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ACCESS TO JUSTICE IN THE TIME OF PANDEMIC: FUNCTIONING OF LEGAL AID FORMS IN NORTH MACEDONIA

Ivona Shushak Lozanovska

Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia

ORCID iD: <https://orcid.org/0000-0001-5467-2281>

susak.ivona@gmail.com

Vesna Shapkoski

Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia

ORCID iD: <https://orcid.org/0000-0002-7705-2808>

risteska.vesna@live.com

Abstract: *The international community has significantly increased its focus on the improvement of justice systems around the world, in recent years. With the increase in effort and interventions in the sector, there has been a need to create tools to assess justice systems, to identify the main elements affecting the workings of the justice machinery. In a context of increasing interest and engagement in justice systems reform, the ability of citizens to access justice institutions to address their needs has come to be seen as an essential element of development, human rights, democracy, and the rule of law. The Republic of North Macedonia has been dedicated in a certain amount to improving the access to justice following these global trends. However, the pandemic has brought to the surface many obstacles in the realization of these efforts and imposed serious issues that need to be further solved. In this paper, we will elaborate on the present situation in North Macedonia from the personal experience of law clinics and civil society organizations that work and contribute closely on this issue. Furthermore, we will identify particular points that need to be advanced and relevant stakeholders to be engaged, to improve the situation, and bring justice closer to everyone.*

Keywords: *Justice; Legal Aid; COVID-19; Law Clinic; Civil Society; Practice; Legislation*

INTRODUCTION

Human rights are fundamental rights and freedoms that belong to every person in the world, equally, from birth to death. They are guaranteed, no matter where a person comes from, what they believe in, or how they choose to live their life. They can never be taken away, and are based on common values such as dignity, impartiality, fairness, equality, respect, and independence. These rights are guaranteed by numerous national and international instruments.

The right to access justice is one of the basic human rights. In the absence of access to justice, people cannot express their views, protect and exercise their rights, oppose discrimination, or call to account. The administration of justice should be objective and non-discriminatory, and the exercise of this right is closely linked and depends on the availability of legal services for all citizens, regardless of their material and social status.

Legal aid programs are a central component of strategies to improve access to justice. Every state must take all necessary steps to ensure fair, transparent, effective, non-discriminatory, and accountable services that promote access to justice for all, including legal aid. Hence, access to justice for all citizens depends, among other things, on the efficiency and quality of the system of free legal aid, and thus guarantees the realization of human rights.

In this paper, we will elaborate on the present situation in North Macedonia from the personal experience of law clinics and civil society organizations that work and contribute closely on this issue. Furthermore, we will identify particular points that need to be advanced and relevant stakeholders to be engaged, to improve the situation, and bring justice closer to everyone.

WHAT WAS BROUGHT BY THE NEW LAW ON FREE LEGAL AID?

Equal access to justice for all citizens is a basic human right whose realization must be guaranteed by the legal system of the state. The Constitution of the Republic of Northern Macedonia, as the highest legal act, does not directly guarantee the right to free legal aid, but it does so indirectly through the provision that guarantees equality of all citizens (Constitution of RNM 1991, Article 9). Hence, the existence of a Law on Free Legal Aid is only one step towards exercising this right.

The Law on Free Legal Aid in the Republic of North Macedonia was first adopted in 2009 and came into force in July 2010. It was a complex legal solution whose main goal was to provide equal access to justice through free legal aid for vulnerable categories of citizens who cannot solve the legal problems they face due to lack of funds. During 2011, 2014, and 2015, this law underwent legal changes, but despite that, during its implementation, several problems came to the surface that seriously limited

the access to justice of citizens, so much that the very purpose for which it was adopted, was brought into question. The shortcomings were seen in the ambiguity of the legal text, the weak institutional set-up, as well as its non-functionality and non-compliance with the legal needs of the population.¹

Hence, because this law failed to meet the needs of those who need legal aid the most in terms of fulfilling the principle of equality of all before the law and before the institutions, it was replaced by the new Law on Free Legal Aid from May 2019 year, which prescribes innovations that are expected to have a positive impact on the promotion of the right of individuals to access justice and equitable judicial protection, which is envisaged as its main goal (Law on free legal aid 2019, Article 2).

