



Citizens Assistance Services in Croatia

Introduction

In the process of harmonizing domestic legislation with *acquis communautaire* of the European Union, in Chapter 23 “Judiciary and Fundamental Human Rights“, on 16 May 2008 the Croatian Parliament adopted the Legal Aid Act (hereinafter: the LAA) which, in its most important part, has been implemented since 1 February 2009.

The purpose of adopting the LAA was to render possible access to professional legal aid to citizens in poor financial situation in order to exercise certain right as well as to ensure equal access to court and other state administration bodies. Civil society organizations, the Croatian Bar Association, legal experts, international organizations and beneficiaries themselves have been regularly warning about the problems in the functioning of the newly established legal aid system in the Republic of Croatia.

Through the implementation of the project “Civil Society Organizations’ Initiative for Changes in Anti-discrimination Policy“, funded by the European Union from the IPA 2008 programme Strengthening the Capacities and Role of Civil Society Organizations in Monitoring of the EU Acquis in the Area of Comprehensive Anti-discriminatory Strategy, and co-financed by the Office for NGOs of the Government of the Republic of Croatia, a number of Croatian NGOs exercised the purpose of monitoring the implementation of the LAA in combating discrimination and strengthening the capacities of civil society organizations for monitoring public policies, analysis of collected data and reporting.

On the basis of the analysis and surveys conducted with legal aid providers during 2012, the associations provided legal aid in as few as 372 individual legal cases through legal aid system financed by the Ministry of Justice. At the same time outside the system, the financing of which is to a large extent provided by international donors, they provided legal aid in 14.564 individual legal cases, or in percentages: 2.8% within the legal aid system and 97.2% outside the system.

Unfortunately, the last amendments to the Legal Aid Act from 2011 did not bring expected, necessary and objectively feasible qualitative step forward, nor did they contribute to efficiency and effectiveness of legal aid system. The most serious problems which occur year after year are non-functioning and inadequacy of the system, particularly in relation to socially vulnerable persons for whom the Act was intended, which is clearly evident by a comparatively small number of persons who acquired legal aid. Faced with the fact that legal aid system has not been functioning since the last quarter of 2012, particularly in the part pertaining to primary legal aid due to lack of funds in the State Budget, with the consequence that citizens are not granted legal aid except in urgent cases, providing sufficient funds is an imperative.

Furthermore, the established property criteria for granting legal aid are still restrictive and lead to the exclusion of a large number of citizens from the system. The property



criteria set forth in such a manner represent a risk from discrimination on the ground of property status. Citizens with low income, for whom legal aid was intended, do not have equal access to administrative and judicial bodies compared to other citizens of Croatia. Putting those persons in an unfavourable position because of their inability to exercise legal aid brings into question the effectiveness of the entire anti-discrimination protection system.

Finally, the general conclusion is that the LAA should be amended in such a manner as to take into consideration the opinions of legal aid providers and legal experts and to establish softer criteria and simplify the procedure of granting primary legal aid to a wide range of beneficiaries who necessarily need such aid. In order to improve the effectiveness and efficiency of the system, it is necessary to ensure significant increase of funds intended for legal aid from the State Budget and other alternative sources, particularly European funds, so that citizens of Croatia could enjoy the same rights and standards as citizens of European countries that have a well-developed legal aid system and so that they would have equal access to justice.

Legal Framework

Since the beginning of 90's, the Republic of Croatia did not have a comprehensive system of legal aid provision. In the process of harmonizing domestic legislation with *acquis communautaire* of the European Union, in Chapter 23 "Judiciary and Fundamental Human Rights", on 16 May 2008 the Croatian Parliament adopted the LAA which, in its most important part, has been implemented since 1 February 2009¹. The purpose of this Act was to render possible access to professional legal aid for citizens in poor financial situation in order to exercise certain right as well as to ensure their equal access to courts and other state administration bodies.

Constitutional Court decision No. U-I-722/2009 of 6 April 2011 initiated the procedure for the assessment of conformity of the LAA with the Constitution and it quashed several Articles from that Act, which went out of force by 15 July 2011². The Act on the Amendments to the Legal Aid Act (hereinafter: the ZID LAA) was adopted by the Croatian Parliament at its session held on 8 July 2011 and that Act is still in force³.

The European Commission recognized this topic as one of the important topics to ensure fundamental rights and suppress discrimination in fulfilling the criteria set forth in Chapter 23 and, in its progress reports it regularly mentions the legal aid system, as well.

