

Project commissioned by the  
Centre for Human Rights, Zagreb

# Evaluation of the Croatian Legal Aid Act and its implementation

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*International expertise by*

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## 2. INTRODUCTION. EVALUATION ISSUES

### 2.1. *Mandate, members and work*

The report presents our analysis of the Croatian Legal Aid Act (CLAA) and its implementation in the 2009-2010 period. Our mandate comes from the “Application for ‘fund for local cooperation’, a Croatian Human Rights Centre project financed by the Embassy of Finland in Zagreb since June 15, 2010. The objectives and approach of the analysis are described as follows:

#### 4. 4. Objective(s) of the project.

The main objective is to initiate and develop an expert analysis of the implementation of the existing Free Legal Aid Act which will lead to concrete recommendations for improvements of the free legal aid system. The final objective is to establish an effective free legal aid system.

5. Description of the approach: how the project intends to create changes, what methods would be utilised, how different social groups and interests would be taken into consideration.

Currently, there are extremely few meetings and discussions between the different stakeholders in the field of free legal aid that could lead us to proposals for improvements in the free legal aid system. On the one side, the Ministry of Justice is defensive about the criticism coming from the NGO's, certain experts in the field of free legal aid as well as individual citizens, while on the other hand the NGO's and experts lack relevant empirical data in order to be able to make a serious assessment of the implementation of the Free Legal Aid Act since February 1, 2009. Finally, the Croatian Law Chamber has filed a complaint against the Free Legal Aid Act to the Constitutional Court. The current situation fosters increasing criticism and antagonism, rather than encouraging open discussions about the existing problems and ways to solve them.

This expertise we are proposing would change the dynamic of the discussion and in fact, set the grounds for changes that would make the system function in a more effective manner for those for whom it was created – citizens that are in need for free legal aid in order to ensure the greater principle of access to justice and rule of law. The expertise would gather relevant empirical data, comparative analysis of examples of best practices and, within the Croatian context, suggest certain concrete proposals for improvement. The expertise would be comprehensive in the sense that it would take into account the interests of the different interest groups (NGO's, lawyers, government officials, etc.), but above all the needs of individual citizens. (P 2-3)

The Human Rights Centre appointed as members of the expert group:

- Professor Dr. Jon T. Johnsen, Faculty of Law, University of Oslo, Norway;
- LStA Mag. Georg Stawa, Leiter der Abteilung Pr 8 Projekte, Strategie und Innovation, Bundesministerium für Justiz, Austria;
- Professor Dr. Alan Uzelac, Pravni fakultet, Sveučilište u Zagrebu, Croatia.

The expert group met in Zagreb on October 11, 2010 and heard evidence from:

- Mr. Tin Gazivoda (former director of the Human Rights Centre), Topic: the background of the whole policy process, legislative proposals and the implementation of the law, past activities in the field;
- Ms. Ljiljana Božičević Krstanović (Center for Peace, Osijek, head of the Coalition of legal aid providers). Topic: the experiences of NGOs as providers of legal aid, the activities of the Coalition, policy issues;

- Ms Dragana Milunić (Civil Rights Project Sisak). Topic: experiences of the organization that had a long record of legal aid activities and has been the most active as a legal aid provider that tried to work within the frame of the CLAA;
- Mr. Mladen Klasić (attorney-at-law, Vice-President of the Croatian Bar Association). Topic: the activities of the Croatian Bar Association in the field of legal aid, experiences of lawyers with the CLAA and its implementation;
- Ms. Ljubica Matijević Vrsaljko (attorney-at-law, former Ombudsperson for children). Topic: experiences of a lawyer who has actively been involved in legal aid provision, also in cooperation with civil society organizations.
- Ms. Jagoda Novak (acting Director of the HRC and the Head of its Research and Information Department). Topic: past research of the legal aid caseload of the various providers, their sources of funding and development in the past years.

On October 12, members Johnsen and Uzelac received further evidence from:

- Mr. Wilfried Buchhorn (representative of the UNHCR in Zagreb). Topic: experiences of one of the most active and generous international donors in the field of legal aid.

The expert group also wished to hear the opinion of the Ministry of Justice, but the Ministry was not able to arrange a meeting with any of the responsible officials at this date due to other pressing obligations.

On 24 November 2010 the group issued a first draft of its evaluation. The Human Rights Centre sent it to the Croatian Ministry of Justice, the Bar Association and the civil society organizations involved in legal aid.

The expert group met in Zagreb again on December 3, 2010 and presented its second draft with its preliminary recommendations for improvements at a public meeting. All stakeholders were invited and the media also participated. The presentation was followed by a debate. The Human Rights Centre also invited all stakeholders to send written comments to the draft report.

On December 15, the Croatian Ministry of Justice officially invited the international expert members Johnsen and Stawa to an extensive discussion of the draft report. The participants from the Ministry were:

- Mr. Dražen Bošnjaković, Minister of Justice;
- Mr. Kristijan Turkalj, Director of the European Union and International Cooperation Directorate;
- Ms. Jasna Butorac, Head of Free Legal Aid Department;
- Mr. Miljenko Petrak, Cabinet Secretary.

The meeting included a visit to the General Administration Office of the City of Zagreb (department for legal aid applications) and the participation at the meeting of the Commission for Legal Aid (the advisory body of the Ministry of Justice). The members of the Commission present at that meeting were:

- Mr. Kristijan Turkalj, Director of the European Union and International Cooperation Directorate, Vice – President;

- Ms. Tamara Novak Petrović, Senior Advisor, Ministry of Finance;
- Mr. Marijan Hanžeković, Croatian Bar Association;
- Ms. Marina Kasunić Periš, Head of Industrial Democracy Sector, The Union of Autonomous Trade Unions of Croatia.<sup>1</sup>

Also present at the meeting on December 15 were:

- Mr. Vanja Bilić, new Director of Civil, Commercial and Administrative Law Directorate in the Ministry of Justice;
- Mr. Damir Kontrec, State Secretary in the Ministry of Justice.

The Ministry also sent the Human Rights Centre an extensive written comment to the draft evaluation.<sup>2</sup> The Centre has also received written comments from the Civil Rights Project (PGP) Sisak.<sup>3</sup>

## **2.2. The expert group's interpretation of its mandate**

The mandate from the Human Rights Centre leaves the expert group with significant space for further definition and specification. We build our evaluation on the following considerations:

Legal aid schemes are complex systems. Evaluations therefore tend to become extensive since many elements need to be considered both separately and how they interplay with the other elements of the scheme. At the outset we aimed at a short, principled document. However both the inputs from the stakeholders and the complexity of the task have made an extensive report necessary.

Important momentum in the development of legal aid is gained from Croatia's accession process into the European Union and our commissioners want to use our evaluation *inter alia* as a part of this process. This premise means that we should deliver our report fast. It does not leave much space for empirical studies of the Croatian legal aid system as a part of the evaluation. We must build on the existing information, also when it appears incomplete and ambiguous. We therefore will focus our evaluations on some major features of the Croatian legal aid system, and avoid going into detail.

An evaluation has to build on a set of standards. We will start by outlining them. We will then focus on six major elements of the scheme contained in the Croatian Free Legal Aid Act (CLAA). Those elements are:

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<sup>1</sup> The meeting was attended by four out of eight members (the president from MoJ, the representatives appointed on behalf of civil society organizations, by the legal clinics and the Ministry of administration were absent). The expert group was assisted by Ms. Ognjenka Manojlovic during the meeting.

<sup>2</sup> Draft analysis of the Croatian Free Legal Aid Act and its implementation – response submission, December 13, 2010 (MOJ Response submission December 13, 2010).

<sup>3</sup> Comments dated 17 December 2010.

**1 The understanding of legal problems and effects of legal aid schemes** underlining Croatian legal aid. Is the knowledge basis underlying CLAA in accordance with international legal aid research and the practical experiences from the advanced legal aid schemes in other countries?

**2 The scope of legal problems covered.**<sup>4</sup> Is the coverage wide enough? Does the range of problems included in CLAA produce a sufficient protection? Are the priorities sensible? Are the types of problems covered by the CLAA the most important ones or are there other, equally important problems that fall outside the schemes?

**3 The part of the population covered.**<sup>5</sup> Does the scheme cover the part of the population that are unable to carry ordinary legal service costs or for other reasons ought to be exempted from such costs or do groups fall outside coverage although they cannot afford to pay for legal services themselves? Opposite; are groups included although they might carry all or parts of the costs themselves?

**4 The range of services offered.** Does the scheme provide for the types of legal services (counselling, drafting and representation) that are necessary for a professional sound handling of the problems covered or are there limitations?

**5 Delivery.** Does the scheme put up a delivery system that secures that everyone who applies and qualifies also receives sufficient service?

**6 Funding.** Is the funding sufficient? Is the money provided well spent? Do alternative sources of funding exist that might be better utilized?

We will also present proposals for improving the scheme contained in the Act.

Defenders in criminal cases are not covered by CLAA. Croatia has a separate scheme for defenders in criminal cases contained in the Code of Criminal Procedure. We were neither asked, nor will we include defenders in criminal cases in our evaluation.

Croatia also has legal aid schemes for legal aid in some other types of cases outside the CLAA. A separate scheme for legal aid in asylum cases exists in the relevant legislation, and the Civil Procedure Code also contains some provisions concerning legal aid. The Attorneys Act provides for legal aid on *pro bono* basis awarded by the Croatian Bar Association. A wide range of schemes set up by Civil Society Organizations and sponsored from various sources (mainly outside the national state budget) also exist.

Our mandate concerns CLAA. Our information about the other schemes is limited. Still we will mention them when it seems appropriate for the understanding of CLAA and its operation.

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<sup>4</sup> Problem criteria, *criteria ratione materiae*, objective criteria.

<sup>5</sup> Person criteria, *criteria ratione personae*, subjective criteria.

### 3. EVALUATION STANDARDS

#### 3.1. Selection

There are different standards that might be used in evaluations of legal aid systems. In Croatia as elsewhere political parties have ideas about how to shape legal aid schemes, stakeholders have expectations, the users and their organizations also have opinions about how the schemes should function and so might other civil society organizations. The standards of government become however a major formative factor in deciding how to reform the system. In many societies, legal aid has a long history which means that traditional expectations about what the existing system should deliver also have an impact.

We will, however, not use any of the internal Croatian standards as the yardstick for our evaluation. We are composed as an international team and understand our mandate as providing Croatia with an international evaluation of its legal aid schemes.

