

Bleona Musliu

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

Let me first share a brief personal story with you, since real experiences reflect and are embodied better than theoretical ones. They help us find weaknesses and they provide us with the opportunity to turn those weaknesses into our own strengths. In fact, I feel thrilled and astounded and I also become sentimental every time I start researching and writing about this nature of assistance, obviously of special importance and value to an individual. Long time ago, my family and I faced a very difficult situation when due to poor economic conditions we could not hire a lawyer. At that time I did not understand whether it was the fault of relevant bodies because they did not inform us properly that we could be beneficiaries of the free legal aid or whether it was simply our mistake: "ignorantia legis non excusat" (ignorance of the law excuses not).

However, I have to get rid of these feelings and start writing and observing things from a different angle.

- ❖ Our state Kosovo, like other countries, has undoubtedly made and continues to make efforts to ensure effective access to justice, through authorized institutions in order to provide free legal aid to all its citizens who do not have sufficient financial resources to provide legal representation or need legal advice in any proceedings, whether criminal, civil, administrative or misdemeanor.

Analyzed from this perspective, the institutions legally in charge of providing this type of aid are functioning quite well, although not always at the appropriate level.

From this point of view, I believe that some of the disadvantages that I have listed below should be addressed and prioritized to be avoided as soon as possible, in order to have a more functional and appropriate mechanism for providing free legal aid to the citizens in need.

Disadvantages:

1. Complete revision of the legal framework (commencing with the Criminal Procedure Code) related to the Law on Free Legal Aid, wherewith different solutions for legal representation are provided, i.e. there is a contradiction between the legal provisions (*explanation: Article 58, which deals with the Lawyer's public costs, in cases when defense is not mandatory.*

1. When there are no conditions for mandatory defense, the defendant shall be assigned a lawyer at his own cost, upon his request, if:

1.1. there are no conditions for compulsory defense and criminal proceedings are instituted for a criminal offense punishable by imprisonment of eight (8) years or more, or

1.2. this is required by the justice, regardless of the sentence imposed, the suspect or defendant is assigned a lawyer upon his request, if based on his financial situation he cannot afford the costs of his defense.

Whereas, the Law on Free Legal Aid in Article 4, the scope and types of free legal aid says that:

2. Free legal aid is provided in civil, criminal, administrative and misdemeanor proceedings.

Furthermore, Article 58, item 2. of the CPC does not explicitly authorize which body is obliged to inform the defendant about this possibility.

The Law on Free Legal Aid does not make a difference between criminal cases that require mandatory representation (Article 57 of the CPC) and representation in criminal proceedings when defense is not mandatory (Article 58 of the CPC), and furthermore, this law does not take into consideration the number of years of possible imprisonment as long as three criteria from Article 6 of the LFLA are met, such as: qualification, financial and legal criteria).

2. Insufficient budget, lack of financial resources in the budget of the Free Legal Aid Agency, (*respectively, covering the need for additional staff in regional offices, this ensures a faster and more timely procedure without delays, because the delay is in itself a violation).*

3. Failure to inform the citizens about the Law on Free Legal Aid by bodies and officials, mainly administrative ones (*lack of referrals by public administration on*

the possibility of obtaining legal aid). Also, police, prosecutors and judges must inform defendants in criminal cases of their right to free legal representation if they meet the criteria set out in the LFLA.

- 4. Citizens are not sufficiently informed about the role and opportunities offered by the Free Legal Aid Agency, and even less about the location of the Agency's offices.**
- 5. Non-allocation of funds for the overall expansion of mobile offices in all regions.**
- 6. Commitment of responsible state structures to effectively implement the law, without prolongation.**

As a fundamental right, Free Legal Aid is guaranteed by the Constitution of the Republic of Kosovo as well as by international instruments applicable in our country. Certainly, the most vulnerable category are and remain to be the most disadvantaged communities, the Ashkalia, Roma and Egyptian community, LGBTI community, and victims of domestic violence. Therefore, in case any legal issues arise, the probability of these communities taking any action to resolve their dispute is small, due to the lack of knowledge where to address their concerns. I consider the lack of money to be one of key obstacles, as well as their lack of confidence that taking action will help their situation, and in some cases the low level of education about their rights.

