



CIVIL RIGHTS PROJECT SISAK

Report on the Implementation of the Law on Free Legal Aid



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Report on the Implementation of the Law on Free Legal Aid - from its adoption to today

Numerous non-governmental organizations (NGOs) in the Republic of Croatia have been engaged in providing free legal aid for more than 10 years. By doing so, they have gained a lot of experience and trust from their beneficiaries and clients and have also developed good cooperation with other associations, NGOs, governmental bodies, local and regional authorities and other stakeholders.

The association of the Civil Rights Project Sisak (CRP Sisak) has provided free legal aid since 1999 and today it has more than 18,000 clients with more than 60,000 cases.

The most common legal issues are related to the resolution of the status of citizens' rights (e.g. regulation of temporary and permanent residence, citizenship, etc.), social assistance, pension insurance, housing, property rights, family relationships and so on.

Until the adoption of the Law on Free Legal Aid in 2008 (Official Gazette 62/08), free legal aid, which is provided by civil society organizations (CSOs) in the Republic of Croatia, was financed by various international organizations such as UNHCR and OSCE, embassies of different countries, the European Commission and the like.

However, the Republic of Croatia, amidst the negotiation stages on accession to the European Union and the process of harmonization of national legislation with the EU acquis (in relation to chapter 23 "Judiciary and Fundamental Rights"), adopted the Law on Free Legal Aid in 2008 which came into force on February 1, 2009. The purpose of the Law on Free Legal Aid was, above all, to provide indigent citizens equal access to justice and to help them exercise their rights before judicial and administrative bodies.



According to the Law, free legal aid includes the following:

1. PRIMARY LEGAL AID and
2. SECONDARY LEGAL AID.

1. PRIMARY LEGAL AID

Primary legal aid is provided by attorneys, associations, trade unions and legal clinics. It includes:

- general legal information,
- legal advice,
- legal assistance in drafting documents before administrative bodies and legal persons from public authorities,
- representation in administrative matters,
- legal assistance in peaceful settlement of disputes out of court and
- representation before the European Court of Human Rights and international organizations.

2. SECONDARY LEGAL AID

Secondary legal aid is provided by attorneys and includes:

- representation before courts,
- legal assistance for peaceful settlement of disputes before courts and
- drafting documents in court proceedings.

FREE LEGAL AID IN 2009

According to data from the Ministry of Justice for 2009, 4545 legal aid applications were submitted and 3182 applications were approved. From the mentioned figure, 145 orders were approved for primary legal aid; in other words, only 145 citizens in the whole year of 2009 succeeded in exercising their right to free legal aid provided by associations). Furthermore, according to the report of the Ministry of Justice in 2009, the state budget provided 8,250,000.00 HRK for the purposes of free legal aid (the amount was reduced to 2,503,285.00 HRK following a rebalance of the state budget).

2,010,000.00 HRK was determined for NGOs.

However, as the approval process of primary legal aid was initiated by submission of a request for free legal aid, the first problems appeared. The request forms consisted of four pages, they were vague and the applicants were not able to fill them out on their own. Therefore, the associations which had enough capacity were filling out the requests for legal aid and forwarding them to the state administration offices, who then issued decisions on approval or rejection of free legal aid requests.

There was rarely a case where the applicant addressed the association with a pre-approved request, which cost 250.00 HRK/€35.00 at the most. This resulted in the failure of most associations to justify the assigned funds, and of a total approved sum of 2,010,000.00 HRK, they were obligated to return 1,519,300.00 HRK.

Therefore, in 2009 the Ministry of Justice concluded an agreement on financing free legal aid with 21 associations and one legal clinic that collected a total of 145 orders and for which the organizations were compensated a total amount of 15,379.00 HRK.



In 2010, the Centre for Human Rights conducted a survey which involved 15 of the most active associations that provided legal aid.

Based on the statistical data of the Centre for Human Rights, it was concluded that in 2009 the amount assigned to NGOs to provide free legal aid by the Ministry of Justice covered 0.7% of total legal aid provided.

The remaining 99.3% of the legal aid provided was financed by international organizations and other donors.

In 2009, CRP Sisak provided free legal aid for 4000 cases with financing by other donors, of which 50 were financed by the Ministry of Justice. Therefore, it must be stressed that the CRP Sisak was the NGO which had, since the law was adopted, the highest number of approved orders or requests for free legal aid on an annual basis, i.e. CRP Sisak received the largest amount of funding from the Ministry of Justice.



FREE LEGAL AID IN 2010

According to the Ministry of Justice data for 2010, 4197 requests for free legal aid were submitted and 3267 were approved.

