

ACCESS TO LEGAL AID IN COVID-19 CONDITIONS

REPORT ON THE CHALLENGES FACED BY
POVERTY-STRICKEN CITIZENS IN ACCESSING LEGAL AID
IN CONDITIONS OF COVID-19 GLOBAL PANDEMIC



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Title:

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Published by:

Macedonian Young Lawyers Association, Zoran Drangovski, President

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Note: The content is the sole responsibility of the authors and the grant recipient, and cannot be considered to present the views and positions of the Foundation Open Society – Macedonia

CIP – Каталогизација во публикација
Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

347.921.8:[616.98:578.834(497.7)]”2020”(047.31)

KOCEVSKI, Goce

Report on the challenges faced by poverty-stricken citizens in accessing legal aid in conditions of COVID-19 global pandemic

[Електронски извор] : access to Legal Aid in COVID-19 conditions /

[authors Goce Kocevski, Elena Georgievska ; translated by Sofija Glavinova Jovanovska].

– Текст во PDF формат, содржи 24 стр. ; графички прикази.

– Skorje : Macedonian Young Lawyers Association, 2021

Начин на пристапување (URL): <http://www.myla.org.mk/>. – Наслов преземен од екранот.

– Опис на изворот на ден 11.03.2021.

– Фусноти кон текстот.

– Библиографија: стр. 19. – Содржи и: Annex 1

ISBN 978-608-4843-40-5

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COBISS.MK-ID 53353221

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LIST OF ABBREVIATIONS

| | |
|-------------|---|
| FLA | Free Legal Aid |
| RNM | Republic of North Macedonia |
| MYLA | Macedonian Young Lawyers Association |
| FOSM | Foundation Open Society – Macedonia |
| LFLA | Law on FreeLegal Aid |
| SLI | State Labour Inspectorate |
| Moj | Ministry of Justice |
| Mol | Ministry of the Interior |
| LCP | Law on Criminal Procedure |
| RO | Regional offices (of the Ministry of Justice) |
| SWC | Social Work Center |
| GMA | Guaranteed Minimum Assistance |

INTRODUCTORY NOTES



About the Report

The report on the trends of legal aid provision to poverty-stricken citizens in conditions imposed by COVID-19 pandemic observes the legal needs of poor persons in 2020. The report identifies the factors that impacted, positively or negatively, the access to free legal aid (FLA) in this period. In addition, the report identifies the opportunities for strengthening the secondary legal aid provided by lawyers.

The need of such report arose from the new and unfavorable circumstances imposed by the COVID-19 pandemic that has a negative impact on the access to justice of poverty-stricken and vulnerable categories of people. The report describes the events and processes related to the procedures for obtaining FLA, the initiated court or administrative proceedings, as well as the general behavior and practices of the institutions working with the vulnerable population. Based on all positions and experience in the analyzed period, the report provides practical and feasible recommendations that could be implemented by all stakeholders for the purpose of preventing future unwanted negative consequences upon the rights of the vulnerable population.

This report is a kind of continuation of the [Report on the opportunities and perspectives for the development of the pro bono legal aid in the Republic of Macedonia](#) (hereinafter 2018 Report), which was prepared by the Macedonian Young Lawyers Association (MYLA) with the support of the Foundation Open Society - Macedonia (FOSM) in 2018. The present research adds to the previous one by including the problems and challenges for provision of different types of legal aid to poverty-stricken and underprivileged citizens and persons in the conditions imposed by the new reality with COVID-19 pandemic.

The 2018 Report notes that the country will inevitably face with the penetration of international law firms which, among other things, will bring on organized provision of pro bono legal aid. In addition, the state-funded legal aid provision models (mandatory defense, defense for poverty-stricken citizens, legal aid in civil and administrative proceedings, in line with the Law on Free Legal Aid - LFLA) are facing serious problems in terms of financing, and their relevance to respond to the real needs of the citizens, which creates a certain gap in the satisfaction of the legal needs of the citizens. As a result of this, as the Report states, this gap often is filled with voluntary work by the lawyers. Considering the newly emerged situation with the COVID-19 pandemic in 2020, an analysis of the challenges in legal aid provision in such circumstances is quite significant.

The report focuses on three key elements. Initially it provides review of the legal aid provision for underprivileged and poverty-stricken citizens in pandemic conditions. Secondly, it presents the situation and the noted challenges in legal aid provision from the experience of MYLA. And finally, the report identifies the challenges in legal aid provision by lawyers authorized to provide free legal aid.

The report was prepared within the project “*Strengthening pro bono legal aid services in the Republic of Macedonia*”, implemented by MYLA, and financially supported by the Foundation “Open Society - Macedonia”.



METHODOLOGY APPLIED

When preparing the Report, the authors used combined approach of analyzing primary and secondary data sources.

The research had the following goals:

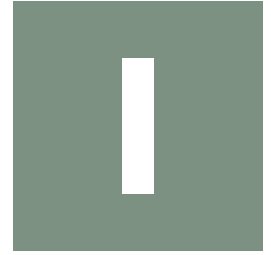
- ▲ Do and to what extent (quantifying) the lawyers in the country provide free legal aid to poverty-stricken and vulnerable population in conditions imposed by COVID-19? To whom is legal aid provided? For what kind of legal issues? Is the legal aid in these conditions performed on unwritten rules?
- ▲ Which factors positively or negatively impact the provision of free legal aid in the conditions imposed by COVID-19?

