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FREE LEGAL AID-COMPARATIVE FRAMEWORK OF THE REPUBLIC OF NORTH MACEDONIA AND SERBIA

*Original Research Paper UDK
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Abstract: *The right to free legal aid enables the achievement of the principles of equality and fairness, and with that the state prevents discrimination that would be a consequence of material status, lack of knowledge of the law or education, and ensures the realization of the right to legal protection for those persons (natural and legal entities) who cannot exercise this right due to material circumstances or belong to a vulnerable social group, that is, if they are in a disadvantageous position. At the same time, the term free legal aid does not indicate a specific form or type of legal aid but indicates only situations when legal aid is free of charge. Through a comparative analysis of existing normative solutions in the Republic of North Macedonia and the Republic of Serbia, the authors point to legal solutions on free legal aid. They conclude that only systemic solutions can ensure free access to justice, and thus one access to justice for all.*

Key words: *free legal aid, vulnerable persons, civil procedure.*

1. INTRODUCTION

The state establishes a system of providing free legal aid, which is intended for those in need of legal protection in order to achieve the rule of law and to protect subjective civil rights that have not been protected in actual life relations. The right to free legal aid enables the accomplishment of the principles of equality and equity, and in this way the state prevents discrimination that would be a consequence of material status, lack of knowledge of the law or education, and it ensures the realization of the right to legal protection for those persons (natural and legal) who, due to their material circumstances or because of excessive court fees, cannot exercise this right.⁴⁹⁷

⁴⁹⁷G. Stanković, Free legal aid in representation in civil proceedings, XII thematic international scientific meeting International criminal acts, Tara, 2013, p. 153.

2. THE CONSTITUTION

The Republic of Serbia

The institute of free legal aid in civil proceedings is governed by numerous regulations in the Republic of Serbia. Firstly, by the highest act in the hierarchy, the Constitution of the Republic of Serbia,⁴⁹⁸ which has priority over all other legal acts. The right to free legal aid is guaranteed as a human right in Article 67 ("Right to legal aid"), which states that everyone, under the conditions specified by law, is guaranteed the right to legal aid, that legal aid is provided by the advocacy, as an independent service, and by legal aid services that are established in local self-government units, in accordance with the law, and that the law determines when legal aid is free.

Republic of North Macedonia

The Institute of Free First Aid in civil proceedings in the Republic of North Macedonia is also regulated by several legal regulations. According to the Constitution as the highest legal act, the citizens of the Republic of North Macedonia⁴⁹⁹ are equal in freedoms and rights regardless of gender, race, skin color, national and social origin, political and religious belief, property, and social position. Hence the state must ensure equal access to justice for all. Free legal aid is defined by the Law on Free Legal Aid, the purpose of which is to enable and advance the right of access to justice and fair judicial protection. This law covers the types of legal assistance that can be obtained by the applicant. The law distinguishes between primary and secondary legal aid.

3. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The right to free legal aid is also guaranteed by numerous international documents,⁵⁰⁰ of which the European Convention on the Protection of Human Rights stands out. The Republic of Serbia and the Republic of North Macedonia have ratified the European Convention for the Protection of Human Rights and

⁴⁹⁸ The Constitution of the Republic of Serbia, 'Official Gazette of RS', no. 98/2006 and 115/2021.

⁴⁹⁹ Constitution of the Republic of North Macedonia (Official Gazette 1/92, 31/98, 91/2001, 84/2003, 107/2005, 3/2009, 49/11 6/19 and 36/19), Article 9.

⁵⁰⁰ See e.g. the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the UN Basic Principles on the Role of Lawyers, the Convention on Fundamental Rights in the European Union, the Council Directive on Improving Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Regarding Legal Aid in such disputes, Resolution (78) 8 on free legal aid and legal advice, Recommendation (93) 1 on effective access to justice and justice for the socially disadvantaged, Resolution (76) 1 on legal aid in civil, commercial and administrative matters, Recommendation (81) 3 on measures to facilitate access to justice, Resolution (76) 5 on the provision of legal assistance in civil, commercial and administrative matters, the Convention on Civil Procedure, the Convention on Facilitating International Access to Courts.