From the stated figure, 219 orders were approved for primary legal aid, which means that only 219 people received free primary legal aid financed from the state budget.

According to the report of the Ministry of Justice for 2010, 6,835,000.00 HRK was approved for free legal assistance, and 345.000,00 HRK was determined for NGOs.

However, according to the data from the State Treasury for 2010, free legal aid was planned in the amount of 6,835,000.00 HRK. Due to implemented changes and amendments to the state budget for 2010, and by various reallocations by the Government of the Republic of Croatia, the amount was reduced to a total sum of 1,695,000.00 HRK.

In 2010, the Ministry of Justice signed contracts with 19 associations and one legal clinic.

From the reports of the Ministry of Justice it is also shown that, for the purposes of primary legal aid in the observed period, a total sum of 9,054.67 HRK was paid which applied to primary legal aid also provided by attorneys and trade



unions, while an amount of **60,116.28 HRK** was paid for **secondary legal aid**.

There is no information on what amount was paid to organizations for the provision of primary legal aid after returning unspent funds.

In 2010, the CRP Sisak provided free primary legal aid – as described by law for **1831** cases with financing from other donors. Only **35** cases were, in the period of one year, financed by the Ministry of Justice, what is **1,9 %** of the total primary legal aid provided.

However, in 2010 the requirements for free legal aid and the procedure for approval itself posed a big problem.

Parties interested in free legal aid would not agree to provide personal information in order to check the financial status of all household members due, in some cases, to extreme situations such as domestic violence. Accordingly, the majority of Croatian citizens who had addressed the associations were not entitled to free legal aid through the so-called "state system".

FREE LEGAL AID IN 2011

Although the Law on Free Legal Aid was changed in 2011, the system continued to face the same problems.

According to the Ministry of Justice data for 2011, **5541** request for legal aid were submitted and **4634** were **approved**. From the mentioned figure, the exact number of requests for primary legal aid provided by associations had not been included in the official report. However, every year associations were obliged to return the unused funds. Therefore, CRP Sisak is of an opinion that associations received only approximately hundred decisions and a couple of thousands of HRK.

According to the report of the Ministry of Justice for the 2011, 3,647,600.00 HRK was provided for free legal aid from the state budget.

151,252.00 HRK was determined to NGOs.

However, according to data from the State Treasury for 2011, free legal aid was planned in the amount of 4,000,000.00 HRK. By the implemented redistribution of state funds executed by the Government of the Republic of Croatia and by the conducted reallocations up to 5% by the Minister of Finance, the amount was reduced to 1,671,300.00 HRK. Also, according to data from the State Treasury, the total sum of spent funds was in the amount of 1,601,906.42 HRK.

The report also shows that for the purposes of providing primary legal aid, a total of 13,450.00 HRK was provided in the observed period, while for secondary legal aid the total amount provided was 329,138.26 HRK.

Therefore, for the direct use of free legal aid in 2011 by beneficiaries, 342,588.26 HRK was spent (based on issued decisions in 2011).

In 2011, CRP Sisak provided free legal aid in 3470 cases with financing from other donors, while 104 cases in the period of the whole year were financed by the Ministry of Justice, which is 2.9% of the total provided legal aid.

The procedure of filing and approving requests was still a major problem. The clients were often turned down on the grounds that the case for which they applied for did not constitute an existential question or life circumstance as the Law on Free Legal Aid stipulated.



The Law on Free Legal Aid **did not** uniformly grant free legal aid in **all** procedures. For instance, cases regarding pension, health insurance and social welfare were accepted. **In other cases**, free legal aid was only granted if the applicant could prove that the relevant legal question was an 'existential question', which was later renamed 'life circumstances'.

For example, a client in need of free legal aid in determining property rights had to prove, in an administrative procedure, why it deserved to be included into free legal aid system.

In the cases of our beneficiaries, the main issue was usually the settling of ownership as a condition for applying for housing care. Although housing is undoubtedly and unequivocally an existential issue, most applicants **were rejected**.

FREE LEGAL AID IN 2012

According to the Ministry of Justice data for 2012, **7068** requests for legal aid were submitted and **5877** were approved. **448** requests were approved for primary legal aid (which included NGOs, attorneys, trade unions and legal clinics as legal aid providers).

200,397.05 HRK was determined to NGOs.

According to the data from the State Treasury system in 2012, funds were planned in an amount of 2,278,000.00 HRK. The state budget was confronted with revisions and amendments and therefore the funds determined for the year **were reduced to the amount of 1,261,500.00 HRK**.

Accordingly, 1,258,134.89 HRK was spent on legal aid in 2012, while the reserved resources amounted to 5,238,172.78 HRK, for which payment is expected during the upcoming period.