With the aim to achieve the research goals, the following data collection methods were used:

- ▲ Desk research, which includes review and analysis of relevant literature, scholarly and professional papers, reports and analyses that analyze access to justice and regulations governing the provision of legal aid (law and other regulations).
- ▲ Structured focus group with lawyers authorized to provide free legal aid. The focus groups had three main goals: 1) To identify whether lawyers have provided different forms of legal aid to pov-

erty-stricken people in COVID-19 conditions? 2) To identify the positions and perceptions of lawyers regarding the legal services and assistance they provided to poor and poverty-stricken citizens in COVID-19 conditions. 3) To identify whether there are any legal obstacles that make it difficult to access different forms of legal aid for poor and poverty-stricken citizens in COVID-19 conditions? The focus group provided a deeper insight into the positions and opinions of lawyers regarding the legal aid provided in 2020 in conditions imposed by COVID-19. The focus group was attended by 20 lawyers who were randomly selected to participate. Annex I of this report provides the concept for the organization of the focus group.

LEGAL AID AND ACCESS TO JUSTICE IN PANDEMIC CONDITIONS – SITUATION DESCRIPTION



The COVID-19 pandemic caused significant consequences upon the legal system in the country. A state of emergency was declared in the period March - June 2020 through [five adopted decisions](#). The need of lockdown measures occurred for the purposes to protect the population against the virus and prevent its spread (such as introducing curfew, maintaining social distance, restricted movement and gatherings, ban on religious events, ban on sports events, closed borders and stopping the air traffic, delay of procedural deadlines in court proceedings, online education, closing of coffee bars and restaurants, etc). The measures significantly affected the right to privacy, the freedom of movement and freedom of association.

Overall, the declared state of emergency and the situation imposed by COVID-19 caused a large portion of the population to lose their jobs, put the health system into question and the economy to stagnation. The indirect consequences, caused by the lockdown measures, have had quite serious and devastating impact on a significant part of the economy. The companies were on the verge of liquidation and keeping workers was significant challenge. As a result, workers' rights were affected, and due to lack of income, social protection rights were also affected.

The [EC Progress Report on the Republic of N. Macedonia for 2020](#), underlines several facts related to the situation of the poverty-stricken and underprivileged population and their access to justice in general:

1. Before the COVID-19 crisis, unemployment rates were declining and informal employment decreased slightly. During COVID-19 crisis, the positive trends reversed.¹

2. The deadlines in the initiated criminal, civil and non-contentious court cases, administrative disputes, misdemeanors, enforcement procedures or securing of claims were suspended. Exceptions were made for urgent and detention cases, and following the guidelines from the Judicial Council, domestic violence cases were also included.²

▲ Regarding the procedural rights, the only development was the enactment of the new Law on Free Legal Aid. In general, the legal framework provides for the presumption of innocence and right to communicate with a lawyer. There have been no developments regarding victims' rights and the adoption of the Law on compensation of victims of crime.³

▲ The enforcement procedures remained an issue in 2020 and are restricting the poverty-stricken citizens, particularly in inheritance cases and payment orders procedures, where the presence of an attorney is mandatory.⁴

▲ The procedure in administrative disputes remains onerous, complex, lengthy, comprising several appeal layers and numerous repetitions of procedures. Most of the decisions are not based on merit, but on procedural considerations.⁵

3. Administrative procedures have not been simplified, and the Law on General Administrative Procedure is not yet systematically implemented across the administrative bodies and insti-

¹ Page 7 of the EC Progress Report on RNM for 2020

² Page 21 of the EC Progress Report on RNM for 2020

³ Page 34 of the EC Progress Report on RNM for 2020

⁴ Page 20 of the EC Progress Report on RNM for 2020

⁵ Page 15 of the EC Progress Report on RNM for 2020

tutions. The national e-portal for services was upgraded to create a more user-friendly administration, and the final objective was to digitalize the public administration and strengthen the provision of online services to citizens. Lack of political will and finances for complete realization of the digitalization of the public administration has been noted.⁶

4. Challenges of the vulnerable groups:

- ▲ Roma people are often victims to racism, discrimination and segregation, and continue to live in poverty and substandard conditions. Overall, the Roma community faces unemployment, limited access to: education, housing, health insurance and protection. Systematic measures to address the issue of street children and child beggars are lacking.⁷
- ▲ Persons with disabilities also face high level of poverty. A social pension scheme was included in the new Law on Social Protection, whose aim was to provide assistance to people above 64. The capacities of the social work centers must be further strengthened to allow them to implement the newly adopted legislation in line with the country's policy of de-centralisation of social assistance.⁸
- ▲ Gender stereotyping persists, as do attacks on women. Systematic data collection and statistics on gender-based violence are lacking. Four statistical regions in the country have no shelters, and the six functional shelters do not meet the minimum standards of the Istanbul Convention and are not accessible for women with disabilities.⁹

