

CASE STUDY:

**THE IMPACT OF THE
LAW ON FREE LEGAL
AID ON THE WORK
OF CIVIL SOCIETY
ORGANIZATIONS**





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SUMMARY



For many years the issue of free legal aid has been the subject of disputes between attorneys and civil society organizations. After years of debating on who, when and under which circumstances has the right to provide free legal aid, the Law on Free Legal Aid began implementing on October 1, 2019.

Several provisions of the Law are quite vague, both in terms of determining who the providers of free legal aid are, as well as in determining who exactly is eligible to be the beneficiary of these services. The lack of precision in certain provisions leaves room for arbitrary interpretation.

Similarly, the Law provides for restrictions directed towards associations of citizens, as providers of free legal aid, and allows them to provide free legal aid, but only in cases regarding asylum and prevention of discrimination.

Several months after the implementation of the Law on Free Legal Aid, some units of local self-government have still failed to establish their own systems for providing free legal aid. The existing legislature leaves the lawyers working in units of local self-government with a wide range of discretionary power in determining who is eligible for free legal aid, given that it will not be provided in cases where the party has no chance to succeed in the dispute. This leaves room for potential abuse of powers and mistakes. The problem with the implementation of the Law on Free Legal Aid was also noticed in cases when units of local self-government refer citizens to associations, often doing so by the word-of-mouth.

All of the above-mentioned issues contributed to the fact that, since the beginning of the implementation of the Law on Free Legal Aid, the citizens' access to free legal aid, and therefore their access to justice, has been compromised and restricted, while associations of citizens, which have years of experience and adequate staffing and organizational infrastructure for providing free legal aid, have been disabled from doing so like they have in the past.



INTRODUCTION

Citizens in Serbia often need legal aid, both in terms of representation in proceedings, as well as in obtaining certain legal advice and guidance. Until recently, citizens had the possibility of contacting civil society organizations, which have been the providers of free legal aid for many years. However, by adopting the new Law on Free Legal Aid (hereinafter: the Law), the situation has significantly been changed. For this reason, **the focus of this study will be to determine whether the newly established free legal aid system provides an adequate access to justice for citizens and just how the adoption of this Law has impacted the work of civil society organizations.**

The adoption of the Law was preceded by the long-standing controversy between the representatives of the bar associations (attorneys) and a part of the civil sector, regarding who can provide free legal aid to citizens. On one hand, the attorneys claim that free legal aid can only be provided by attorneys, for which they call upon Article 67 of the Constitution which prescribes that *“legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal assistance offices established in the units of local self-government, in accordance with the Law”*.¹ On the other hand, civil society organizations reflect on years of work and experience in this field, developed expertise in specific areas (for example, protection against discrimination, protection of the rights of vulnerable groups, asylum rights, etc.), tens of thousands of beneficiaries to whom they have provided assistance to, as well as the fact that in the same article, Paragraph 3, the Constitution states that the Law shall stipulate conditions for providing free legal

aid. Civil society organizations also believe that the said provision also prescribes a minimum standard for the provision of free legal aid by attorneys and offices within the units of local self-government, but that the norm cannot be interpreted in a way that explicitly prohibits other parties/participants from providing free legal aid. Milan Antonijevic, the Executive Director of Open Society Foundation, Serbia, notes that organizations may provide representation before the European Court of Human Rights in Strasbourg², which further makes it unclear as to why their expertise to provide free legal aid to citizens in their own country is being questioned.

After more than a decade of debating about who, when and under which conditions can provide free legal aid, the Law on Free Legal Aid³ began implementing on October 1, 2019. This Law, inter alia, establishes a distinction between legal aid and legal assistance; prescribes a procedure for obtaining legal aid and regulates issues, such as who can be the providers and beneficiaries of free legal aid. On the same day, seven rulebooks entered into force, which were adopted by the Ministry of Justice on September 20, 2019.

1 <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

2 <http://www.yucom.org.rs/ko-ce-smeti-da-pruza-besplatnu-pravnu-pomoc/>

3 [The Law on Free Legal Aid \(“Official Gazette of RS”, no. 87/2018\) https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html](https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html)

LEGAL FRAMEWORK

According to the Law, *“free legal aid is any legal assistance a beneficiary receives without any compensation, in accordance with the provisions of this Law, and is provided through free legal aid in the narrow sense, free legal assistance and free legal aid in cross-border disputes”*.⁴

“Free legal aid may be provided to a citizen of the Republic of Serbia, to a stateless person, to a foreign national with a permanent residence in the Republic of Serbia, and other person entitled to free legal aid under another law or a confirmed international treaty, provided that:

1) it meets the requirements to be a beneficiary of the right to financial social assistance in accordance with the law governing financial support of the requirements to be a beneficiary of the right to child benefit in accordance with the law governing financial support to a family with children, as well as the members of his family or joint household, as defined by these laws;