We will use two main sets of criteria. The first set relates to the *minimum standards contained in international human rights*. Croatia has acceded to the European Convention on Human Rights<sup>6</sup> (ECHR) as well as the UN Convention on Civil and Political Rights<sup>7</sup> (CCPR). Both conventions have provisions on fair trial that also bear on legal aid. Those conventions contain minimum obligations that legal aid schemes in Croatia' as well as in other member states must fulfil.

The second set of criteria comes from *studies of legal aid schemes* mainly in the western, industrialized world and expresses what we think are „best practices“ concerning crucial elements in legal aid schemes. Given the Croatian situation, several of those goals appear aspirational in character and cannot be achieved in a short time perspective. In our statistical comparisons we therefore also use European means and averages as a rough yardstick on how far Croatia's development has come.

#### 3.2. *The minimum human rights' requirements in ECHR article 6 and the legal aid doctrine of the ECtHR*

Over the years the ECtHR has delivered several decisions on legal aid as part of its principles on access to justice. We cannot go into detail on the content of its doctrine or give an extensive account of it, but will summarize some main principles now and develop on them when necessary for the different evaluations we make in the report.

Access to legal aid is a part of the entitlement to a fair trial in ECHR article 6(1). Article 6/3c on minimum rights in criminal cases stipulates that legal aid should be provided „when the interests of justice so require.“ A similar standard is applied according to article 6(1) to other types of cases. *Airy v Ireland*<sup>8</sup> from 1979 contains the main principles. The decision sets a precedent which obliges governments to provide legal aid where needed taking into account the following criteria:

<sup>6</sup> Ratified on 17 October 1997, in force since 5 November 1997. See Off. Gaz. 18/97 of 28 October 1997.

<sup>7</sup> The Republic of Croatia was admitted as a Member of the United Nations by General Assembly resolution A/RES/46/238 of 22 May 1992.

<sup>8</sup> Application No. 6289/73.

- the importance of the case to the individual (applicant);
- the complexity of the case;
- the individual's capacity to represent himself;
- the costs and the individual's capacity to carry them.

The Airy-principles have been confirmed in several judgements. ECtHR applies the criteria to the concrete circumstances of the complaint. Access to courts is meant to be *effective* for all citizens, independent of their economic situation. A violation will be established if costs appear as an actual barrier to access to court.

Since the findings of the ECtHR relate to individual complaints and usually are made long after the alleged violation has taken place, its case law contains challenges for national law makers. Legislation as such are not found in violation of the Convention although the Court has said that member states have an obligation to organize their legal systems in a way that prevents repeated violations of article 6.<sup>9</sup> It is mainly left to the states to find out how to best establish sufficient access according to their present system and legal tradition.

When evaluating we therefore build on rough estimates of *the risk* that violations will occur, but we do not intend to forecast the number of violations that will actually be established by the ECtHR in the coming years. The procedures for bringing cases before the Court are time consuming and cumbersome, and depends to a great extend on legal aid lawyers' competence on the case law and procedures of the Court and their willingness to risk putting in a significant amount of unpaid work. The number of non-detected violations probably greatly outnumbers the number of established violations. Although the principles laid down in *Airy* appear discretionary and flexible,<sup>10</sup> they have important consequences for the shaping of legal aid schemes. As mentioned, we will develop on their meaning as we go through each of the major elements of our evaluation.

### 3.3. *Best practices*

While the human rights standards constitute binding obligations on all states that have acceded to the human rights conventions, our „best practices” are suggestions that Croatia might decide to adopt or not according to its own autonomy. As explained, these practices are gathered from different legal aid schemes that are among the best developed in the world.

In its letter of December 13, 2010 the Ministry of Justice states that

... it can be noted that the legal aid system in the Republic of Croatia follows the trends of some European countries and is taken as close example of „best practices”. It is simply unrealistic to expect that the Republic of Croatia, considering its economic and social structure, is able to mirror Great Britain, Norway or Finland. While drafting the Act in the Republic of Croatia, we focused on models that are closer to us in terms of an economic and political environment, like the Hungarian, Slovenian, Slovakian and the Lithuanian model.<sup>11</sup>

We agree that costly „best practices” cannot be expected to be implemented at the same scale in Croatia as in the most affluent states in Europe, although statistics from the European Commission on the Efficiency of Justice show that Croatia's combined spending on courts

<sup>9</sup> See as an example *Hadjidjanis v. Greece*, Application No. 72030/01.

<sup>10</sup> See *Ashingdane v. UK*, esp. para 54 and 57 (Application No 8225/78).

<sup>11</sup> MOJ Response Submission December 13, 2010, p. 5.



and legal aid are not very different from the average spending in Scandinavia and the UK.<sup>12</sup> The difference is rather that, in comparison to legal aid, Croatia prioritizes court spending far more than the more affluent states.

It should be kept in mind, however, that also the European states that spend the most on legal aid still experience a huge shortage of money and that cost-efficient ways for delivering the service therefore have high priority. Even if less affluent states have less money to spend on legal aid, they might learn from several of the delivery methods applied in the best developed schemes.

Several of these „best practices” also are supported by the soft-law of human rights. The Council of Europe, for example, has issued several documents over the years that encourage governments to develop legal aid. Some significant resolutions and recommendations are listed in appendix I.

Our „best practices” suggestions build on the idea of legal literacy, active citizens and equal protection of their rights. People should be encouraged to utilize actively their legal positions. Legal alienation is counterproductive to modern government. Courts should be an effective vehicle for correcting injustice and developing the law for all parts of society.

As with human rights, we will forward our „best practices” as part of our evaluation of the major elements of Croatian legal aid. Space does not allow for an extensive elaboration of the content, implementation or reasons behind the different „best practices” that we point to. Mainly we must limit ourselves to outlining their main features.

### Recommendation:

*It is important for Croatia to produce a development strategy for legal aid that comprehends both long time and short time goals. We also think that several of the „best practice“ principles might be realized wholly or partially in a short time perspective and that they will mean significant improvements of the present schemes.*

<sup>12</sup>

In 2008 Croatia spent 51 Euros per inhabitant on courts and legal aid, Denmark 56, UK-Scotland 58, Finland and Sweden 59, UK-England and Wales 69, Norway 66, UK-Northern Ireland 92. Croatia did not give separate budget figures for the courts and legal aid. European Judicial systems. Edition 2010 (data 2008) Efficiency and quality of justice. Figure 2.21 p 38. Downloadable from [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp).

## 4. RESEARCH BASED LEGAL AID POLICY

### 4.1. *Why is research important?*

Modern legal aid policy is increasingly becoming research based. Politicians want to know how widespread legal problems are. Research also has mapped *the characteristics of the problems* that people experience, such as:

- the legal and factual matters they contain,
- the welfare meaning of the problems to the problem holders and their network,
- how legal problems are produced,
- what sort of legal service is necessary for proper professional handling of the problem,
- different ways of handling legal problems,
- how legal service system functions and why is it unable to cover all the different sorts of problems that exist in industrialized societies.

Research also has mapped the social distribution of legal problems – if there are differences in the volume, type and welfare meaning of the legal problems experiences by:

- the poor and the rich,
- men and women,
- the old and the young,
- the well and the poorly educated,
- singles and married,
- immigrants and nationals.

Empirical research conducted over the last 30-40 years has important implications for the design of legal aid policy. In particular it reminds us that ordinary citizens in modern western societies experience a large number and a wide variety of legal problems, only a small proportion of which involve litigation. In fact the research demonstrates again and again that while many people report experiencing common and frustrating legal problems in a number of areas of life, they rarely go to court. The Scandinavian findings are analysed in the works of Johnsen.<sup>13</sup> The recent research conducted by Hazel Genn in England and Genn and Paterson in Scotland reflects similar conclusions.<sup>14</sup> The research also suggests that different disadvantaged groups, including the poor, illiterate and disabled, face particular difficulties in responding to legal problems regardless of whether they involve litigation or not.

Unmet legal service need is an important entity in legal aid policy. It expresses the amount of legal problems that people are unable of solving neither by themselves nor with assistance from the legal service system. A targeted legal aid policy ought to know the volume of the unmet need, its legal composition, its welfare meaning, how it is spread among the different segments of society and what share it constitutes of the total number of legal problems that a society produces.

<sup>13</sup> See especially Johnsen, Jon T 1987 *Retten til juridisk bistand* Tano Oslo.

<sup>14</sup> The England and Wales research is reported in Genn, Hazel 1999 *Paths to Justice. What people do and think about going to law* Hart Publishing Oxford. The Scottish research is reported in Genn & Paterson 2001. *Paths to Justice Scotland* Hart Publishing. Researchers in a number of other societies including the Netherlands and Canada have undertaken similar research.

The best legal aid schemes in the world today are grounded upon advanced research on such issues, and research is actively used in planning, developing and managing the schemes. Common law countries like England and Australia explicitly state in their legal aid legislation that legal aid schemes should be „needs-oriented”. A developed understanding of people’s legal problems and need for professional service now guides the formation of legal aid policy in those countries.

England and Wales use goal-oriented management of their legal aid scheme. The overall target of their schemes is to provide the best possible coverage of people’s legal service needs from the resources available. Major research tasks are:

- mapping and analysis of the existing legal service needs and changes in the needs,
- priority setting – analysing criteria for selection of the types of legal problems and parts of the population that should be subject to coverage from the schemes,
- evaluation of the delivery systems; whether they help people as presumed in the targets set and how cost efficient different ways of delivery are,
- how the delivery systems might be best organized and further developed and what sort of provider agreements or contracts works best.

England and Wales have established a special research centre – The Legal Service Research Centre (LSRC) – that carries out the research necessary for setting the targets and controlling their fulfilment. They have, for example, developed methods for mapping local legal service needs that the legal aid providers and managers can use for targeting their services within their districts.

## **4.2. Findings**

We have not registered any information that any national research of legal needs has been initiated or used in the development of the Croatian Legal Aid Act of 2008. Neither have we seen that the international body of research and experience has been drawn upon.

Some comparative studies of the legal aid systems in Europe produced by the Ministry of Justice as early as 2004 are only brief compilations from various sources rather than the result of serious research. Useful comments and recommendations were also received from CARDS 2004 National Action Plan for Croatia, but also do not have a character of systematic collection of knowledge, especially in the field of the legal service needs. Especially, it seems that prior to the enactment of the new law no systematic research took place regarding the costs of legal aid and financial impact of new rules.<sup>15</sup>

We think that the main findings of international legal aid research also apply to Croatia and that huge amounts of legal problems exist that people cannot cope with properly without legal assistance. Such problems are especially pressing for poor people and deprived groups.

