in paragraph (2) of this Article shall be prescribed by the Minister.*
- (4) *The Minister shall adopt a decision for registration of a lawyer in the Register referred to in paragraph (2) of this Article within eight days upon the day of the submission of the application.*

▲ The right of access to an expert witness to be provided for every person to whom secondary legal aid is granted

The right of access to an expert witness should be provided for every person to whom secondary legal aid is granted, and whether and in what way this right will be used should depend on the circumstances of the case, the lawyer's assessment and of course the court decision should the opposing party object the decision.

▲ The remuneration and the reimbursement of the expenses should be limited to 70% of what is foreseen under the valid tariffs

The expert witness should be remunerated for the performed expert finding at the amount of 70% of what is determined in the valid tariffs.

Draft provision on compensation of costs and remuneration

- (1) *The remuneration of the expert witness for the finding and opinion is calculated in line with the regular amount for the particular type of expert finding approved by the court before which the procedure is conducted, reduced by 30%.*
- (2) *The expert witness shall submit the list of expenses on a prescribed form.*
- (3) *The Ministry shall, within 8 days upon the receipt of the list of expenses, adopt a decision approving the remuneration to the expert witness.*
- (4) *With a decision, the Ministry shall not pay*

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compensation for a specific case to an expert witness if during regular supervision the Ministry concludes that the entrusted work was performed in an unprofessional, negligent and non-quality manner.

- (5) *The expert may initiate administrative dispute against the decision referred to in paragraph (3) of this Article, before a competent court.*
- (6) *The content of the form referred to in paragraph (2) of this Article shall be prescribed by the Minister.*

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