Fundamental Freedoms.⁵⁰¹ This Convention does not explicitly provide for the right to free legal aid in civil court proceedings.⁵⁰² Procedural legal guarantees, that is, procedural rights or powers in the matter of civil court proceedings, are determined by the Convention in Article 6, under the title "Right to a fair trial".⁵⁰³ Without respect for this, there is no respect for any other human right. Therefore, precisely because of the important place that the right to a fair trial occupies in democratic societies, its restrictive interpretation cannot be justified.⁵⁰⁴ Although essential for the functioning of every democratic society, the right to a fair trial is not, according to its internal content, a singular right. Its content, namely, consists of a number of original and derivative rights that must be respected by national courts, such as: the right to access to court, the right to legal aid and advice; the right to procedural equality (equality of arms); the right to a public and adversarial hearing; the right to a fair hearing; the right to proof; the right to the public pronouncement of judgments; the right to a tribunal established by law; the right to independence and impartiality in the trial; the right to a trial within a reasonable time; the right to effective enforcement of the judgment; prohibition of arbitrariness and the right to legal certainty.⁵⁰⁵

Accordingly, the Convention guarantees that every person has the right to access to the court. In the opinion of the European Court of Human Rights, it would be unthinkable for Article 6/1 to describe in detail the procedural guarantees available to the parties in the proceedings, without first protecting what actually enables the benefit of those guarantees, which is access to court.⁵⁰⁶ As a basic element of a fair trial, the right to access to court is also the starting link in a series of procedural rights protected by Article 6.

Effective access to court is most directly related to the realization of the right to free legal aid. Although this type of aid does not exist *per se*, as stated, and the Convention does not contain an explicit provision on the general obligation of contracting states to provide free legal aid in civil disputes, Article 6/1 in certain cases requires the state to provide legal aid, i.e. representation by an attorney when necessary. The practice of the European Court of Human Rights confirms this position, and illustrative in that sense is the decision in the case of *Airey v.*

⁵⁰¹As a legal act of the Council of Europe, the Convention was adopted in 1950 in Rome. The original version of the European Convention on the Protection of Human Rights and Fundamental Freedoms was composed in English and French. It is also applied in the Republic of Serbia, based on the Law on the Ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("Official Gazette of Serbia and Montenegro - International Agreements", No. 9/2003, 5/2005 and 7/2005 - corr. and "Official Gazette of RS - International Agreements", No. 12/2010 and 10/2015) and The Republic of Macedonia ratified the European Convention on Human Rights and Fundamental Freedoms on April 10, 1997- hereinafter referred to as the Convention.

⁵⁰² However, the right to free legal aid is prescribed in Art.6 para.3 of the Convention in criminal proceedings.

⁵⁰³ The right to a fair trial is realized through the institute of legal aid.

⁵⁰⁴ D. Harris, M. O'Boyle, C. Warbrick, *Law of the European Convention on Human Rights*, London, 1995, p.164.

⁵⁰⁵See more in A. Uzelac, *The right to a fair trial: general and civil law aspects of Art. 6 para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Compliance of Croatian legislation and practice with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Zagreb, 2011, p.90, available at

http://www.alanuzelac.from.hr/pubs/A35Fair_trial_uskladenost%20zakonaCMS.pdf

⁵⁰⁶*Case of Golde v. the United Kingdom*, No.4451/70 of February 21, 1975, § 35.

Ireland,⁵⁰⁷ which, above all, affirms the state's obligation to protect victims of domestic violence and is of exceptional importance for the practice of this court.

In the case of *Airey v. Ireland* the applicant's husband, convicted of domestic violence (for assaulting the applicant), had permanently left the shared home. Classic divorce was prohibited in Ireland by the Constitution, and the spouses had the right to mutually consent on the separation in certain cases or, alternatively, to request a separation before the court. Since the applicant's husband did not consent to the separation, she, in order to protect herself from him and confirm the fact that they live separately, used the opportunity to initiate a proceeding before the national court. However, in Ireland, the competent court for divorce was not the District Court, before which the procedure is relatively simple, but the High Court, which is the most inaccessible, not only because the representation fees are extremely high, but also because the fact that an extremely complex procedure for initiating the procedure is prescribed, especially when the procedure is initiated by a request, which is exactly the case when it comes to divorce. Although mandatory representation was not prescribed, i.e., she was not formally obliged to hire an attorney, the complexity of the procedure required it. The applicant, however, did not have the means to pay for an attorney to initiate this divorce proceeding before the national court, and no attorney was willing to represent her free of charge. In her application to the Court, she stated that her right to respect for family life (Article 8 of the Convention) was violated by the fact that the state did not ensure the availability of proceedings in family law disputes through free legal aid.