<sup>15</sup>

It seems that there were several suggestions to conduct such research during the process of enactment of the CLAA, but they were apparently rejected. We have received the text of the Review of the Final Draft of the Act on Exercising the Right to Legal Aid from 2007, sent to the Ministry by the group of civil society organisations (“the legal aid coalition”), which states under III that “...the bill was drawn up without any prior gathering of the relevant information, and without any realistic assessment of the overall future costs of the new system”.(p. 1). When that draft bill was withdrawn from the Parliament, the same group of legal aid organizations produced the document entitled “Common Principles for the Regulation of Free and Subsidised Legal Aid in the RC”, where it was again stated that a precise assessment of the current situation has to be produced (p. 5, at b.7).

## **4.3. Evaluation**

We think that legal aid schemes should be developed from the best knowledge available. It is paramount that states with limited resources available for legal aid spend the money they have in a considerate and cost effective way that secures that the most pressing legal service needs are met before the less important ones. Research also is important to setting such priorities properly. To our evaluation the lack of research based priorities in Croatian legal aid also have significant impact on the cost effectiveness of the resources actually spent. We will substantiate this assertion in the next parts of our report.

## **Recommendation**

*Measures ought to be taken both to develop research on the functioning of the Croatian legal aid schemes and to get access to the international body of research. The legal aid authorities ought to become aware of important findings and use them in their policy making.*

*(See further recommendations on research below).*

## 5. COVERAGE OF LEGAL PROBLEMS

### 5.1. Findings

One ramification for access to legal aid in Croatia is the problem criteria listed in CLAA. According to article 5(1) legal aid will be granted in cases before courts, administrative bodies or other legal entities vested with public authority if they adjudicate „the beneficiary’s existential issues.” Pursuant to art. 5(2) such existential issues are „especially:”

- Status matters;
- Rights from the social welfare system;
- Rights from pension and invalidity insurance;
- Other forms of support;
- Employment rights;
- Protection of children and young adults;
- Protection of victims of criminal offences;
- Trafficking in human beings;
- Domestic violence;
- Matters concerning immovable property „up to the size of adequate living accommodation” which is interpreted as 35 m<sup>2</sup> in article 3 with an additional 10 m<sup>2</sup> per additional person;
- Matters concerning means for work vital for supporting the beneficiary and his/hers household;
- Monetary claims up to a certain amount (Twenty times the lowest monthly bases for calculation of obligatory insurance contribution per household member, i.e. 54.000 kn or the equivalent of 7.300 Euros);
- When prescribed by international agreements to which Croatia is a party.

In the letter of December 13, 2010 to the Human Rights Centre, the Ministry of Justice says that

„... the legal formulation is quite broad, enabling the approval of legal aid for almost all types of proceedings, while proceedings listed in Article 5, paragraph 2 of the Act are only provided as examples, in a manner intended to emphasise the most important proceedings that in most cases have an existential importance for the party.”<sup>16</sup>

In our meeting on December 15, 2001, the Croatian Ministry of Justice repeated that the issues listed are only *examples* of existential issues. The list is not meant to be complete, and other matters – for example consumer cases or compensation matters – may also qualify if they fulfil the „existential issue” criterion.

To our understanding the use of the word „especially” signals a strong priority to the types of cases listed in the text. Furthermore, the Ministry’s report MOJ 2010 contains an extensive categorization of all the orders granted by the legal aid offices in the period from February 2009 to February 2010 (see p 32-47). Almost all of the 3 178 orders recorded falls within the categories listed in CLAA article 5(2). 175 orders are listed as „Other legal matters” (p 46-

<sup>16</sup> MOJ Response Submission December 13, 2010, p.2

47).<sup>17</sup> The report does not give information about the categorization of the 995 refusals and to what extent they relate to other problem categories than the ones listed in CLAA art 5(2).

Pursuant to article 5(3), in court proceedings the court may also approve legal aid to parties „who do not meet the conditions prescribed in this act for reasons of fairness.”

## **5.2. Human rights**

How do these limitations conform to the human rights standards contained in the Airy principles?

### **5.2.1. CLAA article 5**

To our evaluation, the interpretation of article 5(2) forwarded to the evaluation group by the Ministry does not conform to the interpretation used by the SAOs. They look at the categories listed there as almost exhaustive.

Croatia is not alone in limiting the categories of problems that qualify for legal aid. Several jurisdictions limit the scope of their schemes either by excluding certain types of legal problems, or by restraining them to selected categories.

Norway for example uses a similar technique as Croatia. The Norwegian Legal Aid Act (NLAA) makes a major distinction between litigation aid and aid for other legal problems.<sup>18</sup> The list contains eleven major categories for legal assistance outside the courts and fifteen for legal representation before the courts and some other judicial bodies (NLAA §§ 11, 12, 17). These priorities focus upon cases that relate to:

- dissolution of marriages or unmarried cohabitation, emphasizing division of property and forced marriages;
- female circumcision;
- public child custody;
- compensation for loss of provider and bodily injuries
- applications for public compensation to victims of violent crime and compensation claims against the perpetrator
- termination of housing contracts and evictions from accommodation
- discharge and dismissals from work contracts
- complaints about social security decisions
- involuntary expulsion from the country;
- involuntary health treatment – for example for drug abuse, mental illness, and infectious diseases;
- conscientious objectors to military service;
- loss of legal competence.

The provisions leave limited space for discretion. Other categories of problems are excluded from legal aid unless the circumstances appear extraordinary.

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<sup>17</sup> See appendix IV for MOJ's categorization and statistics and chapter 8.2.3 for further discussions of the Ministry's categories

<sup>18</sup> *Lov om fri rettshjelp* 13 juni 1980 nr 35.

When comparing to the categories used in CLAA some are similar, while others differ significantly. The Croatian Ministry argues that their selection of problems covers “the most important proceedings that in most cases have an existential importance for the party.”<sup>19</sup> The Norwegian Ministry has argued similarly for their priorities. The comparison shows that incompleteness and arbitrariness in coverage is a significant risk of a legislative technique that points to selected categories of legal problems as almost exhaustive for coverage.

According to international research lots of problems exist in the categories that are not covered by the SAO’s interpretation of CLAA article 5. Many of them are often of great importance to people, e.g. division of marital property of some size<sup>20</sup>, removal of parental custody in child care proceedings<sup>21</sup>, many housing and tenants’ problems<sup>22</sup>, access to medical treatment<sup>23</sup>, taxes<sup>24</sup>, immigration and asylum<sup>25</sup>, consumer issues<sup>26</sup>, compensation for injuries for example from car or work accidents<sup>27</sup>, property damage, inheritance of some size, neighbour disputes, resettlement issues due to the war, rights of Roma people<sup>28</sup> etc.

On the contrary, Finland does not prioritize according to legal characteristics of the cases. They use general, discretionary criteria for identifying the problems that qualify for civil legal aid under the general schemes. The wording in the Finnish Legal Aid Act (FLAA) appears simple.<sup>29</sup> The main rule is that all legal problems qualify when legal aid is necessary, unless certain specified exceptions apply (FLAA 1 §).

Neither do the Airy criteria distinguish between different types of legal claims. The main criterion is the problem’s importance to the individual, not the legal category. The ECtHR decision in *Steel and Morris v the United Kingdom* from 2005<sup>30</sup> develops on the principles of Airy:

Steel – a part-time bar worker – and Morris – a postal worker – had extensively criticized McDonald’s for their hamburger production and was sued for slander. The proceedings became one of the largest in English history with 313 court days at the first instance and 23 for the appeal hearings, involving 40,000 pages of documentary evidence and 130 oral witnesses, several of them expert

<sup>19</sup> MOJ Response submission December 13, 2010 at p. 2.

<sup>20</sup> Such cases would not be covered by the art 5(2) CLAA if the value of the property is above 7.300 € or the case relates to an apartment or a house which has over 35 m2.

<sup>21</sup> These cases might be covered by the general phrase of „status matters“, but it is not clear. For the sake of removal of any doubt, it would be better to use a more specific wording.

<sup>22</sup> Such cases would again not be covered under art. 5(2) if they relate to property over the size of „adequate living accommodation“ i.e. 35 m2 for the applicant with an additional 10 m2 per member of her/his household.

<sup>23</sup> It is interesting to note that art. 5(2) CLAA expressly refers to „rights from pension and invalidity insurance“, but leaves out the rights from the medical insurance and/or medical care schemes.

<sup>24</sup> It seems that the CLAA does not treat any tax-related matter as an „existential issue“.

<sup>25</sup> Immigration and asylum matters, in spite of being typical legal aid matters, are not covered by the CLAA, but by the special legislation (see *infra*).

<sup>26</sup> Same as in the preceding footnote.

<sup>27</sup> These categories as such do not exist in art. 5(2) CLAA. Their determination as „existential“ would depend on whether they are covered by the other categories (e.g. by the amount of monetary claim or by the relation to the rights from labour or invalidity insurance).

<sup>28</sup> It seems that the legal aid for Roma is treated outside of the overall budget for legal aid. In the replies to CEPEJ Evaluation Scheme 2010, a separate legal aid budget for Roma minority in the amount of 78.378 EUR is mentioned. See [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010\\_Croatia.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010_Croatia.pdf), p. 4.

<sup>29</sup> *Rättshjälpslag* 5.4.2002/257.

<sup>30</sup> Application No. 64186/01.

witnesses giving evidence on a range of scientific questions. Legal arguments took some 100 days in court. The judgments alone filled more than 1, 100 pages (§ 65).

Although the applicants fulfilled the means test, defamation proceedings were outside the legal aid scheme in England. They were mainly left to represent themselves, while McDonald's used a team of experienced lawyers, and were estimated to have spent more than £ 10 million in legal expenses (§ 58, 68. ECtHR found that in a matter of such complexity, neither the sporadic help from volunteer lawyers nor the extensive assistance from the judge, could form 'any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel ...' and concluded that the denial of legal aid was a violation of ECHR Article 6 (1) (§ 72).

The UK argued in vain that

...states did not have unlimited resources to fund legal aid systems, and imposing restrictions on eligibility for legal aid in certain types of low priority civil cases were therefore legitimate, if such restrictions were not arbitrary" (§ 53).