*2) it does not fulfill the conditions to be a beneficiary of the right to financial social assistance or the right to child benefit, but due to the paying for legal aid from his own income in a specific legal matter would qualify to become a beneficiary of the right to financial social assistance or the right to child benefit.”*⁵

With such legal formulation, citizens who do not fulfill these requirements are directly excluded as

4 *The Law on Free Legal Aid*, Article 3 (“Official Gazette of RS”, no. 87/2018)

5 *The Law on Free Legal Aid*, Article 4 (“Official Gazette of RS”, no. 87/2018)

beneficiaries. Given that the purpose of this Law is to *enable effective and equal access to justice for all*⁶, it remains unknown why these persons are prevented from accessing the free legal aid system, and it raises the question whether entire categories of people can be excluded from accessing to this right, for no logical or justified reason. Also, if other persons under other laws or ratified international agreements meet the conditions to be beneficiaries of the right to free legal aid, the Law should specifically refer to them, as it has been done with asylum and protection against discrimination.

The Law recognizes legal counseling, drafting submissions, representation and defense as forms of free legal aid. In addition, Article 7 of the Law explicitly lists situations in which free legal aid is not permitted – in commercial disputes, the procedure of registration of legal entities, the procedure for compensation for non-material damages (honor and reputation), the procedure before the misdemeanor court, in case imprisonment is not impeded by the misdemeanor, the proceeding in which the value of the dispute would be in an obvious and significant disproportion with the costs of the proceedings, the procedure in which it is apparent that the beneficiary of free legal aid is unlikely to succeed, especially if his expectations are not based on facts and evidence he presented or that are contrary to the positive regulations, public order and good

6 *The Law on Free Legal Aid*, Article 2 (“Official Gazette of the RS”, no. 87/2018),

practice, as well as in case of an obvious attempt to abuse the right to free legal aid or any other right.⁷ Also, in Article 39 Paragraph 3, the Law proscribes that “*representation in the first instance administrative procedure cannot be financed from the budget of the Republic of Serbia, nor from the budget of the units of local self-government*”, which raises the question of adequate protection of citizens in the first instance administrative procedures, as it implies that it is not financed at all.

The standards of the Council of Europe and the EU legislation regarding free legal aid provide for the conduct of a financial test. Therefore, for example, in a verdict made by the European Court for Human Rights, *Glaser v. the United Kingdom*⁸, the Court notes that there is no violation of the Article 6 of the Convention in case the applicant remains outside the legal aid system because his/her income exceeds the financial criteria, provided that the essence of the right to access to court is not violated. Likewise, in a verdict made by the European Court for Human Rights, *Steel and Morris v. the United Kingdom*⁹, the Court notes that states are under no obligation to spend public funds in order to enable full equality of arms between the person providing assistance and the opposite party “*as long as each party is given a reasonable opportunity to present its case, on terms they are not placed in a substantially unequal position with respect to the advisory*”. Also, it is necessary to conduct the merit test. Whether the interest of justice requires the provision of legal aid to any individual depends on the following factors: (a) the importance of the case to the individual (see: ECtHR, *Nenov v. Bulgaria*¹⁰); (b) the complexity of the case (see: ECtHR, *Steel and Morris v. the United Kingdom*¹¹)

and (c) the individual’s ability to represent himself in the proceedings (see: ECtHR, *Airey v. Ireland*¹²).

According to the Law, free legal aid can be provided only by legal professionals and legal assistance offices established in the units of local self-government, while associations can provide legal aid to citizens exclusively in cases of asylum and discrimination, and only through attorneys.¹³ Bearing in mind that Article 85 of the Law on Personal Data Protection provides that “*the data subject, in connection with personal data protection, has the right to authorize the representative of the association dealing with the protection of rights and freedoms of the data subject to represent him, in accordance with the Law, before the court*”¹⁴, it remains unclear why this area was not recognized in the Law on Free Legal Aid. Legally, this would mean that the association can provide this type of legal aid, but would not be able to apply for budgetary funds, and would have to finance its own costs. At the same time, the association would not be able to claim the costs of litigation if it would represent on its own, without an attorney, since it does not have the right to charge attorney’s fees.

On the other hand, free legal assistance can be provided by notaries, law faculties and mediators, as well as associations of citizens (within the scope of their initial goals), which limits their activities to providing general legal information and filling out forms.¹⁵

Disagreements between attorneys and associations of citizens continued following the adoption of the Law, primarily regarding the legal provisions that prescribe who can provide free legal aid. Given that the Law itself stipulates that free legal aid is based on equal availability of the right to free legal aid, without discrimination against providers, claimants and beneficiaries, as well as targeting the real needs of beneficiaries, it remains unclear why civil society organizations’ space for providing legal services has

7 The Law on Free Legal Aid, Article 7

8 *Glaser v. the United Kingdom*, No. 32346/96, September 19, 2000, Paragraph 99

9 *Steel and Morris v. the United Kingdom*, No. 68416/01, February 15, 2005

10 *Nenov v. Bulgaria*, No. 33738/02, July 16, 2009

11 *Steel and Morris v. the United Kingdom*, No. 68416/01, February 15, 2005

12 *Airey v. Ireland* No. 6289/73, October 9, 1979

13 The Law on Free Legal Aid, Article 9

14 The Law on Personal Data Protection, Article 85

15 The Law on Free Legal Aid, Article 9

been restricted, especially having in mind that these associations provided their representation services by hiring attorneys, in accordance with the procedural legislation.