In 2012, CRP Sisak provided free legal aid in 4467 cases with financing from other donors, while 268 cases were financed by the Ministry of Justice in the whole year, which was 5.9% of the total provided legal aid.

It is necessary to state that, in 2012, CRP Sisak had the highest number of requests submitted (384) and the highest number of issued positive decisions (268). It happened because of the following reason:

In 2012, in collaboration with the Legal Clinic of the Faculty of Law of the University of Zagreb, CRP Sisak implemented a project entitled "Strengthening the role of civil society organizations (CSOs) in the provision of primary legal aid". The project was financed by the British Embassy.

The project involved two employees, whose work specifically included fulfilling requests for free legal aid, communicating with the state administration office on a daily basis, collecting documents for clients and collecting the decisions on free legal aid. Therefore, the employees had been working as legal representatives of beneficiaries in the process of submitting free legal aid requests.

On the other hand, CRP Sisak collected data on submitted, approved and rejected requests for free legal aid from NGOs that provided it. From the collected data, CRP concluded that NGOs in Croatia continued to provide free legal aid, but it was only financed 5.8% or less by the state.

CRP Sisak reported the collected data to the Ministry of Justice and the Office of the Ombudsman, and round table was also organized. The conclusion at the round table was the following: the free legal aid system in the Republic of Croatia was not functioning well.



FREE LEGAL AID IN 2013

According to the Ministry of Justice data for 2013, 8184 requests for legal aid were submitted and 6072 were approved. 234 requests were approved for providing primary legal aid by NGOs, attorneys, trade unions and the legal clinic.

160,000.00 HRK was intended for NGOs.

The providers of primary legal aid were obliged to return the unused funds, as every year. However, the exact amount of funds was not included in the report of the Ministry of Justice.

According to the data from the State Treasury system, in 2013 the legal aid was planned in the amount of 1,800,000.00 HRK.

In the reporting period, for the purposes of providing free legal aid, a total of 1,926,783.57 HRK was spent. It included 1,092,432.00 HRK, which was paid for calculated and paid expenses in 2013 and 897,351.57 HRK, which was paid according to calculated and paid expenses from previous years.

In 2013, CRP Sisak provided free primary legal aid in **5803** cases with financing from other donors. Only **63** cases were financed by the Ministry of Justice for the whole year, which was a bit higher than **1%** of the total provided legal aid.



**Free Legal Aid Phone
0800 200 098**



FREE LEGAL AID IN 2014

Problems in the application of the Law on Free Legal Aid resulted in the adoption of the **new Law on Free Legal Aid, which entered into force on January 1, 2014.**

The new law greatly enhanced the distribution of primary legal aid.

First of all, the application procedure was simplified. The beneficiaries were enabled to directly apply to NGOs, legal clinics and state administration offices.

The provider of free legal aid makes a decision on the request for free legal aid by discretionary evaluation and legal counselling was extended to all areas of law.

However, the first problems emerged immediately after the law entered into force. **First of all, insufficient funds were reserved for the primary legal aid, namely 1,450,000.00 HRK.**

The call for applications for the provision of free legal aid was announced **five months later** than the legally prescribed deadline (31 January.) Therefore, the associations started to provide free legal aid **in August/September 2014.**

Three associations and the Legal Clinic of the Faculty of Law in Zagreb received the largest amount – 145,000.00 HRK. This was certainly **not** sufficient to cover the costs of free legal aid, which includes overhead, utilities, office supplies, fees for clients, inclusion of attorneys and representation if necessary). A total of 17 projects were approved for primary legal aid.

In 2014, funds for free legal aid in the state budget were provided in the amount of 4,500,000.00 HRK.

It is important to say that in 2014, the CRP Sisak provided legal aid to 6008 clients. Legal advice was provided 5213 times, out of which 4913 was provided in primary legal aid.

According to the statistics of CRP Sisak in 2014, free legal aid was financed by the state in the percentage of 9.8%, which showed that most of the free legal aid remained financed from other sources.

Since the Law on Free Legal Aid was adopted, CRP Sisak, as well as other organizations, pointed out to the discrimination of primary legal aid.

Namely, since the Law on Free Legal Aid entered into force, the reports of the Ministry of Justice for each year concluded that it can be beyond any doubt that the funds for primary legal aid were financed in a percentage of 20% and that the remaining 80% of the same was approved for secondary legal aid.

Unfortunately, the situation has not changed since.

Although the Ministry of Justice was repeatedly reminded that there was a need for financing primary legal aid, the Ministry announced that it planned to provide 9,000,000.00 HRK for legal aid in 2015, with emphasis on the fact that the funds for primary legal aid would not increase beyond the amount of 1,450,00.00 HRK.