According to ECtHR defamation issues had to be considered from the Airy criteria too. The applicants acted as defendants to protect their right to freedom of expression. The damage claim, which amounted to £ 100,000 at the outset, would have ruined both applicants and was potentially very serious. The UK therefore had violated their entitlement to access to justice and legal aid.

The Airy criteria do not oblige states to provide free access to justice, but presupposes that all cases are considered according to the individual circumstances before legal aid is denied. The Court's case law therefore contains examples on denial of legal aid in defamation cases that did not amount to a violation of article 6 because the applicant was considered capable of conducting the case himself (*Mc Vicar vs UK*)<sup>31</sup> or when the case is not „as serious" to the applicant in question (*Munro v UK*)<sup>32</sup> or no reasonable prospects of success exist (*Thaw v UK*).<sup>33</sup>

Generally, access to the courts – including legal aid - might be subject to regulations by the states. *Antonicelli v Poland*<sup>34</sup> from 2009 summarizes the limitations for such regulations:

33. The Court further emphasises the importance of the right of access to a court, having regard to the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12-13, § 24). A restrictive interpretation of that right would not be consonant with the object and purpose of this provision (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, § 30). However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, 1998-I, § 34 and *Garcia Manibardo v. Spain*, no. 38695/97, § 36). In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 24, § 57; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001 – VIII, *mutatis mutandis*).

<sup>31</sup> Application No 46311/99.

<sup>32</sup> Application No 10594/83.

<sup>33</sup> Application No 27435/95.

<sup>34</sup> Application 2815/05.



What legal aid schemes cannot do is to exempt selected categories of problems from legal aid independent of their importance to the individual. Therefore the interpretation of CLAA article 5(2) practiced by the SAOs does not conform to the Airy criteria, because research shows that all legal categories might harbour problems that are serious to the individual. It might perhaps be argued that family problems more frequently amount to serious or existential problems than consumer problems, but *some* consumer problems still will be just as serious as family problems and might also be of an existential character according to CLAA art 5 (1). The Airy principles as construed in *Steel and Morris* do not allow states to exempt them from coverage because consumer problems *on average* are less serious than other categories of legal problems.

We agree that the interpretation presented to the evaluation committee by the Ministry of Justice that emphasises the listed categories as *examples* is clearly better suited to satisfy the Airy criteria than an interpretation that understands them as priorities with almost no exceptions as applied by the SAOs. Obviously further measures are needed to make the ministry's intentions with the provision a reality. A change of the text in CLAA that clarifies that problems that falls outside the list also are covered according to the Airy criteria seems necessary. Until then the Ministry's interpretation should be made clear to the SAOs, the providers and the users.

We also think that the „existential issues” criterion is too strict. The Airy criteria do not demand that a problem amounts to an existential issue before it qualifies for legal aid. It is sufficient that the problem is of importance to the individual. Manifestly ill founded claims might be exempted from access to court and states might also screen off cases with limited prospects if such a merits test is carried out in an objective way by qualified decision makers. But governments must secure access to courts and a fair trial for claims of importance to the individual and with reasonable prospects of success also when they need support from legal aid.

However, the provisions on legal aid for reasons of fairness in article 5(3) and 42(2) allow courts to grant legal aid independent of the problem criteria in article 5 if:

- the proceedings are complex
- the party does not have the ability to represent himself/herself
- the financial status of the party is such that hiring an attorney would endanger the livelihood of the party and members of his/her household.

The principles cited are similar to the Airy criteria except that the Airy judgment also emphasises the importance of the case to the individual which in theory makes the Croatian fairness principles more liberal. However, since the principles are discretionary, the effect in practice depends on whether Croatia uses the discretion as supposed in the case law of ECtHR.

We estimate that the Croatian practice is significantly stricter. Article 5(3) describes legal aid grants on „the reason of fairness” as *exceptions* from the ordinary criteria and the wording of article 5 makes it optional for the courts if they want to use their discretion. The Airy criteria are supposed to be the *minimum* principles for providing legal service in national legal aid schemes that should be granted to everyone.

It seems that an exceptional character of this instrument is further confirmed by the fact that the report issued by the Ministry of Justice on the implementation of the right to legal aid in 2009 contained no data whatsoever on the scope and volume of application of Art 5(3).

To our evaluation, the „fairness” provision obviously cannot compensate for insufficiencies in CLAA article 5 compared to the Airy criteria.

## 5.2.2. Other civil schemes

*Findings.* From CLAA art 13(3) we read that the Labour Act and the Civil Procedure Act also contain provisions on legal aid. Those schemes should also be taken into consideration when we evaluate the total coverage of Croatian civil legal aid. In addition the Ministry points to various schemes in acts other than CLAA and states that „... in order to assess a system it is necessary to consider all of its aspects through a constructive analysis...”<sup>35</sup> We agree that those schemes ought to be taken into consideration when comparing to the Airy criteria.

The relevant legal aid schemes in the sector of non-criminal cases<sup>36</sup> are:

- the provisions in the Code of Civil Procedure that authorise the court to waive the court fees, and eventually also award free representation to certain parties;
- the provisions in the Act on the Legal Profession which empower the Croatian Bar Association to appoint *pro bono* lawyers in certain cases;
- the provisions in the Law on Asylum which relate to legal aid for the asylum applicants;
- the provisions on representation in labour cases;
- the provisions in the Consumer Protection Act, relating to the legal aid in consumer cases.

Further provisions limited to the waiver of fees in the court and administrative proceedings exist in the acts that regulate fees in such proceedings.

Before outlining some main features of these schemes, we would like to note that the objections of the Ministry to our draft evaluation related to the need to consider the schemes outside the CLAA might be a kind of *venire contra factum proprium* argument. In fact, the Ministry of Justice as the main responsible body for legal aid has not included any data on the use of the other schemes in its annual report entitled “Realisation of the Right to Legal Aid and the Expenditure of Funds in 2009” submitted to the Croatian Parliament (*Sabor*). For the same reason, the experts could not obtain a detailed insight into the functioning of these schemes, and the following outline had to be derived from the other, non-official sources and the impressions from the interviews with the stakeholders.

Further on, the expert group was also informed that the Ministry itself had rejected on several occasions the idea of integration of the schemes existing under other acts in the system of the CLAA.<sup>37</sup> The objections to the legislative draft of 2007 *inter alia* related to the fact that “it does not establish a unified and integrated system, thereby impeding harmonisation of individual elements and monitoring of the costs and effects of the new system”. In its 2007 Review, the Coalition of Legal Aid Organizations argued that point in more detail:

The main objective of the Act, which is also a response to the tasks of a state in the process of association with the EU, is to form an integral and functioning system to enable citizens to exercise

<sup>35</sup> MOJ Response submission December 13, 2010 pp 1, 5-6

<sup>36</sup> As noted in the introduction, this evaluation does not relate to criminal legal aid, which is entirely outside of the CLAA and would deserve a separate study.

<sup>37</sup> Already in November 2004 the proposal to integrate other schemes into the new act was submitted in writing to the Ministry by one of the members of this expert group, Prof. Uzelac (who was at that time one of the members of the Working Group on legal aid appointed by the Ministry).

their rights effectively. This objective is also contained in the very name of the bill, which refers to the realisation of the right to legal aid. It is the state's duty to help those who are unable to exercise their rights without obtaining adequate legal assistance, which they cannot afford due to their indigence. The assessment of the *status quo* found in the exposition of the bill states that "the Republic of Croatia does not have an integral system for providing legal aid".

However, at the very beginning of the bill this position is abandoned, and it is noted that the present forms of providing legal aid are regulated in separate laws which remain in effect (Art. 1/2). Accordingly, the provisions on free legal aid in civil and criminal proceedings and certain forms of providing legal aid in other specific areas will not be altered by the provisions of this bill.

Such a solution is negative, and is not even fully adhered to by the bill itself. It is negative for various reasons. First, the earlier provisions were not harmonised, and various difficulties arose in their implementation. For example, the provisions of the Civil Litigation Act (CLA) on the appointment of *pro bono* attorneys did not specify whether the appointed attorneys were entitled to receive remuneration, and, if so, from which source such remuneration would be paid. The provisions of the Act on the Legal Profession defines the circle of beneficiaries and the criteria for appointment of *pro bono* attorneys in a rather narrow and insufficient way (as stated in the exposition of the bill itself). There are also defects concerning the appointment of *pro bono* attorneys in criminal proceedings, particularly with regard to planning costs and models for calculating and paying remuneration for such attorneys. The new bill, whose main objective is to establish a system of free legal aid in the broader sense of the term, has failed to address these open issues and harmonise the existing regulations. (...)

Most importantly, previous regulations on exemption from the costs of proceedings and on free and subsidised legal aid regulated matters regarding jurisdiction and the sources of support for legal assistance differently. By keeping these provisions, a situation is effectively maintained in which the jurisdiction and responsibility of the state and society for adequate protection of the rights prescribed by the legal order are divided among several bodies and organisations, and are thus quite diffuse. There is no possibility for unified monitoring, supervision, or assuming responsibility when any difficulties arise.<sup>38</sup>

In the Common Principles of February 2008, the Coalition stated that, among the "main goals and principles" for the regulation of free and subsidised legal aid, an *integrated system* should be developed:

The area of free and subsidised legal aid should be regulated in such a way that all existing forms of providing legal aid and facilitating access to justice are harmoniously integrated into a comprehensive legal aid system. This includes the provision of legal aid via the state sector (based on the provisions of the Civil Litigation Act and the Criminal Procedure Act, as well as separate acts in which individual topics are regulated, such as the Asylum Act, the Administrative Procedure Act, and the Notary Public Act). It also includes the forms of legal aid provided by professional organisations and associations (e.g. the free legal aid offered by members of the Croatian Bar Association, pursuant to the Legal Profession Act, and by non-governmental organisations and associations in realising their own goals, with the use of their own funds or funds obtained from donors), as well as all other forms of legal aid (e.g. from legal clinics). The main goal is to create an integrated system of free legal aid, if possible also on the normative level, where, for ease of reference, all provisions on free and subsidised legal aid should be incorporated in a single legal text to the maximum possible extent.<sup>39</sup>

In the public statement to the members of the drafting group regarding various proposals regarding the text of the draft CLAA of February 26, 2008, the Ministry rejected the proposal to integrate the system, explaining that it would „delay enacting of the law for some time“.<sup>40</sup>

<sup>38</sup> Review of the Final Draft of the Act on Exercising the Right to Legal Aid, [http://www.human-rights.hr/attachments/457\\_Review\\_of\\_the\\_final\\_draft\\_of\\_the\\_act\\_on\\_exercising\\_right\\_to\\_legal\\_aid.doc](http://www.human-rights.hr/attachments/457_Review_of_the_final_draft_of_the_act_on_exercising_right_to_legal_aid.doc), p. 1 (citation).