The court accepted the arguments of the applicant and considered that the national authorities of Ireland had an obligation to foresee this (procedural) legal institute, i.e., this type of legal aid, in case of divorce (separation) and concluded that her right to respect for family life was violated. By fulfilling such a positive obligation, Ireland would ensure not only the availability of judicial power, but also effective respect for the right to family life. The court found that the state had an obligation to make this procedure available in the mentioned way, given that the applicant would be in a disadvantageous position if her husband was represented by an attorney and she wasn't, nor could she effectively lead this procedure despite the help that the judge provides to the parties who do not have a representative in the dispute. According to the opinion of the Court, this is confirmed by the fact that in each of the 255 legal separation proceedings, initiated in the period from January 1972 to December 1978, without exception, the applicants were represented by an attorney. From this, the Court concluded that the possibility for a person to lead the proceedings alone does not provide the applicant with an effective right of access to court.⁵⁰⁸

The conclusion of the European Court of Human Rights in this case that Art. 6/1 of the Convention was violated did not, however, condition the adoption of the general position of this court that free legal aid, including the right to a free attorney, must be ensured in every civil rights dispute.⁵⁰⁹ Namely, the state is only expected to ensure that no one is "prevented by economic obstacles in their efforts to realize or

⁵⁰⁷Case of *Airey v. Ireland*, No.6289/73 of October 9, 1979.

⁵⁰⁸Case of *Airey v. Ireland* (op.cit),§24.

⁵⁰⁹For more details on the right to free legal aid in civil law cases, see e.g.,Case of *McVicar v. the United Kingdom*, No. 46311/99 of May 7, 2002; Case of *Bertuzzi v. France*, No. 36378/97 of February 13, 2003; Case of *Steel and Morris v. the United Kingdom*, No. 68416/01 of February 15, 2005.

defend their right before the court".⁵¹⁰ As the institution of free legal aid, or in this case specifically free representation by an attorney, is only one of the ways of ensuring the effective right to access to court, in some cases, the very possibility of personal appearance in court, even without the help of an attorney, ensures the realization of this right, but there are also other ways, e.g. simplification of the procedure, so Article 6/1 leaves the possibility for the states to choose the means for securing this right.⁵¹¹

The right to free legal aid was later confirmed by the European Court of Human Rights in a series of decisions stating that states are obliged to ensure equality of the parties before the law, that the party is obliged to prove its weak financial situation that justifies the need for free legal aid, that free legal aid must be provided at all stages of the proceeding before all court instances, that the attorney must have enough time to prepare for representation, that the state has the right to the return of the funds spent in the name of free legal aid if the economic conditions of the user of free legal aid improve.⁵¹²

Therefore, the Convention guarantees the right to a fair trial, and in certain situations this right is additionally reinforced by the state's obligation to provide effective free legal aid. At the same time, the European Court of Human Rights in the decision *Artico v. Italy*,⁵¹³ pointed out that the state's obligation to provide free legal aid is not exhausted by the appointment of a lawyer *ex officio*, since the appointment itself does not necessarily mean the providing of effective legal aid in the event that the lawyer is prevented from performing their duties or avoids performing them. In that case, the state is obligated to take appropriate measures to ensure that the applicant effectively enjoys the rights guaranteed to him by the Convention. Therefore, the state's passivity in providing effective free legal aid means a violation of the right to a fair trial established by the Convention.

4. THE LAW ON CIVIL PROCEDURE

The Republic of Serbia

The Law on Civil Procedure⁵¹⁴ only partially regulates the issue of free legal aid. The party's right to free legal aid is prescribed by Article 170 and is set in the context of exemption from the costs of the procedure. A party that is exempted from paying the costs of the procedure and has a need to be represented in the procedure because it does not have the necessary knowledge to undertake litigation actions and protect its rights, has the right to submit a request to the court for free representation.

The Law on Civil Procedure stipulates that the court may grant a party the right to a free attorney under certain conditions. The right to a free attorney is

⁵¹⁰N. Petrušić, *The right to access justice in the light of the new CPL*, Access to justice - instruments for the implementation of European standards in the legal system of the Republic of Serbia, Book 2, Niš, 2007, p. 176.

