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ACCESS TO JUSTICE IN NORTH MACEDONIA

comprehensive policy study on the access to justice in criminal, civil and administrative procedures

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EU for YOU

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ABBREVIATIONS

UN	-	United Nations Organization
EU	-	European Union
EC	-	European Commission
TFEU	-	Treaty on the Functioning of the European Union
ECHR	-	European Convention on Human Rights
TEU	-	Treaty on European Union
ECtHR	-	European Court of Human Rights
CRPD	-	Convention on the Rights of Persons with Disabilities
CJEU	-	Court of Justice of the European Union
EIO	-	European Investigation Order
UNHCR	-	United Nations High Commissioner for Refugees
ZBPP	-	Slovenian - Free Legal Aid Act
ZPND	-	Slovenian – Domestic Violence Prevention Act
ZKP	-	Slovenian – Criminal Procedure Act
FLA	-	Free Legal Aid
HR	-	Human Rights
ZUP	-	Slovenian – General Administrative Procedure Act
DZ	-	Slovenian – Family Code
ZNP	-	Slovenian – Civil Procedure Act
RNM	-	Republic of North Macedonia
GNP	-	Gross National Product
LFLA	-	Law on Free Legal Aid
CEPEJ	-	Council of Europe European Commission for the efficiency of justice
CC	-	Law on Criminal Procedure
LLP	-	Law on Litigation Procedure
PDIFM	-	Pension and Disability Insurance Fund
HIF	-	Health Insurance Fund
LNP	-	Law on Notary Public
LE	-	Law on Enforcement
SWC	-	Social works center
LGAP	-	Law on General Administrative Procedure
LCT	-	Law on Court Taxes
ADR	-	Alternative Dispute Resolution
BARNM	-	Bar Association of the Republic of North Macedonia

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EXECUTIVE SUMMARY

In the absence of a single definition, the generally-accepted meaning of the wording "access to justice" refers to the ability of people to access courts and other institutions of the system for the purpose of exercising their rights, receiving actions upon their appeals and settling disputes pursuant to generally-accepted international standards on human rights[1]. The instruments countries can and should used for enabling access to justice include the following: legal protection (recognizing legal, business and process capacity), strengthening the legal awareness and information, free legal aid, fair court and administrative procedures, efficient enforcement and increased role of the parliament, the ombudsman and the civil society[2].

In order to identify the current condition and the challenges in the national legal system in terms of access to justice, and mainly the free legal aid, the Macedonian Young Lawyers Association in cooperation with the Legal-informational center from Ljubljana, Republic of Slovenia, prepared this comprehensive study for policies in the area of access to justice in criminal, civil and administrative procedures. The purpose of the study is to contribute with evidence-based recommendations to the reform processes that affect the access to justice for poor and other vulnerable categories of people. In addition, the study describes and presents the international and the European standards on access to justice and free legal aid that need to be incorporated and applied in the national context.

A number of legal and political documents that set the international standards for facilitating access to justice have been adopted within the United Nations Organization system The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the 1989 Convention on the Rights of the Child should be emphasized since these two documents give rise to the obligation for free aid to children subject to proceedings, for the purpose of protecting the best interest of the child. The UN Declaration on the Elimination of Violence against Women and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power underline the need of facilitating the access to justice for the victims. A particularly important document is the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, dated 2012, that defines in details the international standards in this area.

More precise and more comprehensive are the European standards related to access to justice, contained in the fundamental documents of the Council of Europe (European Convention on Human Rights) and the European Union (EU Charter of Fundamental Rights) that are further elaborated in the case-law of the European Court of Human Rights and the Court of Justice of the European Union. In addition, the EU, through its secondary legislation, actively elaborates and promotes the standards for access to justice and free legal aid within its member states. The case-law of the European Court of Human Rights in the area of access to justice is particularly rich and provides guidelines on determining whether and in which circumstances the country is obliged to provide access to free legal aid in criminal and civil proceedings.

The Republic of Slovenia, which shares common legal history with our country, and is a member state to the EU, is convenient for comparison and identification of positive and applicable solutions related to free legal aid. Particularly positive example is the practice of establishing general Law on Free Legal Aid for all types of legal matters with subsidiary application when it comes to the other laws that regulate legal aid in various proceedings.

On the other hand, the national legislation establishes two separate systems for free legal aid. The free legal aid in criminal procedures is regulated under the Law on Criminal Procedure and the budget for the free legal aid is secured from the budget of the court and other bodies where the proceedings are held. The free legal aid in civil and administrative matters is regulated under the Law on Free Legal Aid, and the budget for such proceedings come from the budget of the Ministry of Justice. The specific thing about this law is that it covers the costs for provision of legal aid to children, in accordance with the Law on Justice for Children, and for the procedure of recognizing the right to international protection.

In relation to the criminal proceedings, free legal aid is predominant in the form of mandatory defense, whereas the defense for poor people, which is actually intended for people who cannot afford defense attorney, and there is no mandatory defense projected, is completely neglected and used in practice on exceptional basis. There are no clear criteria on the financial condition of the person who needs this

1 | UNDP (2005). Programming for Justice: Access for All – A Practitioner's Guide to a Human-RightBased approach to Access to Justice. Bangkok: UNDP. P 5.
2 |UNDP (2004). Practice note on Access to Justice. P. 7.

instrument, and the court actions in appointing defense attorneys and paying the fees and expenses of these lawyers are not unified as well. The courts do not hold exact and precise data on the appointment of defense attorneys ex officio, which directly affects the inability to unify the system, have good planning and administration of justice. The institute "defense for poor people" is almost not used in practice. This is paradoxical since the poverty rate in the country is around 22%, and a successful defense in criminal proceedings seeks significant knowledge in laws. The failure to apply this provision in practice leaves a number of accused persons who are not able to hire a lawyer to perform self-defense, without any help, and in most of the cases this can be considered as violation of the right to fair trial.

In civil proceedings and matters, the new Law on Free Legal Aid, adopted this year, establishes a sufficient legal framework that enables access to information and advice (primary legal aid) and a lawyer (secondary legal aid). However, this law needs to be harmonized with the provisions of the Law on Litigation Procedure that refer to the exemption from payment of the costs for the proceedings and the so-called "poverty right". In addition, there is no well-promoted and efficient system for exemption from payment of costs in procedures before notaries public and enforcement agents that particularly burdens poor people. Amicable settlement of disputes through mediation and other forms is not sufficiently promoted, and this type of settlement has the potential to contribute to meeting the civil legal needs of citizens.

The parties in administrative proceedings in the area of social protection, pension and disability insurance, housing, rights of foreigners and asylum seekers, stateless persons etc., as people belonging to vulnerable categories of citizens and persons, are not sufficiently informed on the rights they can exercise, as well as on the procedure for exercising such rights. The published legal texts are not sufficient or adequate for instructing citizens. Public bodies and entities providing primary legal aid need to cooperate in defining measures for informing citizens, including direct legal information, informative sessions, educational brochures, info offices within public bodies, etc.

Finally, financial means are prerequisite for a functional free legal aid system. In this direction, there is insufficient collection and processing of detailed data about the legal services financed with the state budget. The amount projected for free legal aid has to be increased to the level determined in the CEPEJ report by taking into consideration the economic power of the country. The increase of the amount has to be accompanied by increased monitoring of the quality of the provided legal aid. The price of the lawyers' services needs to be determined by the Bar Association of the Republic of North Macedonia, by taking into consideration the nature of this type of legal aid and setting a discount to the regular tariff.

Introductory notes

"We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice."

Sonia Sotomayor, US Supreme Court judge (2009)

The project Mobile teams for legal support to low-income individuals and families is an action funded by the European Union under the Agreement no. NEAR-TS/2017/393-525 within EIDHR programme. The project is implemented jointly by the Macedonian Young Lawyers Association and the Legal Informative Center from Ljubljana, Republic of Slovenia. The project objective is to strengthen the access to justice for the most vulnerable citizens in Macedonia, which would contribute to legal strengthening of these citizens and their families and to improving the legislation and the implementation of the existing mechanisms for access to justice. The expected project outcomes are the following: 1) dealing with legal issues and matters that affect poor citizens and their families; 2) increased awareness and knowledge in the area of law; 3) review of the implementation of the effective legislation that refers to access to justice; 4) improved legal framework in the area.

A comprehensive study for access to justice in criminal, civil and administrative proceedings has been prepared within the activity 4.1. Comprehensive study of policies in the area of access to justice in RM. Key assumption for implementation of quality reforms in the area of access to justice is availability of evidence-based comprehensive analyses and researches for the various mechanisms for facilitating the access to justice, for the following: legal aid in civil and administrative matters; mandatory defense; defense for poor people; pro bono legal aid; aid for ignorant party; release from payment of court taxes and costs for proceedings, etc.

The analyses available in this area usually focus only on one of the mechanisms or only on a specific target group. Although these studies and researches have narrow focus, they provide indispensible insight in the specific problems and challenges that facilitate or burden the access to justice. However, there is still a need to analyze the access to justice as a whole entity, and especially the interdependence of the specific forms of exercising this right, so that an overlap can be avoided and the possibilities for effective and cost-efficient system for access to justice in RNM can be identified.

A team was formed of two legal researchers with thorough knowledge of the Macedonian legal system related to access to justice (licensed practitioner and PhD in law), with a rich professional experience in researches in the legal area. This team of researchers was reinforced with an expert in the area of finances with thorough knowledge in conducting financial analyses, analyses of fiscal implications and cost-benefit analyses.

The data presented in the comprehensive study are collected with the use of primary and secondary data resources.

Primary data is the experience of MYLA in its daily provision of primary legal aid compliant to the Law on Free Legal Aid. Information was gathered via direct contacts on the condition and problems arising from the legal regulations, the actions of the bodies or the court decisions. On the other hand, the personal experiences, practical and theoretical, of the researchers were taken into consideration.

Researches and analyses conducted by civil organizations, national institutions and international organizations on topics related to access to justice were included as secondary sources. Furthermore, available statistical, academic works and other relevant literature related to the subject of this study were used as well. Documents produced by UN, UNDP, CEPEJ, CoE and FRA were considered as sources for this

study as well. Considering the above, the analysis also offers summarized linkage of existing researches of available literature.

Other methods used for gathering data were the use of the right to free access to public information from information holders through submission of requests and constant contacts with legislative bodies for the collection of data, or contact with all basic courts on the territory of the country and the Judicial Council of RNM.
The study identifies key issues and challenges that burden the access to justice for poor people and other people belonging to the vulnerable groups of the society and attempts to formulate realistic and feasible recommendations for overcoming such issues and challenges. International standards on access to justice, above all the standards of the UN, the European Union and the case-law of the European Court of Human Rights, as well as the comparative experiences of the Republic of Slovenia, as EU member state, were taken into consideration during the preparation of this study.

Throughout the identification of the main findings that occurred within the study, three separate documents were prepared, each of them elaborating the main issue connected to access to justice in criminal, civil and administrative proceedings. The documents were shared with practitioners, experts and representatives of institutions and policy creators. The purpose of these documents was to stimulate a discussion between legal practitioners and experts with the aim to identify and jointly formulate recommendations.
On 28, 29 and 30 October in Skopje, three roundtables were organized on access to justice in civil, criminal and administrative proceedings, which were attended by representatives from the Ministry of Justice, civil associations that work in the area of legislation and provide services to vulnerable categories of people and monitor court proceedings, the Ombudsman, lawyers, the Chamber of Mediators, the regional centers of the Ministry of Justice, the Administrative Court, the Organization of Consumers, the social works centers.

The recommendations formulated within this study arise from the discussions during the three roundtables whose aim was to find and propose systematic solutions for facilitating the access to justice for those that need it the most.

Part 1: Access to justice - notion and meaning

1.1 Challenges in defining the wording access to justice

The contemporary, international and national, legislative and political systems are full of definitions on the meaning of the concept "access to justice". In the interest of the key objectives of this study we will mention only two basic definitions. One, very narrow, limited (stricto sensu), focused only on formal-legal possibility to, or, indisputable (constitutional) legally guaranteed right to access to court or to alternative dispute resolution body, as practice consistent with the international legal obligation of every modern country to provide mechanism for protection of human rights against violations, to rectify mistakes made towards citizens and to hold the enforcement authorities accountable in civil, criminal and administrative matters as processes aimed at realization of material and procedural rights. And second, wider (latto sensu) notion of the relevant societal contexts of legislative systems, unfortunately characterized, inter alia, with barriers that burden (milder form) or ultimately render impossible (harsh form) for certain social categories of people/groups, especially the most vulnerable ones, to practice their own indisputable rights (in the sense of policy and practice of everyday life) to have real and free access to justice. For all and everyone. For all natural and legal entities, regardless of their features, benefits and social positions. With rightful respect, implementation and enforcement of the law. In accordance with the principle "rule of law" in direction of a real "legal state".

1.2 Access to justice – stricto sensu

For the needs of this study, from international and constitutionally guaranteed "umbrella" of the "rule of law", we initially performed insight into the principle of "access to justice" and subsequently into the following (sub)rights, which arise one from anoother, are interconnected and mutually reinforce the strengthening of the institutions, the justice, the legal security/safety and the trust and which contribute to the promotion of social cohesion and to the visible and perceivable economic prosperity".

- **The right to access to court**

This is the starting (sub)right to court accessibility, for the purpose of protection of personal rights, obligations and interests without which all freedoms and rights would be pure abstracts. It implies positive, accusatory aspect known as "right to active legitimation" - right to initiate proceedings in front of competent judiciary bodies, right to accuse and sue, as well as right to appeal due to adopted, individual legal decisions. On the other hand, we have defensive, negative aspect known as "right to passive legitimation" – right and an obligation to appear before courts in cases of initiated proceedings against passive-legitimated persons. The two elements are necessary, not only as guaranteed, but also as effective and efficient elements. The right to access to court is not an absolute right. The limits can be temporary (time limits, or strict deadlines) or financial (e.g. budgetary reasons), however the essence of the right as such cannot be violated – not be able to reach the competent court due to space, time or money. Conversely, this right has only relative use value, since it can be limited due to serious legal objectives, with the establishment of proportionality between the applied means and the desired objectives of the entire processes.

- **Right to independence and impartiality of courts**

The availability of the institutions that administer justice (different types of courts, tribunals, bodies, etc.) has to be adorned by two principles which, almost as a rule, are not used independently, but jointly, due to which very often are "perceived" as synonyms. Obviously they are adjacent, significantly similar, interdependent and complementary. However, the differences are undeniable. The independence is related to court institutional structures, whereas impartiality is related to individual features of the personal architects of all modern courts.

- **Right to fair and public trials**

One more duplex of sub-rights - the right to fair trials and the right to public trials. The former takes into consideration all the facts of each specific case individually, including the capacities to access justice. Particularly important rights are the right to "equality of arms", the right to "reasonable opportunities" of all parties, in all procedures to present their own cases and thus implement "the fair balance". The latter, for the purpose of transparency of the administration of justice and increase of trust through: physical presence and verbal statements at all types of trials.

- **Right to counsel, defense and representation**

Obviously, the essence of the briefly mentioned formally legal trilateral, without which court days or fair trials are impossible due to compulsory enforcement of individual freedoms and rights, is the right to counsel, defense and representation of any person in all types of proceedings. In essence, this is the right to defense/ right to a lawyer/right to counsel. There are different actual "forms" of this right, which are personal choices, in accordance with the relevant legal norms and standards - the right to self-representation (without the help of other people) which can be limited only in the interest of justice; the other form is the right to legal representation by other people (e.g. professional lawyers or attorneys, for different cases in different proceedings), freely chosen by the parties in the disputes, and in this form sufficient time and proper circumstances are needed for enabling unhindered confidential communication between the accused or defendants and the lawyers/ the defense, for the purpose of preparing the defense; or the third form, the right to renounce the right to defense, which due to the importance of the institute "defense" is allowed to be used only in certain limited circumstances and solely upon own will, explicitly or silently and indisputably expressed. These three forms are connected with corresponding court taxes and expenses, in principle, borne by the opposing parties.

- **Right to Free Legal Aid**

Unfortunately, many people, due to different financial reasons, are not able to exercise their rights in court or other proceedings. The right to free legal aid was established to tackle these challenges (in its true meaning, in the 1960s). To be more precise, the right to "free legal aid" imposes an obligation upon the states to cover the expenses with the state budget, and not with the means of the parties in proceedings. Obviously, this right ennobles the judiciary systems and in the same time burdens them with the additional obligations that have to be realized in the interest of the parties, victims and witnesses. Actually, due to the listed reasons, or for the purpose of meeting the described objectives regularly, especially in the most developed countries, rich institutional structures have been established for providing free legal aid.

- **Right to efficient legal remedies**

Any person who has suffered violation of freedoms or rights has the right to exercise effective legal remedies in front of the competent national bodies in order to recover the violated right or freedom. There is no obligation these competent bodies to be courts, however, in theory, even in practice, the general position is that the courts are stronger and safer guarantor of the independence, the accessibility for victims and the compulsory enforcement of the law; conversely, the evaluations of the effectiveness of the non-court/non-judicial bodies have to be based on the facts for each case individually (ipso facto), the rights in question and the characteristics of the engaged bodies.

1.3 The right to access to justice – latto sensu

All of the above, dull, expert contemplation of different aspects of the access to justice, presently is the most urgent issue worldwide and torments government, legislators, bar associations, scientists and educators, and in order to make it useful it has to be perceived through the "wider screen" of the social contexts. It is a fact that everyone, sooner or later, faces some kind of legal problem. Additional burdens are the specifics of the modern life that multiply the legal issues. The longer they remain unsolved, the higher the cost price – economic, health, family, social, societal, cultural, political, etc. The number of groups with limited access to justice is constantly increasing. Some groups are objective, without any or with minor impacts, e.g. children/minors, old people,

people with special needs, women, people with different sexual orientation, people from certain racial, ethnical or religious minorities etc. Others are related to individual sociological and state features, e.g. social status, property, inherited contexts/social origin, political and other beliefs, political and other networks/functions, citizenship, etc. Often, none of the above-listed features is independent, the merges are not only varieties, but also numerous. They feed the barriers, constitute the sets of excommunications and marginalization, they are the basis of the current worldwide crises in the access to justice.

The studious researches in the most developed European and the two American states permanently, based on thorough analyses of a wide public scope, clearly identify the reasons. Briefly, in line with the order within the subtitle 2.1. "Stricto sensu" we list the most spread "marginalization vectors" that make the access to justice difficult or impossible:

- (not)approaching court due to: self-decided absences or imposed alienation from the system; lack of self-confidence; absence of knowledge; absence or very poor knowledge in human rights and the methods to exercise these rights (which requires education – for the purpose of understanding and prevention)

- no independent, objective and impartial/fair trail, but the opposite: most often, differences in judges' behaviors depending on the category of citizens in front of them; absence of true interactions between the system and the people with disabilities;

Part 2: International standards on access to justice

2.1 International universal right

The contemporary international right to protection of human rights grew after the sufferings of the Second World War. After 1945, when the United Nations Organization was formed and after the adoption of its constitutive act – the Charter, as the first international agreement where the subsequent, universal and intensive process of development of the mechanisms for human rights and freedoms protection was conceptualized and constitutionally and legally sanctioned.

2.1.1 Universal Declaration of Human Rights of the UN[3]

This document is rich in historical and significant aspects of the human dimension. For the purpose of this study we emphasize only the following, according to us the most relevant standards arising from its text: "everyone has the right to recognition everywhere as a person before the law", "everyone has the right to be presumed innocent until proven guilty according to law, in a public trial", "all are entitled to equal protection of the law", "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by the law", "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him", the limitations of the rights are possible only as "exceptions determined by the law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society", and finally no one may interpret or apply alleged "rights of states, groups or individuals" that violate this Declaration since everyone has rights and freedoms as well as serious "duties to the community in which alone the free and full development of his personality is possible".

3 | The Universal Declaration of Human Rights was adopted at the UN General Assembly session in 1948, with the Resolution A/RES/217 A (III), as historic (in time), universal (in geographical), essential monumental (in contextual meaning) and general (due to the different categories of rights and freedoms) political document.

2.1.2 Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights of the UN[4]

These two multilateral convents on human rights are part of the general corpus on human rights of the UN (hereinafter the First and the Second Pact, note by the authors), adopted as legally mandatory documents. Although extensive and universal, they still do not completely cover all types of rights in the UN system. The documents contain similar or completely identical legal provisions, as well as provisions similar or identical to the Declaration.

Below, we mention solely the standards that refer to access to justice, generally included in the First pact:

- the recognition of legal subjectivity (Article 16);

- minimum standard of rights in cases of raised criminal charge; information on the acts, the characteristics and the causality; to be tried in his presence; to be tried without undue delays, to examine the witnesses against him and to obtain the attendance and examination of the witnesses of the defense, under the same conditions as the witnesses against him; not to be compelled to testify against him or to confess guilt; right to defend himself in person or through a legal assistance of his own choosing; to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; to be informed, if he does not have legal assistance, and right to free legal assistance (in such case if he does not have sufficient means to pay), as well as free assistance of an interpreter (Article 14(3) of the First Pact); and the right to have the conviction and sentence to be reviewed by a higher tribunal according to law (Article 14(5)).

- everyone is entitled to a fair and public hearing by competent and impartial tribunals with the establishment of courts competent to rule on the respective criminal charge, lawsuits related to exercise of civil rights, etc, as well as to public trial except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or guardianship of children.

The standards, contained in the documents, on equal protection in front of the law, equality before courts, presumed innocence until proved guilty, effective legal remedies before the competent court bodies including the right to appeal against arrest or custody, public and fair trial before objective and impartial tribunals have been copied from the Declaration.

2.1.3 The first Optional Protocol to the International Covenant on Civil and Political Rights[5]

The wealth of the material and legal segment of the First Covenant would be far lesser without the special so-called technical/monitoring – part that enriches the institutional structure of the UN system and establishes the Human Rights Committee. The function of this body is to monitor – all state parties are obliged to submit reports on how the right and freedoms are being implemented on their territories. The Committee can bring decisions only if all legal remedies are exhausted in accordance with the general principles of the international law (but not if the reasonable deadlines are crossed).