¹ Official Gazette, No. 62/08

² Official Gazette, No. 44/11

³ Official Gazette, No. 81/11



Thus, in the 2012 Progress Report⁴ the following is stated: „It is necessary to improve the legislative framework for legal aid in order to facilitate access to legal aid and promote the role of non-governmental organizations as legal aid providers.“

However, it is important to emphasize that the Ministry of Justice at the beginning of 2013 initiated the procedure to amend and improve the legislative framework of legal aid, so that by the end of the current year it is expected that the new LAA will be adopted.

In relation to amendments to the LAA, in the latest Report on Monitoring Preparations for Accession to the EU of 26 March 2013⁵, the European Commission warns about the essential objectives of announced amendments to the LAA in 2013, such as facilitating access to legal aid to citizens on the one hand and fostering the role of non-governmental associations as legal aid providers on the other.

Availability of services

Types of legal aid set forth by the Amendments to the Act are: primary legal aid, secondary legal aid, exemption from paying court fees and exemption from paying the expenses of court proceedings.

Primary legal aid encompasses: legal advice, drafting submissions before public and legal bodies, representation in proceedings before public and legal bodies and legal aid in peaceful out-of-court dispute settlement.

Amendments to the Act increased the number of legal services encompassed by secondary legal aid as they included legal service – provision of legal advice. The remaining two types of legal aid, exemption from paying court fees and exemption from paying the expenses of court proceedings came into force from 1 January 2013. However, Amendments to the Act did not encompass two types of legal aid, exemption from paying administrative fees and exemption from paying the expenses of administrative proceedings.

Pursuant to the provisions of the LAA, legal aid beneficiaries may be Croatian citizens and certain categories of foreigners.

Legal aid may be granted in proceedings before the court and public and legal bodies in cases when they decide about beneficiaries' rights stipulated by the law.⁶

Primary legal aid may be granted in cases of proceedings pertaining to citizens' status rights, determination of rights and obligations stemming from pension and/or health insurance, determination of rights and obligations stemming from social welfare system and, exceptionally, in other administrative proceedings when it

⁴ http://www.mvep.hr/fi/les/fi/le/2012/121108_izvjesceEK.pdf

⁵ http://www.mvep.hr/files/file/documenti/130326-MR-lzvjesce_RD_HRVF.pdf

⁶ Article 5 of ZID LAA



ensues from specific circumstances. Although protection of employees' rights before employers was encompassed by primary legal aid, pursuant to Amendments to the Act only attorneys and trade unions are authorized to provide the same. Secondary legal aid may be granted in proceedings related to actual rights (apart from land-registry rights) stemming from employment, family relations, certain distraint proceedings and insurance proceedings, peaceful dispute settlement and, exceptionally, in other court proceedings when it ensues from specific circumstances.

Provider of legal aid may be a lawyer, authorized association or a university through legal clinic. Amendments to the Act extended the circle of possible legal aid providers to county state administration offices and the Office of the City of Zagreb⁷. A complete list of legal aid provider can be found on the Ministry of justice website⁸.

Legal aid providers provide legal aid for a fee. The amount of fee is stipulated by the Regulation on the Tariff for Determining the Amount of Compensation for Providing Primary and Secondary Legal Aid⁹.

Legal aid providers are explicitly prohibited from any type of promotion related to provision of legal aid. In case of unlawful promotion, legally stipulated measures for uncontentious provision of legal aid shall be applied¹⁰.

The procedure for granting legal aid is initiated by submitting a request with the competent office. The request shall be submitted on a stipulated form. The form shall contain personal data of a submitter and data on legal matter for which legal aid is sought. Apart from that, the submitter must state data on the type of legal aid and legal area in which he needs aid. In the request he should state only one type of legal aid. Likewise, the submitter must state complete and true data about his/her financial situation and of his/her household members of age. Along with the request, he/she needs to enclose different certificates about the status of submitter of the request issued by a competent body. The request shall be submitted with the competent state administration office according to submitter's place of permanent residence. The office shall decide on the request within 15 days and, in case of urgency, even sooner. If the request is rejected, the submitter may lodge an appeal with the Ministry of Justice within 15 days and he/she may also initiate administrative dispute. If the request is granted, a Decree on granting the use of legal aid is issued.