<sup>39</sup> Common Principles for the Regulation of Free and Subsidised Legal Aid in the Republic of Croatia, [http://www.human-rights.hr/attachments/457\\_polazne\\_osnove\\_eng.doc](http://www.human-rights.hr/attachments/457_polazne_osnove_eng.doc), p. 1 (citation).

<sup>40</sup> Declaration regarding the changes in the draft text of the CLAA and the suggestions by the members of the drafting group, e-mail communication by J. Butorac of February 26, 2008, p. 2.

The members of the expert group support the idea of integrating the system, but emphasize that this is above all the duty of the responsible state bodies, which should commission appropriate research, collect all relevant information and ensure that both the normative framework and its implementation in the practice function in a balanced and harmonious way.

Without the good basis in the officially collected data, this report can only briefly summarize the legal aid schemes that have been left outside the Legal Aid Act.

**Legal aid under the Code of Civil Procedure.** The provisions of the CCP contain the historically oldest form of legal aid, derived from the “law of the poor” (*Armenrecht*) regulation of the Austrian ZPO of 1895. Under arts. 172-177 CCP, the party in the litigation proceedings that cannot pay the costs of the proceedings without endangering his or her maintenance (or the maintenance of the members of the party’s family) can request full or partial waiver of the payment of costs. The waiver is granted by the court (i.e. the acting judge or the panel of judges), in a summary proceedings.<sup>41</sup> The partial waiver covers only the court fees, while the full waiver also includes payment of deposits of costs of witnesses, experts and similar expenses. These costs will be finally borne by the court if the party whose costs were waived loses the proceedings. Otherwise, such costs are being recovered by the opposite party.

In the case of full waiver of costs, the court may, upon application of the party, appoint the legal representative (a lawyer or another appropriate person), if this is considered necessary for the protection of the rights of the party (art. 174 CCP). If a member of the bar is being appointed, the decision on appointment is being delivered by the president of the court. The appointed lawyer cannot refuse the representation, except where there are legitimate reasons for such refusal (if this is argued, the court has to decide on justification of these reasons). If the appointed representative wins the case, his fees are going to be recovered from the losing party. Otherwise, it appears that legal aid would be given *pro bono*.

Another confusing element regarding this scheme lies in the fact that it has been practically duplicated in the provisions of the CLAA on legal aid based on “fairness” (arts. 42-44). Except from the fact that CLAA raises the level of formal requirements (number of documents that have to be submitted of evidence of financial status), there are no essential differences in the regulation, which raises the question which scheme would be applicable in civil proceedings (or whether they would be both applicable, according to the choice of the applicant).

**Legal aid under the Law on Legal Profession.** Since 1994, the Law on Legal Profession contains a provision on pro bono representation. The rules are limited to one article - art. 21, which provides the following:

**Article 21.** The Association shall organize free legal aid for the victims of the homeland war and other deprived persons in legal issues that such persons realize as a matter of rights connected with their position, as well as in some other cases provided for by the enactments of the Association.

Some rules on the professional obligation to provide legal aid are contained in the Attorney’s Code of Ethics, Chapter III:

35. Free legal aid to deprived persons and victims of the war for the homeland is the honourable duty of every attorney and it must be carried out as conscientiously and diligently as for any other clients.

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<sup>41</sup> The proof of poor financial status is limited to the submission of a certificate by the competent tax authority.

36. An attorney shall accept representation of deprived persons and victims of the war for the homeland in civil and criminal cases when assigned by an authorized body of the Association.

37. An attorney shall have the obligation to render free legal aid to deprived persons and victims of the war for the homeland in legal matters in which these persons are enforcing their rights related to their positions when the Association entrusts such legal assistance to him or her in accordance with its enactments.

38. In the case of success in voluntary representation of deprived persons and victims of the war for the homeland, an attorney may ask for a fee for his or her legal services to the extent to which such a representation will not lose its social and humane character. An attorney shall, in any case, be allowed to accept a fee that amounts to what the represented client has recovered from the adverse party on account of the attorney's representation.

39. An attorney who, as counsel to a deprived person or a victim of the war for the homeland, acquires from such a person or from a third party, in connection with such representation and on whatever ground, a reward before the termination of representation, has thus committed a severe violation of the attorney's duty and of the reputation of the legal profession.

Although the Statute of the Bar Association (Art. 70(1)(3)) provided the authority of the Management Board “to enact regulations on appointing attorneys to the victims of the war for the homeland and socially deprived persons”, such regulation was never enacted. Instead, the web-pages of the Association<sup>42</sup> specify the documents and requirements for appointment of *pro bono* attorney. The required documents are the written request with the indication of the matter, certificate of the competent tax authority, certificate on the monthly income of the applicant, certificate of citizenship (only Croatian citizens may apply) and, in family cases, various documents regarding children. The applications may be submitted by mail, to the central address of the CBA in Zagreb, or once a week in person (Wednesdays from 10h to 14h). It is expressly stated that only representation may be awarded, and that no legal advice can be asked or granted. As to the level of economic means and other eligibility tests, they are not expressly stated and seemingly depend on internal practices.

**Legal aid under the Law on Asylum.** Under the 2007 Law on Asylum, among other rights, the asylum seekers have the right to legal aid. Such legal aid encompasses assistance in drafting statements of the asylum claim, and the representation in the administrative proceedings.<sup>43</sup> The right to provide legal aid to asylum seekers is defined much broader than in the CLAA: any lawyer engaged by the associations with whom the Ministry of Interior has concluded a contract on legal aid provision is eligible to provide legal aid. Also, the financial means test for asylum seekers is defined in a more flexible way: any asylum seeker who does not possess sufficient funds or property of value is eligible for legal aid (art. 34). Legal aid to asylum seekers is paid by the Ministry of Interior. Legal aid under Law on Asylum is provided and paid according to the Regulation of the Minister of Interior enacted in 2007. Under this regulation, the lawyers acting in asylum cases have the right to 50% of their regular fee, and the fees for providing legal advice are regulated by the agreements concluded between the Ministry of Interior and legal aid providers.

**Legal aid provided by the trade unions in labour cases.** The forms of legal aid provided in labour cases by the trade unions differ only marginally from the general rules. Unlike in other court cases, where representatives may in principle be only qualified attorneys, in labour cases the workers who are members of the trade unions may also be represented by the

<sup>42</sup> <http://www.hok-cba.hr/Default.aspx?sec=169>.

<sup>43</sup> See Law on Asylum, art. 29. From the MOJ response submission p 5 it seems that the scheme is limited to appeals against the decision of the Ministry of Interior, and does not comprehend any primary legal aid in preparing the application to the Ministry.

employees of the trade unions (art. 434a CCP). The trade unions also participate in providing primary legal aid to their members, which is one of the reasons that they are specifically authorized to be among the legal aid provider under the CLAA.

**Legal aid under the Consumer Protection Act.** This Act authorizes the associations for consumer protection to inform the consumers about their rights, assist the consumers in their dealings with the businesses, and establish advisory offices (*savjetovališta*) for protection of consumers. Although legal aid is not specifically listed among the activities of the advisory offices, it seems that the advice on the protection of consumers' rights would include the forms of primary legal aid. Under the CPA, such advisory offices may be co-financed from the state budget, and have the right to apply for office space to the units of local administration and self-government (see arts. 126 to 128 CPA).

**Evaluation.** The above presentation of the various parallel legal aid schemes permits us to draw some conclusions:

- **The need to integrate and co-ordinate the system.** It is not user-friendly that an act which, by its title, should cover all or most forms of legal aid leaves a number of provisions on legal aid in other pieces of legislation.<sup>44</sup> Even if some provisions or schemes are for any reasons left in other pieces of legislation, the schemes contained in the various acts have to be harmonized, co-ordinated and studied from an integral perspective, also for the reasons of optimizing the impact of the schemes for satisfaction of legal needs of the users.
- **The need to learn from the experiences of the parallel schemes.** Some of the schemes described above have elements structurally very different from the approach of the CLAA. They are mainly based on the straightforward definition of legal problems covered, and the direct provision of legal aid by the organisation that is approached by the user, without the need to undergo a long and cumbersome process of legal problems (and means) testing at the separate administrative bodies which are used solely for filtering purposes.
- **The need to restructure the provisions on coverage, aligning them with the Airey criteria.** Also when we take into consideration all the additional schemes that we know of, the legal aid coverage in Croatia shows significant deficits compared to the Airey criteria. The different, overlapping and complex rules on coverage of legal problems contribute to confusion and entail a high risk that specific cases which would, under Airey criteria, undoubtedly require legal aid, will remain uncovered.

### 5.3. Best policy

Modern legal aid should be liberal when it comes to short legal advice and cover all types of legal problems in society. International research show that legal literacy is limited and that ordinary and poor people face huge amounts of simple legal problems that they are unable to handle effectively by themselves but can be solved quickly by a competent adviser. Such services should be informal, efficient and accessible.

<sup>44</sup> It seems from the meeting with the Ministry that, after the initial period of denial, the need for a less fragmented system is finally recognized. Yet, it would be wrong to undertake such integration by eliminating the strong points in the present parallel schemes, and impose the weak and inefficient structures and bureaucratic approaches present in the CLAA and its implementation to the areas of specific needs.

It seems that the importance of an efficient legal advice system for everyday legal problems is not well understood in Croatian legal aid policy. We therefore recommend a survey about the need for primary legal aid to learn about the needs.

Also more complicated legal problems should be covered by legal aid outside courts. For most problems, the court is not the best solution. Some will be better handled through negotiations or alternative dispute resolution (ADR). Administrative procedures might be a better alternative for others – or the only one. For many problems the use of such procedures is obligatory before going to court.

The need for such services is also recognized in CLAA through the provisions on primary legal aid. The limitations on the problems covered are the same as for secondary legal aid, which means that important categories of problems are without coverage. CLAA article 2 also has implications for primary legal aid since it limits the purpose of the law to „facilitating access” to courts and other adjudicative bodies. Problems that do not concern adjudication seem in principle outside the scope of the law. Combined with the system of financing which generally does not stimulate provision of legal advice (see *infra* at 8.4, 9.1 and 9.3) this focusing on problems which occur in the context of adjudication can further explain why so few orders are issued for legal aid provision from the CSOs.