The first optional protocol to the First Covenant is a procedural appendix that contains a new, completely different mechanism for accepting and examining individual (not by state, but by natural persons) complaints. The mechanism is not mandatory, however once a party to the Covenant becomes a party to the Protocol, every individual on the territory of the respective state who is a subject to its jurisdiction obtains the right to lodge a complaint in writing to the Committee. This means that a person who deems that any of his rights identified under the First Covenant has been violated, and if he has exhausted all legal remedies (except in cases of unjustifiable postponements), can lodge a complaint with the Committee. The

4 | Both documents were adopted as resolutions at the UN General Assemply in 1966 (in force since 1976).
5 | Adopted with UN General Assemply Resolution in (in force since 1976)

Committee does not confirm the facts independently, and examines the communications in writing from both parties at closed sessions and states its merit-based position. In order to make these positions available to the public, the Committee publishes them and thus establishes its own individual practice. These publications are very useful guidelines and credible and impactful reference how the merit-based decisions upon individual complaint can be put into function, in the context of access to justice[6].

2.1.4 List of universal legal acts and political documents in the UN system relevant for access to justice

All above quoted legal rights have to be interpreted systematically and without any concessions, such as the right to equality contained in the Declaration, accompanied by the obligation to ban any type of discrimination, contained in the First and Second Covenant. Since this generally-accepted international standard is mentioned above, we will not mention it in the list below.

Although there are a number of such universal legal acts, for this study we selected only the ones we consider most relevant and grouped them in two groups:

1. Legal standards focused on vulnerable groups: children and women, victims of violence and violation of justice, arrested persons and people in custody and persons subject to alternative measures.

2. Group of legal standards focused on prosecutors, judges and lawyers in different court proceedings (criminal, civil, administrative and family).

2.1.4.1. Legal standards focused on vulnerable groups

i.UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) as of 1985 (A/RES/40/33).

These are exceptionally important rules since they project the following standards:

- the juvenile justice system shall emphasize the well-being of the juvenile in the interest of justice (Rule 5), the principle of discretion at all stages of proceedings (Rule 6), investigation of the circumstances in which juvenile is living, the conditions under which the offence has been committed (Rule 16); protection of privacy in order to avoid labeling (delinquent and alike), stigmatization and exclusion from the communities by prohibiting publication of information in the mass media (Rule 8) and by prohibiting issuance of reports on the juvenile.

- the right to information, the right to remain silent, the right to counsel, the right to legal assistance in the interest of the juvenile; limitation of the right of parents or guardians to attend, only based on previous assessment that their attendance is not in the interest of the juvenile (Rule 15); the right to confront and cross-examine witnesses and the right to appeal to a higher authority (Rule 7);

- avoidance of unnecessary delays and prolongation of the proceedings (Rule 20);

6 | more detailed info on the Commissioner website http://www.unhchr.ch/html/menu2/8stat2.htm

ii. Convention on the Rights of the Child, 1989 (A/RES/44/25)

This Convention is considered to be complementary to the Beijing Rules, with several key legal norms:

- the state obligation "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies..., the best interest of the child shall be primary consideration (Article 3);

- when it comes to children in criminal proceedings, the Convention does not include anything more than a reference to the Beijing Rules, and adds the right of children "to interpreters, if the child cannot understand or speak the language used" (Article 40 (vi)).

iii. Convention on the Elimination of All Forms of Discrimination against Women, 1979

This document establishes standards that, inter alia, refer to the following:

- Prohibition of any type of distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field (Article 1 - relevant to all types of proceedings, especially proceedings related to family matters);

- states parties shall be obliged to enable "equality of women and men in front of the law, in civil cases in all phases of the proceedings, in all types of tribunals and courts", and any restriction of the legal capacity of women shall be deemed "null and void" (Article 15), including the proceedings related to various violations of women and female children listed below.

iv. UN Declaration on the Elimination of Violence against Women (A/RES/28/2014), 1994[7]

Besides defining "violation against women", this document establishes the following principles as obligations of the states:

- to prevent, investigate and punish acts of violence against women/girls, regardless who performed those acts (Article 4(c)), as well as to develop adequate preventive legal, political, administrative and cultural mechanisms for protection of women against any form of violence (Article 4(f));

- women-victims to violence should have chance to practice rights to access to the mechanisms of justice, as well as access to legal remedies for the harm they have suffered/survived (as provided for by the national law), by fulfilling their obligations to inform women about their rights (Article 4(d));

- include in the national budgets resources for the elimination of violence against women (Article 4(h));

- take measures to ensure the law enforcement officers and public officials responsible for implementing policies, receive training and sensitize them so that they can understand and develop sympathy with the problems of the women victims to (domestic) violence (Article 4(i));

the UN specialized agencies and other UN institutions should, within their respective mandates, provide assistance to foster the interstate cooperation, to have conferences and seminars, to intensify the contacts of the countries with the UN system; to publish guidelines/manuals to raise the awareness of women on their rights, the right to access to justice, as well as the public awareness, so that the voice would be raised in all situations involving violence against women, in any part of the world (Article 5).

7 | Although there is no explicit overview of the »violence against women and girls«, UN General Recommendations 12 and 19 uderline that the Convention imploes violence against women and lists concise recommendations in terms of the states obligations. They had an impact on the World Conference on Human Rights in 1993 that recognized »violence against women as violation of humen rights«. The UN Declaration on Elimination of Violence against Women was adopted on these grounds (A/RES/28/104) in 1994

v. Convention on the Rights of Persons with Disabilities, 2008 (A/RES/61/106)

This convention imposes to the states additional obligations to provide adequate access to justice to these people. In addition to the right to equality in life in social communities on an equal basis with others, the Convention as key principle guarantees the principle of access to "efficient and equal exercise of various civil, economic, social and cultural rights for all people with disabilities" (Article 9). It is particularly useful to emphasize the right of these people in practicing the procedural aspects through the "right to effective access to justice and Article 12 that defines that "these people are entities in front of the law", have legal subjectivity, or are equal holders of the legally guaranteed rights and responsibilities. This recognition implies that the decisions of these persons on undertaking proper legally prescribed activities have legal capacity. However, the states are obliged to provide for the persons that lack capacity to access justice adequate free legal aid (compliant to the abovementioned features), and the incapacity/lack of capacity of these persons is determined during the respective procedures as well.

vi. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Justice, 1985 (A/RES/40/34)

A document that is particularly important due to the fact that it provides wide definitions of the wording "victims of crime" and "victims of abuse of justice", and further elaborates the problems these persons face that are not known to the public. This declaration establishes the following internationally-accepted terms and standards:

- access to justice and fair treatment, treatment with compassion and respect of their dignity, right to access to the mechanisms of justice because of suffered violations (article 4); judicial and administrative mechanisms should be established and strengthened, mechanisms that are necessary for the victims and available through formal and informal procedures that are expeditious, fair, inexpensive and accessible (Article 5);

- the victims to be informed about the competences, to take into consideration the positions and the interests of the victims where their interests are affected, without prejudice to the accused, and consistent to the relevant legal system; providing proper assistance to victims throughout the processes; taking measures to minimize inconvenience to victims, by protecting their privacy, and ensure the safety of their families and witnesses from intimidation and retaliation; avoiding unnecessary delays (Article 6);
- offenders are obliged to return the property or pay for the harm or loss, reimbursement of damages incurred (Article 8);

- governments should review their legislations and practices to consider restitution as a sentencing option in criminal cases, in addition to other criminal sanctions (Article 9); when complete compensations by the offenders or other parties are impossible, the states should endeavor to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical and mental health as a result of serious crimes (families included), special funds need to be established for such purposes, if the states are not in position to allocate budget (Articles 10-13);

2.1.4.2. Group of special international standards concerning the behavior of prosecutors, courts and defense lawyers

i. Guidelines on the Role of Prosecutors adopted by the Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990

This document refers to lawyers, judges and other institutions in the criminal justice system. The document contains the following standards on administering justice:

- the prosecutors shall act without any discrimination; independently, impartially and with objectivity; confidentially (unless the justice seeks publicity); by considering the views and interests of the victims by collecting and presenting relevant information; by considering the views of the suspects and the victims; by considering all relevant circumstances, regardless whether this is useful or not for the suspects (Article 13);

- proceedings cannot be initiated if the charges are unfounded (Article 14);

- due attention shall be given to the prosecution of crimes committed by public officials (particularly corruption; abuse of power; grave violations of human rights; other crimes recognized by international law); the standards impose obligation for performing serious investigation for the purpose of establishing legal grounds for initiation of the proceedings (Article 15);

ii. Basic Principles on the Role of Lawyers adopted by the Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990

There is no real access to justice without these principles that mostly repeat standards already defined in the previously described documents. However, below, we have listed details of the "right to access to lawyers", legal aid and the right to protection in criminal justice matters. The specific characteristics that are not listed elsewhere, are the following lawyer's rights, obligations and responsibilities:

- responsible advising to clients about their freedoms and rights and their actions; assisting clients in every appropriate way, and taking legal actions to protect their interests, before courts, tribunals and administrative bodies, where appropriate (Article 13); lawyers shall always loyally respect the interests of their clients (Article 15); ability to perform their professional functions without intimidation, violation, humiliation, hindrance, harassment, threatening or improper interference (Article 16);

- The competent authorities ensure access to appropriate information, documents connected to their statements given in good faith, which are in court possession or control, to enable lawyers to prepare the defense "at the earliest appropriate time"; the states have to guarantee confidentiality of all communications and information between lawyers and clients (Article 21); they have obligations and responsibilities for additional professional education and training to protect and promote their professional integrity, in cooperation with the governments, and they shall ensure that everyone has effective and equal access to justice and that they are able, without improper interference, to counsel and assist their clients in accordance with the laws, standards and ethics (Article 24).

iii. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 2012 (A/67/187)

In general, the principles are in function of the criminal justice systems, to shorten the time spent in police station(s) and custody centers. Therefore, they have significant legal force and have to be applied, even by the states that are not parties to the above-listed international acts.

These principles imply provision of legal aid for everyone (suspects, accused, convicted, victims, witnesses, etc) who does not have sufficient means or when the interests of the justice impose so. According to this document, the formulation "legal aid" includes and implies different concepts of legal education; access to legal information and other services through alternative dispute resolution mechanisms and justice restoration processes (A(8)).

The structure of this international document is divided in "principles" and "guidelines".

The principles refer to:

- "the right to free legal aid is an fundamental right based on the rule of law" (B(1)(14)), whereas the "obligation" of the states to guarantee the right has been set at the highest possible level, including, where applicable, in the constitution; constant information on the right to free legal aid;

- the responsibility to consider when, where and to what extend the applicable systems of free legal aid are adequate, to enhance the knowledge of the people (B(17)), the communities – about their justice system and its functions, the ways to file complaints and about the alternative mechanisms (B(18));

- the right should especially be applied to affected people, as well as all above mentioned persons, including persons with HIV and other serious contagious diseases; drug users; indigenous people; stateless persons; asylum-seekers; foreigners, migrants and migrant workers, refugees and internally displaced persons, through special measures for each group, as well as to persons living in rural, remote and economically and socially disadvantaged areas or are part of economically and socially excluded groups (B(10)(32&33));

- the providers have to enjoy the same rights of independence, safety and protection as lawyers (B(12)(36)); obligation of the states to recognize and encourage the cooperation between providers and lawyers, associations, universities, civil society and other groups and institutions that provide legal aid, for the purpose of extending the reach of legal aid (B(14)(39&40)).

The Guidelines are much wider and refer to:

- how the need of legal aid is tested, and how the financial condition of the applicant and his family is determined (B(1)(41));

- information on the right to free legal aid is made available through the standard and modern media, including the internet, to the rural and even the completely isolated or remote, hardly accessible locations; with proof that the information was delivered; and right to effective legal remedies if this is not the case (B(2)(42));

- rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence not to be interviewed before the free legal aid provider arrives; right to interpreters and supervisors, where needed; to be informed on the mechanisms for filing complaints of torture or ill-treatment; to be informed that the exercise of these rights is not prejudicial to his/her case (B(3)(43));

- at the pretrial stage: to monitor and enforce custody time limits in police holding cells or other detention centers; to request bar associations or other legal associations and partner institutions to establish a roster of lawyers and paralegals to provide complete and comprehensive legal system, in particular in police stations (B(4)(44));

- to inform foreign prisoners on the rights to serve their sentences in their country of origin, subject to interstate consent (B(6)(46));

- legal aid for victims: appropriate advice, assistance, care, facilities and support for the purpose of preventing revictimization and additional violations; and children, in line with the UN Guidelines, should be provided with legal aid in all stages of the criminal proceeding, or civil actions for claims for compensations,

- legal aid for witnesses: similarly to the aid for victims; the states should ensure legal aid only where appropriate, e.g. the witness is at risk of incriminating himself/herself; there is a risk to their safety and well-being or when they are particularly vulnerable or having special needs (B(8)(49));

- the states shall provide additional measures in terms of the free legal aid system: to encourage bar and legal associations to provide pro bono activities in line with their professional callings and

ethical duty; to facility the access for lawyers to remote, inaccessible locations by tax exemptions; fellowships and travel allowances, etc.; to encourage lawyers to organize regular trips around the country to provide aid to those in need, by taking into account the persons with special needs, particularly children and their rights... (B(11)(55-59));

- the provision of free legal aid requires money, so the states should earmark adequate budget - "channeled and sustainable financing mechanisms through: establishing funds for financing aid schemes, including public defense schemes to support legal aid provision by legal and bar association; to support university law clinics; to sponsor non-governmental organizations, including paralegal organizations in providing aid throughout the country, especially in economically and socially disadvantaged areas; to identify fiscal mechanisms for allocating percentage of the criminal justice budgets to efficient legal aid, and special mechanisms for collecting fines can be used (to cover legal aid for victims); tax exemptions; to engage students or legal assistants; proportional distribution of funds between prosecutions and free legal aid agencies, and additional special funding (e.g. defense expenses - expenses for copying relevant files and collection of evidence; expenses related to expert witnesses, forensic experts, social workers and travel expenses), which should be provisional (B(12)(61));

- the states shall be obliged to legally regulate: the criteria for the accreditation of legal aid providers; the professional codes of conduct and appropriate sanctions for violations thereof; the obligation of these providers to act pro bono, except when authorized to charge for their services; appropriate oversight mechanisms for legal aid providers for the purpose of preventing corruption (B(15)(69));

- the states shall be obliged to: conduct regular research and collection of disaggregated data on the results of provided aid to vulnerable persons and to publish the data regularly; share good practices; assess the efficiency and effectiveness of the legal aid, in accordance with international human rights standards (B(17)(74)).

iv.IBA Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems, 2018

The UN system does not contain legal acts or standards on access to justice in civil and administrative proceedings. Therefore, we take into account the IBA Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems, dated 2018, drafted on the UN Principles model. Under the Guidelines:

- the free legal aid generates significant social and economic benefits and for this reason the states should estimate such costs and benefits in their budgets. The cost price for not providing legal aid should be taken into consideration, since the results of the researches conducted show that access to justice and legal aid can have positive impact on the healthcare, employment, wellbeing of individuals and their families, through its preventative action, public legal eduction and provision of information to the public, based on the principle "prevention is better than cure";

- the governments are responsible to guarantee the provision of aid, and concerning the price they should receive true, detailed information from all relevant structures mentioned in the Principles for criminal proceedings, so that they can make the right decision and provide fair payment to those who provide aid; the central role in the administering of justice should be played by special bodies.

- professional bodies of lawyers should seek to maximize their pro bono services, and governments should not allow to be dependent solely on these bodies for the provision of services, nor treat these bodies as substitutes of their financial funds;

- clear, transparent and published criteria are needed on the scope and eligibility for legal aid, formulated by the governments in cooperation with all stakeholders;

- court fee waivers should be seen as a form of legal aid and as such, in cases of free legal aid, they should be automatically waived, without any obligations for any additional procedures;

- in procedures where representation is mandatory, the states should provide free legal aid, for persons that cannot afford it financially or due to lack of knowledge, capacity and vulnerability, where "the interests of justice" are more powerful than the "likelihood of success". There is a general eligibility for initial advice when there are no satisfactory sources for needed advice;

- there are special bodies in charge of administering justice, which must be independent of the authorities, and accountable in front of the authorities, and these bodies should cooperate with the professional bodies of lawyers for greater efficiency and with other justice system bodies or groups should regularly report to governments, parliaments and the public on the results of their work;

- identical principles of actions, legality, morality, transparency, independence, impartiality and objectivity, as the ones contained in the Principles, are applicable to the free legal aid providers in civil, administrative and family law matters.

Part 3: European Standards and access to justice (the European Union and the Council of Europe)

3.1 The access to justice and the accession of new member states

The EU law and EU internal and external policies aim to maintain and further develop the Union as an area of freedom, security and justice. In this context, access to justice forms element of the acquis[8] (in terms of EU legislation, its political goals and structural capacity for integration). In the language of conditions for accession of new member states to EU as laid down in Copenhagen criteria[9], it is crucial to fully secure access to justice both as an essential political criteria (under Rule of law and Human Rights), and administrative and institutional capacity to effectively implement the acquis. It is not necessary just to adhere to the legal and political standards in terms of respecting them as common values, the member states and candidate countries must also commit and undertake to promote them[10].

Access to justice is contained in Chapter 23 named "Judiciary and Fundamental Rights". The new European Commission's (EC) approach to negotiations with the future Member States requires for negotiations on Chapters 23 and 24 to be opened first.

The essential standards that refer to the access to justice in the context of the EU law and acquis will be presented below[11].

3.2 EU legislation

EU legal system generally provides for rather comprehensive HR machinery including those related to access to justice. EU law adheres to all core legal institutions and in this direction it specifies many obligations in respect to the processes and goals (i.e. via EU secondary law). But it also lists and to certain respect elaborates even in detail, numerous specific instruments (i.e. rights related to legal and non-legal support measures and services like free translation, psychosocial assistance, the right to compensation etc). In addition, it requires even certain non-judicial paths to justice which can empower people also by offering advice, legal assistance, even representation in legal proceedings. There are many specific solutions

8 | Acquis communautaire is a body of common rights and obligations obligatory for all EU member states in certain period of time.
9 | Available at https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en.
10 | See Articles 2 and 49 from the Treaty of the European Union.
11 | For more details, Handbook on European law relating AFR and CE, 2016.

protecting people in vulnerable situations such as victims of crimes, discrimination, people belonging to minorities or fleeing persecution or serious harm in their own country and therefore in need of international protection, children, persons with disabilities, etc. These instruments are mentioned briefly where they overlap or crucially interrelate with the central issue of free legal aid.

The complexity of these matters (interrelation) is further "blurred" by the complexity of different legal sources with different legal nature regulating these matters in the EU. They interplay - some of the obligations (level of protection of HR) overlap, and some do not. From one solution to another the sources which impose the highest legal standard (in favorem HRs) may vary. EU law consists of:

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3.2.1 The sources of EU legislation

The so-called EU primary law is composed initially by the international treaties regulating establishment and regulation of the EU as a supranational organization i.e. Treaty on the Functioning of the EU (TFEU). With the entry into force of the Lisbon Treaty in December 2009, the second pillar – the Charter of Fundamental Rights of the European Union became legally binding. The third pillar of primary law are so-called fundamental principles of EU law, identified by the CJEU in its case law as resulting from the European Convention on Human Rights (of Council of Europe, binding all member states, and being identified by the ECHR's own control mechanism as l'ordre public europeen, "the public order of Europe")[12] and the common constitutional traditions of Member States.

EU secondary law originates from EU's own internal legislative processes (in EU institutions) made of regulations, directives and decisions. Although the area under scrutiny is regulated by directives, we have to note that directives are in principle (but this is not fully the case!) not directly applicable legislation on their own. In line with the principle of subsidiarity they list only core solutions, key goals and instruments to certain extent, but they always require further legal actions by national legislator – therefore transposition into the national legislation. Directives aim at harmonisation and leave room to certain extent for the member states to reach the required goals (here the minimum common level of protection in access to justice) by accommodating the solutions to their own systems and traditions (see mutatis mutandis the "margin of appreciation" principle under the ECHR law). We would like to further note that directives regulating human rights might have purely implementational nature (in relation to HRs protected by primary EU law), but they may go well beyond that and impose specific (original) duties upon the members states and can even be the original source of some rights (i.e. rights to be protected by non-judicial bodies in respect to non-discrimination or data protection). There are also legally non-binding acts in EU law, such as opinions and recommendations. They may effectively be regarded as part of the soft law acquis (common, preferable understanding, guidance).

12 | See the case Austria v. Italy, бр. 788/60, Commission decision as of 11 January 1961, Yearbook 4, p. 116.

3.2.2 Obligations of members states related to EU law

The EU law is a minimum common standard, so the states are free to go beyond and above them to provide even more effective access to justice. The obligations arising from EU law are not legal grounds for any regression in this respect which could result in the so-called run to the bottom effect.

The implementation and enforcement of EU law takes place primarily at national level in member states. Article 4 (3) of the Treaty on European Union (TEU) requires EU Member States to take appropriate measures to ensure the fulfilment of obligations arising from EU law. This is the principle of sincere (loyal) cooperation. Additionally, Article 19 of the TEU requires Member States to provide sufficient remedies that ensure effective legal protection in the areas covered by EU law. Therefore, access to justice is not only a question of material coherence with the EU law, there is a clear obligation to respect the procedural, remedial solutions so that EU law can be effectively implemented.

Other mechanisms in case of non-coherence with EU law can also be mentioned here as means of internal access to justice mechanisms, but they are available only once the country becomes a member state: the infringement procedure before the European Commission (EC) as the guardian of EU acquis which can at the end result in legal action against the member state before the CEU; requests for preliminary rulings of CEU, made by the national courts; direct effect of the directives can be invoked re the public actors (in the cases of clear rights secured by the directive) or at least via the right to compensation because of the failure to act and implement the directive, there is a possibility to declare the act of the EU institutions void. An important monitoring mechanism, which can trigger other control functions, is the process of revision of all directives, which takes place on regular intervals within the monitoring of the EC, and duties of member states to report on the implementation of their obligations[13]. In the negotiations for the accession to the EU the EC has the most important role and screens (scrutinizes) the alignment with the EU law and other standards of the acquis. Candidate countries are effectively obliged to respect them. It is necessary that a candidate country shows visible and measurable results and track record in applying the legislation. In addition, there is also a constant check if they get the consent of the EU institutions and all EU member states. But member states can also play a very significant role, as they might individually or in group politically block or present (additional) political requirement not only for the final result, but also for opening or closing particular chapters in these negotiations.