In the area of labour relations and occupational safety, in the first half of 2020 ([January - June 2020](#)) the State Labour Inspectorate (SLI) performed 9741 extraordinary inspection visits out of 16892 inspection visits in total. This means that almost 58% of the performed inspection visits were performed at the initiative of natural or legal entities or ex officio (due to a

suspicion on the side of the inspector). In a period of month and a half (11 March till the end of April 2020) a total of [736 motions](#) were submitted to the State Labour Inspectorate (209 for nonobservance of the right to paid absence for parents of children up to 10 years of age, 193 motions for dismissals, 334 motions on different grounds for violation of workers' rights). Most of the motions came from the textile and foodstuff industry.

The situation with domestic violence is also alarming in 2020. In the period from January to June 2020, [there are available data](#) on increased percentage of domestic violence compared to the percentage for the same period in 2019 (increase by 7.4%), 824 victims of domestic violence were recorded (611 women, 140 men and 73 children), 3 murders while committing domestic violence, for which three perpetrators were reported (compared to 2 murders and two reported perpetrators in the same period in 2019).

The annual report on the implementation of the Law on Free Legal Aid for 2020 has not been published yet. But for the first half of 2020, i.e. in the period [1.1-30.6.2020](#), a total of [120 applications for secondary legal aid](#) were submitted to the Ministry of Justice (MoJ). Out of these 120 applications, 71 applications were approved (59%), 29 were rejected (24%), 13 were still pending (10.8%), 5 were stopped (4%) and 2 were withdrawn (1.2%). Among these applications, [the most common legal issues](#) for which secondary legal aid was sought were family matters (divorce, child custody) and property issues (division of marital property, neighboring disputes over lot lines, debts, etc.).

⁶ Page 16 of the EC Progress Report on RNM for 2020

⁷ Page 35 of the EC Progress Report on RNM for 2020

⁸ Page 84 of the EC Progress Report on RNM for 2020

⁹ Page 32 of the EC Progress Report on RNM for 2020

FROM MYLA EXPERIENCE – OBSERVED CHALLENGES



1. Human rights in 2020

In December 2020, MYLA issued the [Annual Report on the Efficiency of Legal Protection of Human Rights](#) in the country in conditions of the COVID-19 induced crisis, which largely reflected 2020. The report aims to objectively present and document the human rights violations identified in 2020 observed by MYLA. Although it contains a whole range of documented human rights violations, in the interest of the present report, the violations related to legal aid and general access to justice for the most vulnerable population have been underlined:

▲ Limited access to the Social work centers during COVID-19 crisis¹⁰

As a result of the newly emerged situation caused by COVID-19 pandemic and the Government recommendations, the Social work center (SWC) of the City of Skopje limited the direct contact with clients by setting two admission days in the week, from 9am to 2pm. Although it is necessary to reorganize the work of the centers in order to comply with the recommendations for protection against Covid-19, this must not be detrimental to the exercise of citizens' rights. This must be especially considered when it comes to cases requiring urgent response from the competent institutions. Therefore, direct work with citizens must not be strictly organized through admission days, without any prior consideration of the elements of the specific case.

▲ Access to justice for victims of human trafficking¹¹

In 2020, the competent institutions identified 5 victims of human trafficking. Timely provision of access to legal aid, as well as access to free legal aid for victims, are extremely important so that the victim could be timely informed so that s/he can decide how to act and what rights and procedural opportunities to exercise in order to be adequately protected. In RNM, the system of free legal aid provision to victims in criminal proceedings is non-functional. The new LFLA does not provide for a lawyer for the victims in the criminal proceeding, and therefore, effective legal protection cannot be observed. Establishing a functional system for victim compensation through a separate law remains a challenge for the following years.

▲ Violations of the measure on care for a child up to 10 years of age¹²

Despite the measure adopted by the Government to release a parent of a child up to 10 years of age from work due to child care, violations of the measure were still observed. According to the reports submitted to the SLI, this is the most frequently violated government measure (28% of the reports to the SLI). When violating this right employers threatened female workers with dismissal, non-renewal of their contract and non-payment of the minimum wage.

¹⁰ Page 13 of the MYLA Annual Report on the Efficiency of the Legal Protection of Human Rights

¹¹ Ibid., p. 14 and 15

¹² Ibid., page 37

2. Free legal aid in 2020

A number of institutional challenges emerged during the implementation of the law in the first year, as well as challenges related to lack of legal regulation or too strict regulation. The authorized officials in the regional offices of the Ministry face a challenge to establish the justification of the legal issue addressed to them by a party. To them, providing legal advice is time-consuming and requires good knowledge and training on legislation in many areas, especially social and child protection, domestic and gender-based violence, justice for children. The competencies of the Asylum Sector at the Ministry of Interior (MoI) have been expanded in the case of FLA for asylum seekers, which requires greater coordination, training and better legal regulation. There is still the problem of submitting and collecting data ex officio on the material, financial and property status, as well as the social status. There is a lack of cooperation and communication between the Ministry of Justice and the Bureau for Forensic Expertise, and the problem with the expert findings that are not performed by the Bureau is still persisting. The law is restrictive in practice in terms of notary and enforcement procedures.¹³