Today, the bulk of the legal counselling services for free are provided by the Civil Society Associations and mainly financed outside the Legal Aid Act. The huge caseload of the CSOs regarding problems that fall outside the CLAA as it is practiced today is a strong indicator that the coverage is deeply insufficient compared to the actual needs. Those insufficiencies will be manifested if the services from the CSO’s disappear.

To our evaluation, a policy must be developed to secure primary legal aid for all serious problems outside the courts with criteria similar to Airy. As long as the CSOs carry on with their services, CLAA might be used in a supplementary role and mainly provide legal aid for problems that are not covered by the services of the CSO’s. However, if the external funding disappears, a choice should be made on whether integrate the CSO’s services better into the CLAA or build up a separate service independent of them. We will comment further on this issue in chapter 8.

## Recommendations

*Primary legal aid ought to cover all types of legal problems. A survey should be carried out to map the need for primary legal aid.*

*For secondary legal aid CLAA ought to define a number of problem types of high welfare importance that are covered without further qualifications unless they are manifestly ill founded. All other categories of problems also ought to qualify after a fair merits test if access to the courts is of importance to the applicant and the prospects are fair. The „existential issues” criterion should be removed from 5(1) CLAA.*

*We suggest that CLAA should be formulated in a way that covers all categories of court cases that are not sufficiently covered by other schemes. The wording in the Finnish legal aid act combined with this limitation is one model. Another is to use the three criteria in CLAA article 42(2) on legal aid for reasons of fairness as the main criteria for legal aid and remove the limitation to exceptional cases.*

*The civil schemes outside CLAA ought to be better integrated and co-ordinated with the system established by CLAA. All provisions on coverage ought to be restructured and aligned with the Airey criteria. The user-friendly features of the schemes outside the CLAA like a straightforward definition of legal problems covered, the direct provision of legal aid by the organisation that is approached by the user, and simple procedures for merits and means testing (or lack of such procedures) ought to be considered also for other categories of problems covered under CLAA.*



## 6. PART OF POPULATION COVERED

### 6.1. Findings

#### 6.1.1. Economic limits

Section III of CLAA contains provisions on the qualifications that the applicants must satisfy. Article 7 says that coverage includes Croatian citizens and certain categories of foreigners, namely:

- People with temporary or permanent residence in Croatia;
- Asylum seekers and asylum grantees;
- Foreigners under subsidiary protection;
- Children of foreigners not accompanied by their parents and lacking a legal guardian [given that they are unable to carry the costs of legal assistance without risk to their livelihood (7(1))].

Asylum seekers are included as far as they are not covered by provisions in other acts (7(2)). Other foreigners mentioned in 7(1) are only covered if they also would fulfil the conditions for legal aid in their home country for the case in question, and also the conditions that are applicable to Croatian citizens.

Article 8 specifies what the „unable to carry the costs” standard shall mean. The criteria are complex. Those who qualify without any further conditions are:

- Welfare recipients and recipients from „other forms of assistance”;
- War veterans with the right to maintenance from the Act on the Rights of Croatian Homeland War Veterans or from the Act on Protection of Military and Civilian War Invalids and their family members.

Other persons qualify when the following five conditions are cumulatively met by the applicants and the members of her/his household:

- Their assets in monetary form are less than 54.000 kn (twenty times the lowest monthly bases for calculation of obligatory insurance contribution per household member; about 7.300 Euros in 2010);
- Their assets in non monetary form are less than 54.000 kn (twenty times the lowest monthly bases for calculation of obligatory insurance contribution per household member; about 7.300 Euros in 2010);
- They do not own a house or a flat that exceeds „the seize of adequate living accommodation” which is interpreted as 35 m<sup>2</sup> in article 3 with an additional 10 m<sup>2</sup> per additional person;
- They do not own a car with a value above 48.600 kn (eighteen times the lowest monthly bases for calculation of obligatory insurance contribution per household member; about 6.500 Euros in 2010);
- Their total monthly income and revenue per household member are less than 2.700 kn (the lowest monthly bases for calculation of obligatory insurance contribution per household member; about 365 Euros in 2010).

Children qualify without any economic limit in proceedings before competent judicial bodies when the case is about the right to maintenance from their parents and other persons who are obliged to support them (Article 8 (2)).

The Ministry of Justice has sent an opinion on the interpretation of CLAA to the state administration offices on 22 April 2010. In that opinion, the Ministry expressed the view that both Article 5 and Article 8 have to be construed in the light of Article 2, which contains the definition of legal aid. The ministry suggests a somewhat more flexible interpretation of the economic criteria, especially when applying article 8 (1)c cf. article 3 nr 18 on adequate housing. The upper limits might be exceeded if the property is in poor condition or impossible to sell and the overall situation of the applicant conforms to the general purpose and meaning of the act.

However, the principles for granting legal aid for reasons of fairness in article 42(2) also allow courts to grant legal aid independent of the person criteria in article 8. As explained in chapter 5.2.1 the „fairness” principles in CLAA appear as exceptions, while the Airy-criteria are minimum principles. We therefore think that the Croatian practice is significantly stricter than supposed in the case law of the ECtHR also when it comes to exemptions from the economic limits in CLAA.

Supplementary rules on how to consider the applicant’s economy are found in article 24 - 29, esp. article 25 and 26. To some extent they seem both to repeat and to modify the rules found in article 8. We will evaluate these rules in the Means and merits testing section in chapter 8.2, see especially 8.2.1.

### 6.1.2. Contributions

Several European legal aid schemes use contribution systems. People of some means are covered by legal aid but have to carry parts of the costs themselves. Different types of contributions are used:

Basic contributions must be paid in advance and the scheme usually covers expenses that exceed the basic contribution. Percentage contributions mean that the applicant has to pay a share of the total costs. They can be progressive in the sense that people with more means pay a higher share of the costs than applicants with lesser means. A third type is maximum contributions. They set upper limits for percentage contributions. All costs that exceed the maximum contribution are carried by the government.

Contributions mean that the economic criteria become more complex, since separate economic limits must be used for contributions. The poorest part of the population does not pay contributions or only the basic contributions, while the most affluent of those who qualify might pay almost all ordinary costs themselves. For them, legal aid mainly functions as a protection when legal costs become exorbitant as demonstrated in the *Steel and Morris* case. Since a contribution system lowers the average costs per legal aid case, it makes it possible to include a larger part of the population in the scheme than when all grantees receive the service for free without increasing costs.

CLAA article 2 says that legal aid is a way of facilitating access to judicial bodies „where the costs are paid in their entirety or in part by the Republic of Croatia.” The act contains a contribution system in article 31. Only percentage contributions are used. No contributions apply to applicants who are granted legal aid because they live on social welfare or other forms of assistance or qualify from the right to maintenance according to the act on war veterans. Other grantees must pay contributions if their monthly household income per

member exceeds 50 percent of the minimum base for calculating and paying contributions for obligatory insurance. Contributions range from ten to fifty percent of the total costs. CLAA also has rules on repayment if the grantee has submitted incorrect information on his household's economy or has his economic situation substantially improved.

## 6.2. Evaluation

### 6.2.1. Human rights criteria.

*Means test.* Human rights also bear on means testing. According to the *Airy* principles trial costs must be adjusted to the economic capacity of the individual. Legal service costs must not make legal assistance unavailable when it is deemed necessary in the interests of justice. Both economic limits and contributions must be in accordance with this principle.

*Steel and Morris* develops on the principles of *Airy* with respect to trial costs. For people of means the human rights consequence is that they might claim access to legal aid if trial costs become exorbitant. Human rights do not lay down a right to *free* trials, but costs must be adjusted to the economic capacity of the individual. This principle obviously bears upon the framing of both economic limits and contributions. Legal aid cannot be limited only to the poor. If costs become exorbitant, as in *Steel and Morris*, middle income and possibly high-income people might also be in need for public support.

The means testing laid down in CLAA article 8 cf. article 2 seems strict and will not satisfy the demand for flexibility embedded in the *Airy* principles. Neither will the more flexible interpretation suggested in the Ministry's letter of April 22, 2010 be sufficient, although the intention is certainly going to the right direction. Issued as an opinion it cannot be expected to substantially change the interpretations that can be gleaned from the text of the act itself. The exemptions from the means test embedded in the „fairness” criteria are not wide enough to compensate for the limitations in access to legal aid in CLAA article 8 cf. article 2.

We have not received any statistics that show how extensive was the coverage of the CLAA i.e. how widespread is poverty in Croatia and what percentage of poor people is covered from the existing limits. In our view, it would be one of the major tasks of the bodies responsible for legal aid to collect and monitor these indicators. In our independent assessment we could arrive to only few potential indicators that also raise some concerns about the sufficiency of the coverage.

Under the latest CEPEJ data, Croatia had in 2008 a per capita GDP of 10.583 EUR, and average gross annual salary of 12.533 EUR. The average monthly net salary in 2009 was about 5.300 kn (about 730 EUR). There are also varying assessment of the level of poverty of the overall population. According to several sociological studies (Šućur<sup>45</sup>, Bejaković<sup>46</sup>) and the World Bank data, the absolute poverty in Croatia is relatively low. But, various sources estimate that the relative poverty is still considerable. In 2009, it was reported that 856.429 citizens live below the relative level of poverty, or about 17,4 percent of population (Novi list, 19/09/2009). In 2007, the level of households that lived at the edge of poverty was about 20%

<sup>45</sup> Šućur Z., *Siromaštvo: teorije, koncepti i pokazatelji*, Zagreb: Pravni fakultet, 2001.

<sup>46</sup> Bejaković, P., *Poverty, Inequality and Social Exclusion in the EU and Croatia*, in: Ott, K. (ed.), *Croatian Accession to the European Union: Institutional Challenges*, Zagreb: IJF, 2005, pp.. 79-103 (also available at <http://www.ijf.hr/eng/EU2/Bejakovic.pdf>).

or 285.133 households. At that time, the poverty threshold was 1.744 kn net monthly income for a single-person household or 3.663 kn for a 4 person family.