⁵¹¹*Case of Airey v. Ireland (op.cit.)*, § 26.

⁵¹²G. Stanković, *op.cit.*, p.154, note 14.

⁵¹³*Case of Artico v. Italy*, No. 6694/74 of May 13, 1980.

⁵¹⁴The Law on Civil Procedure, "Official Gazette of RS", No. 72/2011, 49/2013 – decision of the Constitutional Court, 74/2013 – decision of the Constitutional Court, 55/2014, 87/2018, 18/2020 and 10/2023 – other laws.

granted to a party who is, as stated, completely exempt from paying litigation costs (based on the so-called “poor law”) and when, in the court’s judgement, this is necessary for the protection of its rights. The basic idea of this institute is that unfavorable material status should not be an obstacle that prevents citizens from exercising their rights in civil proceedings. The court does not appoint a free attorney *ex officio*, but only at the request of the party, when cumulatively determined legal conditions are met. A prerequisite for achieving fair and equal legal protection in procedures regulated by this law is qualified representation, which is provided through an attorney. The free attorney is appointed and dismissed by the president of the court, in order, from the list of attorneys submitted to the court by the bar association. However, the legal position of the attorney appointed for the party by the court is completely different from the legal position of the party’s own attorney. In other words, the relationship between the party and the appointed free attorney is not entirely equal to the relationship the party would have with the attorney they chose themselves, so, among other things, the rules on termination and revocation of power of attorney that normally apply to attorneys do not apply, the free attorney cannot refuse provision of legal assistance, the party cannot influence the choice of the attorney who will represent it in the proceedings, etc.⁵¹⁵

Republic of North Macedonia

In contrast to the Republic of Serbia, the Law on Civil Procedure in the Republic of Macedonia does not regulate the issue of exemption from costs based on poor law and the right to a free proxy lawyer. All issues related to free legal aid, regardless of whether it is primary or secondary, are regulated in the Law on Free Legal Aid. The Republic of Northern Macedonia should follow the example of the Republic of Serbia and, in the Law on Civil Procedure, regulate the issue of exemption from costs based on poor law and the right to a free attorney-attorney. This is because the Law on Civil Procedure regulates the issue of proxies and representatives.

5. LEGAL PROFESSION ACT

The Republic of Serbia

The Legal Profession Act includes bar associations which "organize the provision of free legal aid, in accordance with the law" in the providers of free legal aid by the provision of Article 66 paragraph 1 item 7 of the Legal Profession Act.⁵¹⁶ The provision of Article 2 paragraph 1 of the aforementioned Act stipulates that the legal profession is an independent service providing legal assistance to natural and legal persons. The providing of legal assistance is defined in Article 3, which regulates the subject of advocacy and includes: 1) provision of oral and written legal advice and opinions; 2) drafting lawsuits, requests, proposals, pleadings, legal remedies,

⁵¹⁵For more on this topic see S. Ćorac, Services of a free attorney in civil proceedings, Challenges and open issues of service law, Volume 1, Kragujevac, 2024, p. 491-504.

⁵¹⁶See the Legal Profession Act, "Official Gazette of RS", No. 31/2011 and 24/2012 – decision of the Constitutional Court.

petitions and other submissions; 3) drawing up contracts, wills, settlements, statements, general and individual acts and other documents; 4) representation and defense of natural and legal persons; 5) mediation with the aim of concluding a legal transaction or peaceful settlement of disputes and disputed relationships; 6) performing of other legal assistance activities in the name and on behalf of a domestic or foreign natural or legal person, on the basis of which rights are exercised or freedoms and other interests are protected.