CRP Sisak has informed the Office of the Ombudsman of existing problems with the work sustainability of NGOs, among other problems. The Ombudsman, at the request of CRP Sisak, sought administrative supervision and it was determined that it was true that secondary free legal aid was approved in a larger number of cases than the primary aid.

One of the biggest problems that the providers of free legal aid face is still linked with the sustainability of financing, and legal aid provided by some NGOs working for more than 10 years, is now questionable.



Although it is undisputed that NGOs **enjoy their beneficiaries' confidence**, that they work in the field and in the most remote rural areas; that good cooperation with local and regional governments and other various institutions have been established, and that numerous cases were positively resolved, **the continuity of providing free legal aid becomes questionable.**

The system for project financing of the Ministry of Justice **does not** function efficiently. On the one hand, **there is no continuity in insuring the implementation of the free legal aid programme, especially between the end of the one year project, the call for applications in the following year and the approval of project proposals. Therefore,** the imposed question is **how NGOs will overcome the stated time period while not depriving their clients' execution of the right to free legal aid.**

Therefore, the problem with which NGOs are now faced is that there is a time period from January 1, 2015 to the decision of the Ministry of Justice on approving financial resources for financing projects of NGOs. In this period, many NGOs – having no projects and who are not receiving funds from local and regional self-governments – will not have the necessary funds to cover the costs of providing free legal aid. In that period, some NGOs will be forced to close the doors of its offices and thus deny beneficiaries in the most remote and rural areas the right to free legal aid.

Although the Ministry was repeatedly warned of this problem, it **still has no solution for it.**

On the one hand, the Law on Free Legal Aid itself stipulates that NGOs **may be** financed by the local and regional self-government. Therefore, it may be a solution to this problem.

Nonetheless, the practical work shows otherwise.

CRP Sisak has collected data which shows that **no NGOs**, registered within the Ministry of Justice in 2014, **have managed to acquire co-financing by the local and regional self-governments.**

In 2014, CRP Sisak sent an application to a **number of cities** and municipalities for co-financing of free legal aid. Nevertheless, the reply stated that the law itself **presumes co-financing as a possibility, but not as an obligation** and they refused the request.

On the other hand, a number of calls for applications that are launched in the Republic of Croatia – including those of the National Foundation for Development of Civil Society and other government bodies – **expressly include the stipulation that the project will not be approved for NGOs that are financed in accordance to special laws. Legal aid itself is financed through the Law on Free Legal Aid.**

NOTE: There are many other NGOs in the Republic of Croatia that provide free legal aid (e.g. Human Rights House, Centre for Peace Studies (CMS) etc.), but they **are not** registered within the Ministry as authorized providers of free legal aid. The reason for this is that they do not meet the necessary requirements, namely having a law graduate that has taken the bar or state exam, **but they also have no interest in participation in a system which does not function well.**



SUMMARY

1. FINANCING OF PRIMARY LEGAL AID FROM THE STATE BUDGET IS STILL IN THE AMOUNT OF 20%.
2. FINANCING OF SECONDARY LEGAL AID FROM THE STATE BUDGET AMOUNTS TO 80%.
3. TOTAL FINANCIAL MEANS DETERMINED FOR FREE LEGAL AID PURPOSES FROM THE STATE BUDGET AMOUNT TO 9.8% (according to the statistics of CRP Sisak).
4. TOTAL FINANCIAL MEANS BY LOCAL AND REGIONAL SELF-GOVERNMENT AMOUNT TO 0%.
5. 91% OR MORE OF PROVIDED LEGAL AID IS FINANCED BY INTERNATIONAL ORGANIZATIONS, DONORS, AND OTHER MEANS (according to the statistics of CRP Sisak).

RECOMMENDATIONS

1. IT IS NECESSARY TO ENSURE SUFFICIENT BUDGET FUNDS IN THE STATE BUDGET FOR THE PROVISION OF PRIMARY LEGAL AID;
2. LOCAL AND REGIONAL SELF-GOVERNMENT CO-FINANCING AS AN OBLIGATION AND NOT AS A POSSIBILITY;
3. IT IS NECESSARY TO ENSURE THE CONTINUITY OF LEGAL AID PROVISION, AND
4. THE RELATIONSHIP OF FINANCING OF PRIMARY AND SECONDARY LEGAL AID SHOULD BE STEADFAST AT 50% -50%.



CRP Sisak at the conference within the Twinning light project of the Ministry of Justice "Improving of the free legal aid system", Zagreb, February 2012



Providing of free legal aid in CRP Sisak office, December 2013

In Sisak, February 2015

For more information:



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