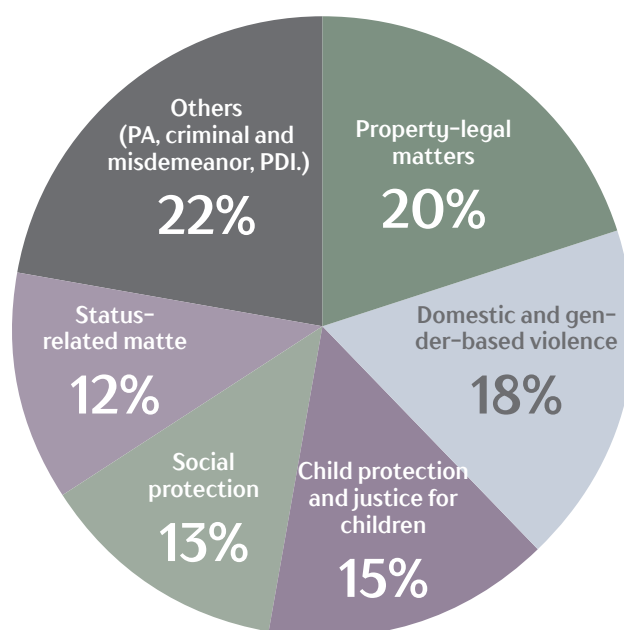
The defense mechanisms for the poor and the compulsory defense under the Law on Criminal Procedure (LCP) do not apply to representation of a victim of a crime in criminal proceedings. With such provisions in the LFLA, a victim of crime (for instance) bodily or serious bodily injury in domestic violence case has no right to access to free legal aid for representation in criminal proceeding due to the limitations in Article 38 of the LFLA. Although there is an exemption from court and administrative fees, court costs, expert finding and lawyer's fees, for some evidence that is significant and necessary to initiate a court procedure to protect employment rights, there is no way to be exempted from payment of these costs. A person who wants to initiate legal proceedings for non-pecuniary damage compensation, and does not have sufficient funds to secure legal assistance from a lawyer, will not have the opportunity to access court and proceedings in order to exercise that right in the same way as wealthier citizens. This is due to the restrictive nature of the law, which restricts access to civil litigation for non-pecuniary damage in cases where there is no serious disability or death.¹⁴

¹³ Ibid., p. 55 and 56

¹⁴ Ibid., p. 59

In any case, in 2020, 100 legal advice was given within the project “Strengthening pro bono legal aid services in the Republic of Macedonia”, implemented by MYLA, and financially supported by the Foundation “Open Society – Macedonia”.¹⁵ If one analyzes the provided legal advice, it can be observed that women were the ones who requested legal aid more (55 in total) compared to men (45 in total).

OVERVIEW OF LEGAL MATTERS FOR WHICH LEGAL AID WAS REQUESTED



It can be observed from the overview that in the period when the state of emergency occurred, as well as during the COVID-19 crisis until today, there is an increase of the need for legal aid increased in resolving legal matters in the field of protection against and prevention of domestic violence and gender-based violence, child protection and child justice, property issues and social protection.

Additionally, throughout the period, MYLA sought to facilitate access to justice by fulfilling its function of being a “filter” for resolving the legal problems of the population, without referring them to costly

¹⁵ At MYLA, and within the MYLA program for legal aid, in 2020, by 31 December, inclusive, a total of 455 legal advice was provided.

court proceedings.¹⁶ Therefore, in 2020 (December 31, 2020, inclusive) from the multitude of parties that applied to the MYLA office, 20 cases were carefully reviewed and selected for which a total of 20 applications for free legal aid were submitted.

Out of the total of 20 submitted applications, 3 are still in decision-making procedure before the competent regional offices of the Ministry of Justice (or 15%), 13 are approved (or 65%) and 4 are rejected (or 20%).