If we compare these indicators with the criteria for means testing set in Art. 8, it is evident that they do not match. Although the monthly income as an indicator may be comparable, there are three further criteria that have to be met, which include the ownership of various assets, including the ownership of a flat or a house. This would e.g. exclude from potential coverage all persons who live at the edge of poverty in their own houses, which is often the case, especially in rural areas with elderly, single-person households. Further limitation is the need that all members of the household – even if there is no maintenance obligation between them and the applicant – pass the income and property test, which further weakens the chances of the applicants to obtain legal aid and makes them dependant on other members of his or her household (even if they qualify under the CLAA, they have to submit their declarations and consents to inspection of their property). Under all these conditions, it seems that a significant part of the people who live at the edge of poverty would not qualify under the criteria of Art. 8 CLAA.

In addition, it seems that the costs of legal services in Croatia may be rather significant even for the people who do not belong to the group of „poor” or „very poor”. According to the available information, the costs of proceedings in Croatia include court taxes, the costs of representation and other expenses (especially the expenses of court experts). If a monetary claim is raised concerning the property of about 500.000 kn value (about 70.000 EUR - which corresponds to the price of a smaller apartment), only the costs of legal representation in a proceedings of two instances may amount to about 10% of the value (50.000 kn or 7.000 EUR), which is – together with court taxes and some other expenses – over ten average monthly salaries. In large cases, the maximum amount payable to a lawyer for a single action in court proceedings (one written submission or one hearing in a court) may under the Tariff for lawyers amount to 123.000 kn (about 17.000 EUR). Such costs may become a prohibitive factor also to persons who belong to wealthier classes. Today they do not qualify since the means test in CLAA art 8 has a set upper limit, independent of the foreseeable costs to bring the case to the court. The only possibility will be an approval of legal aid from the courts for reasons of fairness according to article 5 (3). As explained above, we do not think that the present practices of the courts include such cases.

**Contributions.** A legal aid system that demands middle-income people to carry ordinary legal service costs themselves, might not conflict with human rights if it protects against exorbitant costs that exceed their economic capacity. For the upper part of the income ladder, contributions might be steep. However, legal aid schemes that only cover costs up to a certain limit, or use percentage contributions without any ceiling, might conflict with article 6 if costs become high.

As to the system of contributions in CLAA Art. 31, we find it striking that the report on implementation of the law in 2009 does not contain any information about the scope and use of this instrument. In some aspects, the provision on contributions also seems to be ambiguous (e.g. it is not clear what the contribution is, to whom it applies and what the rights and obligations of the applicants and the providers are). So far, we may only raise the assumption that a number of cases in which legal aid is given the share paid by government are very limited. The low payment for legal aid work may, however, reduce the impact of contributions.

From 2011 the present payment rates for the providers will increase with fifty percent, see chapter 8.3. As a consequence, contributions also will increase similarly unless they are

adjusted. As far as we know, no evaluation of whether such a steep rise the contributions is compatible with the capacity to pay among the groups that are subject to contributions has been carried out. For costs of some significance the increase probably means an insurmountable barrier to access to court for the groups affected.

### 6.2.2. *Best policy.*

Modern legal aid schemes are supposed to be generous in defining their target population. Most of the population qualifies – although contributions apply for people above the poverty line and might be steep for the better off. For the affluent the schemes mainly function as a protection against exorbitant costs. When contributions are used, they are tailored both to the costs of the case and to the grantees economy. The point is to secure that no one shall be left with costs that are unreasonable compared to their economic capacity and to avoid that fear of such costs becomes a barrier for access to justice. Some European states also provide short legal advice free for everyone and some also cover legal costs independent of economy in administrative cases about governmental intervention into people's integrity – like involuntary psychiatric treatment. Legal costs for public intervention into immovable property – like expropriation – are commonly covered.

## Recommendations

*The means test ought to be reviewed and significantly extended in light of the Airy criteria. Maximum contributions ought to be part of the contribution system and the contributions must be kept in accordance with the individual's capacity to pay also when the government's costs changes – for example due to adjustments in the payment to the providers. Coverage must include all types of trial costs that amount to a barrier to access to justice – including lawyer fees and court taxes, costs for expert evidence, translation costs and other major evidence costs and also costs to the counterpart. The contribution system might be extended similarly.*

## 7. SERVICE

### 7.1. Findings

*Primary and secondary legal aid.* CLAA article 4 distinguishes between primary legal aid (4(2)) and secondary legal aid (4(3)). Primary legal aid comprehends information, counselling, drafting and representation outside the courts, while secondary legal aid includes legal assistance and representation in court cases – also in settlements before a court. Representation before the European Court of Human Right and other international bodies is covered, but classified as primary, not secondary, legal aid.

A grant for primary legal aid comprehends all forms of service listed in article 4(2) see article 30(1). Grants for secondary aid also include all sorts of service listed in article 4(3) but shall be issued „for specific types of proceedings and instances”. New applications are necessary if grantees want to pursue their case before other instances than specified in the grant.

For primary legal aid article 4(2) must be read in the light of article 2 that significantly limits its scope. Article 2 delimits legal aid to „facilitating access“ to courts and other adjudicative bodies, see also article 5(1) that limits legal aid to „proceedings.“ If these provisions are interpreted narrowly, people will only be entitled to legal aid when they are considering to forward claims before adjudicating bodies. Information and advice on legal planning, drafting of legal documents and applications and help to negotiate with counterparts *without* bringing in adjudicative bodies is outside CLAA.

Research from other countries show that legal alienation is widespread and that legal assistance to sort out and solve legal problems before they reach the adjudicative stage is important, see chapter 4.1. CLAA does not seem to address this challenge.

*Coverage of costs.* Access to court involves several kinds of costs. They might include:

- Provider costs or the costs of the assistance of a legal expert
- Court costs – usually a fee to the court for handling the case
- Costs for experts and other costs connected to the production of evidence
- Costs for interpretation
- Costs to the counterpart if the case is lost
- The party’s own costs.

CLAA article 6(1) says that legal aid relates to „complete or partial provision of payment of the costs of legal assistance,” while CLAA article 4(4) says that „approval of any form of legal aid includes exemption from payment of taxes and the costs of the proceedings.” The wording covers both costs for the lawyer and the court costs.

An issue where our findings are uncertain concerns the payment of the fees for experts in the proceedings. Under art. 4(4) legal aid includes „exemption from payment of the costs of proceedings”, which may include the payment of court experts. However, in this respect we have not found any indications in the Report on legal aid provided in 2009. From some lawyers and also from associations we have received information that such costs are not covered by the legal aid scheme. The same can be said regarding the interpretation costs; they are undoubtedly a part of the total costs of proceedings. In the “old” scheme of the Code of Civil Procedure, such costs would be borne by the court, if the user of legal aid loses the case. However, we have not seen any confirmation either of the fact that these costs are paid

when required, or that payment of experts or the interpreters is included in the legal aid budget.

In many jurisdictions – including Finland, Norway and Austria -- a party must carry the costs of the counterpart if the case is lost. Under Croatian law, the winning party also can request to have its costs awarded in the judgment. We have not found any specific rules which would limit or exclude the application of this rule in respect to the legal aid beneficiaries. Therefore, it seems that, if legal aid beneficiary loses the case, s/he would face the chances of being ordered to pay the whole legal costs of the counterpart. According to human rights standards, costs to the counterpart should be considered as a part of the total cost barrier. Even when the poor party's own costs are covered fully, a risk of paying the counterparts costs might still be prohibitive for poor people, cf. *Steel & Morris*.

Also the party's own costs might sometimes be prohibitive to court participation. Travel and accommodation costs are most common. Handicapped grantees might be in need of special health services if participating in a trial, etc. As far as we can see, there are no provisions especially for the party's own costs in CLAA.

It might be asked if legal aid for the reasons of fairness also covers costs that are outside ordinary legal aid. As we read CLAA article 42(2) it allows for legal aid independent of the problem criteria in article 5(1) and (2) and of the person criteria of article 8. It does not allow for coverage of other types of costs than the ones listed in the act.

## 7.2. Evaluation

**Human rights.** According to human rights the types of service offered by legal aid cannot be limited to an extent that makes access to justice ineffective. However, the „access to justice“-approach to legal aid in human rights focuses on *access to courts and similar judicial bodies*. The human rights obligations for governments to provide legal aid is therefore mainly limited to what is necessary for proper use of them.

However, an efficient use of the right to a fair trial presupposes that the decision whether to go to court or not, is an informed one. Most people need expert advice on whether to sue or dispute a claim in court. Especially among poor people, many are not capable even to decide properly whether to seek a lawyer's assistance about a legal dispute. A legal aid system that limits itself strictly to court assistance might be criticized for not helping its citizens sufficiently in finding out whether they need the protection provided by Article 6.

In *Golder v UK*,<sup>47</sup> the majority of the ECtHR found that the entitlement to a fair trial also comprehended a right to make an *informed* decision as to whether to sue or not. If a person lacks sufficient means for necessary counselling, legal aid might become a prerequisite for effective access to court. Since the main aim of Article 6 is to protect access to court for claims *with* merits and not the unfounded ones, governments' obligation to provide access to pre-trial legal counselling might be shaped accordingly. However, making legal aid available only for the court alternative might pressure people on legal aid into the court track also when they would have been better off with ADR.

In principle, the range of legal services provided for in CLAA satisfies the human rights obligations. However, for problems that falls outside the ones listed in article 5(2) – that is the bulk of the problems – and legal aid will mainly be granted for „reasons of fairness“ according to article 5(3), no pre-trial advice on whether to go to court seems available through

<sup>14</sup>

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legal aid. Article 42(3) says that an application may be submitted „when court proceedings are instituted or during the court proceedings”. The first steps – counselling on whether to go to court or not, instigating the proceedings or denying a claim before a court – must be carried out by the applicants *before* they know whether legal aid for „reasons of fairness” will be granted. If the application is turned down, poor people might be exposed to expenses they cannot cover even if they refrain from further litigation. Even the cost risk involved with the steps necessary for forwarding an application might well be prohibitive since the granting of legal aid for the reasons of fairness is meant to be exceptional, see CLAA article 5(3).

According to article 6 ECHR access to the courts must be effective for everyone. *All* costs that are considered necessary from the Airy criteria must be kept to a level that is compatible with the individual’s capacity to pay.

It is uncertain whether the costs of expert evidence are effectively covered by CLAA either. Inability to effectively engage experts because of their high costs is also relevant from human rights perspective, since it may potentially cause a violation of the right to access to a court (see *mutatis mutandis* the ECtHR decisions in cases *Bakan*, *Tolstoy-Miloslavsky*, *Kreuz* and *Stankov*). The Airy criteria mean that *all cost* barriers connected to the proceedings that hinder access should be lowered to a level in proportion with the applicant’s capacity to pay.