The Decree stipulates the type and scope of legal aid which is granted. The Decree does not stipulate the provider of legal aid, which means that the beneficiary independently decides on the selection of provider taking into account provider's authorization to provide certain types of legal aid¹¹. This means in practice that the beneficiary must find a lawyer or another provider, whereby he/she does not possess basic knowledge about certain provider's authorizations. The beneficiary must use

⁷ Article 10, paragraph 1 of ZID LAA

⁸ <http://www.mprh.hr/authorized-associations-and-legal-clinics>

⁹ Official Gazette, No. 33/11

¹⁰ Article 10, paragraph 3 of ZID LAA

¹¹ Article 25 of ZID LAA



the granted legal aid within 90 days. Upon the expiry of that deadline, the Decree which granted legal aid is declared null and void.

Gaps in the availability of services

The at-risk-of-poverty rate¹² in Croatia in 2011 was 21.1%. The at-risk-of-poverty rate for a single person household amounted to 24,240 Kuna per year, while the at-risk-of-poverty rate for a household with two adults and two children younger than 14 amounted to 50,904 Kuna per year.

According to Eurostat data, the at-risk-of-poverty rate for EU-27 countries in 2011 amounted to 16.9%. There are four EU countries in which the at-risk-of-poverty rate exceeds 20% (Greece, Bulgaria, Spain and Romania). With its 21.1% rate, Croatia is among the countries with the highest at-risk-of-poverty rate in the EU¹³.

At the end of December 2012, the Croatian Employment Institute recorded a total of 358,214 unemployed persons. In relation to January of 2012, the number of unemployed persons increased by almost 7% or 23,863 persons. According to data provided by the Central Bureau of Statistics¹⁴, in 2011 a total of 402,338 beneficiaries of social welfare were recorded. According to the statistical report of the Croatian Pension Insurance Institute¹⁵ for December 2012, a total number of beneficiaries who exercised the right to pension pursuant to the Pension Insurance Act were 1,127,821. Out of that number, 566,873 beneficiaries (50.2%) receive a pension below 2,000 Kuna per month, which at the annual level amounts to maximum 24,000 Kuna, i.e. less than the at-risk-of-poverty rate for a one person household which in 2011 amounted to 24,240 Kuna per year.

Additionally, large parts of Croatia belong to areas of “special state concern”. Although those are geographically different areas, the one characteristic they have in common is a significant underdevelopment compared to other parts of Croatia.

The presented statistical data indicate that as many as 21.1% of Croatian citizens live on the brink of or below the poverty threshold. When percentages are turned into living human beings, approximately 904,000 Croatian citizens are living with high at-risk-of-poverty rate. If one takes into consideration the conditions for exercising the right to legal aid stipulated by the Act, as well as statistical data from the Ministry of Justice pertaining to the number of granted requests for legal aid (in 2009 there were 2,652 requests submitted at the entire territory of Croatia, in 2010 there were 3,297, in 2011 4,604, while in 2012 there were 5,877 requests submitted), then the

¹² The at-risk-of-poverty rate is the percentage of people with an equivalized disposable income below the at-risk-of-poverty threshold. The at-risk-of-poverty threshold is determined in such a manner that an equivalized disposable income per household member is calculated for all households. Then the median value of the national income distribution is determined and 60% of the calculated median value represents the at-risk-of-poverty threshold.

¹³ Source: Eurostat 2013-02-26.

¹⁴ Source: <http://www.dsz.hr>

¹⁵ Source: <http://www.mirovinsko.hr>



aforementioned social-economic indicators raise the serious question whether the scope of population was adequate.

Legal areas excluded from legal aid system include criminal and misdemeanour law, property law, certain foreclosure procedures in which public bodies vested with legal powers are authorized to collect taxes and public income. Status rights of citizens are not clearly defined.

Amendments to the LAA from 2011 annulled the right to legal aid for misdemeanour and criminal procedures, as well as land registry procedures for victims of domestic violence. Legal areas in which it is possible to grant primary legal aid and in which associations have the authority to provide legal aid have been narrowed down.

A provision was stipulated that leaves a possibility of exceptional granting of legal aid in other administrative procedures when such need arises from specific living circumstances of the applicant and members of his/her household. The provision stipulated in such a manner provides a lot of room for discretionary decision-making and different interpretation of "specific living circumstances", which subsequently leads to uneven application of this legal norm.

The issue of financing legal aid provision is regulated in such a manner that necessary funds are allocated from the State Budget. It is also possible to allocate funds from the budgets of local and regional self-government units, donations and other legally permitted sources. Until 15 January of each year, associations and legal clinics must submit reports concerning expenditure of funds for the projects of legal aid provision, while unused funds have to be returned to the State Budget.