The legal framework that regulates the position of the legal profession defines the standards of providing legal aid and provides for a clear and fair procedure for reviewing the actions of attorneys during the providing of legal aid. By Art. 73 of the mentioned Act, it is prescribed that the bar association can organize free legal assistance to citizens in its area or part of that area, independently or on the basis of a contract concluded with a local self-government unit, in accordance with the law. At the same time, as it is pointed out in theory, there is no talk at all of the monopoly of the legal profession in the providing of legal aid in the sense of representation.⁵¹⁷

5. THE LAW ON FREE LEGAL AID

The Republic of Serbia

The Law on Free Legal Aid has been in force since October 1, 2019, and for the first time in the legal system of the Republic of Serbia, it regulates the area of free legal aid in one place.⁵¹⁸ This law regulates free legal aid for citizens as its beneficiaries and the way it is realized and provided, and it is applied to beneficiaries of free legal aid who have not exercised their right to free legal aid according to other laws. The main goal of the law is to enable equal and effective access to justice for every person. Free legal aid was introduced as a social measure by which the state protects citizens, and the Law on Free Legal Aid defined three categories of citizens who have the right to free legal aid, which are firstly those who receive social aid or child allowance. In the second category are citizens whose

⁵¹⁷M. Knežević, On the new regulation of voluntary representation in civil proceedings,

Зборник радова Правног факултета у Новом Саду, 3/2011, p. 691.

⁵¹⁸ The Law on Free Legal Aid, "Official Gazette of RS," No. 87/2018 - hereinafter LFLA.

The by-laws that originate from this law and were adopted with the aim of closer determination and more effective application are: Regulation on the Tariff for Providing Free Legal Aid ("Official Gazette of RS", No. 74 of October 18, 2019); Rulebook on the procedure for paying fees for free legal aid and the method and procedure for returning the received funds ("Official Gazette of the RS", No. 80 of November 8, 2019); Rulebook on the manner of keeping records of administrative bodies of local self-government units on requests for approval of free legal aid and free legal support ("Official Gazette of the RS", No. 68 of September 25, 2019); Rulebook on referral of the applicant to the provider of free legal aid ("Official Gazette of the RS", No. 68 of September 25, 2019); Rulebook on the organization and the method of conducting training for the implementation of the Law on Free Legal Aid ("Official Gazette of the RS", No. 68 of September 25, 2019); Rulebook on the appearance and detailed content of the application form for the approval of free legal aid ("Official Gazette of the RS", No. 68 of September 25, 2019); Rulebook on the manner of keeping records of provided free legal aid and free legal support ("Official Gazette of RS", No. 68 of September 25, 2019); Rulebook on the method of registration in the Register of Free Legal Aid and on keeping the Register ("Official Gazette of the RS", No. 68 of September 25, 2019); Decision on the establishment of the Council for monitoring the system of free legal aid and free legal support ("Official Gazette of RS", No. 67 of July 2, 2021, 104 of November 5, 2021).

incomes are so low that they would fall to the level of need for social assistance or child allowance if they hired and paid for legal assistance themselves. The third group of users is not determined by their financial status, but they receive the right to free legal aid as "vulnerable groups".⁵¹⁹

The forms of free legal aid are contained in Article 6 of this law,⁵²⁰ while the forms of free legal support are contained in Article 11.⁵²¹ Free legal aid is provided by the legal profession and legal aid services in local self-government units.⁵²² Associations can provide free legal aid only based on the provisions of the law governing the right of asylum and the prohibition of discrimination. Free legal aid is provided by attorneys on behalf of the association.

The Law on Free Legal Aid also predicts the providers of legal support. These are public notaries, mediators and law faculties. Providers of free legal support must not provide free legal aid.

⁵¹⁹ LFLA, Art. 4.

⁵²⁰ Free legal aid consists of providing legal advice, drafting submissions, representation and defense.

The provision of legal advice is a detailed explanation of the way and the possibility of solving a specific legal matter before a court, another state body, that is, a public authority or in the process of peaceful settlement of a dispute, which refers to the right, obligation or interest of the user of free legal aid based on the law.

Drafting submissions is the drafting of a written document that initiates a procedure before a court, another state body, or a public authority, or that is submitted during an already initiated procedure (drafting a lawsuit, request, proposal, pleading, complaint, objection, submission, appeal and other legal remedy).

Representation is any legal action that, based on the power of attorney, the attorney undertakes in the name and on behalf of the user of free legal aid in a proceeding before a court, another state body, a public authority or in the process of peaceful settlement of a dispute.

Defense is the representation of the suspect, the defendant or the accused in pre-investigation, investigative and criminal proceedings, which are conducted due to the suspicion that a criminal offense has been committed, for which no mandatory defense is provided for, and representation in misdemeanor proceedings, which are conducted due to the suspicion that a misdemeanor has been committed for which a prison sentence is prescribed.

⁵²¹ Free legal support consists of providing general legal information, filling out forms, drawing up notarial documents and mediating disputes.