Therefore, the Law permits associations of citizens to provide legal aid, but only on the basis of provisions of laws that regulate asylum rights and prevention of discrimination, where attorneys provide legal aid in such situations. On the other hand, *“graduated lawyers working in the units of local self-government and association of citizens may provide legal assistance, within authorities prescribed by laws governing the relevant procedures”*.¹⁶ It remains unknown why lawyers working in local self-governments are considered more qualified than the lawyers working in civil society organizations, especially having in mind years of experience they have previously gained by providing free legal aid to citizens, prior to the adoption of the Law.

Another obligation prescribed by the Law is the introduction of the Registry of Free Legal Aid Providers of the Ministry of Justice. In order to make the registration procedure as clear as possible, the Ministry of Justice drafted the Rulebook on the Method of Entry at the Register of Free Legal Aid Providers and Updating the Register, which stipulates that the application for the entry into the Register can be submitted by: Bar Association of Serbia, legal assistance offices in the units of local self-government, associations of citizens, law faculties, public notaries and mediators.¹⁷

However, it is important to mention that, following the adoption of the Rulebook, the Belgrade Bar Association issued a statement, saying, inter alia, that: *“The Belgrade Bar Association expects that only attorneys funded by associations with donor funds will have the interest to register as attorneys providing alleged pro-bono free legal aid services, as well as that their work will be subject to assessment by the competent bodies within bar associations in the light of provisions of the Code of Professional Ethics of*

16 The Law on Free Legal Aid, Article 9

17 <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/9/reg>

*Attorneys, which prohibit unfair competition within the legal profession.”*¹⁸ This is the reason why 14 non-governmental organizations decided to file a complaint to the Council of Bars and Law Societies of Europe, requesting that this association intervenes and *“calls for the Belgrade Bar Association to stop intimidating attorneys that are involved in the work of non-governmental organizations”*. The complaint also alleges that the Belgrade Bar Association has been carrying out the procedure of removing lawyers who are statutory representatives of non-governmental organizations from their official registry. The news regarding this issue was also published on the Belgrade Bar Association’s official website.¹⁹

In their response, the Council of Bars and Law Societies of Europe urges the Belgrade Bar Association to cease restrictions aimed at lawyers working in associations of citizens, as well as to direct their activities towards supporting the rule of law and access to justice.²⁰

In response to the Council’s letter, Belgrade Bar Association provided the following response, stating, among other things, that *“The Belgrade Bar Association has the obligation to ensure compliance with the norms governing attorneys’ profession and that no one can be privileged when it comes to following provisions that prohibit disloyal competition and provisions that prohibit business incompatible with the profession, which is why certain decisions have been adopted in relation to those who have failed to comply with the Law and the Code, as well as that they believe the only aim of the complaint was to protect the privileged status of certain attorneys from the non-governmental sector, who in reality do not practice their profession and merely use it as a ‘smokescreen’ for their other endeavors, as well as attorneys who obtain clients through associations of citizens.”*²¹

18 <https://akb.org.rs/vesti/poziv-za-prijavu-na-listu-advokata-koji-pruzaju-besplatnu-pravnu-pomoc/?script=lat>

19 <https://akb.org.rs/vesti/novi-sistem-pausalnog-oporezivanja-advokata/?script=lat>

20 <https://akb.org.rs/wp-content/uploads/2020/01/International-Bar-Association.pdf?script=lat>

21 <https://akb.org.rs/wp-content/uploads/2020/01/ODGOVOR-AKB-IBA.pdf?script=lat>

THE FIRST
EFFECTS OF THE
IMPLEMENTATION OF
THE LAW ON FREE
LEGAL AID

Since the beginning of the implementation of the Law, most citizens have approached the units of local self-government with legal issues in the area of family disputes, primarily divorce, livelihood, domestic violence and maintaining contact with children. A significant number of cases also included issues in the field of labor law, social aid and the right to pension.²² According to Biljana Bjeletic, a member of the Managing Board of the Bar Association of Serbia and the working group for drafting this Law, in the first 5 months a total of 286 people received free legal aid from attorneys²³. However, there are those who received nothing but legal advice from their municipalities, or the financial assistance from their units of local self-government, to cover the costs of the proceedings. "According to the data from the six-month Report that Tanjug had access to, a total of 1.902 citizens received free legal aid in the first 6 months of the implementation of the Law. More than 90% of citizens' requests for free legal aid have been approved, and more than a fifth of those were solved by lawyers working in municipal offices that provide this type of assistance. The total number of requests for free legal aid was 2.079, out of which 1.902 were approved. The majority of the beneficiaries were provided free legal aid by the municipal services, while 416 beneficiaries were

referred to attorneys (those who needed representation before court or who needed a more complex form of legal assistance). When it comes to free legal support, provided by mediators, public notaries and associations of citizens, the total number of beneficiaries they aided was 7.460. General legal information was provided to 3.657 of them, while 635 received support in drafting submissions."²⁴