Benefits of Free Legal Aid are numerous. Kosovo has a considerable list of benefits. Below are listed those that in my perspective are the most important ones:

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- a) Supporting a stratum of population/Positive discrimination in resolving their legal dispute through free legal aid services
 - b) Good policies for the use of donor funds
 - c) Transparency in financial management and in the publication of reports and decisions by LFLA.
 - d) Teamwork, seriousness and professionalism of free legal aid officers.

- e) Access to the online platform for completing the application for legal aid (ndihmajuridike.com)
 - f) Fundraising, various awareness-raising campaigns, information days are just some of the advantages that make the number of legal aid seekers increase from year to year
 - g) Last but not least, the establishment of Legal Clinics through the Seek Justice program, which is implemented by the National Center for Courts, has strongly supported and ensured more productive access to all those who cannot afford a lawyer.
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How can free legal aid services in Kosovo be improved?

The principle of equality of arms should be made available to all persons before the court.

- ❖ The Assembly considers that the Criminal Procedure Code should be revised, i.e. Article 58, which deals with approving a defender at public expense, when the protection is not mandatory. Furthermore, Article 58, item 2 of the CPC does not clearly authorize which body is obliged to inform the defendant about this possibility.
- ❖ The Law on Free Legal Aid does not differentiate between criminal cases that require mandatory representation (Article 57 of the CPC) and criminal representation when the protection is not mandatory (Article 58 of the CPC), and furthermore, this law does not take into consideration the number of years of possible imprisonment until all three criteria from Article 6 of the CPA are met, such as: qualification, financial and legal criteria.
- ❖ I consider that each regional office should be covered by one or two more officials, in order for persons who are in a difficult financial position to be provided with a fair and timely procedure and wider coverage with mobile offices.
- ❖ Research and fundraising from various donors.
- ❖ Direct meetings with communities that are not users of social networks, in order to identify and inform people in need about free legal aid services.
- ❖ Inter-institutional cooperation (institutions especially those of justice should pay more attention and importance to the institutions dealing with this aid, especially the Free Legal Aid Agency).

- ❖ Conducting and organizing roundtables, debates, organizing information sessions and various discussions by LFLA, various Non-Governmental Organizations and inviting law students, lawyers, and so forth...
- ❖ Drafting brochures, catalogs, and various leaflets in order to inform the general public on free legal aid; creating various videos with awareness raising messages.
- ❖ Information dissemination on free legal aid services through communication means - the internet (various social networks), TV, radio or newspapers.
- ❖ Compilation of various questionnaires to assess the level of information of citizens about the free legal aid and how many of them have used this kind of assistance.
- ❖ Participation of officials in various fairs organized by higher education institutions in the country, because the best information dissemination is done by the youth/students.
- ❖ Establishment of Free Legal Aid offices in Higher Education Institutions (universities), binding Memorandums of Understanding between the LFLA and Faculties of Law so in addition to other benefits, law students will be offered the opportunity to engage as interns in these offices.
- ❖ The online platform (ndihmajuridike.com) – is a great opportunity for all persons seeking free legal aid, but I believe this platform may be adjusted to provide us with even easier access, i.e. information, data on financial and social status can be obtained directly and automatically from the system of the authorities that possess this data (Ministry of Finance and Ministry of Labor and Social Welfare). This leads to a simpler use of this platform wherefore ordinary people enter their personal numbers and are focused only on addressing their problems without dealing with other data.
- ❖ Developing a mobile application version which can be downloaded, and which covers all information, reports and everything else related to free legal aid, and integrating an option there which asks citizens questions anonymously.

It may happen that the individuals would have to wait in lines in the offices which provide Free Legal Aid. In order for such queues not to happen, I think that it would be good for the citizens to have an opportunity to log in virtually through

this application and talk directly to the officials and lawyers (certainly separately due to the confidential nature of the cases).

Last but not least, each of us can become part of a necessary change. After all, it is our voice that gives color to our rights.