3.3 Free legal aid in EU legislation

Access to legal aid is an important part of the right to a fair trial under Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights. The right of access to a court (arising from the right to a fair trial and fair hearing) should be effective for all individuals, regardless of their financial means. This requires states to take steps to ensure equal access to proceedings; for example, by establishing appropriate legal aid systems. Legal aid does not only serve subjective goals in terms of mitigating the risk of discrimination on the grounds of property (financial) or social status of a party in legal dispute. It also serves more objective goals, i.e. to facilitate the proper administration of justice because parties that are not represented in court disputes are frequently unaware of procedural rules and require considerable assistance from courts, which can cause undue delays. An individual has effective access to courts when appearing before a supreme court if the guidance provided by the procedural rules and court directions, together with some legal advice and assistance, is sufficient to provide him/her an effective opportunity to put forward his case.[14] What is required to ensure effective access to the courts depends on the facts of a particular case - the assessment of the state of play as a whole. Under ECHR and EU law, legal aid does not have to take a particular form; states are free to decide how to meet their legal obligations.

13 | For an example relevant for this paper see Report from the Commission to the European Parliament and the Council of 8 September 2010 on the application of Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [COM(2010) 465 final – which provides an overview of EU countries' transposition of Directive 2005/85/EC into their national law and of problems encountered in its application, i.e. cases of incomplete or incorrect transposition and flaws in the application of the directive by EU countries. Furthermore, it analyses the optional provisions and derogations in the directive, differences persist between EU countries' arrangements and procedural guarantees including on the issue of legal assistance and representation.

14 | ECtHR, A. v. the United Kingdom, No. 35373/97, 17 December 2002, para. 97..

As a result, legal aid systems often vary widely.[15] For example, legal aid may consist of free representation or assistance by a lawyer and/or exemption from paying the costs of proceedings, including court fees.[16] These arrangements can exist alongside other complementary support schemes, such as pro bono defense, legal advice centers or coverage of legal costs – which may be state funded, run by the private sector, or administered by NGOs.

The rights protected in the ECHR and the EU Charter of Fundamental Rights overlap. The rights determined in the Charter that correspond to ECHR rights are given the same meaning and scope as those laid down in the ECHR, in accordance with Article 53 of the Charter. The Explanations to the Charter – which serve as an interpretative tool to help understand its content but are not legally binding – provide additional guidance on this point. This overlap means that ECtHR case law is frequently important for interpreting rights under the EU Charter of Fundamental Rights. ECHR has a crucial, fundamental position in the protection against violations in criminal and civil matters (whilst administrative law is not covered in general). However, the EU law, especially the secondary legislation, provides more specific solutions.

CRPD is safeguarding different forms of legal (i.e. also procedural) capacity and inter alia requires appropriate adjustments and reasonable accommodation measures for persons with disabilities in order to secure full and effective access to justice on equal basis with others. EU, like most of the other parties to the convention, is facing challenges in meeting these obligations, as reflected by CRPD Committee on the Rights of Persons with Disabilities in its Concluding observations on the initial report of the European Union.[17] They are analyzed more closely under a separate sub-chapter below.

The EU Charter of Fundamental Rights includes classic civil and political rights and fundamental freedoms, as well as economic, social and cultural rights. In some instances, the Charter refers to 'principles' instead of 'rights' (for example, the principle of equality between women and men in Article 23). According to the EU Charter of Fundamental Rights, when provisions are classified as 'principles', national courts use them only to interpret and to rule on the legality of the acts of the Member State implementing the EU law.

The secondary EU law is more specific in many aspects, particularly in respect to access to justice in cross-border civil disputes and in criminal law. There are specific solutions in anti-terrorism and human trafficking regulations, asylum issues, etc. These issues are analysed below per each legal source individually. Furthermore, there are specific obligations in respect to protection provided by non-legislative bodies, which can be considered as pathways to justice (i.e. equality bodies, bodies for data protection, bodies that protect persons with disabilities).

These bodies, in many cases serve as a tool to access courts (either these bodies protect their decisions directly by protecting particular rights against the perpetrators before the courts or can access courts directly by representing victims of HR violations or by judicial action on their own motion, i.e. with means for collective redress or when addressing systemic problems, i.e. by challenging constitutionality of legislation).

15 | ECtHR, Airey v. Ireland, No. 6289/73, 9 October 1979, para. 26..
16 | CJEU, C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, 22 December 2010, para. 48.
17 | See CRPD/C/EU/CO/1, 2015, under Equal recognition before the law (art. 12) Para 36. »The Committee notes with deep concern that across the European Union, the full legal capacity of a large number of persons with disabilities is restricted. 37. The Committee recommends that the European Union take appropriate measures to ensure that all persons with disabilities who have been deprived of their legal capacity can exercise all the rights enshrined in European Union treaties and legislation, such as access to justice, goods and services, including banking, employment and health care, as well as voting and consumer rights, in line with the Convention, as developed in the Committee's general comment No. 1 (2014) on equal recognition before the law. Under Access to justice (art. 13) 3-8. »The Committee is concerned about discrimination faced by persons with disabilities in accessing justice, owing to the lack of procedural accommodation in European Union member States. 39. The Committee recommends that the European Union take appropriate action to combat discrimination faced by persons with disabilities in accessing justice by ensuring that full procedural accommodation and funding for training justice personnel on the Convention are provided in its member States.« In section D. European Union institutions' compliance with the Convention (as public administrations) it further highlights Access to justice (art. 13) in para. 80. »The Committee is concerned about the lack of access to justice for persons with disabilities in European courts. 81. The Committee recommends that the European Union guarantee full access to justice and eliminate all barriers, including physical and procedural barriers, and those relating to legal capacity, in European courts.«

3.3.1 Legal aid in civil proceedings

a) Standards of the Council of Europe (European Convention on Human Rights)

The right to legal aid in civil proceedings arises from the interpretation of Article 6 (Right to a fair trial) and Article 13 (Right to an effective remedy) of ECHR by the European Court of Human Rights. Specific provision containing the right to free legal aid is contained only in the so-called criminal limb of Article 6(3) (c), relevant only for criminal proceedings. Under ECHR law, there is no clear-cut obligation to provide legal aid for all proceedings involving civil rights and obligations.[18] Failure to provide an applicant with an assistance from a lawyer may breach Article 6 of the ECHR where such assistance is indispensable for effective access to court, either because legal representation is compulsory (as is the case for various types of litigation, especially before higher courts, typically supreme courts), or because a case's applicable procedure is particularly complex.[19] Legal systems may establish selection procedures for determining whether legal aid will be granted in civil cases, but these may not function in an arbitrary or disproportionate manner, or impinge on the essence of the right to access court. For instance, refusing legal aid on the ground that an appeal did not, at the time of application, appear to be well-founded may in some circumstances impair the very essence of an applicant's right to a tribunal.[20] The most well-known and indeed ground-breaking case from ECtHR practice was Airey v. Ireland (1979)[21] . The applicant sought judicial separation from her husband but was unable to obtain a judicial order because she could not afford to retain a lawyer without legal aid. The ECtHR confirmed that, although Article 6 (1) of the ECHR does not explicitly provide for legal aid in civil proceedings, states may be compelled to provide it when legal assistance is indispensable for securing effective access to a court. This does not apply to all cases concerning civil rights and obligations. Much depends on the particular circumstances of each case. In the present case, the relevant factors in favour of granting legal aid were: the complexity of the procedure and of the issues of law; the need to establish facts through expert evidence and the examination of witnesses; and that this was a marital dispute entailing emotional involvement.

In this judgement and other subsequent case law, ECtHR elaborated further criteria for checking whether there is a duty to accommodate financial weakness of the party with free legal aid and similar solutions. These criteria test both the financial and merit grounds. As to the financial test, the ECtHR has said that there will be no violation of Article 6 (1) if an applicant falls outside the legal aid scheme because his/her income exceeds the financial criteria, provided the essence of the right of access to a court is not impaired.[22] States are not obliged to spend public funds to ensure total equality of arms between the assisted person and the opposing party, "as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary".[23] Refusing to provide legal aid on the merits – because of insufficient prospects of success, or because of a claim's frivolous or vexatious nature (for example, the claim is brought merely to cause annoyance) – may also be legitimate.[24] To avoid arbitrariness, a legal aid system should establish a fair mechanism for selecting cases likely to benefit.[25] It is for states to establish systems that comply with the ECHR.[26] Failing to make a formal decision on a legal aid request may violate Article 6 (1).[27]

Under ECHR, whether the interests of justice require granting legal aid (merits) to an individual depends on factors such as: the importance of the case to the individual; the complexity of the case; the individual's capacity to represent him-/herself. For example, the complexity of the procedures or legal or factual issues in a case may give rise to the need for legal aid. It may also be required if the absence of legal aid infringes "the very essence" of the applicants' right to access a court.[28] The ECtHR also considers statutory

18 | [ECtHR, Del Sol v. France, No. 46800/99, 26 February 2002, para. 20.
19 | ECtHR, P., C. and S. v. The United Kingdom, No. 56547/00, 16 October 2002, paras. 88-91.
20 | ECtHR, Aerts v. Belgium, No. 25357/94, 30 July 1998.
21| See footnote 8.
22 | ECtHR, Glaser v. the United Kingdom, No. 32346/96, 19 September 2000, para. 99. See also ECtHR, Santambrogio v. Italy, No. 61945/00, 21 September 2004, para. 58 (the applicant's family paid for representation).
23 | ECtHR, Steel and Morris v. the United Kingdom, No. 68416/01, 15 February 2005, para. 62 and 64.
24 | ECtHR, Staroszczyk v. Poland, No. 59519/00, 22 March 2007, para. 129. See also ECtHR, Steel and Morris v. the United Kingdom, No. 68416/01, 15 February 2005, para. 62.
25 | ECtHR, Gnahoré v. France, No. 40031/98, 19 September 2000, para. 41.
26 | ECtHR, Siałkowska v. Poland, No. 8932/05, 22 March 2007, para. 107.
27 | ECtHR, A.B. v. Slovakia, No. 41784/98, 4 March 2003, paras. 61-63.
28 | ECtHR, Mirosław Orzechowski v. Poland, No. 13526/07, 13 January 2009, para. 22.

requirements for legal representation.[29] The specific circumstances of each case are crucial. The key test is whether an individual "would be able to present his case properly and satisfactorily without the assistance of a lawyer". [30] As an example, in cases concerning issues of particular importance to an individual (such as contact with their children), legal aid may be required, particularly if an individual is vulnerable (for example, has mental health problems).[31] Legal aid may also be obligatory in complex actions requiring ongoing representation by an experienced lawyer. The existence of great disparities in the legal assistance available to parties (such as individuals taking on multi-national corporations) may also violate Article 6 of the ECHR.[32] The case of McVicar v. the United Kingdom, 2002[33] , listed out many crucial elements. The applicant published an article suggesting a well-known athlete used performance-enhancing drugs. The athlete brought a libel action. The applicant, who was not represented, lost the case and was ordered to pay the costs of the action. He complained to the ECtHR that the unavailability of legal aid violated his right of access to a court. He was a defendant, so the question of legal aid related to the fairness of proceedings. The ECtHR decided that whether legal representation was required depended on the specific circumstances of the case, and, in particular, upon whether the individual would be able to present his case properly and satisfactorily without the assistance of a lawyer. The principles were identical to those applied in Airey v. Ireland. The libel action was brought before the High Court by a comparatively wealthy and famous individual. The applicant was required to call witnesses and scrutinize evidence in a trial that lasted over two weeks. On the other hand, he was a well-educated and experienced journalist who would have been capable of formulating cogent arguments in court. In such circumstances, the Court found no violation of Article 6 (1) of the ECHR.

It is interesting that under ECHR law, granting legal aid to legal persons (for example, companies) is neither required nor in principle impossible, but must be assessed in light of the relevant national rules and the situation of the company concerned. The ECtHR has in relatively recent judgement noted that there is a lack of "consensus or even a consolidated tendency" among states on this issue.[34] A legal aid scheme available only to non-profit-making legal persons does not violate the right of access to justice if there is an objective and reasonable justification for the restriction (for example, because profit-making companies are able to deduct the legal costs from their tax obligations).[35]

The European Agreement on the Transmission of Applications for Legal Aid[36] does not form an integral part of EU law nor does it bind certain EU member states (such as Slovenia).

b) EU legislation

EU law deals with access to justice via ECHR standards, but in relation to EU law primarily in the context of effective judicial protection in proceedings relating to all rights and freedoms arising from EU law. Article 47 of the EU Charter of Fundamental Rights provides a right to legal aid to those who lack sufficient resources so far as this is necessary to ensure effective access to justice. The Explanations to the Charter confirm that legal aid must be available "where the absence of such aid would make it impossible to ensure an effective remedy". .[37] The Explanations to Article 52 (3) of the EU Charter of Fundamental Rights also confirm that Article 47 corresponds to Article 6 of the ECHR. This explicit connection means that the cases mentioned under ECHR law are relevant in EU law.[38] It is for national courts to ascertain whether particular conditions on granting legal aid constitute unfair restrictions of the right of access to a court. Restrictions must not constitute "a disproportionate and intolerable interference" on the right itself.[39]

29 | ECtHR, Airey v. Ireland, No. 6289/73, 9 October 1979, para. 26.
30 | McVicar v. the United Kingdom, No. 46311/99, 7 May 2002, para. 48.
31 | ECtHR, Nenov v. Bulgaria, No. 33738/02, 16 July 2009, para. 52.
32 | ECtHR, Steel and Morris v. the United Kingdom, No. 68416/01, 15 February 2005, para. 69.
33 | See footnote 22.
34 | ECtHR, Granos Organicos Nacionales S.A. v. Germany, No. 19508/07, 22 March 2012, para. 47 and 53.
35 | ECtHR, VP Diffusion Sarl v. France, No. 14565/04, 26 August 2008.
36 | Council of Europe, European Agreement on the Transmission of Applications for Legal Aid, CETS No. 92, 1977. Slovenia is not a party to the agreement, but North Macedonia is bind to its provisions since 2003.
37 | Explanations relating to the EU Charter of Fundamental Rights, OJ 2007 C303/17.
38 | EU Charter of Fundamental Rights, Art. 52 (3). See also CJEU, C-619/10, Trade Agency Ltd v. Seramico Investments Ltd, 6 September 2012, para. 52.
39 | On restrictions on defence rights, see CJEU, C-418/11, Texdata Software GmbH, 26 September 2013, para. 84. See also EU Charter of Fundamental Rights, Art. 52 (1).62

- Legal aid for legal entities

The central referential CEU case is DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, case C-279/09, (2010). DEB, an energy providing company, intended to bring a claim against the German state for delaying the implementation of two directives, which it claimed led to financial losses. In addition, the company said it lacked the means to pay the court fees or the lawyer required by the applicable Code of Procedure because of these losses. Litigants were required to arrange legal representation, but legal aid for legal persons was only available in 'exceptional circumstances'. The German court referred the issue to the CJEU. The CJEU considered the ECtHR case law It noted that granting legal aid to legal persons was not in principle impossible, but it must be assessed in light of the applicable rules and the company's situation. In assessing requests for aid, national courts must consider: (i) the subject-matter of the litigation; (ii) whether the applicant had a reasonable prospect of success; (iii) the importance of what was at stake for the applicant; (iv) the complexity of the applicable law and procedure; (v) the applicant's capacity to represent himself effectively; and (vi) whether the costs of the proceedings might represent an insurmountable obstacle to accessing the courts. Regarding legal persons specifically, courts may take into account: (i) the form of the legal person in question and whether it is profit-making or non-profit-making; (ii) the financial capacity of the partners or shareholders; and (iii) the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings. Therefore, under the principle of effective judicial protection enshrined in Article 47 of the EU Charter of Fundamental Rights, it is not impossible for legal persons to receive legal aid.

- Legal aid in cross-border cases

The secondary law creates standards for legal aid in cross-border civil cases with the aim of facilitating effective free movement of persons. In 2000, the European Commission published a Green Paper on legal aid in civil matters[40] with a view to taking stock of difficulties encountered by cross-border litigants and proposing solutions. The central regulation adopted in this respect is the Legal Aid Directive - Council Directive 2002/8/EC (2003) establishing minimum common rules relating to legal aid in cross-border disputes. It establishes the principle that persons who do not have sufficient resources to defend their rights in law are entitled to appropriate legal aid. This directive covers all civil matters, including: business, employment and consumer protection. It gives people who cannot afford legal representation the right to legal aid, to EU citizens and nationals of non-EU countries living in the EU. Legal aid may include: access to pre-litigation advice, legal assistance and representation in court, exemption from court fees – or assistance with them, exemption from the cost of proceedings, exemption from certain fees in international cases (e.g. interpretation, translation, travel). In addition, the directive introduces rules on processing applications for legal aid, and specific rules govern even forms for applications. National authorities must: make sure applicants understand how applications are processed, explain why they reject an application and let applicants appeal against rejection.

EU law also contains specific provisions on legal assistance and legal aid in relation to asylum, which is decided upon by national authorities in administrative proceedings and may be usually challenged in administrative disputes so this aid is regulated separately, as described below.

3.3.2 Legal aid in criminal proceedings

a) Standards of the Council of Europe (European Convention on Human Rights)

An explicit right to legal aid in criminal proceedings is set out in Article 6 (3) (c) of the ECHR. This provides that everyone charged with a criminal offence has a right to free legal aid if they do not have "sufficient means" to pay for legal assistance (the financial or means test), where the 'interests of justice' so require

40 | Green Paper from the Commission - Legal aid in civil matters: the problems confronting the cross - border litigant /* COM/2000/0051 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52000DC0051.

(the interests of justice test). The right of access to a lawyer in criminal proceedings applies throughout the entire proceedings, from police questioning to the appeal. [41] In order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 para. 1 [of the Convention] requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated under the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defense will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.[42]

Financial means test is not defined in detail. The ECtHR has not provided a definition of 'sufficient means'. The particular circumstances of each case will be taken into account to determine whether a defendant's financial circumstances justify granting legal aid. The accused or suspected person bears the burden of proving insufficient means.[43] This, however, does not have to be proven beyond all doubt.[44] All the evidence must be considered, including evidence of the applicant's status (such as whether s/he has spent time in custody), information provided by the individual, and any evidence contradicting the applicant.[45] Determining this question is a matter for national courts, which must assess the evidence in accordance with the requirements of Article 6 (1).[46] In the case Tsonyo Tsonev v. Bulgaria (No. 2)[47] the applicant was convicted of inflicting bodily harm and breaking into someone's home. He was sentenced to 18 months' imprisonment. The applicant requested that he be appointed counsel for his appeal to the Supreme Court of Cassation, but this was refused without specific reasons. The applicant complained that this breached his fair trial rights. The ECtHR noted that it was difficult to assess whether the applicant lacked sufficient means to pay for legal assistance. It held, however, that certain indications suggested that this was the case: first, counsel had been appointed for the applicant in the previous proceedings, and second, the applicant expressly asserted that he could not afford to retain counsel. The Court held that, given the absence of clear indications to the contrary, the applicant did lack sufficient means to pay for his legal representation. It concluded that this violated Article 6 (1) and (3) of the ECHR. In another important case of Twalib v. Greece,[48] the applicant had been in prison for three years and was represented by court-appointed counsel at trial and by a humanitarian organization on appeal. These factors amounted to 'strong indications' that he lacked the financial means to pay for legal assistance. The state's failure to provide him with legal aid in proceedings concerning his appeal to the Court of Cassation violated his rights guaranteed under Article 6 of the ECHR.

Determining whether the 'interests of justice' (merits) require the provision of legal aid involves taking three factors into account, namely: the seriousness of the offence and the severity of the potential sentence; the complexity of the case; the defendant's social and personal situation.[49] All three factors should be considered, but they do not necessarily need to be added together; any one of the three can justify granting legal aid. In the case Zdravko Stanev v. Bulgaria,[50] the applicant was unemployed. He complained that he was refused legal aid in criminal proceedings for forging documents in a civil action. He was convicted of the offence and fined €250. He was also ordered to pay €8,000 in damages. ECtHR noted that although the applicant was not sentenced to prison, the damages award was significant in view of his financial situation. The applicant had a university degree, but no legal training. The proceedings were not of the highest level of complexity but involved issues regarding the rules on admissibility of evidence, the rules of procedure and the meaning of intent. Additionally, the criminal offence with which the applicant was charged involved the impingement of a senior member of the judiciary and called into question the integrity of the judicial process in Bulgaria. A qualified lawyer would undoubtedly have been in a position to plead the case with greater clarity and to counter more effectively the arguments raised by the prosecution. The Court found a violation of Article 6 (3) (c) of the ECHR.

The accused or suspected person's personal circumstances are important. The interests of justice test indicates that free legal assistance may be required for persons considered vulnerable, such as children, persons with mental health problems and refugees.[51] Where "the proceedings were clearly fraught with consequences for the applicant" and the case is complex, legal aid should be granted.[52] Even where applicants are educated persons who can understand the proceedings, the important issue is whether they can actually defend themselves

41 | ECtHR, Imbriosca v. Switzerland, judgment of 24 November 1993, para.36.
42 | ECtHR, Salduz v. Turkey [GC], No. 36391/02, 27 November 2008, para. 55..
43 | ECtHR, Croissant v. Germany, No. 13611/88, 25 September 1992, para. 37.
44 | ECtHR, Pakelli v. Germany, No. 8398/78, 25 April 1983, para. 34.
45 | Ibid.
46 | ECtHR, R. D. v. Poland, Nos. 29692/96 and 34612/97, 18 December 2001, para. 45.
47 | ECtHR, Tsonyo Tsonev v. Bulgaria (No. 2), No. 2376/03, 14 January 2010.
48 | ECtHR, Twalib v. Greece, No. 24294/94, 9 June 1998, para. 51.
49 | ECtHR, Quaranta v. Switzerland, No. 12744/87, 24 May 1991.
50 | ECtHR, Zdravko Stanev v. Bulgaria, No. 32238/04, 6 November 2012, paras 40 in 70.
51 | ECtHR, Quaranta v. Switzerland, No. 12744/87, 24 May 1991, paras. 32–36.
52 | ECtHR, Pham Hoang v. France, No. 13191/87, 25 September 1992, paras. 40–41.

without a lawyer.[53] Applicants do not have to show that the absence of legal aid caused "actual damage" to their defense; they must only show that it appears "plausible in the particular circumstances" that a lawyer would be of assistance.[54]

What is at stake is always important. Where an individual's liberty is at stake, the interests of justice in principle call for legal representation.[55] This obligation arises even if there is only a possibility of a custodial sentence.[56] During the appellate stage of criminal proceedings, the following factors are important for the interests of justice test: the nature of the proceedings; the capacity of an unrepresented appellant to present a particular legal argument; the severity of the sentence imposed by the lower courts. Where substantial issues of law arise in appeal hearings, free legal assistance has been required.[57] Once it becomes clear that an appeal raises an issue of complexity and importance, the applicant should be given legal aid in the interests of justice.[58] The ECtHR has stated, however, that the interests of justice do not require the automatic granting of legal aid whenever a convicted person, with no objective likelihood of success, wishes to appeal after receiving a fair trial at first instance in accordance with Article 6 of the ECHR.[59]

The mere provision of legal assistance does not mean that it will be effective. For example, an appointed lawyer may become ill or fail to perform his/her duties.[60] The state cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. However, a legal aid lawyer's manifest failure to mount a practical and effective defense may violate Article 6.[61] Article 6 (3) (c) of the ECHR also sets out the right to be defended by a lawyer of one's own choosing, which can be subjected to limitations if the interests of justice so require. There is no absolute right to choose one's own court-appointed legal aid lawyer. An individual who requests a change of legal aid lawyer must present evidence that the lawyer failed to perform satisfactorily.[62] Acceptable limitations on the choice of lawyer can include requiring specialist lawyers for certain proceedings.[63]

b) EU legislation

In addition to the rights protected under Article 47, Article 48 (2) of the EU Charter of Fundamental Rights guarantees presumption of innocence and respect for the rights of the defence of anyone who has been charged. The Explanations to the Charter confirm that Article 48 (2) has the same meaning as Article 6 (3) of the ECHR. Thus, the ECtHR case law outlined below is relevant for purposes of Article 48. In terms of EU secondary legislation, the European Council has agreed to strengthen by legislation the procedural rights of suspects or accused persons in criminal proceedings.[64] In order to maintain and develop an area of freedom, security and justice, the principle of reciprocity of recognition of judgments and other judgments of judicial authorities must become the basis of judicial cooperation in criminal and civil matters between the Member States of the European Union. To improve such cooperation, it is important for the Member States to gain trust in the criminal justice systems of other Member States. This is the rationale for the so-called Roadmap for procedural rights,[65] which gradually set out detailed rules of common minimum procedural rights and guarantees at the EU level.

