

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
January 15, 2019 4:44:47 PM GMT+01:	+4122 839 33 59	227	6	Received
15/01/2019 16:58	+4122-839-33-59	MISSION SERBIE GE		PAGE 01/06



**Government  
of the Republic of Serbia  
Office for Human and  
Minority Rights**

**Responses of the Republic of Serbia to observations of the Special Rapporteur on the  
Independence of judges and lawyers**

**Recommendation 1** With regard to a suggestion “to clarify that the scope of the Law is only to regulate the provision of State-run legal aid services”, we note that this conclusion is not correct. Firstly, the Law does not introduce “State-run legal aid services”. On the contrary, the law relies on independent lawyers and legal aid services in local self-government units as well as associations as providers (Article 9). Secondly, the scope of this Law is to regulate “free legal aid for citizens as its beneficiaries, as well as the ways of exercising and providing free legal aid”, while the objective of the Law (Article 2) is to enable each person effective and equal access to justice. This Law aims to establish a **comprehensive system of free legal aid in the whole country and to that end it includes all the providers of free legal aid services.**

We believe that Your Excellency is aware that the state has been attempting to adopt this law for more than 10 years, precisely with an aim to include all available providers in the free legal aid system. If the scope of the Law was to regulate “state-run legal aid services”, we would have adopted such a law years ago, accepting the requests of the Bar Association to exclude all the other providers.

**Recommendation 2** With regard to a suggestion “to recognize the contribution of non-state actors in providing legal aid” and to ensure that “non-state actors are able to carry out their work effectively, freely, autonomously and independently”, we note that it is unclear why such a recommendation is offered, given that the Law already enables such an environment.

Firstly, as explained above, the reason for postponing the adoption is precisely this effort of the state to include all available providers in the free legal aid system.

The providers are regulated by Article 9 of the Law:

*“Free legal aid shall be provided by lawyers and legal aid services in local self-government units.*

*Associations may provide free legal aid only based on the legal provisions governing the right of asylum and prohibition of discrimination.*

*On behalf of associations, free legal aid shall be provided by lawyers.*

*Free legal aid in the legal aid services of local self-government units or on behalf of associations may be provided by graduate lawyers, in line with the powers laid down in the law governing the relevant proceedings.*

*Providers of free legal aid, as well as associations within the aims they have been set up to achieve, may provide general legal information and fill in forms as types of free legal support.*

*A local self-government unit may organize a joint legal aid service in partnership with another provider, within the powers vested in him under this Law, but it cannot transfer the provision of free legal aid to that provider entirely."*

The provision of Article 9 is complex, but it allows overcoming the disagreements between lawyers and civil society organizations, as well as adherence to the existing rules of all procedural laws that do not change with the adoption of the Law on free legal aid.

We hope that Your Excellency is acquainted with the legal framework in the Republic of Serbia, on the basis of which the associations have been providing free legal aid for a number of years. This Law fully acknowledges the continuation of the provision of free legal aid in the fields in which the associations have been acting. More precisely, Article 9 stipulates that free legal aid is provided by lawyers and legal aid services in local self-government units, which is in accordance with the Constitution.

**In accordance with Para 2, associations may directly provide free legal aid in the procedures for exercising the right to asylum and protection against discrimination.** This enables associations to continue providing free legal aid in these procedures.

In addition, Para 3 states that, on behalf of associations free legal aid is provided by lawyers. This Para refers to **situations where procedural laws stipulate that a party's representative must be a lawyer** – This is also the way in which associations have acted so far when providing free legal aid. This means that Para 3 allows that, in other cases not covered by para 2, associations may provide free legal aid within the objectives for which they have been established by hiring their lawyers to provide free legal aid on behalf of those organizations.

It is very important to take into account that **Para 4 allows that free legal aid in the associations may be provided by a person holding a BA in law** (i.e. not an attorney at law), if the appropriate procedural laws do not require a representative to be an attorney at law. **This provision provides that associations dealing with the protection of human and minority rights and freedoms directly provide free legal aid in the areas of legal protection in which they are engaged** (women victims of domestic, partner and sexual violence, rights of LGBT people, Roma, children, disabled and others).