Already the problems arose during the initial addressing of citizens to their units of local self-government. By the end of February 2020 - 5 months after the implementation of the Law, over 40 municipalities and cities still have no competent staff in charge of initial estimation of whether a person qualifies as a beneficiary of free legal aid. This includes Smederevo, Prokuplje, Kosjeric, Bajina Basta, Bela Palanka, Majdanpek, Lebane, Irig...²⁵

Therefore, one of the consequences of the beginning of the implementation of the Law is that some non-governmental organizations, which have the appropriate structure and facilities for providing free legal aid, have been prevented from doing so, while some units of local self-government have still failed to establish a proper system, which significantly impedes citizens' access to justice in some municipalities and cities.

22 <https://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:851775-Advokati-bez-placanja-zastupaju-286-gradjana-Prvi-efekti-primene-Zakona-o-besplatnoj-pravnoj-pomoci>

23 <https://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:851775-Advokati-bez-placanja-zastupaju-286-gradjana-Prvi-efekti-primene-Zakona-o-besplatnoj-pravnoj-pomoci>

24 https://www.rtv.rs/sr_lat/drustvo/za-6-meseci-1.902-gradjana-dobilo-besplatnu-pravnu-pomoc_1117081.html

25 <https://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:851775-Advokati-bez-placanja-zastupaju-286-gradjana-Prvi-efekti-primene-Zakona-o-besplatnoj-pravnoj-pomoci>

THE CIVIL SECTOR'S
RESPONSE TO THE
IMPLEMENTATION OF
THE NEW LAW



At the end of January 2020, Partners Serbia organized a focus group in Belgrade, which was attended by representatives of 8 civil society organizations. This focus group was attended by: Lawyers' Committee for Human Rights – YUCOM, Belgrade Centre for Human Rights, Praxis, Autonomous Women's Center, SHARE Foundation, A11 Initiative, Da se zna! and Humanitarian Law Center.

The aim of the focus group was to exchange experiences, regarding the current implementation of the Law, and discuss the impact of the new Law on the work of the civil sector. Aside from this focus group, an additional meeting was organized with another organization outside of Belgrade.

The collocutors concluded that the procedure of adopting the Law took an extremely long time, and that civil society organizations were not adequately included in this process. The representative of one of the organizations, who took part in a local meeting of the working group for drafting the Law, noted that the meeting was poorly organized, that there was no room for discussion, as well as that there was a rather hostile atmosphere directed towards the representatives of civil society organizations who were present.

All the organizations that took part in the focus group, that have sent written proposals to the Draft of the Law, claim that their suggestions were rejected without any explanation.

Nonetheless, the participants of the focus group concluded that the adoption of the new Law had no significant impact on the scope of their activities in this area. However, some organizations have chosen to focus their activities on administrative proceedings and no longer engage in court representation.

The representatives of the civil sector also find the Law to be confusing, both for providers and citizens who are beneficiaries of legal assistance. The provisions should be simplified, so that the procedure for accessing the free legal aid system could be appropriately understood by the citizens.

The mere referral of citizens also proved to be problematic, and from organizations' experience so far, it can be concluded that, in cases when units of local self-government estimate they are unable to provide legal aid, they informally refer citizens to civil society organizations, without providing them with an official decision. The collocutors also find that the Law fails to specify what happens in situations when beneficiaries are rejected from obtaining free legal aid within the units of local self-government, i.e. whether in these circumstances citizens can contact organizations outside of the areas provided by the Law (asylum and protection against discrimination). Almost all representatives of organizations confirmed that they were contacted by citizens referred by the units of local self-government, but without any official referral decisions. Representative of one of the organizations also pointed out that potential beneficiaries in one of the Belgrade municipalities were rejected by phone, even in situations where they had filled out the necessary form.

In the first six months on the implementation of the Law, one organization received only one referral decision, even if much more citizens contacted them, following the advice of the units of local self-government. In the above mentioned decision, the person was referred to the organization, and not to a specific attorney or other persons working within the organization. Citizens were referred to organizations by units of local self-government, as well as by courts and social work centers, always by word-of-mouth.

