



A N A L Y S I S

FREE LEGAL AID ACT

The purpose and the aim of the Free Legal Aid Act

The intention of the Free Legal Aid Act and its bylaws is to establish a system which would enable indigent citizens to contract a legal representative, receive legal aid and an equal access to judicial and administrative instances, thus, creating an entire system of legal aid free of discrimination. Timely provision of information to the parties and provision of legal advices to citizens before the initiation of an procedure aims to reduce the number of cases initiated due to the parties' ignorance of their rights, obligations and possibilities of success in a particular legal matter and the quality preparation and professional representation that would enable more effective work of courts and other decision-making bodies reaching decisions regarding rights and obligations of citizens. The new system of free legal aid would establish a comprehensive control over the quality of the legal aid provided and would sanction unprofessionalism and malpractice in cases of free legal aid provision.

Beneficiaries of free legal aid are Croatian citizens, foreigners, asylum seekers and children-foreigners found on the territory of the Republic of Croatia without the presence of parents or a legal guardian, i.e. persons who cannot cover the costs of legal aid without jeopardizing their existence.

In the field of free legal aid, the Free Legal Aid Act creates assumptions for the implementation of the *acquis communautaire* of the European Union and the establishment of:

- 1) *clearly determined criteria for enabling the process of requesting for the approval on the right to free legal aid;*
- 2) *expanding the circle of legal aid beneficiaries to all foreign citizens;*
- 3) *clear and comprehensive provisions on the procedure of approval of the request and the form for request submission;*
- 4) *clearly defined authority of the bodies in-charge of receiving and approving free legal request in cross-border proceedings.*

With the abovementioned assumptions, clearly determined criteria, comprehensive and clear procedural provisions for request approval as well as clearly defined authority of the competent state administration bodies, the domestic legislation would align with:

- 1) *Resolution (76) 5 on legal aid in civil, commercial and administrative matters;*
- 2) *Resolution of the Committee of Ministers of the Council of Europe (78) 8 on legal aid and advice;*
- 3) *Directive of the European Commission 2003/8 from 27 January 2002*
- 4) *Charter of Fundamental Rights of the European Union (2000/C; 364/01; in Nice, 7 December 2000).*

On the basis of the notification on the succession of parties, the Republic of Croatia became the country-member of the following treaties:



- 1) *International Pact on Civil and Political Rights (1966);*
- 2) *Haag Convention on Civil Procedure (1957);*
- 3) *Convention on International Access to Justice (1988),*

With the membership in the aforementioned pact and conventions, the Republic of Croatia took on an obligation of ensuring full equality of citizens before the law as well as fair and public hearing before an independent court; an obligation to arrange models of accessing the right on legal aid to foreign citizens in another country where the proceedings are taking place before the competent bodies.

Preparations for the Free Legal Aid Act enactment

A widespread public discussion was initiated in the Republic of Croatia on the draft proposal of the Free Legal Aid Act. Civil society organizations took an active role in the discussion and expressed full cooperation with the Ministry of Justice of the Republic of Croatia by submitting numerous proposals and amendments on the draft law with an aim to improve its full efficiency. It is important to say that out of all comments and suggestions only few were finally adopted

Organizations of civil society addressed their objections and proposals at the Advisory meeting on the topic of the implementation of the Free Legal Aid Act held on 21 January 2009. The conclusion of the Advisory meeting, organized by the Ministry of Justice of the Republic of Croatia and the Office for Cooperation with NGOs of the Government of the Republic of Croatia, was 'the need and necessity of frequent inclusion of civil society organizations in advisory processes pending enactment and implementation of crucial provisions'.

During the Advisory meeting, civil society organizations addressed a serious complaint and a warning regarding the enactment of the Free Legal Aid Act without comprehensive and high-quality solutions, as well as the fact that the adopted legal provision, according to generally accepted views, does not contain necessary quality which would allow its full functionality. Civil society organizations correctly perceived that such legal solution questions the possibility to achieve the purpose and the aim of the Free Legal Aid Act, thus, concluding that poor and sketchy legal provision and implementing acts endanger the entire concept of the legal aid provision system.

Enactment of the Free Legal Aid Act

The *Decision on the Promulgation of the Free Legal Aid Act* was brought at the session of the Croatian Parliament on 16 May 2008. Free Legal Aid Act ("*Official Gazette*" no. 62/08) came to force on the 8th day from the announcement in the "*Official Gazette*", except for Articles 15 and 16 of the Act, which came into force on 1 February 2009. Provisions of the Articles 45 through 52 of the Act (*Chapter VII Special provisions on legal aid in certain cross-border disputes*) will come into force on the day the Republic of Croatia becomes a member of the European Union.