-Directive 2010/64/EU (2010) on the right to interpretation and translation in criminal proceedings

The first measure adopted in this context was Directive 2010/64/EU (2010) on the right to interpretation

53 | ECtHR, Zdravko Stanev v. Bulgaria, No. 32238/04, 6 November 2012, para. 40.
54 | ECtHR, Artico v. Italy, No. 6694/74, 13 May 1980, paras. 34–35.
55 | ECtHR, Benham v. the United Kingdom, No. 19380/92, 10 June 1996, para. 61
56 | See, for example, ECtHR, Quaranta v. Switzerland, бр. 12744/87, 24 May 1991, para. 33.
57 | ECtHR, Pakelli v. Germany, No. 8398/78, 25 April 1983, paras. 36–38.
58 | ECtHR, Granger v. the United Kingdom, No. 11932/86, 28 March 1990, para. 47.
59 | ECtHR, Monnell and Morris v. the United Kingdom, Nos. 9562/81 and 9818/82, 2 March 1987, para. 67.
60 | Ibid.
61 | ECtHR, Artico v. Italy, No. 6694/74, 13 May 1980.
62 | ECtHR Lagerblom v. Sweden, No. 26891/95, 14 January 2003, para. 60.
63 | For example, ECtHR, Meftah and Others v. France [GC], Nos. 32911/96, 35237/97 and 34595/97, 26 July 2002, para. 47.
64 | The Stockholm Programme, OJ 2010 C 115.
65 | The Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (Text with EEA relevance) 2009/C 295/01.

and translation in criminal proceedings. Interpretation must be provided free of charge to suspected or accused persons who do not speak or understand the language of the criminal proceedings including during police questioning, essential meetings between client and lawyer and all court hearings and any necessary interim hearings. The right to translation of documents that are essential for their defence (includes: any decision depriving a person of his liberty, any charge or indictment and any judgment).

- Directive 2012/13/EU (2012) on the right to information in criminal proceedings

Directive 2012/13/EU (2012) on the right to information in criminal proceedings is designed to help prevent miscarriages of justice and reduce the number of appeals. Suspects and accused persons must be informed promptly, either verbally or in writing, of several procedural rights. These include access to a lawyer, any entitlement to free legal advice, the right to be informed about the accusation, the right to interpretation and translation, the right to remain silent. Arrested persons must receive promptly a Letter of Rights from the law enforcement authorities (i.e. the police or justice ministry), written in simple language, providing information on further rights, including: access to case documents, the right to inform one person and to contact consular authorities, the right to urgent medical assistance etc.

- Directive 2013/48/EU (2013) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

This Directive is the central regulation in regards to rights of the defendants. Citizens must have access to a lawyer without undue delay: before they are questioned by a law enforcement (e.g. the police) or judicial authority, during an investigative or other evidence-gathering act (e.g. confrontation), from the moment of deprivation of liberty and in due time before they appear before a criminal court. As regards persons subject to European arrest warrant, the directive lays down the right of access to a lawyer in the executing EU country and to appoint a lawyer in the issuing country. There are specific rights when citizens are deprived of liberty in an EU country other than their own: the right to inform their consular authorities, to be visited by them, to communicate with them and to have legal representation arranged for by them. Legal aid Directive (EU) 2016/1919 sets out common minimum rules concerning the right to legal aid for suspects, accused persons and wanted persons ensuring the effectiveness of Directive (EU) 2013/48. It requires EU countries to ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. EU countries may apply a means test (to assess if the person lacks sufficient resources to pay for legal assistance), a merits test (to assess whether providing legal aid would be in the interest of justice), or both to determine whether legal aid is to be granted. The European Commission has also issued a Recommendation on the right to legal aid for suspects or accused persons.[66] This Recommendation provides non-binding guidance on the financial and merits tests as well as on the quality and effectiveness of legal aid.

- Directive 2014/41/EU regarding the European Investigation Order in criminal matters

It aims to simplify and speed up cross-border criminal investigations in the EU. This Directive introduces the European Investigation Order, which enables judicial authorities in one EU country ('the issuing state') to request that evidence be gathered in and transferred from another EU country ('the executing state'). The issuing of an EIO may be requested by a suspected or accused person, or by their lawyer, in line with applicable defence rights in an EU country.

- Directive (EU) 2016/1919 on provisional legal aid for suspects or accused persons deprived of liberty and for legal aid in European arrest warrant proceedings

Directive (EU) 2016/1919 on provisional legal aid for suspects or accused persons deprived of liberty and for legal aid in European arrest warrant proceedings since very recently obliges EU Member States to provide without

66 | See European Commission, Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, OJ 013 C 378.68

delay provisional legal aid to persons who are deprived of liberty – and before questioning. The provisional aid applies until a decision on eligibility for legal aid can be made.

- Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

One of the latest relevant acts is Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings that became binding to member states as of 11 June 2019. It establishes age-appropriate procedural safeguards for children to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration. In addition to criminal matters the directive should apply in all the cases of deprivation of the child. The children's right to access and the right to be assisted by a lawyer (Article 6) is key element of the Directive. It is mandatory when they are brought before a court to decide on pre-trial detention and when they are in detention. A child who has not been assisted by a lawyer during the court hearings cannot be sentenced to prison. The right to information (Article 4) stipulates that once children are made aware that they are suspect, they become entitled to the right to have the holder of parental responsibility informed.[67] The right of the holder of parental responsibility goes hand by hand with the right of the child to be accompanied by him/her during court hearings (Article 15). The Directive (Article 16) underlines that children have the right to be present at their trial and to participate effectively in the trial by giving them the opportunity to be heard and to express their views. An obligation for audiovisual recording (or in another appropriate manner) of questioning is foreseen in Article 9. Alternative measures to deprivation of liberty should be given priority where possible (Article 11) and deprivation of liberty of a child at any stage of the proceedings shall be limited to the shortest appropriate period of time (Article 10). Other important safeguards included in the Directive refer to the protection of privacy that mostly reflects in the absence of public during court hearings (Article 14), medical examination if the child is deprived of liberty (Article 8), right to an individual assessment by qualified personnel (Article 7), Member States' duty to hold children who are detained separately from adults (Article 12).

The European Union is, inter alia, committed also to protecting the victims of crime.

- Framework Decision 2001/220/JHA on the situation of victims in criminal proceedings. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

The first act is the Framework Decision 2001/220/JHA on the situation of victims in criminal proceedings. **The Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims** focuses on rights of the victims to claim compensation in another member state.

- Directive 2012/29/EU on victims' rights.

The central legislation which consolidated related rights of crime victims is now the Directive 2012/29/EU known as Victims' Rights Directive. The Directive introduces a set of binding rights for victims of crime such as victims' right to receive appropriate information, support and protection so they are able to effectively participate in criminal proceedings. At the same time, it lays down clear obligations on EU Member States to ensure these rights in practice. Victims' Rights Directive places the victims in the centre of the criminal proceedings and not somewhere in the back surrounded by silence, shame and fear. Under this EU-wide minimum standards on the rights, support and protection of victims of crime in every EU country victims must have the right to: information, i.e. to understand and to be understood during contact with an authority (for example plain and simple language); receive information from the first contact with an authority; make a formal complaint and receive written acknowledgement; interpretation and translation (at least during interviews/questioning of the victim, they are entitled to file an objection if they consider that interpretation or translation is inappropriate); receive information about the case's progress; access victim support services. The victim may participate in criminal proceedings wherever the damage occurred in the EU. Every EU country must ensure that victims of crime are recognized and treated in a respectful, sensitive and professional manner according to their individual needs and without any discrimination (for example based on nationality, resident status, race, religion, age, gender, etc.). The directive lays down minimum standards for all victims of all crimes regardless of victims' nationality or residence status. As soon as a crime is committed or criminal proceedings take place in the EU, the victim must be granted the rights established by the victims' directive. Under the directive, family members of deceased victims are

67 | This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.

considered victims themselves. It establishes the following rights: to have their case heard in court; review a court's decision not to prosecute; have their expenses reimbursed; receive legal aid; recover stolen property. It seems obvious, that the right i.e. to challenge court's decision not to prosecute can be effective only if legal aid is available. Article 4 of the Directive designates the duty to provide the victim with a range of information: basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation. It also implies duty to share information about procedures for making complaints with regard to a criminal offence and among other things prescribes the obligation of Member States to inform victims under what conditions they can obtain protection, including protection measures. The victims have the right to obtain information on how and under what conditions they can access legal advice, legal aid and any other sort of advice. Furthermore, the directive foresees the victims' right to get information under what conditions they can access compensation.

- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA in articles 12 and 13 lists the following key requirements: assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. The victims of these crimes are entitled at least to standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial means. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment. They are entitled to compensation. There are also specific measures to prevent victimisation and several articles aimed at specific protection of children in these extremely vulnerable situations (Articles 13 to 16).

- Directive (EU) 2017/541 on combating terrorism

Title V under the Provisions on protection of, support to, and rights of victims of terrorism, contains a number of additional measures to those generally available under the Victim's Rights directive. These are immediate support and assistance services after the attack, which should be confidential, free of charge and easily accessible. These inter alia consist of emotional and psychological support, such as trauma support and counseling; provision of advice and information on any relevant legal, practical or financial matter, including facilitating the exercise of the right to information; assistance with claims on compensation for victims of terrorism available under the national law. Member States shall ensure that the severity and the circumstances of the crime are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid. Particular attention shall be paid in the criminal proceedings to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.

3.3.3 Legal aid in administrative proceedings

Under ECHR the right to effective remedy (Article 13) also presupposes fairness of the proceedings in question, but legal aid is not explicitly defined. Minimum procedural protection standards can be still derived from Council of Europe Resolution (77) 31 on the minimum standards of procedural protection (also covers the right to representation and assistance). It is a fundamental procedural right of the party.

In EU legislation the most significant situation where legal aid is explicitly protected and regulated in administrative proceeding relates to international protection.

- Council Directive 2005/85/EC (Asylum Procedures Directive)

This directive regulates the key rights of asylum seekers in Articles 10 and 15. EU countries must ensure that applicants: are informed of the procedure to be followed, their rights and obligations and the result of the decision made by the responsible authority. All decisions must be communicated in writing and, if an application is rejected, the reasons must be stated and information on how to challenge the negative decision must be given; receive the services of an interpreter for submitting their case to the competent authorities whenever necessary; are given an opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR). In more general terms, EU countries must authorise the UNHCR to have access to applicants for asylum, including those in detention centres, and to information on asylum applications and procedures, and enable the UNHCR to give his/her opinion to any competent authority; Under the directive, applicants have a genuine opportunity to consult a legal adviser. In the first instance, applicants may have to do so at their own expense. If the competent authority's decision is negative, the EU country in question must ensure that free legal assistance is granted upon request. It may attach certain conditions to this right (only applying it to one appeal and not to any onward proceedings, limiting the option of legal advice to advisors specifically designated by national law, restricting proceedings to those that have a chance of success or to applicants who do not have sufficient resources). The following additional guarantees apply, subject to some conditions, in the case of unaccompanied minors: a person shall represent the minor and/or help him/her with the application; if the procedure involves a personal interview, the representative shall have an opportunity to explain the purpose of the interview to the minor; a person with knowledge in the special needs of minors shall prepare the decision of the competent authority and, if applicable, conducts the personal interview.

In Directive 2013/32/EU (Recast Procedures Directive) Articles 8, 12, 20 and 21 are particularly relevant; EU countries must ensure that applicants: inter alia must be given an interpreter to help them make their case if necessary; have the right to consult a legal adviser, at their own cost; have the right to an effective appeal before a court or tribunal and have free legal assistance during their appeal. People with specific procedural needs, for instance because of their age, disability, illness or sexual orientation, or as a consequence of trauma, or for any other reason must be given appropriate support, including sufficient time, to help them with their application process. Specific requirements exist for unaccompanied children, including the obligation to appoint a qualified representative.

3.4. Other paths to justice

Access to justice mechanisms may include non-judicial bodies, such as national human rights institutions, equality bodies, data protection authorities or ombudsperson institutions. Some of them may effectively give support in their own, but also other proceedings, including by providing direct free legal representation before the courts. The independent equality bodies protecting from discrimination on the grounds of race, gender and nationality of another EU member states are required by EU law (specific Directives), whilst protection of persons with disabilities is required by CRPD. Data protection by independent supervisory authority is also required under EU law and the Charter, Article 8 (3) Treaty on the Functioning of the EU, Article 16 (2) General Data Protection Regulation, Articles 51–59, the right to complain before the supervisory authority, General Data Protection Regulation, Art. 57 (2). These administrative, non-judicial bodies may advance access to justice by providing quicker and cost-free ways of obtaining remedies or by allowing collective redress (ex officio proceedings, systemic measures, collective complaints or lawsuits, judicial review of legislation). However, they must not override an individual's right of access to a court and should generally be subject to judicial supervision. The access to court should be secured not only to the perpetrator (when they challenge decisions of those bodies which protected one's rights), but also when these bodies potentially fail to protect the victim of the HR violation.

Alternative dispute resolution (ADR) procedures, such as mediation and arbitration, provide alternatives (more time efficient, less expensive) to accessing justice via formal judicial routes. The EU has encouraged the use of ADR with legislation such as the EU Mediation Directive (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation) in civil and commercial matters and a variety of consumer protection initiatives (i.e. in financial sector, such as banks and insurance industry). If the law compels parties to go to arbitration, the arbitration tribunal must comply with Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights.

Part 4: Free Legal Aid in the Republic of Slovenia

4.1 Legal framework related to Free Legal Aid

The free legal aid in the Republic of Slovenia is regulated under the Law on Free Legal Aid (ZBPP)[68] , which is a general law in the Republic of Slovenia with subsidiary application in terms of all different types of free legal aid (including the legal aid in criminal matters) regulated under other laws.

Lex specialis, which is applied in exceptional circumstances, is the Domestic Violence Prevention Act (ZPND)[69]. ZPND in Article 24 stipulates that every person assessed by the Social Works Center as being under threat has the right to free legal aid. Under ZPND, free legal aid can be provided upon the request of the victim only in certain cases, e.g. for implementing a restraining order and the assigning of a joint household. In all other cases, the victims submits request for free legal aid under ZBPP. ZPND in Article 8 stipulates that the competent body for free legal aid acts upon the requests for free legal aid by priority.

The decision from the Constitutional Court from 2016 includes that the regulation indicated in Article 97 from the Criminal Procedure Act of RS is lex specialis in the context of the free legal aid. Article 97 from the CPA clearly indicates that the expenses of the defense shall be covered by the budget only if the defense lawyer was appointed ex officio, and only if the subsistence of the defendant or the subsistence of the people that the defendant is obliged to support would be endangered if the defendant was to pay the fee and all related expenses to the defense lawyer. Hence, this form of legal aid is related to the case when the defense lawyer was appointed under the CPA. The cases when the defense lawyer is appointed ex officio are regulated under Article 70 from the CPA and based on the fact that the accused person in cases of mandatory defense has not engage a defense lawyer himself/herself. So, the special regulation of the free legal aid under the CPA occurs only in case of mandatory representation, when the accused person does not choose the defense lawyer but the lawyer is appointed by the court. [70]

The decision indicates that the Free Legal Aid Act does not regulate the right to choose defense lawyer in criminal proceeding, but it provides legal grounds for granting legal aid in cases when the applicant does not have sufficient means to pay for a lawyer. Also, the Criminal Procedure Act does not limit the right to choose a defense lawyer in cases of mandatory defense.[71]

4.1.1 Types of Legal Aid

Article 4 in the Free Legal Aid Act includes the following types of legal aid: regular, extraordinary, exceptional and emergency free legal aid.

- Regular free legal aid – the financial condition (finance test) of the applicant is taken into consideration, as well as the legal grounds (merits test) of the application for free legal aid. In the other types of FLA different circumstances are considered. Article 24 of the Law stipulates that the following circumstance are taken into consideration when deciding on the awarding free legal aid: the matter is not clearly unreasonable and that the applicant's prospects for successful conclusion of the matter are fair; that it is reasonable to institute proceedings or participate in them and file the legal remedies in the proceedings or file responses to them; the matter is important for the applicant's personal and social and financial situation and/or the expected outcome of the matter is of vital

68 | Free Legal Aid Act (Zakon o brezplačni pravni pomoči), acronym ZBPP, „Official Journal of RS", no. 48/2001, 50/2004, 23/08, 15/14 and Dec. CC 19/15.
69 | Domestic Violence Prevention Act (Zakon o preprečevanju nasilja v družini), acronym ZPND, „ Official Journal of RS ", no. 16/08, 68/16 and 54/17 – ZSV-H.
70 | Ibid,http://www.sodnapraksa.si/?q=id:2015081111400272&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2015081111400272
71 | Administratiove Cour decision, UPRS sodba II U 360/2016, ECLI:SI:UPRS:2016:II.U.360.2016.

importance for the applicant or the applicant's family.[72]

- Extraordinary legal aid shall be granted to an applicant who receives monetary social welfare and meets the abovementioned requirements for receiving free legal aid listed in Article 24 from the law. The data that refer to the right to receive social welfare (the amount of the monetary assistance, the period when granted) is checked by a an authority competent for granting FLA, ex officio, in the Central Registry of social welfare beneficiaries by direct insight into the electronic base. The competent authority accesses the mentioned data through the single identification number of the citizen.[73]

- Emergency legal aid is granted in situations when the time interval for deciding upon the application for free legal aid and the procedure of completing and submitting a request for free legal aid could cause negative consequences upon the applicant, or cause the applicant to miss a deadline for undertaking certain legal actions and subsequently loses the right to undertake such action. It is necessary to mention that this type of free legal aid is granted solely for actions considered to be necessary to be undertaken so that the applicant would avoid unwanted consequences arising from possible failure to perform the action.[74] Based on the conclusions of the competent authority for FLA a decision on granting FLA is adopted. If it is concluded that the applicant did not meet the requirements for using free legal aid, due to his/her financial capacity, the provisions on the change of circumstance and undeserved FLA shall apply.[75]

- Exceptional legal aid shall be granted regardless of the legal provisions referring to the financial condition of the applicant and his/her family. Exceptional legal aid shall be granted when the family income does not exceed by 4 the amount of the minimum wage, and the property does not exceed the amount of 60 minimum wages in the Republic of Slovenia.[76]

The exceptional FLA is granted in the following circumstances:

• if the costs of living of the applicant's family are burdened with enormous costs for treatment of a family member, or costs of maintenance of a disabled or otherwise affected family member, costs of care and education of children or other family member with special needs, and other costs resulting from force majeure or reasons beyond the applicant's control,

• due to applicant's health problems, if the costs for his/her treatment are not covered with the mandatory healthcare insurance, and are needed due to his/her disability level or other forms of physical injury or mental disorders,

• in case of unexpected financial costs (for e.g. flood, earthquake),

• if greater part of the applicant's household budget is used for covering costs for institutional housing of a family member (e.g. old people's home),

• if the applicant wants to get payment for a court-approved right for subsistence by another person, or if there is an agreement certified by a notary public;

• if the applicant has guardian appointed for special case or has been deprived of his/her working capacity;

• in other circumstances that are beyond the control of the applicant or his/her family members have no control and endanger them financially.[77]

The free legal aid includes the applicant's right to be provided, fully or partially, with means to cover the expenses for legal aid and be exempted from paying the costs of the proceedings. This means the costs of legal counselling, legal representation before general courts, special courts, the Constitutional Court of the Republic of Slovenia and before all organs, institutions or persons in the Republic of Slovenia who are

72 | Read Article 24 ZBPP.
73 | See Article 12 ZBPP.
74 | See Article 36 ZBPP, para. 1.
75 | See Article 36 ZBPP, para. 5.
76 | See Article 22 ZBPP, para.1.
77 | See Article 22 para. 2 ZBPP.

responsible for out-of-court settlement of disputes and exemption from paying the costs of litigation. In addition, free legal aid is provided before international courts or arbitration, if the right to free legal aid is not regulated under the rules of the international court or arbitration.

Free legal aid can be granted as exemption from payment of the costs for court and out-of-court proceedings, particularly exemption from payment of:. costs for expert witnesses, witnesses, interpreters and translation, costs for external actions of the court or other bodies of the Republic of Slovenia, and other costs eligible for exemption from payment; the security deposit for the costs or expenses for the realization of the proceedings (advance payment); costs for collecting documents and authentic certificates required in the court proceedings.