According to collocutors from an organization in the south of Serbia, unlike their colleagues from Belgrade, the units of local self-government made no referrals of beneficiaries to this organization. On the other hand, citizens who have requested assistance from an organization unable to provide legal aid were indeed referred to the free legal aid service within the unit of local self-government. However, the representatives of this organization have no information whether any of those citizens were



actually provided with free legal aid. Nevertheless, given that free legal aid was never the primary activity of this organization, the implementation of the Law did not have a significant impact on its work. For the first six months of the implementation of the Law, the representatives of this organization have no information whether any of the citizens that have previously contacted them have managed to obtain the right to free legal aid within the services of free legal aid at the units of local self-government. This organization is not registered as free legal aid provider, precisely because their activities are more focused on establishing a connection between beneficiaries and providers, and not to a direct assistance. On the other hand, the organization often provides interpretations of particular legal provisions and drafts general guidelines for citizens.

On the other hand, other organizations have made informal referrals of beneficiaries to free legal aid services within the units of local self-government, in case citizens contacted them looking for free legal aid, in situations in which they were unable to provide legal assistance in accordance with the Law. According to one of the organizations present at the meeting, none of the beneficiaries they have spoken to, that have been referred to municipalities, have managed to obtain the right to free legal aid. For example, in one case, a client seeking to initiate court proceedings in order to determine the time and place of his birth, was asked to submit his personal identification card for inspection, which was clearly not possible at the given moment, since the person was not registered within the official civil records (namely the Register of Births) and thus did not possess citizenship papers. Therefore, there are justifiable fears that there may be more cases like this one.

One of the participants present at the focus group also pointed out to the problem of one provision which states that free legal aid will not be provided in cases where there clearly is no chance of success in the dispute. This leaves room for potential malpractice and allows for a too wide discretionary power of lawyers working at the free legal aid services within the units of local self-government to decide on this matter. According to the Law, such jobs can be undertaken by graduate lawyers with over three years of working experience in the legal sector and the certificate on successful completion of training for the implementation of this Law,

and the work of these lawyers is monitored by the Ministry.²⁶ Such definition of these formal conditions has been criticized by some of the collocutors from associations of citizens, finding that the bar was set too low, given the responsibility such job entails and the level of legal expertise it requires.

Regarding asylum, the participants also find that the Law fails to clearly define cases where free legal aid can be provided – whether solely in the procedure for requesting asylum or it can be extended to persons who were already granted asylum, persons seeking temporary protection, etc.

In collocutors' opinion, the provision that stipulates who can be the beneficiaries of free legal aid is particularly problematic. Once again we emphasize that the Law proscribes that the beneficiary may be a person eligible to access the right to financial social assistance, child benefit, members of his family, as well as person who is not eligible to access the right to financial social assistance, but who would become one in case he pays for legal aid from his own income.²⁷ It remains unclear how it will be assessed whether a person is in danger of becoming a beneficiary of social assistance, since the costs of proceedings cannot be accurately determined; especially not before the procedure itself has began. This issue is governed by the Rulebook on the Contents of the Free Legal Aid Request Form²⁸, which stipulates (in Article 6) that the applicant submits evidence of financial status proving that by paying the costs of free legal aid or free legal assistance the applicant would be existentially endangered. The same article prescribes what information about the financial status of the applicant must be provided, however, it is still unclear how the potential costs of the procedure will be determined. The Rulebook also stipulates that "the claimant shall receive free legal aid if the claimant's income is not higher than the minimum wage established by the Government in accordance with the law."²⁹

There are also dilemmas amongst participants, regarding the reports that are to be submitted to

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26 The Law on Free Legal Aid, Article 29

27 The Law on Free Legal Aid, Article 4

28 <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2019/68/11/reg>

29 The Rulebook on the Contents of the Free Legal Aid Request Form, Article 6

the Ministry of Justice. The views on the reporting procedure differ, despite the adoption of the Rulebook on Keeping Records on Legal Assistance and Free Legal Aid. Specifically, the Rulebook stipulates that *“based on the Law on Free Legal Aid, services provided by associations, like provision of general legal information, filling out forms, and free legal aid, are to be recorded and shall contain the information such as name and residence of the beneficiary of free legal aid or free legal assistance, who has been provided services of free legal aid or free legal assistance, but who does not meet the conditions prescribed by the Law.”*³⁰ According to the information the participants obtained from the Ministry of Justice, all cases, not just those financed from the budget, are to be reported, which puts additional strain on civil society organizations. So far, the organizations’ practice shows that citizens prefer not to share their personal information in some cases, especially when they know that this information may be forwarded to other bodies and institutions. Certainly, associations should keep records of all users for their internal needs, primarily because of the potential oversight of their work, but it is questionable whether the Ministry will be provided only with a statistical representation of cases or with certain personal data of beneficiaries, when submitting the report.

What is interesting is that one of the organizations registered as provider of legal assistance, yet it has been added to both registers – the one with providers of free legal aid and the one with providers of free legal assistance. The same thing happened to other organization, which registered as provider of free legal aid, and was also added to the list of providers of free legal assistance.