Essentially, associations will be able to continue to provide free legal aid in all areas where they have been active so far, but are recognized for the first time by the Law as free legal aid providers.

**Recommendation 3** Regarding the recommendation to "bring definitions of free legal aid and free legal support in line with internationally agreed definitions", we emphasize that **the meanings defined under this Law are fully in line with the internationally agreed definitions of legal aid.** Namely, available forms of Free Legal Aid (Article 6) include the provision of legal advice, the drafting of motions, representation and defense.

Given the discussed definition of the term "defense" in Your observations, we believe your Excellency should be aware of the fact that this term is defined under the Criminal Procedure Code as the key governing act in this field. We also believe that all the respective States regulate criminal matters in the main procedural laws and not in the laws governing free legal aid. Therefore, the field of representation and defense is regulated in the Criminal Procedure Code, in particular the field of mandatory defense. **The Law on Free Legal Aid solely adds to the options provided in the Criminal Procedure Code, with an aim to broaden the number of individuals who could benefit from free legal aid in case of insufficient financial means or the fact that they belong to a vulnerable group.**

Forms of Free Legal Support (Article 11) include the provision of general legal information, the filling in of forms, the drafting of notarial deeds and mediation in dispute resolution. This term has been introduced to cover the so-called 'primary' legal aid, which refers to a broad array of issues of consultative nature. General legal information, filling out forms and legal advice are available to everyone and are not subject to authorization. In developing this provision, we have accepted proposal of the CSOs in the Working group, that given that numerous associations who provide free legal aid through projects, such a provision would enable access to free legal support to as many citizens as possible. Free legal assistance provided by lawyers, the drafting of public notices and mediation in dispute resolution are subject to approval.

**Recommendation 4** In terms of the definition of the providers, we reiterate that the Law includes a broad group of free legal aid providers:

**Providers (Article 9)**

*"Free legal aid shall be provided by lawyers and legal aid services in local self-government units.*

*Associations may provide free legal aid only based on the legal provisions governing the right of asylum and prohibition of discrimination.*

*On behalf of associations, free legal aid shall be provided by lawyers.*

*Free legal aid in the legal aid services of local self-government units or on behalf of associations may be provided by graduate lawyers, in line with the powers laid down in the law governing the relevant proceedings.*

*Providers of free legal aid, as well as associations within the aims they have been set up to achieve, may provide general legal information and fill in forms as types of free legal support.*

*A local self-government unit may organize a joint legal aid service in partnership with another provider, within the powers vested in him under this Law, but it cannot transfer the provision of free legal aid to that provider entirely. "*

**Providers of Free Legal Support (Article 12)**

*"Providers of free legal support shall include notaries public, mediators and law faculties.*

*Notaries public shall draft notarial deeds within the powers defined under the law governing the notarial activity.*

*Mediators shall mediate in the resolution of disputes within the powers vested in them by law.*

*Law faculties shall provide general legal information and fill in forms.*

*Providers of free legal support shall not provide free legal aid."*

**Recommendation 5 Ensure that provisions on a Registry maintained by the MOJ as a precondition for the provision of free legal aid are only applicable to State –run legal aid services**

We note that we are pretty surprised by this recommendation, in particular given that **not even one CSO has ever suggested that this Law should not regulate the whole system.** The only proposal received in this regard and with such a meaning was the Amendment to the Law during the adoption procedure in the Parliament, proposed by the oppositional, Democratic party.

The amendment was not accepted because Article 1 of the Law regulates the subject of the law, which includes cases when free legal aid is financed from other means, and not only from the funds provided from the budget of the Republic of Serbia and the budget of the local self-government unit. The reason for this is that this Law establishes a comprehensive system of free legal aid at the level of the Republic of Serbia, which includes the provision of free legal aid financed both from the budget of the Republic of Serbia and the budget of the local self-government unit, as well as from donations and project financing. **These were the requests of all the stakeholders throughout the whole process of drafting the law.**

Civil society organizations (associations) are recognized for the first time by the Law as providers of free legal aid. Having in mind the project financing from public revenues prescribed by law, associations will thus be able to finance the provision of free legal aid from the state budget. It is therefore unclear why would Your Excellency suggest that civil society organizations (associations) are excluded from the system of free legal aid and imminent financing.