General legal information is information about the regulation of some legal area, the legal position of the user in a specific legal matter, the subject and the way of deciding on an individual right, obligation or interest based on the law, before a court or other state body or public authority, about the rules and the amount of costs of the procedure that do not relate to the procedure before the court in a specific legal matter, the possibility of a peaceful settlement of the dispute, the method of execution of the decision, on the reasons and conditions for initiating an administrative proceeding and the procedure that is initiated by a constitutional appeal, and on the conditions and procedure for exercising the right to free legal support. Form filling is assistance in entering data about the user, which is filled in by the provider and signed by the user.

Mediation in the resolution of disputes is any action that, according to the law regulating mediation in the resolution of disputes, is undertaken by a mediator.

Compilation of a notarial document is the compilation of notarial records and notarial minutes.

⁵²² Legal aid services within local self-government units are part of the state administration and the possibility of their establishment stems from the Constitution of the RS itself and is regulated by the Law on Local Self-Government ("Official Gazette of the RS", No. 129/2007, 83/2014 – another law, 101/2016 – another law, 47/2018 and 111/2021 – another law). However, it should be noted, human resource capacities in local self-government units are a significant problem of this system. The main challenge is the turnover of people, i.e. the lack of employees, because it is not a rare situation that they undergo training to provide free legal aid, and then go on to other jobs, or do some other work along with that job, which can affect the quality of the free legal aid provided.

Article 16 of the Law on Free Legal Aid stipulates that providers are registered in the Register of Free Legal Aid Providers, which includes a separate record of providers of free legal aid and a record of providers of free legal support. The Register is maintained by the Ministry of Justice as a unique public electronic database, and citizens can access information on attorneys, local self-governments, public notaries, associations and mediators, who, according to the Law, provide free legal aid and free legal support.⁵²³

Republic of North Macedonia

The law on free legal aid applies from October 1, 2019. This law regulates the general rules for providing free legal aid, the types, the scope of free legal aid, the providers and users of free legal aid, their obligations and responsibilities, the procedure in which the right to free legal aid is exercised, the financing, the award and reimbursement of costs for the provided free legal aid, free legal aid in cross-border disputes, transparency and accountability in the provision of free legal aid, special procedures for legal aid, supervision over the application of this law and other issues related to free legal aid.⁵²⁴ The purpose of the law is to ensure equal access of citizens and other persons defined by this law to the institutions of the system, for getting to know, obtaining, and enabling effective legal assistance, following the principle of equal access to justice. The procedure for free legal aid is urgent.⁵²⁵ With the new law, the conditions for access to justice have been improved, so that not only citizens who have the status of the social case, but all natural persons who have low incomes, can get free legal aid. Persons with low incomes are those whose monthly incomes are not taken by the Republic of the minimum net salary in North Macedonia. With this law, things, court, and administrative fees are to be protected from the side of the budget of the Ministry of Justice, which contributed to the increase of interested persons for free administrative assistance.

Primary legal aid

Primary legal aid in 2022 is provided through: The regional departments for free legal aid at the Ministry of Justice, through authorized associations registered in the Register of authorized associations for providing free legal aid at the Ministry of Justice and legal clinics registered at the Ministry of Justice for providing of free legal aid.⁵²⁶ In 2022, through regional departments, authorized associations, and legal clinics, a total of 5,972 people received primary legal assistance, of which 3,105 were men and 2,741 were women. In 2022, in the Regional Departments for free legal aid under the Ministry of Justice, a total of 3330 people received primary legal aid, of which 1915 were men, 1316 were women.

According to the reports of the Regional Departments of Free Legal Aid at the Ministry of Justice, the most frequently submitted requests for secondary legal aid in

⁵²³ The Registers are available at

(<https://www.mpravde.gov.rs/tekst/26374/spisak-registrovanih-pruzalaca-besplatne-pravne-podrske.php>)

⁵²⁴ Article 1 on the Law on Free Legal Aid.

⁵²⁵ Article 2 on the Law on Free Legal Aid.

⁵²⁶ Annual report of the Ministry of Justice on the application of the Law on Free Legal Aid for 2022, available at <https://rm.coe.int/-/2022-/1680ae841a>.

2022 are in the field of property-legal matters, divorce, imposing measures to protect victims of domestic violence, protection of children, establishing paternity, etc.