A representative of one of the organizations that has opted out of registering within the Ministry, has stated that they will probably register as providers of free legal assistance, but only after they determine whether a person working within the organization can be registered as the provider, or it could be their external associate, bearing in mind their previous cooperation with an attorney that provided free legal aid, but was not working within the organization. They are also uncertain with regards as to who will

be paid from the budget – the organization or the attorney providing free legal aid.

It is important to mention that none of the 8 organizations that participated at the focus group plans to be financed from the budget of the Republic of Serbia, but would rather finance all their activities through donor funds, meaning projects. Thus, this goes to show that there are no intentions to misuse the state budget, and in this respect civil society organizations present no competition to attorneys and the units of local self-government, but rather, they enable citizens to have an access to additional form of protection, one that would enable timely access to justice to a wider range of beneficiaries.

One of the participants of the focus group believes that the entire procedure has been complicated to the extent that citizens now seem to need free legal aid services in order to be able to access free legal aid.

What is also interesting is the lack of notable campaign to bring the free legal aid system closer to citizens and demonstrate how they can exercise their rights. The participants of the focus group agree that the current system contributes to further victimization of beneficiaries and leads to a more difficult access to justice for all citizens, as they are forced to repeat the same issue before the municipality, then before the attorney they are referred to, and lastly before the court, should the case reach the court. Some of the collocutors pointed out that the insufficient precision of certain provisions of the Law affects associations of citizens that provide free legal aid to users who are not citizens of the Republic of Serbia, while some have become very reluctant to represent beneficiaries in court.

Within the focus group, Partners Serbia checked whether the activists, organizations, and attorneys have been pressured due to their activities conducted in providing free legal aid services so far. Although none of the organizations suffered any specific pressures, representatives of one of the organizations find that adoption of the Law had a negative effect on their work, since the attorneys they have previously worked with decided to temporarily postpone cooperation, fearing that the Belgrade Bar Association might initiate proceedings against them, which lead to the organization operating at a reduced capacity.

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30 The Rulebook on Keeping Records on Legal Assistance and Free Legal Aid (*“Official Gazette of RS”*, no. 68/2019), Article 3

CIVIL SOCIETY
ORGANIZATIONS'
CONCERNS
REGARDING THE
IMPLEMENTATION OF
THE LAW ON FREE
LEGAL AID

Having in mind that the Ministry of Justice is supervising the enforcement of this Law, some of the civil society organizations' doubts and questions regarding the implementation of the Law and its provisions, to which the Ministry should provide further clarifications and interpretations, are listed below.

On the one hand, it remains unclear whether discrimination complaints and lawsuits can be drafted and filed by associations of citizens, with the consent of the discriminated person, even if they are not registered as providers of legal aid and assistance, since they are already doing so, in accordance with the Anti-Discrimination Law.

It is also questionable whether civil society organizations can cover the cost of beneficiaries' representation, even if they are not formally registered as providers of free legal aid.

In order to provide citizens with timely access to justice, it remains unclear whether citizens can contact civil society organizations in the event of being rejected by the units of local self-government and whether civil society organizations registered as providers of free legal aid can, in such cases, provide legal aid beyond the scope of asylum and protection against discrimination.

Also, considering the issue of the provision which prescribes that legal aid will not be provided in disputes in which it is obvious that there is no chance of success in the dispute, it is necessary to clarify how this will be determined, namely whether the lawyer in the units of local self-government will be able to determine the facts and evidence in specific cases.

Given that the Law does not specifically prescribe whether legal aid refers exclusively to the asylum procedure, or can be extended to asylum seekers or persons seeking temporary protection, it is also necessary to specify whether associations of citizens

can provide legal aid in all situations related to the asylum procedure in the Republic of Serbia.