The Law on Free Legal Aid now provides two forms, 'primary' and 'secondary', and sets out different criteria that applicants must meet. Primary legal aid can be requested by any person, and secondary legal aid can be used only by persons who meet certain conditions, regarding their income and financial situation, property, and living conditions (Law on free legal aid 2019, Articles 17, 18, 19 and 21).

Primary legal aid is provided to any interested person with a domicile or residence on the territory of the country. The initial meeting in the Ministry of Justice, in the authorized association, or the legal clinic (which are now authorized providers of primary legal aid) is to explain to the interested person the nature of the problem or to direct whether the problem is a legal issue, whether it is within the scope of the legal services they provide, as well as the types of legal aid that are most appropriate for the person. Under the new law, providers were given greater powers, in addition to general legal advice and information, to assist in completing forms, to mediate secondary legal aid applications, and to file complaints to the Commission for Protection against Discrimination and Ombudsman as well as requests for protection of freedoms and rights to the Constitutional Court. The providers do all this without any compensation and have no right to act in the name and on behalf of the applicant during the procedure for primary legal aid (Law on free legal aid 2019, Articles 17, 18, 19, and 21).

Concerning the second form, secondary legal aid, the law clearly defines it as aid granted to a person whose request is justified, who needs professional legal assistance from a lawyer for specific legal work, and who is unable to pay the costs of the procedure due to his financial situation. Secondary legal aid includes representation in court proceedings, a state body, the Pension and Disability Insurance Fund of the Republic of North Macedonia, the Health Insurance Fund of the Republic of North Macedonia, and persons exercising public authority. This includes representation before all levels in civil, administrative procedure and administrative disputes, representation before a notary public in a procedure for dispute resolution, compilation of submissions of a debtor before a competent enforcement agent, when enforcement is carried out by

¹For more information, please visit: <https://www.fosm.mk/CMS/Files/Documents/javna-politika-062014.pdf>

selling real estate, and exemption from costs in accordance provided in the Law on Free Legal Aid or some other law.²

The applicant for secondary legal aid, independently or with the assistance and support of the providers of primary legal aid, fills out a request for secondary legal aid to which he/she encloses a statement on his / her financial situation and the financial situation of his / her family members, as well as all the documents they own and can provide, that refers to the legal issue for the solution of which legal assistance is required. The authorized official from the Ministry of Justice, within 15 days from the receipt of the request, obtains all the data and determines whether the applicant meets the conditions for approval of secondary legal aid. It prepares a notification denying the request for secondary legal aid or a confirmation of approving it. If the request is approved, the official organizes the first meeting between the lawyer and the beneficiary of the secondary legal aid, stating the date of the meeting in the confirmation (Law on free legal aid 2019, Article 23).

CHALLENGES AND OPPORTUNITIES IN PROVISION OF FREE LEGAL AID

The old law on Free Legal Aid, according to the indicators, showed that it did not fulfill its purpose, both because it contained very strict legal requirements that citizens had to meet to receive legal aid, and because of the enumerated legal issues for which it was approved. Thereby, there was a very small number of submitted requests for legal aid, and there was a trend of almost twice more rejected than approved requests for legal aid (Helsinki Committee for Human Rights 2019, 15).

The law from 2019, with all the changes of material, procedural and institutional nature, was expected to be 'revolutionary' that would change such a situation, but still the data from the current, although short-term implementation, do not indicate such a positive dynamic.

In the statistical period of 01.10.2019 to 31.12.2019, a total of 113 persons received primary legal aid, and 77 persons requested secondary legal aid. Only 46 of them received it, 28 people were rejected, and 5 people were given a decision terminating the secondary legal aid (Ministry of Justice of the Republic of North Macedonia 2020, 16).

In the following analyzed statistical period, from 01.01.2020 to 31.10.2020, a total of 204 requests for secondary legal aid were submitted, only 109 of which, were

²A person who is granted secondary legal aid is exempt from legal fees, as well as court fees, expertise fees and administrative fees (Article 13, point 5, Law on Free Legal Aid, published in Official Gazette of the Republic of North Macedonia no.101/2019).

approved. The remaining 49 were denied, 33 are in the procedure, 2 were rejected by the decision, and 11 are stopped.³

Some of the generating reasons for these negative trends refer, this time not so much to the need for more solid legal solutions for the legal aid system, but the insufficient promotion of 'legal aid services' and the lack of information of the citizens, as well as the promptness of decision-making.