A family law success story

The applicant for free legal aid, RB from Skopje, has been living separately from her husband for a long time due to arranged marriages, and she could not access social protection rights because she is a married person. She could not allocate funds for a lawyer to represent her in the divorce proceedings because she was in a poor financial situation, so she turned to the Regional Department of the Ministry of Justice, Gazi Baba, after which she was approved for secondary legal aid - a lawyer who will represent her in divorce proceedings. The procedure was successfully completed, the marriage was dissolved, and the applicant as an independent person appeared before the authorities of the Centers for Social Work and exercised her social rights.

According to the code of professional ethics of lawyers, legal assistants, and legal trainees of the Bar Association of the Republic of Macedonia, when taking on the case, if possible, the lawyer should inform his client of the amount of costs and the reward for representation, i.e. the performance of public powers. If it is a question of a party that fulfills the conditions for providing free legal aid according to the normative acts of the Codex on the professional ethics of lawyers, lawyer professional associates, and lawyer trainees of the advocate chamber of the republic of North Macedonia (AKRM), the lawyer should not ask for any compensation, keeping in mind the old ethical principle of lawyers: no one, due to the inability to pay the lawyer's fee, should be left without a lawyer and quality legal assistance.⁵²⁷

7. INSTEAD OF A CONCLUSION

The paper deals with a comparative normative analysis of free legal aid in the Republic of Serbia and the Republic of North Macedonia, with mentions of international standards and the practice of the European Court of Human Rights. The comparative normative framework related to free legal aid in the Republic of Serbia and the Republic of North Macedonia includes legislative acts that regulate the rights of citizens to access justice and the way in which this aid is provided. The analysis performed in the paper shows that free legal aid in both countries is an important element in achieving equality and fairness in access to justice, especially for those individuals who, due to their financial situation or belong to a vulnerable social group or if they are in a disadvantageous position, are unable to finance legal protection themselves.

This important mechanism for achieving equal access to justice in the Republic of Serbia and the Republic of North Macedonia is regulated by various laws and regulations, whereby the Constitutions of both countries, as the highest legal acts, guarantee the right to legal aid. Although there are certain differences in the laws and the way of organizing free legal aid, the essence remains the same - ensuring access to justice for the most vulnerable categories of society. Moreover,

⁵²⁷ Point 8 of the code is the Code of professional ethics of lawyers, legal professional associates, and legal trainees of the Bar Association of the Republic of Macedonia,
<https://www.mba.org.mk/index.php/mk/akti/kodeks-etika>

the definition of vulnerable categories of society and the criteria for receiving aid in the Republic of Serbia and the Republic of North Macedonia are similar. Thereby, persons who cannot exercise their rights most often due to lack of funds, refugees, asylum seekers, persons with disabilities, victims of domestic violence and other vulnerable groups have the right to free legal aid.

In both countries, free legal aid includes legal advice, drafting of submissions, representation before the court, authorities and other institutions. In the Republic of Serbia, free legal aid can be provided by attorneys, services in local self-government units, as well as associations that are in the Registry of the Ministry of Justice, and in the Republic of North Macedonia free legal aid is provided by attorneys and accredited non-governmental organizations.

In accordance with international standards, established through international documents, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, there is an obligation of the state to provide free legal aid, because the need for equal access to judiciary for all citizens, understood in the broadest sense as the right to a fair trial, is unequivocally recognized. Denying legal protection to those who cannot pay for it would call into question the very essence of the legal order of any country.⁵²⁸ Consequently, both states are obliged to provide means that will enable the effective exercise of the right to free legal aid. In the Republic of Serbia, the state finances this aid from the budget and in the Republic of North Macedonia, the state covers the costs of providing this aid, but there are also donor funds and support from international organizations. In addition, the aforementioned effective exercise of this right implies ensuring that legal aid is effective, in order to guarantee the right to a fair trial and equality before the law.

Finally, free legal aid is a necessary mechanism in preserving the rule of law, and states should continue to improve this system in order to ensure fair access to justice for all citizens, regardless of their economic or social status. The importance of further improvement of the free legal aid system was recognized in order to ensure fairness and equality before the law for all citizens.

⁵²⁸М. Анђелковић, Right to free legal aid - economic aspect, Правни живот 12/2006, p. 251.