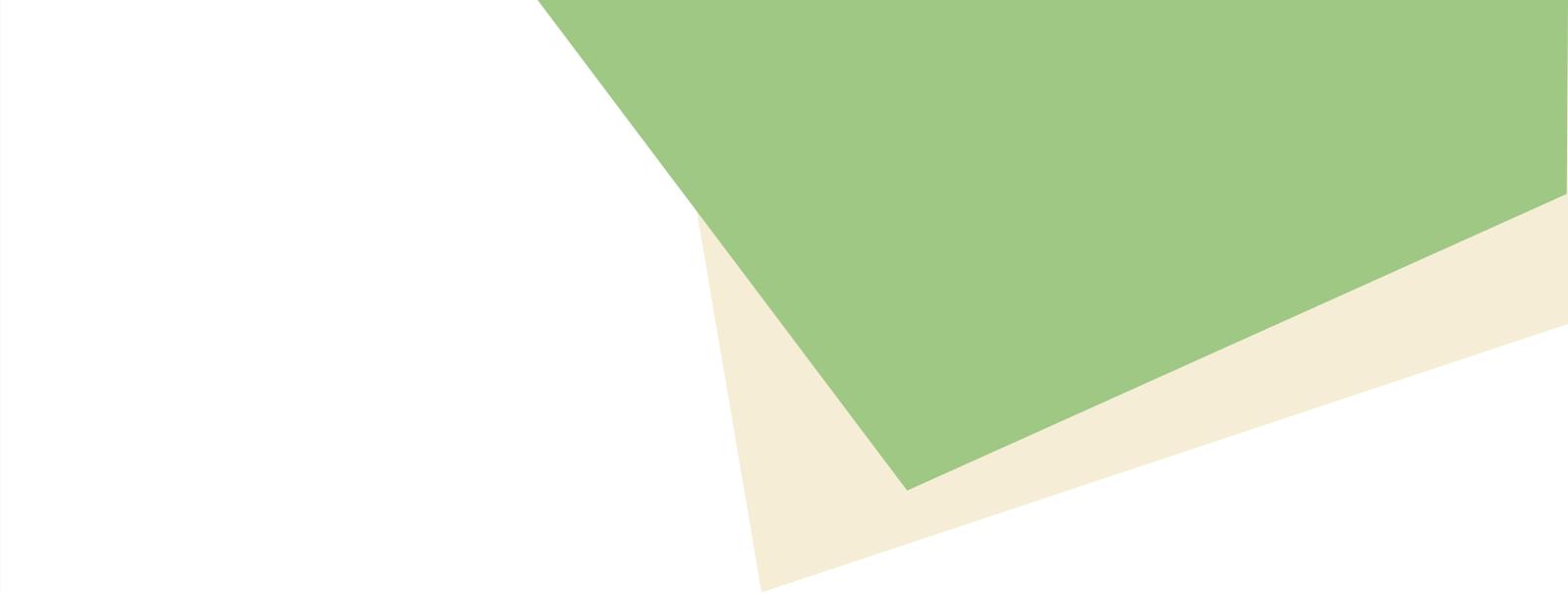
Another concern is the possibility of hiring external associates, for example attorneys hired by civil society organizations to provide free legal aid to citizens. On the one hand, it is necessary to specify whether the person providing legal aid must be officially employed by the organization, as well as whether the funds from the state budget are paid personally to the attorney or the association itself. Also, it is necessary to determine whether the organization can be financed from the budget of the Republic of Serbia or exclusively from project funds, in case the unit of local self-government refers the beneficiary to the civil society organization with an official decision, without specifying which person in the organization they should contact.

Bearing in mind that the Law prescribes "*mandatory keeping of records on provided free legal aid and legal assistance, which contains the name of each user to whom the free legal aid or free legal assistance was provided and the type of free legal aid and free legal assistance provided*"³¹, it is still unclear whether civil society organizations need to provide the Ministry with only statistics showing the number of clients who have been provided with free legal aid, which type of legal aid was provided to them (representation, legal advice) and specifying in which areas free legal aid has been provided, or if personal data of the beneficiaries should also be submitted. According to the Law, "*the beneficiary has the right to file a complaint to the Ministry, if he considers that the provider has unjustifiably refused to provide approved free legal aid, does not provide free legal aid conscientiously or professionally, does not respect his dignity or if he claims that the provider is seeking compensations for the provision of free legal aid.*"³²

31 The Law on Free Legal Aid, Article 22

32 The Law on Free Legal Aid, Article 36

CONCLUSION



Although the lawmaker's intention is clear and demonstrates the need to provide timely access to justice to as many citizens as possible, the lack of precision of certain provisions, as well as restrictions directed towards associations of citizens, have unfortunately led to the opposite effect.

On one hand, while associations of citizens that have the adequate structure and facilities for providing free legal aid have been disabled from doing so, some units of local self-government entrusted with these powers have failed to establish an appropriate system, meaning that citizens in these areas are unable to appropriately access the free legal aid system.