Amendments to the LAA placed before the legislator also include the task of amending the system of vouchers which was the subject of many objections coming from interested parties in the legal aid system. The main objection from civil society organisations pertained to negative effect vouchers had on timely and effective exercise of citizens' right to legal aid, as well as their negative role on the occasion of distributing state funds for the provision of primary legal aid. The consequences of such system are that authorized associations and legal clinics, in a large number of cases in which citizens requested the exercise of their right to primary legal aid, were unable to obtain vouchers/decisions in competent state administration offices, thus the funds that were allocated had to be returned to the State Budget as almost completely unused. In their proposals for Amendments to the Act, NGOs requested that the Ministry of Justice seriously consider the possibility of abandoning the system of vouchers as a method of distributing funds for primary legal aid as well as to affirm the system of project financing along with introducing the control of the manner in which allocated funds are spent, that will be based on reports from legal aid providers.

Analysis of the efficiency of direct implementation pointed at the fact that, after four years of implementation of the LAA, it has become evident that total budget funds for implementation of the Act have significantly decreased in relation to initial plans. In a



survey¹⁶ conducted in 2010 it was established that providers managed to charge only 0.7% of the fee for provided legal aid through vouchers. They earned a negligible fee compared to the expenses of their work which they covered from other international sources (in a total of 5 to 6 million Kuna).

According to the Report of the Ministry of Justice for 2011, a total of 4,000,000 Kuna was planned in the State Budget for legal aid, but following a redistribution it was cut down to 1,671,300 Kuna. Further decrease of funds followed in 2012 and, out of planned 2,278,000 Kuna, available funds were cut down to 1,261,500 Kuna. Pursuant to the aforementioned, since the end of 2012 the system has not been functioning due to lack of funds and citizens are not granted legal aid, except in urgent cases. Thus, it comes as no surprise that stakeholders at the recently held public discussion reached a conclusion that the aforementioned lack of budgetary funds is the biggest problem in the legal aid system.

The fact that the State currently allocates no more than 0.001% per capita is defeating. The State needs to allocate substantially larger funds, in order to maintain the work of the free legal aid providers.

Conclusion and Recommendations

According to the opinion of the critical organisations and individuals involved in the public debate, the LAA does not correspond to the needs of Croatian society and its citizens, because it fails to provide, to a sufficient degree, equal exercise of their rights in proceedings before administrative and judicial bodies.

The reasons for this they find in reduced legal area of the Act's application, limited possibilities for supporting all forms of legal counselling, restrictive conditions for granting legal aid to citizens, complicated procedure and insufficiently informed citizens.

In that sense, the Ministry of Justice made a positive step forward and, at the beginning of February 2013, published a working draft of the ZID LAA on its website and forwarded it to public discussion with the objective of receiving proposals, objections and comments. In such a manner the procedure of amending legislative framework of legal aid was initiated.

On 3rd April 2013 a public discussion was held on the Draft Law on Amendments of the Free Legal Aid Act. The purpose of conducting this discussion was to open a dialogue about obstacles in the implementation of the Free Legal Aid Act and proposed amendments to the Act, and to focus on concrete solutions that contribute to the effectiveness and efficiency of the free legal aid system, especially in the field of primary legal aid.

¹⁶ In a survey conducted by the Centre for Human Rights in 2010, which encompassed 15 associations - registered legal aid providers, it was established that associations had a total of 138 cases/vouchers within the legal aid system and 19,690 cases outside the system.



Public discussion was attended by total of 50 participants: representatives of the Ministry of Justice, the Ombudsman, representatives of the Office of the Ombudsman-offices for gender equality, children and people with disabilities, the Office for Cooperation with NGOs, the Office for Human Rights and rights of National Minorities of the Government of RoC, the National Foundation for Development of Civil Society, UNHCR, British Embassy, authorised association, Legal Clinic of the Law Faculty-University of Zagreb, representatives of civil society organizations.

A key conclusion of this public discussion is an urgent need for changes of the Free Legal Aid Act in order to take into account opinions of legal aid providers and professionals and through establishing a less restrictive conditions and simplification of the approval process of primary legal aid to wide range of beneficiaries who need such assistance.

On the basis of the analysis of legal decisions, current situation in the provision of legal aid, collected comments and proposals, as well as financial data on funds spent on direct financing of legal aid, the Ministry of Justice approached drafting of new ZID LAA. Having realized that planned amendments to the LAA encompass a large number of articles, the Ministry decided to draft proposal of a new LAA.