The basic rule of reimbursement of litigation costs is the rule of success in litigation. In accordance with the first paragraph of Article 154 from the Litigation Procedure Act[78], the party who fails in the lawsuit reimburses to the opposing party and any intervenient party, the costs for the proceedings. Special rules are in place for reimbursement of costs that apply in cases when costs are incurred by client's fault, for judgments based on recognition of a claim, withdrawal of a claim, court settlement and, in case of associated parties (articles 155-162 of the ZPP). The grant of free legal aid therefore does not cover in principle the payment of the costs for the procedure (except in the special situations, see above), the actual expenses and the remuneration of the lawyer of the opposing party. This burden on the applicant may be still particularly heavy and even dissuasive for effective access to justice.

4.1.3 Legal matters in which free legal aid cannot be granted

Legal aid is excluded and won't be granted in a number of situations, i.e. for prosecuting criminal offences of defamation and similar offences, in cases for reduction or abolishment of alimony (when the party that provides the subsistence did not fulfil his/her liabilities), in compensation proceedings for the recovery of non-pecuniary and pecuniary damage in the event of insulting the honour and the spreading of false claims, unless the injured party is likely to prove that this has affected his financial or social situation; in administrative disputes arising from the granting of free legal.[79]

4.1.4 Beneficiaries of Free Legal Aid

The beneficiaries of free legal aid are persons who, according to their and their family's financial situation, are not able to cover the costs of litigation themselves, without jeopardizing their financial subsitence and the financial condition of their family. The financial condition of the beneficiaries shall be determined on the basis of monthly income of the individual and his/her family and the possessions of the individual and his/her family. The users of free legal aid differ depending on whether they are involved in domestic dispute or a cross-border dispute. In disputes that do not contain an international element, the beneficiaries of free legal aid are as follows:

- citizens who reside in the Republic of Slovenia;

- foreigners with a permanent or temporary residence permit and stateless persons legally residing in the Republic of Slovenia;

- other aliens on condition of reciprocity or under conditions and in cases determined by international treaties that bind the Republic of Slovenia; and

- under certain conditions, non-governmental organizations and associations.[80]

The rights of ignorant or uninformed party shall be protected by the judge presiding on the case who is obliged to provide procedural advice. The principle of support for legally-ignorant party is defined in Article 12 from the Litigation Procedure Act. The court is obliged to warn the party that has no representative and

78 | Litigation Procedure Act (Zakon o pravdnem postopku), acronym ZPP, „Official Journal of RS" no. 73/07 – официјален консолидиран текст , 45/08 – ZArbit, 111/08 – dec. CC, 57/09 – dec. CC, 12/10 – dec. CC, 50/10 – dec. CC, 107/10 – dec. CC, 75/12 – dec. CC, 40/13 – dec. CC, 92/13 – dec. CC, 10/14 – dec. CC, 48/15 – dec. CC, 6/17 – dec. CC, 10/17 and 16/19 – ZNP-1).
79 | See Article 8 ZBPP.
80 | See Article 10 ZBPP.

due to lack of knowledge does not use the procedural rights under the LLPA on the civil actions he/she can exercise.[81] This duty is much narrower than the similar duty of the acting administrative authority, which has to warn the parties also on the material rights.

4.1.5 Procedure and the competent body deciding on the requests for free legal aid

The application for free legal aid is made usually before the district courts and decided upon in administrative proceedings. Such legal aid is then carried out by lawyers registered in the registry of the Bar Association and law firms established under the law regulating the lawyers, and notaries in the areas they work in under the act governing the notary (hereinafter: lawyers). Free legal advice may also be offered by persons who, without the purpose of obtaining a profit, perform the activity of free legal aid with the consent of the minister responsible for justice. An appeal against the decision of the competent body for free legal aid is not envisaged within the Slovenian legal system. Administrative dispute can be initiated in front of the Administrative Court of the Republic of Slovenia.

4.2 Legal aid in criminal proceedings

The general rules from the Law on Free Legal Aid are applied in criminal proceedings. In addition, Criminal Procedure Act (ZKP)[82] contains special provisions regarding many specific situations, especially with regard to mandatory access to lawyer in cases of deprivation of liberty and to representation of specific vulnerable groups (children). Their position is regulated not only when they have a role of suspects and the accused, but also when they participate in criminal proceedings as victims of crimes. This act also regulates access to justice in regarding to their civil rights which can be vindicated alongside criminal proceedings.

Important novelties regarding the access to free legal aid were introduced by the recent adoption of the Act Amending the Criminal Procedure Act (ZKP –N)[83] One of the main reasons for these amendments is transposition of Victims' Rights Directive. The act provides right to interpretation and translation, free right to access to general (for all victims) and specialist services (for victims with special needs) for assistance and support to victims, the right to legal assistance and reimbursement of expenses to the injured party and the right to privacy protection (Article 65 a). The right to language assistance to victims (including translation of written documents addressed to the victim) who don't speak the official language is envisaged (Art. 147. a, para. 4). Under these amendments, family members of a person whose death was directly caused by criminal offence are now considered as victims (injured parties).[84] It is important to mention that victims who are minors are entitled to an accompanying person (trusted person) in all the phases of the criminal procedure. The same right is reserved to adult victims of violence who have the right to be accompanied by a person they trust as well.[85] ZKP-N prescribes that an underage victim in criminal procedures initiated as response to criminal offences against marriage, family and children, criminal offences against sexual integrity, acts of trafficking in human beings and criminal act engaging in slavery, must by represented by a legal representative from the very beginning of the procedure. The legal representative is appointed to take care of the victim's rights in criminal proceedings, in particular with regard to the protection of his/her integrity during the hearing and enforcement of a claim of property.[86] Hearing of a witness under the age of 15, who was the victim of above-mentioned criminal offences is always recorded.[87] The presumption that the victim is a minor prevails in all the cases when the age of the victim is not clear, but there are reasons that speak in favour of being a minor.[88] ZKP-N specifies which information must be provided to the victim upon first contact with the competent authorities in the pre-

81 | Litigation Procedure Act (Zakon o pravdnem postopku), чл. 12.
82 | Criminal Procedure Act (Zakon o kazenskem postopku), consolidated text, „Official Gazette RS" no. 47/13, 87/14, 8/16 – dec. of the CC, 64/16 – dec. CC, 65/16 – dec. CC, 66/17 – ORZKP 153,154 и 22/19), acronym ZKP.
83 | Act Amending Criminal Procedure Act, (Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku - акроним ZKP-N), „ Official Gazette RS" no. 22/19 on 5.4.2019. ZKP-N's provisions are going to come into effect in July 2019.
84 | These are under Art. 144, par. 6 of ZKP: spouse, blood relatives in straight line, extramarital partner, adoptive parent, adopted child, brothers and sisters and persons towards whom they have maintenance obligation.
85 | ZKP. Art. 65, para. 4., amended by ZKP-N.
86 | ZKP, Art. 65, par. 3., amended by ZKP-N
87 | ZKP, Art. 84 amended by ZKP-N.

trial or criminal proceedings, as well as on the information he/she needs to receive in relation to pre-trial or criminal proceedings. The competent authorities must, at the first contact with the victim, in order to determine the existence of special protection needs, assess the level of the victim's exposure to secondary and repeated victimization, bullying and retaliation (individual assessment).[89] The victim - prior to giving his/her consent for restorative justice procedures - must have all necessary information regarding the course of the procedure, its possible outcomes and consequences.

The Domestic Violence Prevention Act (ZPND) in Art. 9b covers the right of victims of domestic violence to receive adequate and timely information on supporting measures.[90] In general, provisions from the ZBPP are applied for the victims of domestic violence. Regardless of the general merits test, ZPND considers any person for whom the threat assessment was prepared by the Centre of Social Work as eligible to be granted free legal aid[91] The competent body for free legal aid shall consider applications filed under ZPND as priority.[92] According to ZPND, a child is considered to be a victim of violence even if he/she is present when violence is being perpetrated against another family member or lives in an environment where violence takes place.[93]

If the suspect who is arrested, considering his/her property situation, is not able to provide a lawyer (defense lawyer) himself/herself, a lawyer shall be appointed upon his/her request by the police at the expense of the state, if this is in the interest of justice.[94] The defense lawyer appointed ex officio shall perform his/her duty in a procedure under 204a[95] from the Law, and in a penalty procedure against the defendant, under the same conditions as the representative appointed by the court.

Only a lawyer can be appointed as a defense lawyer. Pursuant to ZKP, the persons deprived of liberty have the right to ex officio defense advocate (zagovornik po uradni dolžnosti). The ex officio advocate is appointed by an investigative judge when the prosecutor demands a person to be put in custody. An accused person has the right to mandatory defense when the crime for which he/she is prosecuted includes imprisonment of 8 years or more severe penalty.[96]

4.3 Legal aid in administrative proceedings

Generally, the administrative proceedings fall outside the scope of access to free legal aid as secured in national legislation (i.e. in ZBPP). There are two key exceptions where free legal aid can be awarded during the administrative procedure. The first is laid down in the Article 25 of the ZBPP, which provides that the first legal advice to the beneficiaries can be provided only during the administrative procedure in matters relating to health, pension, disability and social insurance, and unemployment insurance. The second regulates information (Article 5), counselling and legal aid (Articles 8-11) to seekers of international protection in both administrative proceedings (but not before first instance decision!) and in administrative disputes under the International Protection Act (which reflect minimum EU law obligations). Special certified legal counsellors with a bar exam are providing this legal aid under specific arrangements, many of them come also from NGO HR advocacy sector.

It must be noted that according to the Administrative Fees Act[97] at least possibility for waiver of the duty to pay administrative fees is relatively friendly in many respects. There is a general clause that enables request

88 | Artcle 64, para. 3, amended by ZKP-N.
89 | KP, Art. 143 č.
90 | Domestic Violence Prevention Act, acronym ZPND, „Official Gazette RS" no. 16/08, 68/16 and 54/17 – ZSV-H.
91 | ZPND, Art. 26
92 | Ibid.
93 | ZPND, Art. 4 para.2.
94 | Penalty Procedure Act, Zakon o kazenskem postopku (Uradni list RS, št. 32/12 – official text, 47/13, 87/14, 8/16 – dec. US, 64/16 – dec. US, 65/16 – dec. US, 66/17 – ORZKP153,154 and 22/19), Art. 4 para. 4.
95 |ZKP in Article 204 a, para. 1 states that right after the hearing the public prosecutor is obliged to state whether criminal procedure will be initiated and custory or other additional measure will be undertaken.
Para. 3 in the same article reads that if a decision on custody is brought against the defendant, and the public prosecutor does not submit application in writing on initiation of criminal proceedings within 48 hours after the pronouncement of the custody measure, the investigative judge will terminate the custody and release the defendant.
96 |ZKP, Art. 70 para. 4.
97 |Administrative Taxes Act (Zakon o upravnih taksah - ZUT-UPB5) „Official Gazette RS" no. 106/10 – consolidated text, 14/15 – ZUUJFO, 84/15 – ZZelP-J, 32/16 and 30/18 – ZKZaš.

for waiver (in line with financial and merits test). Several applications in specific areas are excluded from the duty to pay administrative fees, and there is a series of privileged applicants (including but not exclusively NGOs). Again, similarly as in the judicial proceedings the prospects for success in the proceedings can be very important (and potentially dissuasive) factor, as the party which did not succeed with the motion (especially when there is an opposing party) has to bear the costs of the proceedings nevertheless.

Under General Administrative Procedure Act (ZUP)[98], the authority must pay due diligence to the principle of protection of the rights of the parties and the protection of public benefits (Article 7 of the ZUP). The authority which conducts the procedure and issues the decision must, throughout the proceeding, effectively protect party's rights. Thus, the authority must draw attention of the parties to their rights and assist them in procedural acts (to assist in submitting the application, to clarify the procedure in relation to the complaint, to refer it to the competent authority, etc.). In addition, the authority has to take care during the process that the party does not exercise its rights to the detriment of the rights of others and to the detriment of public benefits. A fair balance has to be struck between the two in line with the principle of proportionality. The principle is indirectly implemented also trough procedural rules, i.e. re the handling of the application, duty to take care of the proper representation of the procedurally incompetent party (47-49. Article ZUP), and in the duty procedurally and substantially guide the procedure (138. Article ZUP) and the due process of law.

The ZUP lays down the obligation to representation only in specific individual situations (legal and temporary representative, joint representative), and in general, this is the choice of the party. Under Article 267 and 268 the Social Work Centre but also other authorities (administrative or judicial) can appoint a provisional representative for a specific case or a guardian for a specific task to an absent person whose domicile is not known and which has no representative, the owner of the property, where it is necessary for someone to be concerned about this property, as well as in other cases where it is necessary to protect the rights and benefits of an individual. In line with Family Code (DZ)[99] permanent custody over the adult people can be still imposed when procedural incapacity of people (with disabilities) is established. Guardians are nominated to either partially or fully substitute decisions of these persons. The decision to put people under guardianship is reserved for civil court, but the guardians are nominated by the Social Work Centre. Therefore, people who are deprived of procedural incapacity cannot act in administrative proceedings without a guardian. It is not known to the authors, whether in the proceedings for removal of the legal capacity provisional representatives would be lawyers or that lawyers would assist them. The breach of the rules of mandatory representation of the party constitutes an absolute substantive violation of the rules of procedure and is considered an independent reason for complaints. In special situations related to deprivation of legal capacity a person can be put under temporary custody and temporary guardian can be nominated by the court in line with Civil Procedure Act (ZNP-1, Article 265)[100] . The court establishes in this decision the scope of the obligations and rights of the temporary guardian. This is a provisional situation until decision on custody is made.

4.5 Assessment of the effectiveness of the Slovenian system for access to justice

In general, a solid system is put in place. This is a result of the strict rules under the EU law. Its operation is in principle good. In the past the strengths of the system were much undermined by excessive length of proceedings (including but not exclusively in execution of the judgments), which is well reflected in ECtHR practice, but the positive trend towards more speedy proceedings is very promising in the last years. Some of quite obvious shortcomings, especially re the persons with intellectual and psychosocial disabilities and persons with mental health issues were partly remedied on some of the most crucial points by interventions of the Slovenian Constitutional Court.

Free Legal advice was initially free of charge and available for everybody (without any financial test), prior to 2008. Since then, general principles for admission to free legal aid apply. This can be considered as regression. The system is now dissuasive and obviously much over bureaucratic to enable effective enjoyment of this right, which can effectively cover less than 10% of the population due to the census. This solution is unsound even economically. It is estimated that the decision making on entitlement consumes

98 | General Administrative Procedure Act, (Zakon o splošnem upravnem postopku) acronym ZUP, Official Gazette RS n. 24/06 – consolidated text, 105/06 – ZUS-1, 126/07, 65/08, 8/10 and DZ 82/13) -
99 | Family Code (Družinski zakonik), acronym DZ, „Official Gazette RS" no. 15/17, 21/18 – ZNOrg and 22/19.
100 | „Official Gazette RS" no. 16/19.

more than three times as much of resources as the service alone. Perhaps the system is even more costly and work consuming than would be general availability of first legal advice for all, without any checks. Risks are perceived in certain areas and specific situations. The Social Protection Act (Article 18) provides that workers in enterprises, institutions and other employers are required to provide advice and assistance in solving workplace disputes, while terminating the employment relationship and assisting in the exercise of rights from health, pension and invalidity insurance and child and family care (article 18).[101] These services are practically no longer exercised by the State since 2008.

In cases of deprivation of legal capacity there is no obligatory free legal aid assistance or even representation of a third, neutral person.

The specific legal action (i.e. defamations) which is out of scope ratione materiae could undermine protection before courts against discrimination in two meanings. Firstly, the people (victims, their advocates, witnesses, whistleblowers) could be victimised by such legal action by the perpetrators. Secondly, this action can be sometimes an effective alternative to the discrimination claims (i.e. instead of installing harassment claims which might be less predictable due to the lack of legal practice, ordinary defamation could equally serve the victim's aim for redress).

It seems that many situations still remain where a great difference in power exists when taking legal action as an individual against the perpetrator (i.e. discrimination cases, labour disputes court fees, cases against the state). The system has clearly asymmetric effects against the individuals. It has to be noted all the burdens on the state are effectively socialised (even directly from the general state budget, so there are even no technical financial/administrative difficulties/burdens on the specific authority). We have to note that the rule on the success in the proceedings generally applies and that in the same context the state uses the same estimated costs of the proceedings as the lawyers. So, when state attorney is representing the state and they win the case, they are entitled to full costs under the lawyer's fee as any private party although their services are already paid by the budget anyway. This can have dissuasive effects.

Obligatory legal representation, especially before Supreme court (i.e. even in its capacity of first instance court or/and the only effective remedy at the same time (voting disputes) as second instance court, i.e. in disputes of full jurisdiction in HR issues, issues of legal (in)capacity, children).

Very narrow scope of free legal aid in administrative proceedings is regarded problematic by the authors in many ways, including the EU law perspective. Despite the due ex officio assistance of magistrates and judges to the legally ignorant party (see below), the proper use of legal remedies is never only formal but requires substantial use of remedies (i.e. invoking all relevant legal and factual aspects timely before first instance, and during the appellate proceedings). The legal aid awarded only subsequently in judicial proceeding once the administrative proceedings became final can usually remedy (if at all) only the most important flaws in the use of material law or key procedural rules by administrative authorities. If the flaws were not addressed properly already on the level of administrative proceedings, it is often impossible to invoke them successfully before the court (non-exhaustion of legal remedies). One can think of several situations where legal assistance of a qualified lawyer is quite essential not only for equality of arms but also for any reasonable prospects of success, even in spheres related to EU law. Particularly difficult legal situations and complex procedural and factual situations can emerge in the antitrust proceedings, with complaints related to public procurement and tenders, in administrative offence proceedings before the various administrative bodies, in labour and employment related complaints before public administration employers (internal administrative proceedings are the necessary condition for access to courts both procedurally but also in terms of substantial use of legal remedies), in tax procedures, etc. In our opinion, the absence of a mechanism, that could reflect what is at stake by individual assessment even in these situations cannot be considered as appropriate under the EU law on access to justice. The absence of specific secondary legislation (directives) in this respect is not crucial, as the obligations to provide for effective judicial protection of rights is stemming from EU primary law.

In many cases (i.e. especially for legal action in asylum proceedings which can be very lengthy) it is difficult for applicants to provide evidence on their financial situation continually during the duration

101 | Social Protection Act (Zakon o socialnem varstvu), „Official Gazette RS", no. 3/07 – official text, 23/07 – popr., 41/07 – popr., 61/10 – ZS-VarPre, 62/10 – ZUPJS, 57/12, 39/16, 52/16 – ZPPreb-1, 15/17 – DZ, 29/17, 54/17, 21/18 – ZNOrg, 31/18 – ZOA-A and 28/19)

of the proceedings. Since not all costs of proceedings can be exempted, the risk of failure undermines the prospects for HR strategic litigation (where the final outcome is not really decisive and the aim is to interpret the law clearly) as no specific funds are available nor eligible for such action. Identification of vulnerable groups or victims of crimes seem to be the quite a critical point in practice.

Occasionally worries are expressed that the best lawyers are not interested in free legal aid services, as the remuneration is reduced by half. As a result of the perception that this is the domain of those that can patch up enough clients only with this institute, this also has psychological consequences for the lawyers. There are numerous generalizations that they tend to be less enthusiastic, diligent etc.

Besides the legally determined frame for provision of free legal aid, there are other possibilities to offer legal aid to socially vulnerable persons, such as pro bono services by lawyers and legal counseling by NGOs.

There are many good practices worth mentioning. Some were/are sponsored directly by public funds, and some by private initiatives.

- Some municipalities (i.e. Kamnik, Medvode) offer legal advice services to their people as a public service.

- A number of NGO free legal aid initiatives are known from present and the past (Legal-Informational Centre for NGOs (PIC), Zavod PIP Maribor) and most of them were sponsored by public funds (i.e. PIC is running legal consulting and legal aid for migrants). There are some other pro bono initiatives run by NGOs for general public or specific projects run for longer periods where NGOs hire lawyer to secure access to justice for specific vulnerable groups (i.e. to Roma by Amnesty international , to families and children in social distress by Association of Friends of Youth Ljubljana Moste Polje – the service can be provided even by phone consulting etc). Traditionally trade unions and consumer organisations provide such services for free, but only to their members.

- In terms of reach, national day of free legal aid (held on annual basis on 19 December, 8 times up until now) stands out)[102] . It is a reach out event of the national bar association. Lawyers are offering pro bono legal advice simultaneously in many law offices in many public premises like municipalities and some original solutions such as counselling in two city buses parked in prominent city spots in Ljubljana are known. According to the head of the Slovenian Bar such first legal advice is available free of charge by most of its members throughout of the year.

102 | https://liza.aktivni.si/aktualno/19-december-dan-brezplacne-pravne-pomoci-za-vsakogar/

Part 5. Instruments for facilitating the access to justice in the national legislation

5.1 Criminal proceedings

5.1.1 Legal framework

a) Mandatory defense

The Law on Criminal Procedure (LCP) determines so-called mandatory defense (Article 74 from LCP) by a defense lawyer in situations where the defendant cannot successfully defend himself/herself due to the gravity of the charge, the importance of certain action or any other obvious obstacle. In such cases, the defendant (or his/her family) can engage a defense lawyer himself/herself, and if the defendant does not engage a defense lawyer, regardless of the reasons, the court shall appoint one ex-officio. LCP defines five cases in which a defense lawyer has to be engaged, if not engaged by the defendant, a defense lawyer shall be appointed ex-officio:

(1) If the defendant[103] is dumb, deaf or incapable of defending himself/herself successfully, or if a criminal procedure is initiated against him/her for a crime which according to the law entails a sentence of life imprisonment, then the person shall have a defense counsel as of his/her first hearing.

(2) The defendant shall have a counsel during the detention period, if detention has been imposed against him/her.

(3) When an indictment has been raised for a crime for which a prison sentence of ten years or more severe sentence is prescribed by the law, the defendant shall have a counsel at the time of delivery of the indictment.

(4) The defendant shall have a counsel during the procedure of negotiation and plea bargaining with the prosecutor.

(5) The defendant who is tried in absentia shall have a defense counsel assigned immediately after the adoption of the decision on trial in absence.