STATUS OF SUBMITTED APPLICATIONS FOR FLA

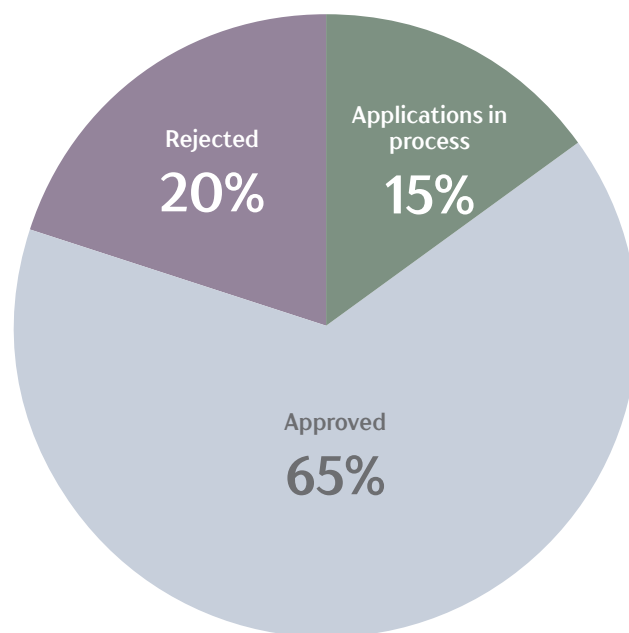


Table no. 1: Overview of submitted applications for free legal aid

| Status of submitted application | Number of applications | Legal matter for which secondary legal aid is needed | |
|---------------------------------|---------------------------------|--|--|
| Ongoing procedure | 3 | Status-related matters (dissolution of marriage) | |
| Approved | 3 | Status-related matters - dissolution of marriage | |
| | 1 | Dissolution of marriage due to domestic violence | |
| | 3 | Temporary measures for protection against domestic violence | |
| | 4 | Child protection | 2 for determining child custody |
| | | | 1 for approval of expert finding (DNA analysis) for challenging and establishing paternity |
| | | | 1 for child support |
| | 1 | Administrative silence in administrative procedure | |
| 1 | Protection of employment rights | | |
| Rejected | 1 | Property-related matters | |
| | 1 | Representing a victim of domestic violence in criminal proceedings | |
| | 1 | Status-related matter (dissolution of marriage) | |
| | 1 | Administrative procedure for social pension | |

¹⁶ Page 58 of the MYLA Annual Report on the Efficiency of the Legal Protection of Human Rights.

MYLA, as a continuation of its activities, in 2020, held 5 educational sessions for legal literacy of interested population, attended by 84 people (32 men, 52 women). Topics covered that were particularly relevant in the Covid-19 period included gender-based and domestic violence, free legal aid, social protection, labour relations and disputes, discrimination, and the rights of persons with disabilities.

The greatest interest was shown for the educational sessions on gender-based and domestic violence (2 sessions in total), which were attended by representatives of regional offices (RO) of the Ministry of Justice and social work centers. Several practices of actions regarding this frequent occurrence during 2020 have been noticed:

- ▲ Psychological violence is most difficult to prove, unlike other forms of violence that are easier to prove during the proceedings.
 - ▲ There is progress in LFLA regarding the protection of the victim of domestic violence, the financial situation is not evaluated when secondary legal aid is granted, provided that a certificate from the SWC that the person is victim of domestic violence is submitted. However, this only applies to victims who sought help from a social work center. Victims who did not go to the social work center, who did not report the incident to the police and who did not have any other evidence (except in extreme cases - medical documentation) can not receive FLA.
 - ▲ In case of disturbed family relations and domestic violence, when the victim leaves the household, the social protection income remains in the name of the right holder. The problem that arises is if the victim is not the holder of the right to social protection, leaves the home, and thus remains without any income. If that person asks the competent social work center to receive guaranteed minimum assistance (GMA) as a minimum financial assistance until her/his status-related issue is resolved - s/he will be rejected by the center because the practice is that the application for GMA should be submitted together with a decision on dissolution of marriage. Changes in the address of residence or registration of residence due to domestic violence do not effect any changes in the procedures of the social work center. In any case, the
- SWC helps only with one-time financial assistance, which can be very small and insignificant for the financial support of the victim.
- ▲ In the procedure for protection against domestic violence by imposing temporary measures, and in case of a submitted application for FLA, the prevailing view in the Ministry of Justice is that the victims initially turn to the Ministry of the Interior and the SWC before coming to the RO of MoJ. Hence, the greater obligation of the SWC in accordance with the Law on Family to initiate ex officio a non-contentious procedure for passing a temporary measure. This position is problematic, primarily due to the fact that there is a special law, which is the Law on Prevention of and Protection against Domestic Violence. According to Article 36 of this Law, the party shall have the right to choose whether to initiate this procedure - either directly or through the SWC. Moreover, Article 21 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention) gives the victim the opportunity to individually initiate proceedings for legal remedies and means. This possibility is raised to an even higher level since this provision obliges the signatories of the convention to provide the necessary sensitive and professional assistance when victims decide to use this mechanism.
 - ▲ The main problem is sheltering the victim. There are not enough shelter centers, and the accommodation is temporary. Victims are left homeless and therefore do not always report violence.
 - ▲ Another problem is when the victim reports domestic violence to the police, it takes a long time for them to receive a report from the police that the violence has been committed. The SWC have no insight and does not know what happens further with the victim in criminal proceedings. This is not an isolated case, but there is information and insight that the same is happening in other regions of the country. There is no single or joint system where the data and developments and the course of the proceedings can be checked by using the personal identification number of the victim.

▲ Legal aid for victims of crime in criminal proceedings through the FLA mechanism is not clearly and unequivocally regulated¹⁷

Article 38 of the LFLA determines that defense and representation in criminal proceedings shall be provided in line with the Law on Criminal Procedure. Pursuant to Article 49 of the LFLA, Article 8 of the old law, which provides for protection of victims of crimes and protection of victims of human trafficking, remains in force.

The dilemma that arises is in the practical application of the law - whether the representation of victims in criminal proceedings is excluded or allowed under the LFLA. In this way, the access to justice and the fair court proceeding for poverty-stricken victims of crimes are brought into question due to the restrictive mechanisms available to the victims under the LCP.