Novelties in the proposal of the new LAA include:

- the range of primary legal aid was expanded to all legal areas;
- providers of primary and secondary legal aid were clearly separated;
- preconditions for exercising primary legal aid were softened,
- the procedure for using primary legal aid was simplified through direct contacts between beneficiaries and primary legal aid providers and without passing decisions;
- property criteria for granting secondary legal aid were softened;
- stating the name of a lawyer in the decision on granting secondary legal aid was introduced;
- prohibition of promotion was abandoned;
- project-based financing of associations along with recognition of material and other expenses related to provision of legal aid was allowed.

Faced with the fact that the existing legal aid system has not been functioning since the last quarter of 2012, particularly in the part pertaining to primary legal aid due to lack of funds in the State Budget, providing sufficient funds is imperative and a basic precondition that a system designed in such a manner would yield positive results.

Therefore, the recommendations pertaining to implementation of the Legal Aid Act are the following:

- To ensure significant increase of funds for legal aid from the State Budget and other alternative sources, particularly European funds, so that citizens of Croatia would enjoy same rights and standards as citizens of European countries which have well-developed legal aid system as well as have equal access to justice.



- To ensure financing of primary and secondary legal aid from budget sources in the approximately same amount, because of extreme preventive importance of primary legal aid and, by doing so, to avoid previous practice of non-equal allocation to the detriment of primary legal aid.
- It would be necessary to expand the circle of legal aid beneficiaries to foreigners – returnees to the Republic of Croatia who return to Croatia within the programmes of return, reconstruction or housing accommodation and cancel the condition of reciprocity for this category of beneficiaries.
- To re-introduce the possibility of obtaining legal aid for criminal, misdemeanour and land-registry procedures for victims of family violence, as well.
- Statistical records of beneficiaries of legal aid kept by the Ministry of Justice should be supplemented with data, for example on age, sex, status, ethnic affiliation etc., for the purpose of more systematic and comprehensive monitoring and reporting.
- For the purpose of increasing the efficiency of legal aid system, it is necessary to ensure better IT links between offices for granting legal aid and state bodies to ensure facilitated and accelerated verification of stipulated conditions for granting legal aid.
- It would be necessary to re-define the role and tasks of the Legal Aid Commission in such a manner that the Commission becomes independent and impartial body with broader powers.
- In the procedure of adopting new LAA to continue counselling with legal aid providers and with interested public.

The survey conducted within the framework of the Triple A for Citizens project, focusing on the provision of information, advice and legal aid, brought in some additional recommendations and/or observations that are addressing the issue of free legal aid provision in Croatia, as seen by the organisations involved in service provision, so it is valuable to present them in the following topics:

- 1) The lack of a single network of providers that would enable the beneficiaries to approach them by regional or thematic ground, making the services more available to them.
- 2) Insufficient education of providers in specific cases, due to the lack of a comprehensive system.
- 3) People sometimes get different advice from state institutions, than from the NGOs involved in the free legal aid provision, and it is confusing.
- 4) Unequal territorial distribution of organizations that provide legal assistance - a consequence of this situation is the unavailability of legal aid providers, particularly in rural areas. Hence, free legal aid is not available to citizens in rural areas, in villages far away from the cities and municipal centres.
- 5) Communication over the phone or communication by electronic mail are significantly limited and therefore are not as effective as direct communication. Also, geographically distant areas offer significantly fewer opportunities, and thus increase the uncertainty of the situation in which a person is more difficult to see a solution to the situation.



- 6) It is necessary to enable people to rely on their own capabilities and accept co-responsibility for everything that happens in their life, getting more and more engaged and act as involved citizens.

As the project Triple A for citizens aims to encourage the non-governmental organisations to provide information, advice and active help to citizens on their rights, but also seeks to promote the role of civil society in giving citizens a voice and holding governments to account, it could be appropriate to conclude that the project comes at the right time, having in mind the above described situation. By aggregating the complaints and evidence they receive, citizens' information and legal advice services should be able to influence government policy on key reforms and their implementation. Keeping that in mind, a comprehensive conclusion can be derived from the presented analysis that the expectations of this project are high, but at the same time crucial for further development of the provision of information, advice and legal aid to the citizens of Croatia.

Let's hope that this will be enough in order to see a launch of a more comprehensive system of legal aid provision in Croatia, encompassing a multitude of services provided to citizens to enable them to access information on their rights, as well as obtain advice and active help in exercising them.

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