The state shall be obliged to pay these defense counsels in advance; however, these expenses, by rule, should be borne by the defendant at the end of the procedure, unless he/she convinces the court that the payment of these expenses would endanger his/her subsistence or the subsistence of his/her family. Under the LCP, the expenses for the procedure and the "necessary costs" of the appointed defense counsel should be paid in advance by the body leading the criminal procedure, and later charged to the persons that under the law are obliged to cover these expenses (Article 102 paragraph 4 from LCP).

b) Defense for indigent persons

When the requirements for mandatory defense are not met, upon the request of the defendant, the court can appoint a defense counsel at the expenses of the state if the defendant cannot bear the expenses of the defense based on his/her personal financial situation, when required for the purpose of the "interests of justice" (Article 75 from LCP). The requirements that have to be met for a defense counsel to be appointed at the expenses of the state are as follows:

• In the interest of justice – This general requirement arises from ECtHR practice and includes two criteria. The first criterion, which is the initial point of the court, is the severity of the crime, i.e. the projected sentence, so in this context, the maximum possible sentence and the realistically expected sanction in the respective case should be considered. The second criterion would be the complexity of the case in question. The complexity of the actual and legal matters is considered here, however, the legal matters

103 | In accordance with Article 21, the word defendant in this law is used as general term for suspect, accused and convicted.

often occur as reasons for inability of the defendant to successfully defend himself/herself without a defense lawyer.

•The financial situation of the defendant - the criteria for the financial situation (if the defendant cannot bear the expenses of the defense due to his/her financial situation) of persons that qualify for free legal aid in criminal cases are not clearly defined and left to be interpreted in each case individually.

The judge in pretrial procedure decides upon the request for defense counsel at the expense of the state, and the defense counsel is appointed by the court president. In the request, the defendant can indicate a preferred lawyer from the list of defense counsel of the legal community. The defense expenses shall be covered by the Budget of the Republic of Macedonia.

c) Free Legal Aid Act for Crime Victims

The Law on Criminal Procedure, although it recognizes the right of victims to participate in the criminal procedure as an injured party by joining the criminal prosecution or for the purpose of realizing legal claim for damages (Article 53 paragraph 1 item 1 from the LCP) and the right to a proxy (Article 57 from the LCP), it does not include a possibility for victims that cannot afford to hire a lawyer, a representative to be assigned whose expenses would be covered by the state. The LCP leaves room for the victims of crimes against gender freedom and gender morality, humanity and international law "before the interrogation, to speak to a counsel or a legal representative free of charge, if she/he participates in the procedure as injured party" (Article 55 paragraph 1 item 1), however, from the available information in practice, there is no data whether this opportunity has ever been used. This gap is currently covered with the Law on Free Legal Aid, dated 2019, under which the victims of criminal actions can obtain a legal representative in accordance with the law (Article 49 from the LFLA).

5.1.2 Statistical data and application in practice

For the purpose of this study, a total of twenty seven (27) requests for access to public information were sent to all 27 basic courts on the territory of the country[104]. Statistical data was requested from the basic courts on the following:

- Number of defendants that in 2018, 2017 and 2016 received a defense lawyer ex officio based on Article 74 paragraph 6 from the LCP, in total per annum, and if available, data segregated by: gender, ethnical origin and crime.

- Number of defendants that in 2018, 2017 and 2016 received a defense lawyer based on defense for indigent persons based on Article 75 from the LCP, in total per annum, and if available, data segregated by: gender, ethnical origin and crime.

Using the same data collection method, paralelly, request for access to public information was submitted to the Judicial Council of the Republic of North Macedonia, for data on the total number of initiated criminal cases in 2018, 2017 and 2016, in total, and segregated by basic courts.

The received replies showed ununified statistical method, due to the limiting options of the ACMIS system, which was the reason for the courts to reply that they did not have such information available, and two courts did not reply at all.

The processed data presented below show that ex-officio defense is the only instrument for facilitating the access to justice in criminal proceedings that is regularly applied in practice.

104 | Samples of submitted applications can be found in Anexes 1 and 2 of the study.

Table no. 1: Number of appointed defense lawyers ex officio and defense for indigent people

	2016	2017	2018
Defense lawyers appointed ex officio	1180	1045	1095
Defense lawyers for indigent persons	3	6	2
Criminal cases in total[105]	15853	15040	15129
% of the cases in which defense lawyer was appointed	7.46%	6.99%	7.25%
Number of criminal cases in which defense lawyer was appointed, per 100.000 citizens	57.09	50.65	52.84

Source: Responses from basic courts to the requests for free access to public information.

The number of appointed defense lawyers for indigent persons is insignificant. It is obvious that the cases in which defense lawyers were appointed for indigent persons are only a few. This quite a low number shows that in practice the right of the defendants in criminal proceedings is completely illusory. Defense lawyers were appointed in only four basic courts on this basis, namely, Basic Court Veles (3 defense lawyers), Basic Court Krushevo (2 defense lawyers), Basic Court Kumanovo (1) and the Basic Criminal Court in Skopje (5).

If compared, the number of cases for which defense lawyer was appointed ex officio (or defense for indigent persons) and the total number of criminal cases processed throughout the year, the per cent is around 7. If one takes into consideration the poverty rate in the country, which is 22.22%[106], the above per cent shows a gap in the access to justice for persons living in poverty and persons that cannot cover the costs for the criminal procedures.

The number of cases in which free legal aid is granted in criminal procedures is particularly low when compared to European countries. According to CEPEJ data, in 2016 in RNM, free legal aid was provided in 64 cases[107] per 100.000 citizens, which is far from the European average of 474 cases per 100.000 citizens, or, medial value of 284 cases per 100.000 citizens.

Table no. 2: Number of appointed defense lawyers ex officio by basic court

Basic court	2016	2017	2018	Basic court	2016	2017	2018
BC Berovo	4	5	4	BC Kumanovo	93	53	101
BC Bitola	56	34	34	BC Negotino	1	3	15
BC Veles	33	62	58	BC Ohrid	20	20	35
BC Vinica	0	0	1	BC Prilep	56	69	69
BC Gevgelija	27	25	12	BC Radovish	6	8	0
BC Gostivar	n/a	n/a	n/a	BC Resen	3	4	6
BC Debar	9	2	4	BC Sveti Nikole	1	1	3
BC Delchevo	2	2	3	BC Struga	0	0	0
BC Kavadarci	7	25	28	BC Strumica	42	49	62
BC Kichevo	24	20	15	Basic Civil Court Skopje	/	/	/
BC Kochani	14	11	7	Basic Criminal Court Skopje	675	551	556
BC Kratovo	2	0	1	BC Tetovo	n/a	n/a	n/a
BC Kriva Palanka	9	5	2	BC Shtip	96	95	76
BC Krushevo	0	1	3	BC Kumanovo	93	53	101

Source: Responses from basic courts to the requests for free access to public information.

105 | Source: Judicial Council or RNM.
106 | Source: State Statistical Office, http://www.stat.gov.mk/PrikaziSoopstenie.aspx?id=115&rbr=2509, http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbrtxt=115
107 | The data is taken from the CEPEJ database and differ from the collected data since not all courts responded to the requests for information.

5.1.3 Identified problems and recommendations

a) Mandatory defense

PROBLEM 1: The obligation for mandatory defense in cases when the defendant is "not capable of defending him/herself successfully" (Article 74 paragraph 1 from the LCP) creates problem in practical interpretation. The academia and the judiciary do not have a precise answer to the question when the defendant is incapable to defend himself/herself successfully. In addition, the new system for criminal proceedings increased the complexity of the presentation of evidence, through the so-called cross examination, and this provision needs become of relevance.

> **RECOMMENDATION:** Detailed regulation of the threshold of the "capacity" of defendant to defend himself/herself by introducing clear criteria that need to be assessed by the court when determining whether a person is capable of defending himself/herself successfully.

PROBLEM 2: Absence of clear criteria based on which the court, when deciding upon the costs in the procedure, can assess whether "the payment of the costs would endanger the subsistence of the person or the subsistence of his/her family" (Article 107, p.1 from LCP). The absence of criteria can create unequal actions in different courts.

> **RECOMMENDATION:** Clear and measurable criteria need to be defined that would enable equal approach in the decision-making processes whether the payment of the expenses would put in danger the subsistence (e.g. introducing measurable category such as certain number of average salaries under which the subsistence of the party and his/her family would be endangered if burdened with expenses). The criteria should refer to the income and the possessions of the person and his/her household. However, when setting a threshold, an option should be included that in the interest of justice and fairness, the court can go beyond the respective threshold.

PROBLEM 3: The differences in court actions in relation to the methodology and order of appointing defense lawyers ex officio indicate absence of unified system of appointing defense lawyers.

> **RECOMMENDATION:** A clear methodology to be prepared, software solution if possible, managed by the Bar Association, that would enable ex officio appointment of lawyers alphabetically or by another order.

PROBLEM 4: The quality of the defense by the ex officio appointed lawyers is brought into question in certain cases, by the parties and by other lawyers. The reason for this is the absence of obligation for the appointed lawyer to justify his/her engagement in front of an institution, or to justify the actions made or the absence of actions in a concrete case appointed to him/her.

> **RECOMMENDATION:** Indicators need to be formulated and a procedure to be established based on which the quality of the defense would be measured in future[108]. This should be preceded by a selection of certain number of closed cases where the defense lawyer was appointed ex officio and analysis of these cases especially in the manner and procedure of appointment of the defense lawyer, the actions undertaken by the defense lawyer, and the results of such actions.

PROBLEM 5: Absence of exact and precise data within courts on the appointment of defense lawyers ex officio, which directly affects the inability to unify the system, have good planning and good administration of justice.

> **RECOMMENDATION:** The ACMIS system needs to be upgraded so that such information can be included, and to have an option to use this information in a rapid and simple manner to do analysis on the financial implications[109].

108 | The recommendation originated from the discussion during the Roundtable on access to justice in criminal procedures held on 28 October 2019 in Skopje.
109 | The recommendation originated from the discussion during the organized Roundtable on access to justice in criminal procedures held on 28 October 2019, in Skopje.

b) Defense for indigent persons

PROBLEM 6: The institute "defense for indigent people" is almost not used in practice. This is paradoxical since the poverty rate in the country is around 22%, and a successful defense in criminal proceedings seeks significant knowledge of laws. The absence of application of this provision in practice leaves a number of defendants who are not in position to hire a lawyer, to perform self-defense, without any help and in most of the cases this can be considered as violation of the right to fair trial.

> **RECOMMENDATION:** When the defendants are interrogated, in any phase of the proceeding, they should be advised in clear and unambiguous manner that they have the right to ask for a lawyer if not being financially able to engage one themselves. In this direction, there is a need for informing the citizens of this possibility regadless of the fact whether they appear as defendants in criminal proceedings. It would be recommendable for this awareness raising to be made jointly by all actors in the society (judicial system, institutions, associations, etc).

PROBLEM 7: Taking into consideration that the pretrial procedure (investigation) is conducted by a public prosecutor, the question is whether the judge in the pretrial procedure or the president of the council should decide upon the request for defense for indigent persons, since in most of the cases, these people cannot come to contact with the judge during the investigation, nor there is an obligation on the part of the public prosecutor to advise them that a lawyer can be appointed if requested and if they meet the requirements.

> **RECOMMENDATION:** An obligation should be established for mandatory advice for the right to a lawyer based on defense for indigent persons, in all phases of the proceedings, in a manner that is clear and comprehensible to these persons. There should be an opportunity for a lawyer to be appointed based on defense for indigent persons by the PP in accordance with a methodology for appointments, which would provide quality and objective diligence.

PROBLEM 8: Unclear criteria concerning the financial condition provided under the law. According to the LCP, the defendant can exercise this right, inter alia, if "he/she cannot bear the defense expenses due to his/her financial situation". As such, this criterion leaves room for subjective interpretation in practice.

> **RECOMMENDATION:** The same as in recommendation concerning problem 2.

c) injured/crime victims:

PROBLEM 9: Absence of a system to inform and advise crime victims on their right to legal representative, right to psychological and social support and protection, in a clear and comprehensible manner.

> **RECOMMENDATION:** The crime victims need to be advised in the very beginning of the proceeding that they have the right to legal representative who will represent their rights and interests in criminal proceedings. The advice should include guidance, if financially unable to engage a lawyer, to ask for free legal aid by submitting an application to the competent regional department of the Ministry of Justice.

PROBLEM 10: Preparing lawyers to work with children victims, witnesses, or even perpetrators of a crime and the absence of uniformed system for training lawyers can seriously damage a concrete case.

> **RECOMMENDATION:** Lawyers need to be prepared and trained to work with crime victims, particularly children as vulnerable category. A training system needs to be established for lawyers, legal associates, social workers, police officers, and everyone that comes into contact with these vulnerable categories. It should be clear in this training system who will conduct the training, the duration of the training, the time interval for advanced training; in addition, training programs and topics should be developed

and constantly amended in accordance with the changes in these categories.

RECOMMENDATION: The opportunity of the creation of an action plan for open government partnership as of 2020 should be used, where trainings for dealing with vulnerable categories (crime victims, children) could be included and jointly realized with the ministries, lawyers and associations with joint commitment, i.e. establish them as an obligation which would be a kind of guarantee for the realization.

PROBLEM 11: LCP does not project free legal aid for victims of crimes.

RECOMMENDATION: The LCP should include an opportunity for appointing a legal represetative to crime victims in a criminal procedure with the transposition of the so-called EU Victims Protection Directive.

5.2 Civil proceedings

5.2.1 Legal framework

a) Exemption from payment of expenses and appointment of legal representative under LLP

In the area of civil law there is a so-called indigent right that enables parties to seek for protection of their rights by initiating a court proceeding, even when they have no financial means for such action. This institute is regulated under the Law on Litigation Procedure, Articles 163-169 entitled: Exemption from payment of proceeding expenses.

The court shall exempt from payment of costs in the proceedings, the party that according to his/her general financial condition is not able to cover these expenses without harming its subsitence and the subsistence of his/her family (Article 163 paragraph 1 from LL).

The exemption from payment of the proceeding expenses shall include exemption from payment of taxes and advance payment of costs for witnesses, exper witnesses, inspections and court announcements (Article 163 paragraph 2 from LLP).

The court can partially exempt a party from payment of litigation costs (Article 163 paragraph 3 from LLP), or payment of court taxes, if it considers that by exempting the party from paying the court taxes would meet the purpose of this institute.

The decision on exemption from payment of expenses shall be adopted by the court of first instance, on a proposal of a party, based on evidence proving his/her financial situation (Article 165 from LL). The court decides upon this and an appeal is not allowed against this decision. When a party is completely exempted from payment of costs for the proceedings, the court, upon the party's request, can decide the party to be represented by a legal representative, if necessary for the protection of the party's rights. In such case, the party shall be exempted from payment of the costs and the fee of the legal representative as well.

Pursuant to Article 166 from the LLP, the costs for the proceedings shall be settled with advance payment to the court, for the witnesses, expert witnesses, translators, interpreters, for inspections and issue of court notice, as well as the expenses for the appointed legal representative.

Article 167 from the LLP includes flexibility of the court towards the party when there is an exemption from costs and change of the financial situation of the party. The mentioned article underlines that during proceedings a basic court can abolish the decision on exemption from payment of costs and appointment of legal representative if the court finds that the party is able to bear the costs of the proceedings. In addition, the court shall decide whether the party will partially or completely reimburse the costs and taxes from which it had been priorly exempted, as well as the costs and fee for the appointed legal representative.

In accordance with Article 168 from the LLP, the taxes and costs paid from the court budget, as well as the actual expenses and the fee of the appointed representative, are part of the litigation costs. In terms of

the compensation of these expenses by the party opposing the party which is exempted from payment of the costs for the proceedings, the court shall decide based on the provisions on payment of costs. The taxes and costs paid from the court budget shall be collected ex officio by the basic court from the party obliged to compensate such costs. If the opposing party to a party that is exempted from payment of the costs for the proceedings is obliged to compensate the litigation costs, and if established that the party is not able to cover those costs, the court can additionally decide for the costs to be completely or partially covered by the party exempted from payment of the costs for the proceedings from what has been ruled thereto. This does not invade the right of this party to ask for compensation from the opposing party for the payments made.

b) Free Legal Aid under the Law on Free Legal Aid

While implementing 2009 Law on Free Legal Aid, a range of issues occurred that gravely limit the access to justice of citizens and other people included within, which brough into question the purpose of its adoption. The shortcomings are reflected in the inconsistency of the legal text, the weak institutional set-up, as well as its dysfunctionality and inconsistency with the legal needs of the population, among other things. The new Law on Free Legad Aid adopted in May 2019 includes novelties that are expected to have positive impact on the promotion of the right of natural persons related to access to justice and fair court protection, which is actually defined as its primary objective.

The scope of primary legal aid was broadened, by including all natural persons with residence or place of habitation on the territory of the country. The mandate of the associations authorized to provide primary legal aid was enlarged with the possibility to provide aid in completing the forms and templates of a governing body for a particular type of administrative action, as well as to draft motions to the Commission on protection against discrimination and the Ombudsman, as well as applications for protection of freedoms and rights to the Constitutional Court. The number of primary legal aid providers increased with the inclusion of legal clinics in the state system and completely new way of financing associations and legal clinics was introduced.

In terms of the second type, the secondary legal aid, the law clearly defines it as expert legal aid by a lawyer and financial aid that will be provided by the state for compensating the forensics expenses, realized through the Bureau for court forensics, court taxes and procedural costs by exempting the beneficiary, and exemption from administrative taxes for proceedings in front of the court, state bodies, PDIFM, HIF and people performing public mandates. The novelty in the law is the mitigation of the requirements that need to be fulfilled by the applicants in terms of their the material, financial and property condition of the applicants and their family members with whom the applicants live in joint household, but connected to their national civil status as citizen with permanent residence or foreign citizen with temporary or permanent residence permit, people with right to legal aid pursuant to ratified international agreements and asylum seekers.

c) Exemption from payment of costs for procedure in front of notary public or enforcement agent

Under the Law on Notary Public (LN) "the notary service includes drafting and issue of public documents for the legal matters in a form of notarial act, statements and certificates for facts based on which rights and obligations are determined, adoption of decisions in a procedure for issuing notarial payment orders, solemnization of private documents, issuing certificates, certifying signatures and handwritten signatures, copies, translations, acceptance of guarding documents, money and items of value for the purpose of passing them other people or bodies, as well as performance of entrusted matters determined under the law" (Article 3 paragraph 2 from the LNP).

In terms of the expenses, the law determines that the party entitled to be exempted from the expenses in the procedure under the LLP, can ask from the Chamber of Notaries Public to be exempted from payment of tax, fee and costs for the actions taken by the notary public, and the Chamber shall compensate such expenses to the notary public that acted in the procedure.[110] The Law does not include explicit provisions on exemption from payment of lawyers' expenses when the legal requirements for such thing are fulfilled.

When it comes to exemption from expenses of a party in a procedure before an enforcement agent, it has to be

110 | Article 37 from the Law on Notary Public

underlined that the existing Law on Enforcement (LE) does not include such possibility in any legal provision. However, it should be taken into consideration the the LLP has subsidiary application and has to be applied in an enforcement process (Article 10 from the Law on Litigation Procedure).

5.2.2. Statistical data and application in practice

The same approach, as described in 5.1.2 hereof, was applied for data collection. The basic courts on the territory of the RNM were asked to submit:

- Number of parties exempted from payment of expenses in a procedure based on Article 163 from the LLP in 2018, 2017 and 2016, number of parties in 2018, 2017 and 2016 that were appointed a legal representative (lawyer) upon their request based on Article 165 paragraph 3 from the LLP (poverty right)[111]

The Judicial Council of RNM was requested to submit information on the total number of initiated litigation and nonlitigation cases in 2018, 2017 and 2016 in total and segregated by basic courts.

The data[112] collected from the basic courts show that the exemption from payment of expenses and appointment of legal representative under the LLP is rarely used in practice.

Table no. 3: Number of people exempted from payment of proceeding expenses

	2016	2017	2018
Number of people exempted from payment of expenses	28	17	9
Number of appointed legal representatives	2	9	2
Number of litigation cases	60287	71875	66195

Source: Responses from basic courts to the requests for free access to public information.

In 2018, only nine persons were exempted from payment of procedure costs[113] based on Article 163 from the LLP, and legal representatives were appointed only to two persons based on Article 165 paragraph 3 from the LLP, upon the latter's request. Compared to the total number of litigation procedures (excluding commercial disputes and liquidation procedures) it can be concluded that the use of this institute in practice is insignificant in percentage.

The decision on exempting a person from court taxes and procedure costs is based on the assessment of the impact such costs would have on the subsitence of the person and his/her family. A starting point, criteria for assessing the general financial condition of the party, in correlation to the jeopardizing that person's subsitence and his/her family's subsitence, should be the incomes the person has, as well as the incomes of the person's family. In practice, evidence is requested on the movable and immovable property of the party in the procedure and his/her family (certificates from the Cadastre, Public Revenues Office on realized incomes, certificates from the social works center on use of social welfare, certificates on expenses for continous medical treatment of the person or a close relative, etc). The provision does not contain criterion with values (e.g. number of salaries) so that it could be determined that the general financial condition of the party would be endangered.

The content of paragraph 2 Article 163 shows that there is no complete exemption of the party in the procedure from the costs for witnesses, expert witnesses, inspections and court expenses, besides for the court taxes. This provision contains the wording "down payment" which means that there is an exemption from advance payment of the listed expenses, but there is no complete exemption. Finally, depending on the outcome of the dispute, the party that loses the dispute shall be obliged to compensate these expenses to the opposing party.

111 | Samples of submitted applications can be found in Annexes 1 and 2 of the study.
112 | The data is collected with the use of the right to free access to public information. Some of the courts stated that they could not provide such data since the ACMIS system cannot generate database.
113 | Information obtained from 27 basic courts on the territory of RNM.

In relation to paragraph 3 Article 163 from the LLP, it should be emphasized that in most of the cases the exemption from court taxes plays significant role in the party's decision whether he/she will initiate a court proceeding or not. The highest tax paid under the Law on Court Taxes, which refers (only) to initiation of a court dispute is at the amount of MKD 48,000. When taken into consideration that the same tax at the same amount is paid once again as tax on ruling, and the same tax is paid double for submission of regular or extraordinary legal remedy, MKD 96,000, it can be said that this amount can significantly affect the subsitence of a party with scarce incomes.

The rare use of this institute in practice, if taken into consideration the general poverty rate in the country, which is around 22%, should be a concern and indicates a serious flaw in the establishment of a system of civil justice. Unfortunately, data on the number of people that requested to exercise this right is absent and cannot be compared to the number of people exempted from payment of the costs. It is obvious that there is a problem with the citizens' awareness on their rights, and it should not be neglected that the courts have failed to inform parties on their right to ask for exemption from payment of costs.