For the purpose of full implementation of the Free Legal Aid Act, the following implementing regulations have been issued:

- 1) *Instruction on the rate for determining the value of the amount of compensation for the provision of primary and secondary legal aid ("Official Gazette no. 13/09);*
- 2) *Regulations regarding the conduct of the registry of NGOs accredited to provide free legal aid ("Official Gazette" no. 93/08);*
- 3) *Regulation on the form of requests for approval of use of free legal aid, the pattern of referrals and referral records issued ("Official Gazette" no. 13/09); and*
- 4) *Regulation on the criteria for evaluation of authorized providers of free legal aid and legal clinic and on how to report on implementation of projects (<http://www.pravosudje.hr/default.asp?gl=200901290000017>).*

Registered problems in the process of the Free Legal Aid Act implementation

Despite the fact that the Free Legal Aid Act has been in power for only eight (8) months and that it is still not possible to fully appreciate its efficiency, significant problems have been registered in its full application and implementation. Due to sketchiness and vagueness of the Free Legal Aid Act, the possibility of its full application has been limited, as well as its implementation which questions the achievement of the purpose and the aim of this Act.

One of the ideas was to apply the law in order to predict minimum of administrative procedure which would ensure a system where socially vulnerable citizens would have an access to the right on free legal aid. At that time, in 2008, the Ministry of Justice of the Republic of Croatia assured that citizens would access free legal aid through ultimately simplified procedure by submitting free legal aid requests to the competent county office of the state administration with the declaration of assets, as the only required document.

However, *Regulation on the form of requests for approval of use of free legal aid, the pattern of referrals and referral records issued* prescribed extremely demanding and complicated forms clients generally were not able to fill out without professional assistance of free legal aid providers. Despite the fact that the law prescribes that all persons who can't bear the costs of legal assistance without jeopardizing their own existence will have the right on free legal aid, by now it is quite clear that criteria by which free legal aid is being granted are extremely restrictive. Accessing the right on free legal aid is impossible for citizens who own a house considered as satisfactory residential area by the law (35m² for the applicant plus additional 10m² for each other member of the household with possible deviation of up to 10m²). Thus, for example, with a consistent application of the legal provisions an applicant who lives in a household of his/her own, unemployed, who isn't a pension or social welfare beneficiary and has no financial income, is being denied free legal aid. There are many more examples in practice where competent state administration offices deny



citizens requests for free legal aid although they have no or small and existentially insufficient incomes but who in the eyes of the law are in possession of a satisfactory residential facility (a house or an apartment). The fact of ownership of a "satisfactory residential area" completely disqualifies many indigent citizens / potential applicants as recipients of free legal aid and prevents their access to judicial authorities and bodies of public administration in Croatia.

Also, instead of criteria under which the certificate issued by the Tax Office, referring to the declaration of assets of a citizen as the only required document which would determine whether the applicant meets the statutory requirements for the approval of free legal aid provision, would be sufficient, now, as proof, it is required to submit several other certificates and documents. Obtaining all necessary documents requires time; administration fees burden the applicants and further discourage them in the process of free legal aid provision.

Furthermore, any model of direct cooperation between providers of free legal aid and the Ministry of Justice of the Republic of Croatia is missing. The Ministry of Justice delegated the obligation of communication and cooperation with free legal aid providers to the County offices of State Administration. Providers of free legal aid base their work on the Free Legal Aid Act, implementing regulations and the Contract signed with the Ministry of Justice of the Republic of Croatia. Corresponding provisions regulate mutual obligations, rights and control over the work of legal aid providers, while at the same time clearly and comprehensively arrange criteria and authority of the county offices of state administration. County State Administration Offices have been established for the purpose of collecting citizen's requests, issuing the first instance decisions and provide technical assistance to citizens in filling out the Form of requests for approval of use of free legal aid. Establishing the practice by which the competent county offices of state administration issue oral working instructions to free legal providers is contrary to the Free Legal Aid Act, implementing regulations, signed contract and the provisions of the Law on General Administrative Procedure, and this practice is completely unacceptable.

At the same time, free legal aid forms have been determined by the law as primary and secondary free legal aid. Civil society organizations registered as providers of free legal aid have been unfairly deprived of possibility to provide certain forms of secondary legal aid (*for example, legal aid in processes of peaceful settlement of disputes and drawing up documents in court proceedings*), although civil society organizations in general have the capacities, education, knowledge, skills and experience in provision of such sort of assistance. Therefore, we believe it is necessary to consider the possibility of expanding free legal aid provision to some other fields of legal protection.