On the other hand, the data on the increase in the number of free legal aid providers are optimistic. In 2020, three additional legal clinics and one authorized association for providing primary legal aid were registered, and the register of lawyers authorized to provide secondary legal aid was increased from 396 to 507. Their internal activity, as well as the Free Legal Aid Awareness campaign in North Macedonia, which emerged as an initiative of the Ministry of Justice of North Macedonia, is likely to result in raising awareness, promoting the right to free legal aid and its importance in achieving effective access to justice for all.

COMMUNITY-BASED FORMS OF LEGAL AID AND THEIR ROLE AS 'FIRST INSTANCE'

Access to legal aid is the main condition for providing access to justice for all since it is the only way to guarantee the realization of human rights following internationally accepted standards. However, not always the system of legal aid is given the proper attention to, and is often underestimated when creating main state policies and strategies. Legal aid is often used by governments:

As a political volleyball that can be swatted out of bounds in the name of fiscal expediency. After all, people who need legal aid are not the largest voter base. This perspective fails to appreciate the overarching value that a strong legal aid program brings to society — ensuring justice is done and can be seen to be done effectively and efficiently, and enabling people facing urgent legal issues to find a meaningful resolution (McLachlin 2019).

This is particularly why community-based approaches of legal aid are the ones most effective and the ones producing highly scalable results in providing access to justice for all. Community-based justice is most often served by civil society organizations, through various alternative forms that tend to combine professional legal services with community activism. This combination has shown exceptionally positive results since it includes both professional knowledge and grass-root outreach that create a comprehensive approach in addressing the issue directly and effectively.

³The data were obtained by Decision of the Ministry of Justice no. 19-2764/2020 dated 25.12.2020, upon a submitted Request for access to public information.

In the Republic of North Macedonia, two of the most commonly practiced forms of community-based access to justice approaches are (a) informal legal aid (outside of the Law on free legal aid) and (b) paralegals/paralegal aid.

(a) Informal Legal Aid - is the legal aid provided by civil society organizations that are not part of the formal Free Legal Aid system. This means it is not part of the official government program on free legal aid. It is financed and sustained by the CSOs themselves i.e. by the grants they receive from domestic or foreign donors, donations, or by innovative methods of self-financing such as social entrepreneurship.

This form of legal aid does not receive government funds or resources. It is provided by law graduates who have experience in the work of promotion of human rights and access to justice. The aid is often intended for marginalized communities such as smaller ethnic communities, single parents, rural communities, imprisoned persons, victims of domestic violence, people who use drugs, etc. It consists of legal advice, referral, filling documentation, and even personal assistance in conducting the legal and administrative procedures. The advantage of this legal aid form is that it is both individually and systemically oriented with every case being processed separately by implementing a specific person-tailored approach while identifying systemic obstacles that tend to address the collective realization of rights. As a result, positive outcomes are not only aimed at individual benefit but rather at the collective promotion of rights and systemic change. Also, CSOs tend to stay close to communities, continuously research and monitor the change of needs and issues, in that way adjusting their work and focus, thus the legal aid to the circumstances and real needs of citizens. However, being outside of the government program of free legal aid, makes this work highly exposed to sustainability issues and therefore somewhat insecure and inconsistent. As part of the CSO sector, fully dependent on its destiny, it is often collateral damage to the political schemes and conspiracy theories that are very often present in the region.

(b) Paralegals/Paralegal Aid – is a form of community-based work, that is community-based in its whole. It is a form of assistance provided by members of the community who do not have an official law degree but are trained for the first instance regarding the legal and administrative obstacles that people face. Their task is not to give legal aid but to refer and address people so that they do not wander from one institution to another not knowing what their right is and how to realize it, but to be able to walk the road confidently and with awareness. They are trained to identify the issues, to connect them with a certain area of an institution, and to explain to the people the exact procedure and how to complete it.