Table no. 4: Number of submitted and approved applications for free legal aid

	2014	2015	2016	2017	2018
Submitted applications for FLA	270	199	130	134	156
Approved applications for FLA	114	113	65	74	80

Source: Reports on the application of the LFLA, Ministry of Justice, available at http://www.pravda.gov.mk/resursi/10

A decrease in the number of submitted and approved applications for free legal aid can be observed. In addition, there is a huge discrepancy between the number of submitted and number of approved applications, which, among other things, is a consequence of rather restrictive criteria determined under the LFLA from 2010. According to CEPEJ, in 2016, the number of cases related to noncriminal legal aid (FLA) is 5 per 100.000 citizens, which is far from the European average of 270 and the medial value of 117 cases per 100.000 citizens.

The application of the new LFLA started as of October 2019, and at this moment, it is impossible to assess or project its application in practice. It is a fact that the new LFLA significantly improves the quality of the legal frame, still, some challenges can be identified that can render difficult the access to justice in civil matters. The challenges are as follows:

- The Law asks for expert witnessing for the court procedure for which secondary legal aid is approved by the Bureau for court forensics, as a body within the Ministry of Justice. In parallel, the Starategy for Judicial Reform 2017-2022, includes abolishment of this body. In addition, the manner, the procedure and the deadlines for provision of expert finding and opinion by the body or the forensics expert that will conduct the forensics are not regulated.

- The new LFLA includes legal aid in case of representation and composition of written statement before public mandate officials, only for inheritance procedures involving discussion on inheritance before notary public, and when the inheritance includes property where the applicant or his family members live, property less than 300m2 in the city of Skopje or 500m2 in other municipalities, or 5000m2 in rural areas. There is an opportunity for composition of applications by lawyers for debtor in procedure for sale of property where the applicant or his family members practically live. Hence, several dilemmas occur: 1. Will the secondary legal aid beneficiary be automatically exempted from the payment of expenses in these procedures as well? 2. The Law on Notary Public includes mandatory representation by a lawyer in procedures exceeding certain value, so if a poor person needs lawyer's service for any other notary service, that person cannot complete the procedure since he/she cannot pay the lawyer; 3. Limited possibility for people with low incomes to use the opportunity for objections against irregularities in enforcement which is a court procedure before a president of a competent court.

- The mediation is not included under the new law, although under the Law on Mediation, it is applicable particularly in property, family, work-related disputes, disputes in the area of education, environment protection, disputes related to discrimination, as well as in other disputed relations where the mediation is compatible to the nature of the disputed relations and can help in its settlement.

• The Law does not provide for the poor citizens to have access to legal aid in procedures for compensation of intangible damage, except in cases of victims to crimes or death or severe disability. Moreover, the legal issues in the area of public and communal services where the poor population is facing most challenges are excluded from the opportunity for secondary legal aid in disputes resolution.

• The Law on Litigation Procedure, on the other hand, regulates the duty of the party losing the dispute to cover the costs, and regulates the rules that must be respected by the court in the decision-making process. Hence the discrepancy between these provisions and the provisions from LFLA since the costs of the litigation procedure are compensated solely to the party winning the case, and not to a third party or to the Budget of RNM. In addition, under the provisions on payment of lawyers contained in the new LFLA, there is no indication that the lawyer should underline that he/she was appointed as a lawer pursuant to this law in the application for compensation of expenses.

The communication with people involved in procedure before notary public and enforcement agent showed that they had no information or advice on the opportunity to seek exemption from payment of the procedure costs. Therefore, the use of this mechanism in practice is not excluded, however due to its rare use and lack of data, detailed analysis is difficult to be performed.

5.2.3 Key problems and recommendations

a) Exemption from payment of costs for procedure in accordance with the LLP

PROBLEM 1: The wording in paragraph 1 of Article 163 of "general material condition" of the party seeking exemption from payment of costs is not concise. In addition, a practical problem is the method of proving that a citizen, who does not have a lot of possessions, cannot bear the costs of the procedure because material evidence is needed the acquisition of which is expensive.

RECOMMENDATION: Clear and measurable criteria need to be defined that would enable equal approach in the decision-making processes whether certain person will be exempted from payment of proceedings costs (e.g. introducing measurable category such as certain number of average salaries under which the subsistence of the party and his/her family would be endangered if burdened with the litigation expenses).

RECOMMENDATION: The court should collect ex officio the data proving the financial situation of the party from other institutions that have such data. This requires proper intervention in the legal text.

PROBLEM 2: There is a dilemma whether the wording "down payment" in paragraph 2 of the same article means that there is partial exemption from payment of costs for witnesses, inspections, court notices, etc, and what is the impact on the party that loses the case and is exempted from court costs (since the respective party will need to reimburse these costs to the opposing party)? The same applies to Article 167 as well, under which the court can make void the decision on exemption from payment of costs, which creates a possibility for so-called grey zone of the checks a court can make to determine changed circumstances which would imply failure to meet the criteria for exemption from payment of proceeding costs. Finally, under Article 168 paragraph 4, if the party opposing a party exempted from payment of costs for proceedings is obliged to compensate the litigation costs, and if established that this party is not able to cover the costs, the court can additionally decide for the costs to be completely or partially covered by the party initially exempted from payment of the costs for the proceedings from what has been ruled thereto. This is unclear and contradictory provision since if the court ruled for the party exempted from payment of costs to receive certain amount from the other party that lost the dispute, how can the losing party, for which it had been determined that is not able to pay for the court expenses, be expected to pay for the ruled amount?

RECOMMENDATION: Regulation of the legal gaps in a clear and concise manner which would not cause ambiguity in practical application.

PROBLEM 3: Under paragraph 3 the court has the opportunity to exempt the party from payment of court taxes if such payment reduces the subsistence means of the respective party.

RECOMMENDATION: Clear criteria need to be defined that would take into consideration the incomes and the property owned by the party and the amount of the court taxes that need to be paid.

PROBLEM 4: The Law on Court Taxes projects procedure for exemption from court taxes that coincides with the mentioned provisions from the Law on Litigation Procedure.

RECOMMENDATION: These two laws need to be aligned.

PROBLEM 5: There is a discrepancy in the regulation whether the person released from payment of procedure costs under LLP, who does not get appointed legal representative, can ask for a secondary legal aid under the LFLA.

RECOMMENDATION: Clear and unambiguous intervention in LLP is needed with amendments elaborating that if the court does not appoint legal representative to a party after the decision that the respective party should be released from paying procedure costs, the party can use legal aid under the provisions of the LFLA.

6) Free legal aid under the LFLA

PROBLEM 6: Potential victim of domestic violence who is not registered as such in the SWC cannot obtain free legal aid for expenses in procedure before a court for pronouncing interim measures. Whether certain person is a victim is not a matter that will be determined by the court in the procedure for pronouncing interim measures.

RECOMMENDATION: Although the intention of LFLA is not to identify separate vulnerable categories of people and citizens and it is created to serve the ones who need it the most, still it puts aside a large group of citizens affected by the social phenomenon domestic and gender-based violence due to the fact that they do not have the necessary documentation to prove their status of victim. Hence the need to amend Article 20 paragraph 2 of the LFLA which approves secondary legal aid only if the applicant submits confirmation to be registered as victim to domestic violence in a competent social works center, in standardized association that provides specialized services to victims of domestic violence or submits other documentation from state bodies or healthcare institutions that provides sufficient indications for the applicant to be considered victim of domestic violence.

PROBLEM 7: Although the costs for forensics are covered under the law, a problem will arise if the tendency included in the Judicial Reform Strategy on abolishing the Bureau for Courts Forensics is realized.

RECOMMENDATION: The process of adoption of a new law on forensics should be followed, and if this intention is realized, LFLA should undergo adequate amendments that would enable coverage of the forensics expenses.

RECOMMENDATION: A cooperation with the Healthcare Fund and public healthcare institutions is needed for the purpose of creating a single budget that would be used for forensics/analyses necessary for the realization of the rights of the most vulnerable categories of citizens (e.g. children in procedure for paternity determination; victims of domestic violence for setting measure for mandatory treatment of alcoholics, where expert witnessing from two doctors is needed, one neuropsychiatrist and one neurologist, and there is a lack of such experts within the Bureau for Court Forensics, etc.)

PROBLEM 8: The dilemma concerns the rule in LLP to compensate the expenses only to the party that wins the disputes, and not to a third party or the Budget of RNM, as regulated under the new LFLA. Moreover,

if the person who uses free legal aid loses the disputes, he/she shall be obliged to cover the expenses of the procedure. This might be a practical problem since the person had obtained free legal aid due to the financial inability to initiate the dispute, and would influence the person to give up from court proceedings and the procedure for FLA to exercise his/her right.

RECOMMENDATION: The provisions of LFLA and LLP need to be harmonized in terms of the reimbursement of expenses in litigation procedure in case the beneficiary loses the dispute.

RECOMMENDATION: A mechanism or a method should be set for the people that fulfill the requirements for FLA, and lose the dispute afterwards in court procedure be released from payment of the costs of the procedure or reimbursement of the costs to the opposing party, and these costs to be covered from another available fund, whether being a court fund or the Bugdet of RNM.

PROBLEM 9: Lack of regulation of the alternative dispute resolution method before the initiation of civil proceedings. We have such example with EVN, who uses the regulatory commission as mechanism that decides whether certain right is disputable or not. If this procedure fails, a civil court proceeding is initated, and without the prior procedure, the court dispute might fail. In addition, the LFLA limits the ability of a low-income citizen or person to ask for compensation of damages in a procedure for claiming damages that do not arise from a crime.

RECOMMENDATION: The free legal aid should be available in matters arising from the public services in alternative dispute resolution procedures, which is a requirement for initiation of court proceedings and procedures in which low-income citizens face most problems and needs. The same recommendation refers to the enabling of poor-income citizens to claim damages that do not originate from crime.

PROBLEM 10: There is a problem with the late delivery of data that regional departments ask from other state bodies that have the information on the financial and material condition. This, as it was the case with the previous law, could affect the general rule of emergency in the procedure for FLA and postpone the procedure with the failure to meet the set deadline of 15 days for making decision upon the application.

RECOMMENDATION: It is necessary to connect the regional departments electronically with the institutions that have data on the material and financial condition of the applicant, following the example of e-links with the Real Estate Cadastre.

в)Costs for procedures in front of notary public or enforcement agent

PROBLEM 11: Obvious poor awareness of citizens about their right to ask for exemption from payment of costs in procedure before notary public which directly affects the access to justice in these procedures.

RECOMMENDATION: Increased promotion and information of the poor-income parties that they have this right, as well as better promotion of the rights and all mechanisms for facilitating the access to justice in civil proceedings. This promotion and information should be adjusted to the needs of the citizens and the situation there are in, therefore the need to increase field actions in a joint, systematized method by all actors (judiciary, state institutions, NGOs, etc).

PROBLEM 12: Article 46 paragraph 1 from the Law on Enforcement determines the right of the enforcement agent to receive compensation for the conducted actions related to the processing of the case and for the expenses arising from conducted actions in accordance with the Tarrif of enforcement agents, and collects this compensation from the debtor during enforcement. An exception is included in paragraph 5 defining that only a registered social welfare beneficiary can be exempted from payment of the expenses and fees.

RECOMMENDATION: This provision is not aligned to the new provisions from the Law on Social Protection, and as such is restrictive compared to other beneficiaries of monetary rights arising from social protection, since the obtained rights are connected to the financial and material condition of the beneficiaries, as well as restrictive in terms of another category of citizens who are not registered in SWC and have poor material and financial condition.

5.3 Administrative procedures and matters

5.3.1 Legal framework

a) The principle of active assistance to the party

The Law on General Administrative Procedure (LGAP) includes the principle of active assistance to the party as one of the main principles (Article 17 from the LGAP). This actually means that the public bodies are obliged to enable all parties in a procedure to exercise and protect their rights and legal interests in the most effective and simple manner possible. The public bodies are obliged to inform the parties about the legal provisions of importance for the settling of the administrative matter, their rights and obligation, as well as about all information related to the procedure, and warn them on the legal consequences arising from their actions or oversights. The ignorance or lack of skills of the party participating in the procedure should not be to the detriment of the legal rights and interest of the party.

b) Exemption from payment of proceeding expenses

The institute "poverty right" in an administrative procedure occurs in one legal provision in the LGAP, which refers to the distribution of expenses in the procedure. Under Article 68 from the LGAP, the costs of the procedure include the special expenses in cash of the authority that administers the procedure, such as: travel expenses of the officials, the expenses for the witnesses, expert witnesses, interpreters, inspections, announcements and alike, that occurred during the administering of a procedure on administrative matter. In a procedure initiated upon the request of the party or in administrative matters involving two or more parties with opposing interests, the costs of the procedure shall be borne by the party initiating the procedure or the party that loses the procedure, except when regulated otherwise.

Upon the request of the party, the public body that administers the procedure can exempt the party from payment of costs with administrative act, completely or partialy, if it determines that the respective party cannot cover the costs without causing damages upon his/her subsistence and the essential support of his/her family. The public body adopts the administrative act based on the certificate on possessions of the party issued by a competent public authority, received ex officio.

The same as in the civil law, this institute is activated upon the submission of an application by the party, under the conditions that the coverage of the expenses endangers the neccessary subsitence of the party and the necessary support of his/her family. The general financial condition is proved with the same means, the sole difference being that in administrative procedure the court gets the certificate on possessions ex officio.

c) The Free Legal Aid Law and administrative procedures

The 2019 LFLA includes free legal aid in administrative procedures as well, that could be exercised as primary or secondary legal aid.

The primary legal aid, provided by authorized associations and legal clinics, in addition to the general legal information and general legal advice, provides assistance in completing forms, templates issued by administrative bodies in administrative procedure for social protection and protection of children's rights; pension, disability and healthcare insurance; protection of victims of gender-based and domestic violence; procedure for entry in the Civil registry; obtaining personal identification documents and citizenship (Article 6 from the LFLA). The primary legal aid is provided to any interested person without any limitations related to the financial situation of the person.

The secondary legal aid includes, inter alia, representation in a procedure before state authority, Pension and Disability Insurance Fund, as well as the Health Insurance Fund of the Republic of North Macedonia (Article 13 from the LFLA). With approved secondary legal aid, the beneficiary is released from payment of administrative taxes. In terms of the types of administrative procedures, the sole limitation is that it won't be approved in property-related matters in administrative procedure (Article 22).

d) Law on Court Taxes in procedures for administrative dispute

Article 11 from the Law on Court Taxes (LCT), among others, determines that citizens are exempted from payment of taxes in procedure for deciding upon request for exemption from payment of expenses in the procedure, in administrative disputes in the area of social insurance, social welfare, custody and adoption and decentralization and in procedure for enforcing request for entrusting guardianship of a child (line 2, 3 and 4 from Article 11 of the LCT).

In any case, under Article 13 paragraph 1, the court will exempt a party from paying taxes if the payment of such taxes would significantly reduce the subsistence means of the party or her/his family members. Under paragraph 4 thereof, with the request the applicant has to enclose evidence on his/her material and financial condition, collected from the competent bodies.

5.3.2 Use of the tools for access to justice in administrative procedures in practice

In practice, the principle of active assistance to the party is not sufficiently exercised. Public bodies, sometimes due to objective reasons such as lack of personnel or workload, are not able to dedicate special attention to every party for the purpose of realization of this principle. The parties, usually the ones with lower education, are not always able to understand their rights and opportunities, especially if such rights and opportunities are presented to them in legal and incomprehensible language. The same applies to other vulnerable categories of people who are on the territory of the country on different grounds, such as the example with the asylum seekers and the persons in migration custody. In this direction, on the field, there is a lack of translators in some of the rare languages, and usually NGOs working in this area intervene in this respect. In addition, the officials in different institutions are not properly prepared, and this is also addressed with trainings organized in cooperation with associations, supported by donors.

The same can be concluded in relation to the exemption from payment of the expenses in the procedure under LGAP. However, a positive practice has been observed in this direction with the use of certain ad hoc solutions, such as the opportunity of the social protection beneficiaries to obtain free topographic survey report needed for an initiation of administrative procedure on legalization or privatization.

As emphasized in this document, the Law on Free Legal Aid needs to be monitored so that possible weaknesses that would impact the access to justice in administrative procedures as well can be jointly identified. The possible weaknesses that might arise can be the ones related to foreigners in migration (administrative) custody who don't have access to legal aid regardless of the fact that the current Law on Foreigners determines this right, which is not regulated in details.

At a roundtable on Access to Justice in Administrative Procedures, held on 30 October 2019, and organized within the project, the positive practices in the application of the mechanisms for facilitating the access to justice in administrative dispute procedures were discussed. The judges in this area showed aligned position that in order to save the party from additional expenses, it is sufficient for her/him to present a check/decision/certificate that she/he receives social welfare and thus this person can be automatically exempted from payment of the expenses in administrative-court procedure. In addition, the new amendments to the Law on Administrative Disputes are expected to improve the efficiency by including mandatory public debate and the possibility to adopt decision in full jurisdiction for every administrative dispute. Thus, the ping-pong effect of the institutions and the court, the citizens complain mostly on, would be removed. The possibility for mitigating the work of the social works center was also discussed at the event through a reorganization of the lawyers in the centers in a triage function, since there is a lack of human resources of this profile.

And finally, but not less important, is the frequent use of the Ombudsman by the citizens, which can be observed from the dynamics of received complaints contained in the Annual report on the provision, respect, promotion and protection of human freedoms and rights for 2018.[114]

114 | Report available at http://ombudsman.mk/upload/Godisni%20izvestai/GI-2017/GI-2018.pdf , p. 147

5.3.3 Key problems and recommendations

The legal framework that refers to the tools for access to justice is sufficient and includes all mechanisms for facilitating the access to justice, including information, exemption from payment of expenses and legal aid. Unlike in the case with criminal and civil proceedings, an intervention is not needed in the laws for the realization of this objective.

PROBLEM 1: The parties in administrative proceedings in the area of social protection, pension and disability insurance, housing, rights of foreigners and asylum seekers, stateless persons etc., as people belonging to the vulnerable categories of citizens and persons, are not sufficiently informed on the rights they can exercise as well as on the procedure for exercising such rights. The published legal texts are not sufficient or adequate for instructing citizens.

> **RECOMMENDATION:** Hence the need to facilitate the access to clear and comprehensible information and guidelines. Public bodies and entities providing primary legal aid need to cooperate in defining measures for informing citizens, including direct legal information, informative sessions, educational brochures, info offices within the public bodies, etc.

PROBLEM 2: The long duration of administrative disputes, as well as certain administrative procedures (e.g. legalization) negatively impacts the willingness of the parties to exercise the right that they consider to be entitled to under the law.

> **RECOMMENDATION:** More efforts are needed in provision of rapid and efficient administrative justice.

PROBLEM 3: Although still existent as mechanism, the adoption of merits-based decision (whether by the ministry deciding as second-degree body upon complaint or the Administrative Court when ruling upon repeated lawsuit for administrative dispute in the same legal matter and issue) is not used in practice, thus the negative perceptions among citizens that they are lost in administrative mazes.

> **RECOMMENDATION:** Awareness needs to be arised among the holders of public posts and the policy creators. The implementation of the Law on Administrative Disputes should be closely monitored.

Part 6: Financing Free Legal Aid

6.1 Expenses related to Free Legal Aid

Free legal aid is free of charge for the client, but not for the state as well. The amount of legal aid, the number of people who can use it, as well as its quality, can largely depend on the funds allocated from the state budget. Legal services incur costs that primarily include the reward and compensation of lawyer's fees, the costs for preparation of expert findings and opinions, the costs for translation and interpretation, the costs for provision of evidence, as well as other costs related to the procedure. Apart from these costs, the exemption from court and administrative taxes is also important to the state budget, which although are not strictly considered as expense, have budget implications because with their exemption, the state would lose some of the income it would have received had it not release the parties from paying taxes.

Therefore, a precondition for increasing the functionality and efficiency of the state-funded free legal aid system is a careful and thorough analysis of its implications on the state budget. It is necessary to identify the costs incurred by the state for the functioning of the free legal aid system, as well as to identify whether the costs are sufficient, whether they are used efficiently and whether their amount is sufficient.

It is important to distinguish that the analysis will only include the costs incurred by the state to cover the costs for free legal aid, which refer to the costs for service providers, and not to the costs for operating and administering the system as a whole (e.g. the costs for the staff in the regional offices of the Ministry of Justice) which also require further serious analysis.

For the purpose of this analysis, the following data have been collected and analyzed:

- Used funds from the court budget for payment of legal services in cases when a lawyer was appointed ex officio, as well as in other cases where a lawyer was appointed by the court during the period from 2014 to 2019;
- Number of cases in which a lawyer or proxy was assigned by a court decision;
- Planned and used funds from the budget of the Ministry of Justice related to free legal aid;
- Number of cases in which the provision of free legal aid was approved;

It is important to note here that the access to certain data is restricted, which significantly impedes the analysis process and raises the question on how funding of legal aid is planned in the absence of data. Upon the submission of a number of requests for free access to public information, several courts did not provide data on the number of appointed lawyers elaborating that they did not keep such statistical data. Data on individual amounts paid, types of cases, demographic structure of users was impossible to obtain. In addition, there is no data on the amount which the clients were exempted from in terms of paying taxes. However, the collected data can provide a rough estimate of the budgetary implications of free legal aid in criminal proceedings and in accordance with to LFLA.

6.2 Use of funds allocated for free legal aid

Since there are two separate systems for free legal aid (legal aid in criminal proceedings vs. legal aid in civil and administrative proceedings), their funding from the state budget is budgeted and performed from two different budget items. Compulsory defense, defense for the poor, and proxy based on the "poverty law" are budgeted from the judicial budget, more specifically under item 425 - Contracting Services, sub-item 425310 - Legal Services. On the other hand, the legal services provided by the Law on Free Legal Aid are budgeted and paid from the budget of the Ministry of Justice.

a) Use of funds for free legal aid from the judicial budget

The reports of the judicial budget council enable a direct insight into the data for the use of the judicial budget. The costs for legal aid are being paid under sub-item 425310 – Legal services. According to the Report, legal services refer to the appointed proxies (ex-officio lawyers) in the criminal cases for adults and juveniles.