**Recommendation 6** In terms of the recommendation to "clearly identify the conditions for being included in the registry and the obligation of the Bar Association to maintain the list in a neutral and timely manner, to ensure non-discriminatory inclusion of all lawyers ..." we note that the Law does not stipulate any conditions for entry in the Registry. Article 16

provides that the Registry of Free Legal Aid Providers shall be used to keep records of providers of free legal aid and providers of free legal support. The Registry is envisaged as an integral public electronic database, aimed at providing information to citizens about available providers. Similar registries already exist for mediators, court interpreters, court experts and public notaries, and no issues have been identified so far for the functioning of any of these registries.

All lawyers providing free legal aid shall be entered on the list of lawyers, compiled by the Serbian Bar Association (as their professional, independent association). The Ministry of Justice is in the process of establishing a new working group, which shall include representatives of all providers and shall develop rules on the referral to a specific provider and financing.

**Recommendation 7** In terms of the recommendation to “ensure that the definition of beneficiaries of free legal aid include ...any person who comes into contact with the law and does not have sufficient means to pay for counsel”, we note that the Law provides for a broad circle of the potential beneficiaries.

The Law takes into account all the potential beneficiaries in line with existing legal standards and international mechanisms: *“Free legal aid may be provided to a national of the Republic of Serbia, a stateless person, a foreign citizen, a foreign national domiciled in the Republic of Serbia, or any other person entitled to free legal aid under any other law or ratified international treaty ...”*

Namely, there are 3 groups of beneficiaries:

I) persons meeting the conditions to be beneficiaries of the right to financial social assistance or child allowance in accordance with the relevant laws;

II) persons who do not fulfill the conditions to be beneficiaries of the right to financial social assistance or child allowance, but due to payment of legal aid from their own revenues in a particular legal matter, fulfill the stated conditions.

The first two groups are related to the economic situation of the free legal aid applicant. The Law includes those groups of citizens estimated to be in the most difficult financial situation on the basis of available data (World Bank analysis, Social Inclusion and Poverty Reduction Team data). The citizens who would be equalized with the first group by bearing the costs of legal aid (fees for lawyers, costs of court proceedings) are in fact equalized with the first group. Determining the economic position is not too static, but allows the examination of all relevant circumstances in the specific case.

III) persons who belong to vulnerable or socially vulnerable groups, who automatically obtain the right to free legal aid (*ex lege*), therefore, regardless of the financial situation.

**Recommendation 8** With regard to recommendation to "ensure that decisions rejecting the request for free legal aid are always reasoned and subject to judicial review", we emphasize that this is already covered by the Law.

Application for Free Legal Aid (Article 27 Para 5) are reviewed pursuant to the law governing general administrative procedure. In particular, Rejection of the Application and Lodging an Appeal with the Ministry is regulated in the Article 34, which stipulates both the reasoning and the judicial review mentioned in the recommendation.

"The administrative authority shall reject an application for free legal aid if certain requirements for free legal aid provision specified in this Law (Article 4) are not met, if in the legal matter concerned free legal aid is not permitted (Article 7), or if the applicant conditions the provision of free legal aid on the final outcome or the success of the proceedings.

The decision rejecting the application must be reasoned.

Appeal against the decision rejecting the application may be lodged with the ministry within eight days from the receipt date of the decision or within eight days or three days from the expiry of the time limit whereupon the application shall be deemed rejected (Article 32, paragraph 4).

The ministry shall decide on the appeal within 15 days from the receipt date of the appeal.

The decision on the appeal shall be final in the administrative proceedings."

Finally, the Republic of Serbia would like to express particular concern with regard to a statement (page 2, Para 2) that *"According to information received, lawyers and their representative organizations, non-state legal aid providers and civil society organizations were consulted during the drafting process, but their concerns have not been taken into account in the final text of the law"*. We would like to suggest that any future assessment is performed in consultations with more reliable sources, given that the consultations and the public debate have been lasting for several years, and that the state has postponed the adoption of the text until the final consensus had been reached with the named stakeholders. In a spirit of cooperation and dialogue, the Republic of Serbia would like to suggest that in future assessments; a better acquaintance with the concrete laws or situations is achieved, prior to developing recommendations.