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INSTITUTE OF LEGAL STUDIES AND RESEARCH, FACULTY OF LAW
FREE LEGAL AID AGENCY

RESEARCH STUDY

Topic: “What are the advantages and disadvantages of Free Legal Aid in Kosovo and how can free legal aid services in Kosovo be improved?”

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1. INTRODUCTION

Free legal aid is a mechanism through which persons lacking financial means are provided with free legal services, i.e. access to the legal/ judicial system, as a fundamental right guaranteed by national and international legal acts.

The term "free legal aid" means the right to use free professional legal services for citizens who meet the abovementioned criteria.¹ It applies in cases of persons with poor financial conditions dealing with family, property, work, compulsory and administrative problems, or having the status of arrestees, detainees, etc.

Free legal aid is considered essential in Kosovo, given the poor economic conditions of the population. According to data from the Kosovo Agency of Statistics, the number of families that benefited from the social assistance scheme in 2019 was 24,352 families.² This number is significant compared to the total population of 1,782,115 inhabitants (2019). On the other hand, during the same year, the number of cases in Kosovo courts was 360,806, a clear indicator of the large number of legal transactions and court proceedings.³

European Union member states also provide legal aid, and there are differences between them so that some practice a general approach while other countries provide legal aid only to the poorest stratum of the population⁴.

The following are some of the characteristics of legal aid in various EU member states.

Republic of Austria:

- Legal aid does not apply to civil litigation in criminal proceedings before the Criminal Division of the Court, but such lawsuits are allowed to be filed to the Civil Division at the same time;
- A party that has received free legal aid in any Member State of the European Union will also be provided with assistance in the Republic of Austria regarding the recognition and enforcement of a decision rendered in court proceedings;
- In order to become a beneficiary of legal aid, an application must be submitted to the Court of First Instance, which is the body that decides whether the applicant meets the criteria;

¹ Article 1, par 1.1., Law no 04/L-017 on Free Legal Aid

² Statistical yearbook of the Republic of Kosovo, 2020, p.15

³ Annual statistical Court report, 2019

⁴ https://e-justice.europa.eu/content_legal_aid-37141-en.do

- The lawyer is selected by the Bar Association, following the approval of the request by the Court; The selection is made according to alphabetical order. The applicant may propose a lawyer, but the proposal is not binding and the selection may differ from the proposal;
- If the case is lost, the beneficiary must reimburse the other party's litigation costs.⁵

Republic of France:

- Legal aid applies to all legal proceedings;
- The state provides partial legal aid, which is granted in the amount of 85%, 70%, 55%, 40%, 25% or 15%, depending on the financial condition of the beneficiary;
- An application for free legal aid must be submitted to the competent court or to the Legal Aid Bureau;
- The selection of the lawyer is done by the applicant himself, and in the absence of a proposal, the selection is done by the competent court.⁶

Republic of Poland:

- Legal aid is applied in civil proceedings related to family relationships, employment and social cases;
- The application for free legal aid must be submitted to the competent court and there is no request form, so a request in writing is sufficient;
- The lawyer is selected by the Bar Association, while the beneficiary may propose the lawyer and his/her request will be reviewed by the court⁷

Given the fact that free legal aid is applied in modern legal systems and there are many differences between them, the Republic of Kosovo may use the legal regulations and practices of these countries to improve its system.

⁵ [https://wayback.archive-](https://wayback.archive-it.org/12090/20191030183930/https://ec.europa.eu/civiljustice/legal_aid/legal_aid_aus_en.htm)

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⁶ https://wayback.archive-it.org/12090/20191030183855/https://ec.europa.eu/civiljustice/legal_aid/legal_aid_fra_en.htm

⁷ https://wayback.archive-it.org/12090/20191030183933/https://ec.europa.eu/civiljustice/legal_aid/legal_aid_pol_en.htm

2. FREE LEGAL AID IN KOSOVO

Free Legal Aid in Kosovo is regulated by the Constitution which guarantees free legal aid to persons with poor financial conditions, in cases when this kind of assistance is necessary to ensure effective access to justice.⁸ It is also regulated by Law no. 04 / L-017 on Free Legal Aid (hereinafter: the Law).

Free legal aid is ensured by Law throughout the territory of the Republic of Kosovo without exception, in civil, criminal, administrative and misdemeanor court proceedings, in forms of information and legal advice on legal proceedings, drafting of documents and administrative/technical support related to the completion of cases as well as court representation.⁹

According to Kosovo legislation, in order to be a beneficiary of free legal aid, the following criteria must be met: *qualification* criterion must be met (it refers to persons entitled to benefits, including citizens of the Republic of Kosovo residing in Kosovo, persons with temporary residence, other designated persons under international law or rules and persons benefiting from reciprocity), *financial* criterion (which is classified as primary legal aid intended for persons who are beneficiaries of social assistance and persons in a similar situation, and secondary legal aid intended for persons with lower family income than the average family income), *legal criterion* (specifics of the legal case such as the actual value of the claim, the rationale of the evidence and the possibility of success of the claim).¹⁰⁹

The law also foresees free immediate legal aid which is provided to persons who arrested or detained by the police, regardless of whether the criteria required by law are met.