This form of community-based work is one of the most cost-effective worldwide and the one that managed to bring justice closer to all in many countries.

Unlike many countries worldwide, the Republic of North Macedonia is not recognizing this form of community work as an official tool for access to justice, so paralegals are left to the will of CSOs and their donors. There are no official statistics on how many are there in the country because the number is not constant, but they have managed to sustain through the years as a very useful tool in legal empowerment and access to justice work. One of the main reasons for this is they are part of the communities, people trust them and they have first-hand information on the issues people face. It is often the root to discover systemic obstacles and make systemic changes. Same as for the informal legal aid, paralegals come from and work in marginalized communities and are in the frontline of every justice battle people from this communities lead.

The COVID-19 pandemic brought to the surface many obstacles humanity is facing through the years, but this time they came back bigger than ever. Among other things, the pandemic is a justice crisis (NAMATI 2020). People lack basic access to administrative and legal services, they fight daily with exacerbated inequalities, and on top of that live in constant danger of either deadly virus or the other pandemic – rising poverty. In all of that, informal legal aid happened to be the brightest ray of hope for the least privileged.


Informal legal aid services are more flexible and accessible, they adapt to the new circumstances in real-time, thus provide services rapidly and effectively. Informal legal services providers working mainly on a grass-root level are not stuck in the bureaucratic machinery and therefore tend to solve issues faster and cheaper. For illustration, the number of provided services through informal legal and paralegal aid from only one CSO working in the municipalities Prilep, Krivogashtani, and Dolneni, for the period January-December 2020 is more than 1000 (LET STATION 2021, 4). In the time of the pandemic, citizens mainly seek informal legal aid in the field of social protection, employment, housing, and agriculture, while paralegals are called for help for the use of economic measures to deal with the crisis, education, health care, social protection and obtaining personal documentation (FOSM 2020).

However, being effective and efficient as much as possible, these community-based service is still standing on the 'informal' side of the legal aid pool. They are left to the sole support of the CSOs, the programs they develop, and the support they manage to get. Sustainability is more than an obvious issue, but it also pulls some other aside – development, human resources stability, and outreach.

CONCLUSION

There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system (USIP 2009, 7.8). No country has managed to develop the justice system so perfectly that it becomes available for every citizen in every situation. However, many of them are going that way and improving it all the time. The Republic of North Macedonia has made significant progress in the past two years and introduced important tools for improving access to justice for all. The new Law on free legal aid, the promotion of the tools, and many other associated activities are already giving positive results in confirmation of this effort. Of course, we should not fall into comfortable lethargy and say we are pleased with ourselves and we reached the maximum. A long road is yet to be walked, especially in the area of effective implementation, improving the results, and shaping the legal tools in a way that serves the citizens' best.

The results of the implementation of the Law on FLA are showing low awareness of its possibilities and are a clear sign that the tools it offers should be promoted more actively among citizens, with a special focus on vulnerable groups since it is aimed mostly at them. Even the best legal solutions are useless if not promoted properly when there is low awareness of the tools they offer and the advancement they introduce.

Another issue is the human resources and infrastructure capacity of the Ministry of Justice, the main holder of the implementation activities, that still need to be advanced to bring to life the legal solutions provided by the law. The lack of recognition and support of informal legal aid services and the positive results they give on the field is another sign that laws should be shaped to serve citizens and not the other way around. From Sierra Leone and Kenya in Africa, through the Asia Pacific region in China, Indonesia, and Nepal, all the way to Europe's Moldova, England, and the Netherlands, many countries worldwide have legally recognized paralegals or similar forms of community justice servers, thus made a significant step forward to bring the justice closer to all⁴. Our country should also consider embracing such effective tools and confirm that access to justice is not just a box we want to check on the list of priorities but a real vision of better quality of life for our citizens. Finally, we are analyzing the issue of justice not as a subjective impression of what is just and right, but as a systemic positive and user-friendly condition for the realization of human rights through the institutions of the system that are accessible and available for all. Therefore, it remains a commitment that needs to be further developed for it is a fundamental part of the ultimate principle of rule of law our society tends to achieve and withhold. 

⁴ For more information, please visit: <https://namati.org/resources/community-paralegals-recognition-and-financing/>

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