The LCP, Articles 74 and 75 thereof, define a mechanism for facilitating access to justice through mandatory defense for defendant or suspect, ex officio defense and defense of poverty-stricken people.

The victims have limited possibility for legal aid in terms of Article 53 paragraph 3 in correlation to Article 55 paragraph 1 item 1 of LCP. Under this provision, the victim has the right to counselor whose expenses will be covered by the budget, or free-of-charge talk with a counselor or proxy when giving statement (if being the injured party in the procedure), or statement or submission of property-related request, if the victim has severe psychological and physical injuries or serious consequences from the crime, but only when being victim to a crime that is penalized with at least 4 years of imprisonment. Such wording does not cover the complete representation by a proxy during the criminal proceeding, it is brought down to advising solely during the first statement.

Through an example, it would look like this: raped woman - victim, for her to receive a free of charge counselor at the expense of the budget, the rape

would have to be performed by a number of people or in a particularly cruel and humiliating way or out of hatred or a rape accompanied by severe bodily injury or death or other severe consequences, since prison sentence of at least 4 years is prescribed only for this qualifying form. A raped victim under another qualifying form, such as being forced into sexual intercourse by threats that incriminating photos of her would be published, has no right to free counselor based on Article 53 from the LCP since the minimum prison sentence for this form is 6 months to 5 years. These are among the most common examples in practice.¹⁸

The intention of the provision in Article 49 of the LFLA, which keeps into force Article 8 of the old law, is more than clear: to provide access to procedure, legal aid and access to justice for victims of crimes and victims of human trafficking. However, the wording used "protection..." causes dilemmas and difficulties in practice, and often different application in terms of approval or rejection of the right to secondary legal aid. Hence, if this situation is not tackled, the principle of governance and the legal safety might be seriously affected due to different practice and application of the law.¹⁹

3. Social protection

▲ Practical issues of the social category citizens who have to sue their relatives for allowance only to exercise the right to social protection.²⁰

In the series of legal issues that reached MYLA was this practical problem which has been going on since 2019, and especially gained momentum during 2020.

The problem occurs when there are new applicants for the right to guaranteed minimum assistance as monetary right under social protection, or when there is a beneficiary to some of the social protection rights that can be transferred into this specific right. In this case there is a need to prove

¹⁷ Highlighted as a problem within the Open Government Partnership in the field of Access to Justice - https://ovp.gov.mk/twg_document/%d0%b8%d0%b4%d0%b5%d0%bd%d1%82%d0%b8%d1%84%d0%b8%d0%ba%d1%83%d0%b2%d0%b0%d0%bd%d0%b8-%d0%bf%d1%80%d0%be%d0%b1%d0%bb%d0%b5%d0%bc%d0%b8-%d0%bf%d1%80%d0%b8%d1%81%d1%82%d0%b0%d0%bf-%d0%b4%d0%be-%d0%bf/

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

that the applicant cannot provide subsistence for himself on any grounds. The actions by the social work centers are unified in this direction in line with the implementation and application of the Law on Family and the Law on Social Protection. This means that the applicant has to submit a lawsuit against a member of his/her family or household for allowance.²¹

The problem is further complicated when a socially vulnerable party needs to be explained that this means instituting court proceeding. For this category of people, court proceeding is unknown and expensive process, and especially affects the disruption of fragile relations with family members that have an obligation to support each other.

Under the Law on Social Protection the social work centers have the possibility to initiate this procedure to the account and on the behalf of the applicant, should the latter be old, powerless, incapacitated, disabled person or a child, however this option is rarely used. On the other hand, although in some procedures the social work centers sometimes request information about close relatives of the applicant, concrete assessment are almost never made whether the relative who is obliged to support the applicant would have sufficient income throughout the year to support him/her, and by doing so would not have any effect on his/her personal or family subsistence.

Hence, there is no mechanism that social work centers can use to determine ex officio and in a simple way whether on the basis of legal subsistence beneficiaries / potential beneficiaries can provide subsistence for themselves. If there is such a mechanism, it would affect the protection of citizens from conducting unnecessary court proceedings that they would knowingly lose because they would not really win allowance on this basis from their relatives, and, on the other hand, the administrative procedure would be conducted in line with the principles of the general administrative procedure.

- ▲ **When a socially vulnerable citizen recipient of GMA receives donation from citizens, this donation is considered as realized income and affects the further exercise of the right to GMA.**

A household that is materially unsecured and has no property or property rights from which they can support themselves has the right to guaranteed minimum assistance.

A household whose total average amount of all incomes of all household members on all grounds in the last three months before submitting the application for exercising the right and during the exercise of the right is lower than the amount of the guaranteed minimum assistance is considered materially unsecured, in accordance with this law.

The Rulebook on the manner of exercising the right to guaranteed minimum assistance, determining the amount of incomes, the status of the property and property rights of the household, determining the right holder, the application form and the necessary documentation, defines exactly which incomes are considered and which incomes are not considered as incomes when realizing and using the guaranteed minimum assistance.