Free legal aid has been institutionalized thanks to the establishment and functioning of several mechanisms such as the Free Legal Aid Council (hereinafter: the "Council"), which is elected by the Assembly of Kosovo and acts independently, and the Free Legal Aid Agency (hereinafter "the Agency") which is subject to the direct supervision of the Council.

As it is provided throughout the whole territory of Kosovo, free legal aid is made available through regional offices, mobile offices, lawyers and NGOs that are partners of the Agency.

⁸ Article 31 (The right to a fair and impartial trial)

⁹ Article 7, Law no. 04/L-017 on Free Legal Aid

The procedure for obtaining free legal aid is initiated through the request along with the relevant evidence and documentation which becomes subject to evaluation by officials who issue a decision to allow or reject the request within 5 days from the date of submission of complete documentation. The authorized services are determined by a decision which are afterwards communicated to the defense lawyer. In case of rejection, the applicant has the right to file an appeal within 8 days from the day of receipt of the decision, and the appeal will be reviewed within 30 days from the day of its receipt.

According to the data, during 2018, about 4,924 cases of free legal aid were developed in the entire territory of the Republic of Kosovo, most of which belong to administrative proceedings, male beneficiaries and a significantly smaller number of beneficiaries from minority communities.¹⁰

3. ADVANTAGES OF FREE LEGAL AID IN KOSOVO

In Kosovo, free legal aid is regulated by a special law, and the advantage is that it foresees the establishment of special mechanisms, such as the Council and the Agency, which are exclusively dedicated to providing free legal aid, unlike in other countries where this task is entrusted to the judiciary. Such regulations in Kosovo, i.e. the existence of specialized bodies, enable greater efficiency in providing free legal aid.

Another advantage is the provision of *completely* free legal aid, unlike other countries that also provide partial legal aid. Beneficiaries in Kosovo may even be persons with lower family incomes than the average family income (Article 8.3 of the Law). Also, as a result of the agreement with the Kosovo Bar Association, lower fees are provided as compensation when lawyers are engaged by the Agency¹¹.

In addition to the advantages that result from the legislation, there are also advantages in the practical aspect, namely the campaigns and information materials that have been presented over the years, the mobile offices, and so forth.

¹⁰ Annual Report 2018, Kosovo Agency of Statistics

¹¹ Annual Report 2018, Kosovo Agency of Statistics, p. 16

4. DISADVANTAGES OF FREE LEGAL AID IN KOSOVO

One of the disadvantages of free legal aid in Kosovo is the lack of secondary legal acts that would specify important issues, such as for example in case of successful completion of the case, whether the refund should be made by the beneficiary, to what extent and according to what criteria so as not to affect the financial interest of the beneficiary.

Another disadvantage is the Court's decision as to whether the beneficiary will pay litigation costs when the litigation is lost.

One of the main disadvantages is the low budget, with a budget of EUR 379,588 envisaged for 2020, which is quite low when aiming to provide highly professional services in working with cases¹². There is also no (published) strategy for withdrawal of international subsidies.

5. IMPROVING FREE LEGAL AID SERVICES IN KOSOVO

Improvement of free legal aid services in Kosovo can be ensured through:

Completion of legal infrastructure: Adoption of bylaws, instructions, regulations, and so forth.

Budget increase: Simple market research can reveal significant fees for providing legal services in addition to those set by the Bar Association, therefore, a budget increase will enable the engagement of lawyers with expertise and experience, and consequently an increase of efficiency and confidence among the general public. Based on the Agency's Report for 2018, since 2010, out of 411 court cases, there are 26 cases that have been completed unsuccessfully. The report also shows that mobile offices deal with a significantly smaller number compared to regional offices, so increasing the budget makes it possible to open regional offices in every part of the country;

Information: Although an information campaign on free legal aid has been conducted, it is recommended the design of strategies so that the free legal aid is dedicated and accessible to social assistance cases and rural areas;

Targeting cases: Recognizing the Agency's right to target potential cases for free legal aid by interacting with bodies that identify and manage social assistance cases, by notifying them that they have a potential right to use these services free of charge and to allow delegation of potential cases to the Court since there are cases when due to lack of information, the citizens do not address the Free Legal Aid Offices;

¹² Law No. 07 / L-014 on amending and supplementing the Law No. 07 / L-001 on Budget Allocations for the Budget of the Republic of Kosovo for 2020

Disciplinary proceedings: In cases when the appointed lawyers neglect or cause unreasonable delays in the provision of free legal aid, the Bar Association will conduct disciplinary proceedings, in accordance with the regulation on disciplinary proceedings;

Exemption from procedural costs: Amending the legislation so that the beneficiary is exempt from procedural costs so that this will not further be a matter of the Court's decision, as it is *prima facie* contrary to the intention as provided by the Constitution and the legislation.

REFERENCES

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