Table 5: Costs for legal aid from the judicial budget

	2014	2015	2016	2017	2018
Used budget for legal services	11,991,000 MKD	10,927,358 MKD	12,065,296 MKD	17,856,823 MKD	27,424,413 MKD
Used budget for legal services (EUR)[115]	194,976 EUR	177,681 EUR	196,183 EUR	290,354 EUR	445,925 EUR
% of budget item 425	23.20%	19.25%	Н/П	34.95%	45.54%
% of the total judicial budget	0.63%	0.59%	0.64%	0.94%	1.42%

Source: Reports for use of the judicial budget for 2014, 2015, 2017 and 2018 by the Judicial Budget Council

The trend shows an increase of the amount of funds from the court budget used for legal services. For comparison, in 2018 a total of 128% funds were used compared to 2014. The increase is also noticeable in relation to the total planned judicial budget. So, this share ranges from around 0.63% in 2014 to 1.42% in 2018. According to the Judicial Budget Council, the increase is due to the new lawyer's tariff adopted in August 2016 which increased the prices of lawyer's services.[116] Although the increase can partly be attributed to these circumstances, the interviews and focus groups with lawyers have shown that prior to 2016 in some of the bigger courts there was a practice of paying substantially lower amounts to lawyers, compared to the then applicable law, which changed in 2016 and 2017 and which may have impacted the increase. The data show that there is a tendency of increase in the number of appointed proxies in criminal cases in general, and the participation of appointed legal proxies in juvenile criminal cases, in particular, under the Law on Juvenile Justice is particularly high. These costs are most noticeable in the basic civil courts with extended jurisdiction.[117]

б) Free legal aid from the Budget of the Ministry of Justice

Data on the realization of the costs for free legal aid paid by the Ministry of Justice are available in the annual reports on the application of LFLA published by the Ministry of Justice. These funds, in addition to the payment of lawyers by decision of the Ministry, are set to provide free legal aid, and payments are made to the lawyers appointed to children in proceedings before the Center for Social Affairs and the Ministry of Interior in accordance with the Law on Justice for Children.

115 | The used average euro exchange rate is according to the National Bank of the Republic of North Macedonia
116 | Judicial Budget Council, Annual Report for 2018, p.47
117 | Same as above.

Table 6: Costs for free legal aid from the of the Ministry of Justice

	2014	2015	2016	2017	2018
Planned budget	3,000,000 MKD	3,000,000 MKD	3,000,000 MKD	3,000,000 MKD	3,000,000 MKD
realized budget	770,701 MKD	740,910 MKD	829,753 MKD	1,386,297 MKD	1,378,904 MKD
% of realized budget	25.69%	24.70%	27.66%	46.21%	45.96%

Source: Annual reports of the Ministry of Justice, related to the LFLA for the period 2014-2018

Same as with the judicial budget, the budget of the Ministry of Justice shows an increase in costs incurred in financing free legal aid. Compared to 2014, in 2018 the budget use is almost doubled. However, compared to the planned amount, budget use is still minor and does not exceed half of the budgeted funds. In terms of realization, the costs for lawyer related services have a major role, while the share for authorized associations is relatively small. Along with the increase in budget realization, the average cost per lawyer has almost doubled. The increase in the costs per lawyer is also a result of the increase in the prices for lawyer services and due to the fact that the costs for lawyers appointed before the MoI and the Center for Social Affairs are paid out of this budget under the Law on Justice for Children.

6.3 Cost Analysis for Free Legal Aid

6.3.1 Cost analysis for free legal aid per capita

One of the most important indicators of the fiscal implications for free legal aid is the state's cost for free legal aid per capita. This indicator provides an estimate of how much of the state budget is allocated for this matter taking into consideration the number of inhabitants in the country, and allowing for comparison with other countries.

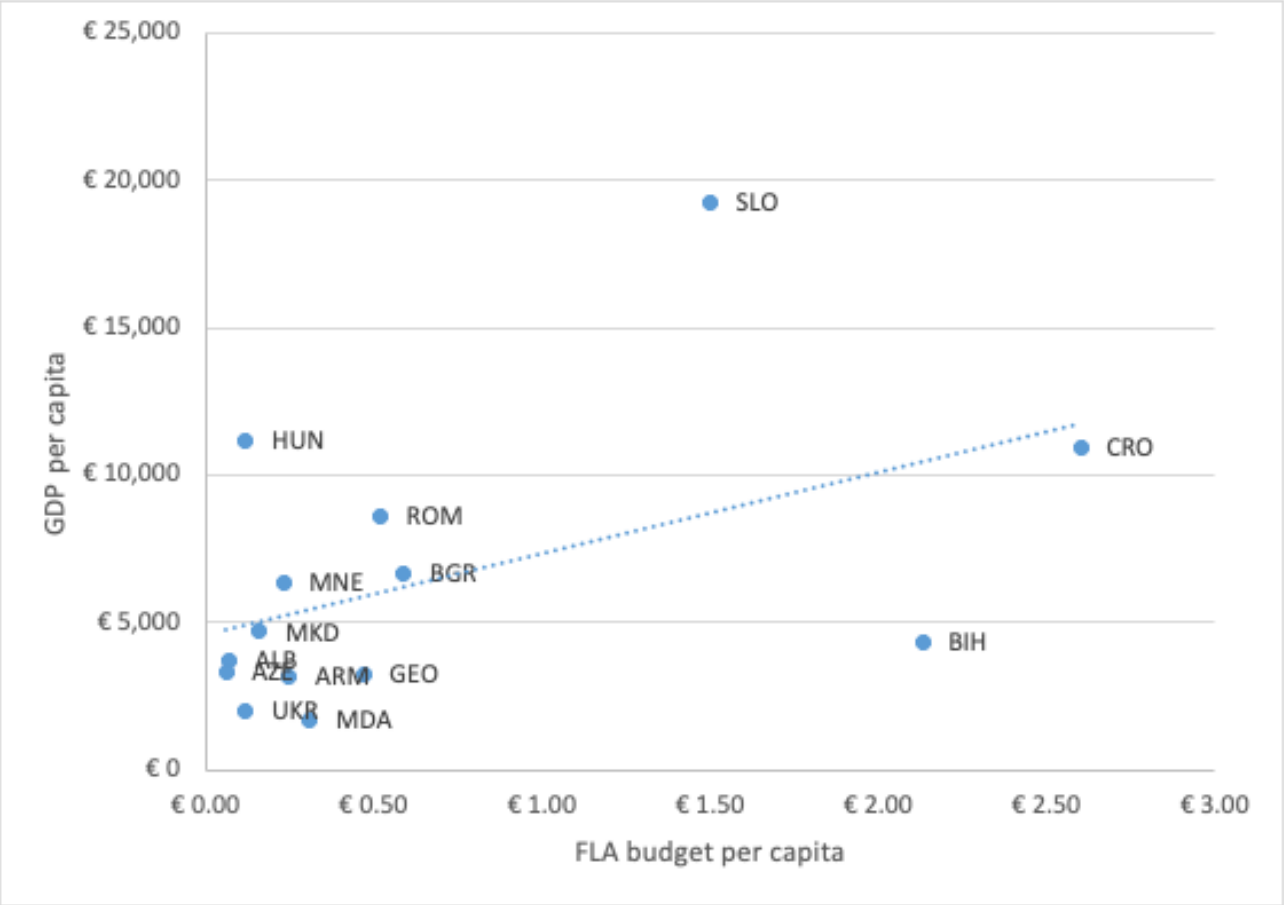
Table no. 7: Cost analysis for free legal aid (FLA) per capita

Used funds for FLA	2014	2015	2016	2017	2018
Judicial budget	11,991,000 MKD	10,927,358 MKD	12,065,296 MKD	17,856,823 MKD	27,424,413 MKD
Ministry of Justice	770,701 MKD	740,910 MKD	829,753 MKD	1,386,297 MKD	1,378,904 MKD
Total costs for FLA	12,761,701 MKD	11,668,268 MKD	12,895,049 MKD	19,243,120 MKD	28,803,317 MKD
Population[118]	2067000	2070000	2072000	2075000	2076000
FLA budget per capita (MKD)	6.17 MKD	5.64 MKD	6.22 MKD	9.27 MKD	13.87 MKD
FLA budget per capita (EUR)	€ 0.10	€ 0.09	€ 0.10	€ 0.15	€ 0.23

118 | According to estimations from the State Statistical Office.

Compared to other European countries, the state allocates one of the lowest GDP per capita budgets, and is well behind the European average of EUR 6.96 and the average (common amount) of EUR 2.19[119] However, this difference must be taken into account with caution having in mind the different levels of economic growth and gross national product between RNM and the other member states. In order to determine whether the state allocates enough funds, it is necessary to compare North Macedonia's budget with other countries that have the same or similar level of economic growth, as well as with the countries in the region.

Figure no. 1: Comparison of the FLA budget with the GDP per capita



Извор: CEPEJ – Dynamic database of European judicial systems. Data for 2016

The figure helps us take into consideration the amount of GDP per capita when assessing whether the state allocates sufficient funds for this purpose. According to these data, four countries with lower GDP (Armenia, Georgia, Moldova and Bosnia and Herzegovina) allocate more FLA funds than RNM, while three other (Albania, Azerbaijan and Ukraine) allocate less. In order to follow the European trend, it is necessary to increase the GDP budget by at least 50% of what is now used.

119 | CEPEJ – Dynamic database of European judicial systems. Data for 2016.

6.3.2 Costs per single case

The second significant indicator which should be taken into consideration is the cost per single case. This indicator is significant because it enables, under the assumption that complete and accurate data are available, smart planning of the allocated costs for free legal aid. Because of the different systems (criminal proceedings against LFLA), it is necessary to determine the amount for this indicator for each system individually. Due to the lack of data on the number of lawyers paid per year, the cost estimate per case was calculated as the quotient between the total realized budget in the year and the number of appointed lawyers. However, this amount should be considered with caution as the payment request may, but does not necessarily have to be made in the same year when the lawyer was appointed.

Table no. 8: Estimation of the realized costs per case from the court budget

Budget calculations	2016	2017	2018
Used budget for PP – judicial budget	12,065,296.00 MKD	17,856,823.00 MKD	27,424,413.00 MKD
Total number of lawyers assigned by the courts	1185	1060	1099
Costs per case (Judicial budget)	10,181.68 MKD	16,846.06 MKD	24,953.97 MKD
Costs per case (Judicial budget) EUR	165.56 EUR	273.92 EUR	405.76 EUR

In the period from 2016 to 2018 the cost per case increased significantly, thus following the correlation with the increase in total costs without having an increase in the number of cases where a lawyer/proxy was appointed. According to CEPEJ, the average cost per case in 2016 was 429 EUR, while the usual (average) cost was 175 EUR, which shows that the cost per case was within the European average.

Table no. 9: Realized costs per case according to LFLA

	2014	2015	2016	2017	2018
Realized budget	770,701 MKD	740,910 MKD	829,753 MKD	1,386,297 MKD	1,378,904 MKD
Payments made to lawyers	748,101 MKD	701,MKD MKD	813,253 MKD	1,359,897 MKD	1,365,704 MKD
Number of paid lawyers	37	36	39	30	34
Average cost per lawyer	20,218.95 MKD	19,480.83 MKD	20,852.64 MKD	45,329.90 MKD	40,167.76 MKD
Payments made to associations	22,600 MKD	39,600 MKD	16,500 MKD	26,400 MKD	13,200 MKD
Number of paid associations	5	5	5	6	5
Average cost per association	4520 MKD	7920 MKD	3300 MKD	4400 MKD	2640 MKD

The average cost per lawyer is the quotient between the total realized budget for lawyers and the number of paid lawyers during the year. According to these data, the average cost from 2014 to 2018 doubled, which could be a result of several factors, out of which the following should be emphasized: payment of lawyers under the Law for Justice for Children and increase in the costs for legal services according to the new lawyer's tariff. The cost per association is insignificant.

6.4 Conclusions and recommendations for funding free legal aid

1. The authorities managing the free legal aid systems, the courts and the Ministry of Justice need to collect and process more detailed legal data regarding the legal services they finance. The improvement in the statistics should include at least: number of cases, lawyers, type of procedures, individual amount for each case, detailed list of actions taken, as well as demographic data for the recipients of the free legal aid. A prerequisite for proper funding planning is to maintain an adequate data base. It is also particularly important to have statistics on the number of persons who have been exempt from paying court taxes, including the amount of costs which they were exempt from paying.

2. Within the judicial budget, it is necessary to provide a special item which will refer only to legal aid services. The current solution, the legal aid to be included in the general item for contracts, does not allow for separation of the costs for free legal aid as a specific cost whose planning requires special forecasts. It is necessary for the Judicial Budget Council to plan the budget for legal services on the basis of data and forecasts which have taken into consideration the citizens' needs for free legal aid.

3. It is necessary to increase the amount provided for free legal aid to the extent established in the CEPEJ report, taking into account the economic power of the state. The increase of this amount should be accompanied by an increased supervision over the quality of the provided legal aid. The cost of lawyers' fees should be approved by LCRNM, taking into account the nature of this type of legal aid, and anticipating a certain discount in accordance with the regular tariff.

7. Final conclusions and recommendations

1. Access to justice is an essential precondition for exercising human rights, and therefore has received particular attention in a number of international documents, both legal and political, establishing common standards and guidelines for the states. States should strive towards these standards through appropriate legislation, institutions and resources. Within the UN system, a number of international agreements have been enacted, stipulating immediate obligations to adhere to, and the standards established therein should be applied in our legislation. The national legislation needs to be fully harmonized with these international standards that recognize the right to free legal aid for children, victims of violence, victims of gender-based violence and persons with disabilities.

2. The Council of Europe and the European Union have established comprehensive standards on access to justice. The primary source is the European Convention on Human Rights, as interpreted and elaborated in a number of decisions by the European Court of Human Rights (ECHR). With these decisions, the court clearly and precisely sets out the cases and conditions in which a particular state should provide free legal aid of certain type and quality. The ECHR case-law should be used in the formulation of legal texts addressing this issue. The ECHR is also accepted as part of the EU legal system. The EU goes even further with the EU Charter of Fundamental Rights and the case-law of the EU Court of Justice, as well as its secondary legislation. The EU has adopted several important directives on access to justice, especially in criminal proceedings, and on the protection of victims which standards we, as a candidate country, need to fundamentally establish and enforce, not only from a legal perspective.

3. Republic of Slovenia, which shares a common legal history with us and is an EU member state, is suitable for comparison purposes, in order to identify positive and applicable solutions to free legal aid. A particularly positive example is the practice of establishing a basic, general Law on Free Legal Aid for all types of legal issues that have a subsidiary application over other laws regulating legal aid in special procedures. This avoids overlapping and provides a unified approach in evaluating who would be granted the right to a free lawyer and how and in which manner the lawyer will be appointed and which is the extent and amount to be paid. Another particularly important and applicable model would be the establishment of so-called legal aid in exceptional cases, which is approved independently of the legal provisions concerning the financial situation of the applicant and his family. In fact, this gives some flexibility, which is limited by precise criteria regarding the maximum amount of income and property that a particular person has, i.e. owns, in order to obtain the right to free legal aid. This type of legal aid enables the authority, applying the principle of fairness, where there are certain pre-defined, justified circumstances to grant free legal aid irrespective of income and property.

4. The institution "defense for the poor/indigent" in criminal proceedings is hardly ever used in practice. This is contradictory given that the poverty rate in the country is around 22%, and successful defense in criminal proceedings requires considerable knowledge of the laws. The non-application of this provision in practice leaves a significant number of defendants unable to hire a lawyer to prepare their own defense, without any assistance that in most cases can be considered a violation of the right to a fair trial. It is necessary that during examination, at any stage of the proceedings, the defendants be advised in a clear and unambiguous manner that they have the right to seek a lawyer if they are not financially prepared to engage one on their own. In this respect it is needed to better inform the citizens about this possibility, regardless if they appear as defendants in criminal proceedings. It is recommended for this broader information to be shared with all factors in the society (judiciary, institutions, associations, etc.)

5. In civil proceedings and matters, the new Law on Free Legal Aid, adopted this year, basically establishes an adequate legal framework that provides access to information and advice (primary legal aid), as well as a lawyer (secondary legal aid). However, it needs to be harmonized with the provisions of the Law on Litigation Procedure, which relate to the exemption from the costs for the procedure, so-called poor law. In addition, there is a lack of a well-promoted and efficient system for exemption from costs in proceedings before a notary and enforcement agent, which particularly affects poor citizens. The peaceful resolution of disputes through mediation and other forms is not promoted enough, although it has the potential to contribute to resolving the civil legal needs of citizens.

6. Clients in the administrative procedures in the field of social protection, pension and disability insurance, housing, the rights of foreigners and asylum seekers, stateless persons, etc., who belong to the vulnerable categories of citizens and persons, are insufficiently informed about the rights they can exercise and the procedure in which those rights can be exercised. The published legal texts are not sufficient and appropriate for sharing the knowledge with the citizens. There is a need to facilitate access to clear and understandable information and guidance. Collaboration between public authorities and entities providing primary legal assistance is needed to define citizen information measures, including immediate legal information, information sessions, educational brochures, info offices within public institutions, etc.

7. Bodies managing free legal aid systems, courts and the Ministry of Justice do not sufficiently collect and process detailed data on the legal services they finance. Improving the statistics should include at least: number of cases, lawyers, types of proceedings, separate amount for each proceeding, a detailed list of actions taken, and demographic data on the beneficiaries of free legal aid. A precondition for proper funding planning is to have an adequate database. It is particularly important to keep statistics on the number of persons exempted from paying court taxes including the amount of costs for which they were exempt. The lack of accurate and precise data within the courts regarding the appointment of ex-officio defendants directly affects the inability for unification of the system, good planning and good administration of justice.

8. Compared to other European countries, the state allocates one of the lowest GDP per capita budget amounts and is well behind the European average of 6.96 EUR and the average (common) amount of 2.19 EUR. However, this difference must be taken into account with caution having in mind the different levels of economic growth and gross national product between RNM and other Member States. It is necessary for the amount provided for free legal aid to be increased to the amount set out in the CEPEJ report taking into consideration the economic capacity of the state. The increase in the amount should be accompanied by increased monitoring of the quality of the provided legal aid. The cost of legal services should be determined by the Lawyers' Chamber of the Republic of North Macedonia (LCRNM), taking into account the nature of this type of legal aid and providing for a certain discount compared to the regular tariff.

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Анекс 1: Примерок од поднесените барања за слободен пристап до информации од јавен карактер до сите основни судови на територија на Република Северна Македонија

Б А Р А Њ Е
за пристап до информации од јавен карактер

Врз основа на член 4 и член 12 од Законот за слободен пристап до информации од јавен карактер ("Службен весник на Република Македонија бр. 13/06, бр.86/08, бр.6/10, 42/14, бр.148/15 и бр. 55/16) , од имателот ја барам следната информација од јавен карактер:

1. Број на обвинети лица на кои во 2018, 2017 и 2016 им бил поставен бранител по службена должност врз основ на член 74 став 6 од ЗКП вкупно по година и доколку постојат расположливи податоци поделени по: пол, етничка припадност и кривично дело за кое е обвинет/а;

2. Број на обвинети лица на кои во 2018, 2017 и 2016 година им бил поставен бранител по одбрана за сиромашни врз основ на член 75 од ЗКП вкупно по година и доколку постојат расположливи податоци поделени по: пол, етничка припадност и кривично дело за кое е обвинет/а;

3. Број на странки кои во 2018, 2017 и 2016 биле ослободени од плаќање на трошоците на постапката врз основ на член 163 од ЗПП.

4. Број на странки на кои во 2018, 2017 и 2016 кои по нивно барање им е поставен полномошник (адвокат) врз основ на член 165 став 3 од ЗПП (Сиромашко право)

Форма во која се бара информацијата:
- а) увид
- **б) препис**
- **в) фотокопија**
- **г) електронски запис**
- д) друго----------

Начин на доставување на информацијата:
- а) по пошта
- б) телефон
- в) факс
- **г) е-маил egeorgievska@myla.org.mk**
- д) друго----------

Барател на информацијата: **Македонско здружение на млади правници, ул. Донбас бр. 14/1-6, 1000 Скопје, 023220870, contact@myla.org.mk, лице за контакт Елена Георгиевска, egeorgievska@myla.org.mk 070/376-176.**

Застапник / полномошник на барателот на информацијата: **Зоран Дранговски, Претседател на МЗМП, ул. Донабс бр. 14/1 -6, 1000 Скопје, 023220870**

(Правна поука: Барателот не е должен да ги наведе и образложи причините за барањето, но треба да наведе дека станува збор за барање за слободен пристап до информација од јавен карактер)

Анекс 2: Примерок од поднесеното барање за слободен пристап до информации од јавен карактер до Судски Совет на Република Северна Македонија

До
Судски совет на Република Северна Македонија
contact@ssrm.mk
emilija.nikolik@ssrm.mk
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Б А Р А Њ Е

за пристап до информации од јавен карактер

Врз основа на член 4 и член 12 од Законот за слободен пристап до информации од јавен карактер ("Службен весник на Република Македонија бр. 13/06, бр.86/08, бр.6/10, 42/14, бр.148/15 и бр. 55/16) , од имателот ја барам следната информација од јавен карактер:

1. **Вкупен број на иницирани кривични предмети во 2018, 2017 и 2016 вкупно и поделени по основен суд;**
2. **Вкупен број на иницирани парнични предмети во 2018, 2017 и 2016 вкупно и поделени по основен суд;**
3. **Вкупен број на иницирани вонпарнични предмети (вклучувајќи ги и оставинските постапки) во 2018, 2017 и 2016.**

Форма во која се бара информацијата:
- а) увид
- б) препис
- в) фотокопија
- **г) електронски запис**
- **д) друго (Скен)**

Начин на доставување на информацијата:
- а) по пошта
- б) телефон
- в) факс
- **г) е-маил egeorgievska@myla.org.mk**
- д) друго----------

(се наведува бараниот начин, со заокружување)

Барател на информацијата: **Македонско здружение на млади правници, ул. Донбас бр. 14/1-6, 1000 Скопје, 023220870, contact@myla.org.mk, лице за контакт Гоце Коцевски, egeorgievska@myla.org.mk 070/376-176**

Застапник / полномошник на барателот на информацијата: **Зоран Дранговски, Претседател на МЗМП, ул. Донабс бр. 14/1 -6, 1000 Скопје, 023220870**

(Правна поука: Барателот не е должен да ги наведе и образложи причините за барањето, но треба да наведе дека станува збор за барање за слободен пристап до информација од јавен карактер)

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ACCESS TO JUSTICE IN NORTH MACEDONIA

comprehensive policy study on the access to justice in criminal, civil and administrative procedures

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