Namely, the Rulebook, paragraph 1, item 16 of Article 4, states that when exercising and realizing the right to guaranteed minimum assistance, donations given in accordance with the Law on Donations. among other things, shall not be considered as income.

Although under the Law on Donations donations are not considered as income when determining the amount of the total income of the GMA applicant, such law, although envisaged, does not exist for natural persons in the legislation of RNM. There is only Law on Donations and Sponsorships in Public Activities, which states that the recipient of a donation may be a domestic legal entity and this law is not and can not be applicable to donations to natural persons. The oversight is in the rulebook itself, which refers to a law that is not applicable to natural persons.

Additionally, there is a problem if donations are received from different individuals directly on the personal transaction account of the GMA applicant/beneficiary. In such case, the social work center considers it as income when determining the material and financial situation of the GMA applicant / beneficiary, and it is up to the GMA applicant/beneficiary to prove that it is a donation.

²¹ <https://www.facebook.com/vidivakamedia/videos/2851525521793790/>

LAWYERS AND FREE LEGAL AID



This section provides categorized comments that originate from structured focus groups with attorneys with or without authorization to provide free legal aid. This section provides an insight into the views and opinions of lawyers regarding the legal aid provided in 2020 in conditions imposed by the COVID-19 virus.

▲ Limited right to choose a lawyer who is appointed in accordance with the [Rulebook on the manner of appointing lawyers](#)

The lawyer is appointed alphabetically from the list of lawyers, i.e. the lawyer next in line after the lawyer who was previously appointed as a lawyer in the procedure for approval of the application for secondary legal aid. The Rulebook prescribes an exception to this rule only if the applicant has been granted secondary legal aid in a procedure that has already been initiated before a competent court or body and has an authorized lawyer who is registered in the Register of Lawyers. In such case, the lawyer who has undertaken the actions in the court proceeding or in the procedure before another body is appointed.

Lawyers believe that this regulation is defective in several aspects. Firstly, given that the relationship between a client and a lawyer is confidential, and if the party has initiated proceedings with one lawyer, s/he does not trust another lawyer to discuss the problem from the beginning. Secondly, there is no uniformity of action in such situations, because regardless of the fact that previous actions were taken on the same issue before the granting of the secondary legal aid, a lawyer who is next in line on the list is appointed. Thirdly, initiating court proceedings requires the payment of court fees (for

example, divorce proceedings)²². In any case, even if an application for secondary legal aid is submitted to a regional office, the court may schedule a hearing on the lawsuit, the case may end as a settlement proposal for divorce, and again the lawyer will not be paid through the FLA mechanism. This means that the provision of the Rulebook on the manner of appointing lawyers may not always find its application in practice in terms of access to justice.

▲ The number of people in need of legal aid has increased during the pandemic

Increased number of domestic violence proceedings, divorces, labour disputes and relations. To avoid physical contact, people communicate via mails or by phone. But the problem that arises is with those people who can not or do not know how to explain their problem and do not have the opportunity to send the documents for consideration by email or other means.

▲ The poor functioning of the state bodies and the judiciary due to the conditions imposed by the COVID-19 pandemic

The case was reported in the Pelagonija region, but it is not an isolated case that occurred only there. In the beginning of September, a request was submitted to the competent SWC for determining the visits of a parent to his/her children. To this day, the parent's visits to the child have not been regulat-

²² A case was registered in the Northeast region where, in order for the lawyer to be appointed in a divorce proceedings according to the mentioned rulebook, he filed a divorce lawsuit with a request for release from court fees and costs. The court rejected the request for exemption from paying court fees for filing a lawsuit and the costs of the proceedings only due to the fact that the application for FLA was not approved. An appeal was filed and the Appellate Court upheld the appeal with the explanation that the party had submitted an application for FLA and the fact that the Ministry did not respond to the submitted application is not a reason for it to be denied exemption from court fees.

ed. The reasons and explanations for this slow action, i.e. non-action, were that a number of the colleagues were infected by COVID-19 and there was no one to deal with the cases. Children felt most of the COVID-19 consequences.

In general, limitations have been observed in all institutions. Their doors are locked, they do work directly with clients, there are difficulties with the delivery of the submissions and the receipt stamp is difficult to be obtained because there is a designated day for submission of applications, and another day for collecting them.

In classic administrative procedures, legal aid from a lawyer usually does not reach court proceedings. But in any case, the lawyers are witnessing a number of mistakes made by the institutions, especially during the virus pandemic, and due to this the digitalization of the administration was announced as mechanism to tackle this situation. This does not function in practice because there are still queues of people waiting at the doors of certain institution in spite of the mechanism for digitalization of the administration. On the other hand, it has been observed that the mechanism for collecting documents ex officio or from the registers kept by the institution before which the specific administrative procedure is conducted is not functioning. Finally, the inter-institutional cooperation in the context of COVID-19 has faced particular challenges and difficulties. In fact, the poverty-stricken population felt the greatest consequences of this since they were directly exposed to the risk of infection with the virus.