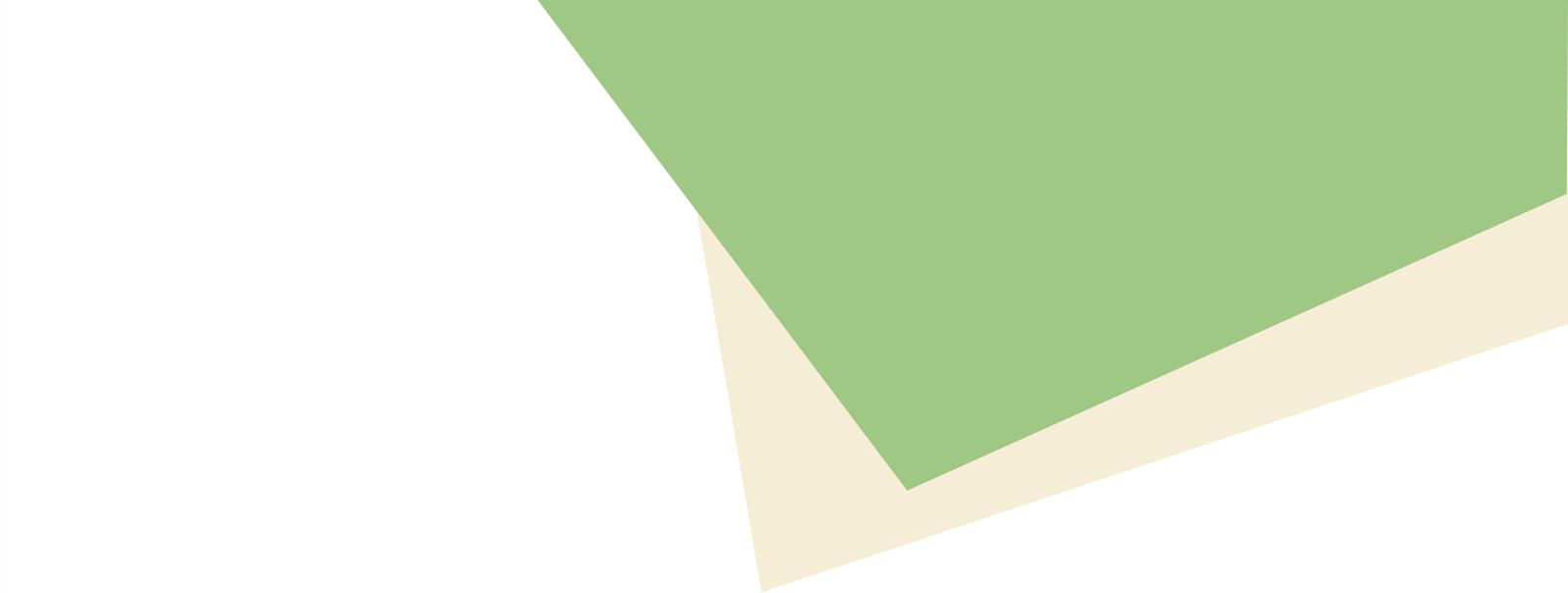
The problem was also noticed during the referral of citizens to associations of citizens, since the units of local self-government often bring no official decision on the issue, but rather refer citizens to associations by word-of-mouth.

The existing legislature leaves the lawyers working in the units of local self-government with a wide range of discretionary power in determining who is eligible for free legal aid, given that it will not be provided in cases where the party has no chance to succeed in the dispute. This leaves room for potential abuse of powers and mistakes.

In order for the primary objective of the Law to be respected, it is necessary to enable a timely and equal access to justice to all persons, and to properly engage associations of citizens in this process, given that, in the end, it is in everybody's interest for an adequate legal protection to be provided to as many citizens as possible.



RECOMMENDATIONS

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- ▶ Impose an obligation on the units of local self-government to issue decisions to citizens, in cases when they are referring them to associations of citizens (despite the legal obligation, it is obvious that it is not always followed in practice). Introduce control over the work of the units of local self-government, as well as sanctions for not receiving and failing to act upon citizens' requests for free legal aid.
 - ▶ It is recommended for the units of local self-government to develop written forms (a closed form, with the majority of YES/NO answers) to be filled out by the free legal aid seekers. This would speed up the process, shorten the time, enable the units of local self-government to process the requests more efficiently and unify the handling of all free legal aid services within the units of local self-government throughout Serbia. Clear forms would contribute to equal legal protection and access to justice, and on the other hand would facilitate the work of the units of local self-government which may not have had experience in providing free legal aid so far.
 - ▶ The recommendation for the associations of citizens is for them to develop their own internal forms. For example, once citizens contact them after having been refused free legal aid within the units of local self-government by word-of-mouth, or in case the aforementioned body has failed to provide assistance, they could respond immediately and file complaints about work, file objections or initiate proceedings against persons responsible (who work within the units of local self-government) for failure to act. This would enable for a more responsible approach to this process to be established, both for employees of the units of local self-government, as well as for associations of citizens.
 - ▶ Publishing periodic reports (primarily by associations of citizens, then the state – especially by the Ministry of Justice) on how the free legal aid system in the field is forking, the conduct of the units of local self-government, whether they are providing assistance, where problems have been identified, etc... This would help determine whether the Law achieved the desired result and became an effective remedy or it has become "a dead letter".
 - ▶ The same work analysis should be conducted with relation to attorneys and associations of citizens (monitoring of trials where free legal aid is provided – whether attorneys arrive on their own or send, for example, their trainees, to what extent do they prepare for these trials, whether they are familiar with the case at the hearing etc).
 - ▶ Reflect on the standards of the Council of Europe and the EU legislation about the importance of conducting the financial and merit test, when determining whether an individual will be granted access to free legal aid.
 - ▶ The Ministry of Justice should, in accordance with its authority as the supervisor of the implementation of the Law, draft an opinion or interpretation of all provisions this study has identified as unclear or imprecise.
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