Further on, it is essential to initiate thorough changes and amendments of the *Free Legal Aid Act* as well as harmonization of the *Regulation on the criteria for evaluation of authorized providers of free legal aid and legal clinics, and on how to report on implementation of projects* with the *Instruction on the rate for determining the value of the amount of compensation for the provision of primary and secondary legal aid in 2009*. For example, Regulation foresees the value of a legal advice but the same legal action has not been foreseen in the Instruction, therefore legal advice can not



be expressed as legal action that is rewarded and compensated. At the same time, Article 10 of the Instruction on the rate for 2009 determined the value of the point in the amount of 2,00 HRK while, a document initiating a procedure before the Constitutional Court of the Republic of Croatia or the European Court for Human Rights is been valued as a legal action in the amount of 300,00 HRK. Such valorisation, on one side, humiliates the profession and underestimates knowledge and on the other side, because of an overly-restrictive system preventing citizens in accessing free legal aid, makes it impossible to spend the funds Ministry of Justice allocated for the work of free legal aid.

Despite the assurances by the Ministry of Justice of the Republic of Croatia that free legal aid providers will be enabled to use a small portion of approved funds provided for free legal aid to cover the necessary and general costs, so called "cold running", and that local and regional self-government will be requested and agreed with to provide financial support in order to cover these costs, particularly to civil society organizations, such support to free legal aid providers has not been arranged, approved, or provided. The Ministry of Justice showed no understanding for the general costs of free legal aid providers in their work (telephone and postal services, office supplies, electricity, etc.), and even the travel costs to attend the meeting organized by the Ministry itself.

According to the law, providers of legal aid provide legal assistance to beneficiaries for a fee that is approved by the competent county office of the state administration. Legal aid can be also provided to persons who are not beneficiaries of legal aid in terms of the Free Legal Aid Act, but outside of the approved funds and without the right to compensation. Financial assistance to organization and provision of legal aid on the basis of referral are provided from the state budget and has been paid in advance on the basis of the approved the project to civil society organizations. Restrictive legal regulations, which inhibit citizens' access to free legal aid system, also prevent spending the approved funds, which will have to be returned to the state budget as unspent. At the same time, civil society organizations are encountering a large number of clients who by all criteria belong to a category of indigent citizens but do not meet the legal requirements and can not be considered beneficiaries of free legal assistance. So, on the one hand, we have provision of legal aid and for these legal actions we are granted financial compensation that is below any standards or legal aid is provided to persons who are not beneficiaries of legal aid under the provisions of the Free Legal Aid Act and such legal actions are outside of the framework of the approved funds and without the right to compensation, on the other hand considerable funds will have to be sent back to the state budget as unspent. *Free Legal Aid Act* as well as the *Regulation on the criteria for evaluation of authorized providers of free legal aid and legal clinic and on how to report on implementation of projects* do not foresee covering of the working costs of NGOs and legal clinics, and rewards provided for legal aid is far lower from the total cost for each undertaken legal action. Each project on the basis of which the particular grant is been approved and where funds are spent to fulfill the aims and objectives of the



project includes a portion of funds to be used for the so-called "cold running", therefore, it is essential that the Ministry of Justice includes these costs when approving the project funding from the funds designated for free legal aid provision. Since the civil society organizations in the Republic of Croatia gave an immeasurable contribution to the provision of free legal aid to citizens long before the Ministry of Justice recognized the need for a systematic solution, we therefore consider necessary to undertake urgent actions in order to resolve this problem.

Conclusion

The system of free legal aid established in the Republic of Croatia failed to provide indigent citizens engagement of a legal counsel, provision of legal aid and equal access to judicial and administrative instances free of discrimination. It is of utmost importance to urgently initiate substantial changes of models and ways to access the right to free legal aid, which requires fundamental and radical actions in the legal text regulating the free legal aid. The model of referrals proved to be completely pointless and unnecessarily bureaucratizes and formalizes the procedure of accessing free legal aid. If the aim is to achieve the full meaning and purpose of the provision of free legal aid, to achieve the preconditions for the implementation of the *acquis communautaire* of the European union, to fulfil the requirements of securing full equality of citizens before the law and the access to rights to a fair and public hearing before an independent tribunal, it is necessary to immediately reopen a widespread public discussion on fundamental changes of the Free Legal Aid Act, which would actively include lawyers, experts for free legal aid, civil society organizations, etc. Unless prompt and thorough necessary changes of the law are not undertaken in order to facilitate its full implementation and complete fulfilment of the aims and objectives for which the law has been passed, then, the concept and functioning of the system of free legal aid is seriously brought into question and full blockade.

Vukovar, 10 September, 2009