Problems have also been reported in the courts, where there is a large number of infected staff, and work capacity has been reduced. The cases were postponed indefinitely, the procedures are delayed and that is to the detriment of the parties. Many people due to the situation with COVID-19 can not exercise their rights, or exercise them very slowly.

▲ Some regional offices do not have an authorized lawyer who will provide primary legal aid and who will decide on the submitted application.

This means redirecting applicants to the nearest regional office that has an authorized official.

▲ Providing free legal services outside the free legal aid system is a regular process in the workload of the lawyers.

If, on average, in one month a lawyer who provides such legal services for the poor and vulnerable population has 8 to 10 clients, the lawyer dedicates approximately one hour for each of those clients. But each client usually returns for a second time for additional legal services. This means that in 10 months, lawyers dedicate 200 hours for unpaid pro bono services for clients, which is 25 working days or approximately 10% of the total number of working days throughout the year.

Although there is an obligation to record cases for which legal services are provided under the free legal aid system, any other legal aid provided outside the system is not regulated. First of all, there are difficulties in assessing whether a party has or does not have the means to pay for legal services, and subsequently based on that to be provided with services free of charge. Secondly, keeping records of pro bono services or free legal aid services provided outside the state FLA system is something that requires extra time for lawyers, which is why they often do not keep such records.

▲ Issues in cases related to domestic violence

In one case, secondary legal aid was granted in a case where the court imposed protection measure compulsory treatment. In this case, as there is no permanent separation of the victim/FLA applicant and the perpetrator and they are practically still members of the same household, the victim had to return the funds to the budget of the Ministry.

At the same time, there is a practice to reject the applications for secondary legal aid for initiating court proceedings for imposing temporary measures for protection against domestic violence, with the explanation that according to the Law on Family, there is a mechanism for the Social work center to initiate such proceedings ex officio. without taking into account the Law on Prevention and Protection against Domestic Violence, under which, according to Article 36, the party is left with the right to choose how to initiate this procedure – either directly or through the SWC. The parties, because they have bigger problems to solve, problems that have put them in a victim position, often give up the right to file a complaint.

▲ Submission of documents to the Ministry of Justice violates the relationship of confidentiality between the lawyer and the client

The obligation to submit documents for the course of the legally completed case arises from Article 33 of the Law on Free Legal Aid. Paragraph 5 of this article regulates the possibility for the Ministry to request additional data in order to check the cost list with which the lawyer requests payment of the incurred costs. As pointed out, this provision does not specifically indicate which documents may be requested by the Ministry as additional data. The practice of the lawyers shows that they are required to make a photocopy of all the actions taken: filed lawsuit, motions, minutes, verdicts, submitted regular or extraordinary remedies, etc. The dilemma whether this would be a violation of the right to confidentiality of the procedure, as well as possible misuse of personal data of other participants in the procedure, remains to be considered.

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ANNEX 1

Concept for conducting a focus group with lawyers who have provided different legal aid forms and services in COVID-19 conditions

The realization of the focus group was based on three main goals: 1) To identify whether lawyers have provided various forms of legal aid to the poverty-stricken population in Covid-19 conditions? 2) To identify the views and perceptions of the lawyers regarding the legal services and assistance they provided to the poor and poverty-stricken citizens in Covid-19 conditions. 3) To identify whether there are any legal obstacles that make it difficult for the poor and poverty-stricken citizens to access different forms of legal aid in COVID-19 conditions?

To fulfill the aim of the focus group, the discussion needs to follow the following questions, which refer to all possible areas in which lawyers could predominantly work (for example: criminal law, or civil law, or business-legal area and legal consulting or all mentioned areas)

1. An estimate of how many poor or poverty-stricken people in 2020 turned to lawyers for different legal aid forms and services that they could not pay for? Were they their acquaintances, friends, relatives, etc.? How many people have lawyers provided such services to and how many working hours (generally) have they set aside to provide legal aid to the specific individuals? An estimate of how many of these individuals were affected by the problems and challenges posed by COVID-19?
2. Identify the legal areas where free legal aid was most often requested from lawyers in 2020?
3. Problems faced by lawyers in the proceedings, which are imposed and related to the limitations caused by the measures and recommendations for protection against and prevention of COVID-19? How did it affect the rights and interests of the clients?
4. Identifying the legal services that lawyers have provided, categorized by frequency, in COVID-19 conditions?
5. Problems and challenges lawyers faced when providing different types of legal aid or FLA in COVID-19 conditions? The relationship with the institutions and other legal service providers such as associations or legal clinics?
6. In the lawyers' opinion, are the citizens sufficiently informed that certain lawyers would offer free legal aid? If lawyers think that citizens are not sufficiently informed, what are the reasons and how to overcome these challenges? If the lawyers think that the citizens are well informed, but face obstacles in obtaining free legal aid, what are the reasons for this? In how many cases for FLA in 2020 were the lawyers appointed under the new LFLA and what were the challenges in these cases in relation to the virus?
7. Are there any policies and rules for providing free legal aid (in terms of written rules, informal rules, etc.) in the law offices of the participants? Do lawyers keep separate records of legal aid provided to poverty-stricken citizens? Do lawyers have a system to check whether individuals are eligible for such legal aid?