Interpretation is another important category of trial costs that should unambiguously be covered under legal aid scheme. Pursuant to article 6(3)e ECHR defendants in criminal cases are entitled to free interpretation „if he cannot understand or speak the language used in court.” Also in other cases interpretation must be provided if necessary for efficient use of the procedural rights embedded in the principle of fair trial in article 6(1).

Even though we have been told by the Ministry that costs of experts and interpreters could be paid from the legal aid funds, we have also heard that this is not functioning in the practice. We consider that these are elements that are too important for the effectiveness of the system to be left to discretionary assessments; firm proof of effectiveness and comprehensive statistical data is needed to confirm the functionality of the system.

According to the Airy criteria also costs to the counterpart and the party’s own costs must be coverable when necessary for access to court. Such costs are clearly outside the scope of CLAA.

Although article 4 CLAA includes representation before human rights bodies, article 13 ECHR also entitles everyone to „an effective remedy” before a *national* authority for alleged violations of ECHR. If legal aid is necessary for effective use of such remedy it must be included in the scheme. In Croatia, such remedy is primarily available in the form of the constitutional complaint, which is decided by the Constitutional Court. The language of art. 4(3) leaves space for doubt whether any secondary legal aid may be afforded for representation before the Constitutional Court, which is not regarded to be the body of the state judicial power, and insofar may be left outside the scope of formula “representation before courts”. Yet, as the Tariff for Legal Aid includes proceedings before the Constitutional Court, it seems that it was construed that such proceedings are covered, however only in the context of secondary legal aid (meaning that civil society organisations and other providers who are not lawyers cannot be credited from the CLAA scheme for their assistance in this respect).



*Best practice.* If we turn to the best practice perspective, the range of services provided ought to be broader than in CLAA. Service *outside* courts ought to contain:

- information and education services,
- counselling,
- advice,
- drafting,
- negotiations,
- applications,
- complaints,
- mediation
- other ADR methods,
- representation before administrative and judicial bodies outside the court proceedings,
- test cases,
- law reform issues.

Legal aid *before* the courts ought to include all necessary legal representation and minor assistance in courts including:

- expert testimony
- interpretation
- test cases
- action for precedents of importance to the target groups of legal aid
- class and group actions on behalf of the target groups
- human rights actions.

We think it important that the information and educational services on legal matters are developed and strengthened because it promotes legal literacy and improves people's capacity to handle simple legal problems on their own. Such strategies also promote more rational and efficient use of the legal aid schemes.

Pursuant to article 9(3) CLAA, providers „cannot charge for offering general legal information.” Obviously it is limited how much general legal information legal aid providers can produce and disseminate for free. Whether legal information and education is made part of CLAA is not the main issue. It is important, however, that the data that can be extracted from the legal aid cases on common legal problems and the obstacles and strategies that can be used to remedy them are systematized and used to improve legal information services and to develop self help systems for simple matters. Associations might be well suited to perform such tasks.

We also recommend the introduction of collective measures as test cases, class and group actions and human rights actions on behalf of the target groups of legal aid also because such strategies are more cost efficient than funding a large number of individual cases with similar content over legal aid.

For similar reasons Croatia ought to consider the inclusion of some law reform strategies into legal aid. They should focus on remedying and simplifying provisions that legal aid cases show hamper efficient and just application of the law to the target groups.

## Recommendations

*Primary legal aid should include pretrial advice on cases that qualify under the „reasons of fairness” criterion. CLAA ought to cover costs for expert evidence and other production of evidence, interpretation costs, costs to the counterpart and the applicant’s own costs when deemed necessary for proper access to justice. Information and education in legal matters ought to be improved. The information that can be gathered from legal aid cases should be better used. A selection of collective strategies ought also to be considered for inclusion into CLAA.*

## 8. DELIVERY

### 8.1. *Who provides legal aid?*

CLAA establishes a delivery system for legal aid in articles 9-14. Three categories of providers are pointed out – attorneys, authorized associations and institutions of higher education through law clinics, article 9(1), 14(1). Attorneys may offer both primary and secondary legal aid while associations and legal clinics are limited to primary legal aid, art. 10(1), 11(1). It is not further defined in CLAA what is meant by an attorney. Under Croatian law, all licensed attorneys (i.e. the members of the Croatian Bar Association) are allowed to provide legal aid according to CLAA. No additional qualifications are demanded.

The legal aid providers are in principle obliged to provide legal aid if so requested by the applicant. However, in the case of attorneys, they may refuse to provide legal aid in cases prescribed by the Attorneys Act (Art. 10(2)). The Attorneys Act includes a reference to the Code of Ethics, which states that provision of legal services may be refused „for important reasons” (p. 43 of the Code). The Code gives examples of these reasons: bad prospects for success; notorious inclination to frivolous litigation; excessive amount of other work; lack of special experience required for the case; immorality of the grounds for which legal service is sought; incapacity of the party to pay the expenses. For associations, no exceptions to the duty to provide the legal aid to the beneficiary are foreseen (Art 11(2)).

The right of the legal aid providers to refuse legal aid seems to be quite imbalanced. While there are many options which allow attorneys to refuse provision of legal aid (even in cases where such refusal would be definitively inappropriate), the other legal aid providers such as associations have an absolute duty to cater all the applicants to whom an order was awarded – also when their request is entirely outside of the special field of expertise of the association.

Croatia had around 4 000 attorneys in 2010 and almost half of them (1900) practice in Zagreb. We have not received any information about how many of them that handled commissions under CLAA during the first year, but we can estimate that on average the lawyers handled around 0,5 cases per lawyer<sup>48</sup>. It seems safe to infer that at least half of the profession did not provide any legal aid. The real figure probably is significantly higher.

Associations who want to provide legal aid must register at the Ministry of Justice. The counsellors used by the associations must hold a law degree, have passed the bar exam, possess at least two years of professional work experience and be insured against liability. They are obliged to provide primary legal aid, article 13(1).

According to the statistics from the Ministry of Justice<sup>49</sup> 30 associations and one legal clinic had applied for registration and 22 associations and one clinic had been approved as legal aid providers for 2009.<sup>50</sup> The average number of orders handled per association can be estimated to 26.<sup>51</sup> Figures from the yearly reports of the associations for 2009 show that ten –

<sup>48</sup> MOJ 2010 p 6: 2 416 orders were issued, p 16: 75,8 percent of the legal aid was provided by attorneys.

<sup>49</sup> Republic of Croatia Ministry of Justice „Report on the realization of the right to legal aid and the expenditure of funds in 2009” Zagreb March 2010 (*MOJ 2010*).

<sup>50</sup> MOJ 2010 p 16-18.

<sup>51</sup> See footnote 4.

or almost of half of the associations – had not handled/finished any orders according under CLAA in 2009. Only three associations handled/finished more than ten orders.<sup>52</sup>

Universities and other institutions in higher education that offer courses in law might establish legal clinics staffed by law students for providing primary legal aid restricted to:

- legal information,
- legal advice,
- drafting of documents, art 14(1).

They cannot provide representation in administrative matters, ADR or before international bodies. They also must register at the Ministry of Justice. At present Croatia has one clinic registered that sees clients (Split). One is under establishment (Zagreb).

**Evaluation.** We support the underlying idea of organizing the providers better and see to that they possess sufficient competence for the advice they give. We think that legal problems and legal alienation is widespread in Croatia as elsewhere and that the *capacity* of the legal aid system is highly insufficient also among the jurisdictions that have the highest numbers of legal aid cases per inhabitant, see chapter 4.

It is therefore important that qualification criteria and other quality measures do not exclude possible providers that possess sufficient competence to provide reliable and cheap advice in specific areas of law -- for example consumer matters, health and welfare benefits, immigration issues, resettlement procedures, minority protection and anti-discrimination issues, ecology, matters regarding family violence and other family relations, typical problems of the witnesses and victims of crime etc. Especially in the UK a variety of first line services staffed with non lawyers exist that handle both legal and non legal problems and refer the more complicated ones to the legal specialists.

Associations usually focus their activities on certain issues according to their purpose and goals and deliver services to their members and the public within their field of work. In several European countries they also deliver legal services, but usually limit them to legal issues that are within their field of work. Unions focus on issues in labour law, automobile associations on car and traffic problems, taxpayer organizations on tax issues, consumer organizations on consumer issues, organizations for battered women on family law (divorce, custody for children, division of marital property etc.), criminal prosecution and compensation, etc. We think it less fruitful to oblige the associations to provide service in all categories of cases covered by CLAA. They should be allowed to specialize in accordance with the working field of their organization if they so wish.

## Recommendation

*We suggest that advisers with a law degree (mag. iur.), but without the bar or any other supplementary exam be allowed to deliver primary legal aid. Persons who have no law degree, but possess other proper training should also be allowed to deliver primary legal aid in matters that are within their competence. Associations should be allowed to specialize according to their field of work.*

<sup>52</sup>

See MOJ 2010 p 21-22.

## 8.2. Coverage in practice

### 8.2.1. European comparisons.

What sorts of coverage do the CLAA providers produce in practice? We will use newly published statistics from Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) as a rough indicator of the quality of the Croatian legal aid schemes compared to schemes in other countries.<sup>53</sup> Croatia has not provided figures on most of the features asked for, but table 3.3 contains crucial data on the number of grants.<sup>54</sup> Croatia reports 32,7 legal aid cases per 100 000 inhabitant „other than criminal cases” in 2008; which we understand to be the types of problems that are now covered by the CLAA. Croatia has not provided information on the number of criminal cases with legal aid.<sup>55</sup>

Croatia ranks as number 16 of the 21 states that have provided figures especially on legal aid outside criminal cases. At the bottom we find Montenegro (1,0) case per 100 000) and FYROM Macedonia (1,7 cases per 100 000). Also Slovakia (13,7) and Georgia (17,3 ) provide legal aid in significantly fewer cases per 100 000 inhabitant than Croatia. Bosnia & Herzegovina is on the same level as Croatia (33,3), while Italy provided legal aid in 81,8 cases per 100 000 or two and a half time as many as Croatia, Estonia 203,4 cases per 100 000 inhabitant or six times as many and Hungary 407,7 or twelve times as many. In Northern and Western Europe Finland provided legal aid in 896,9 cases per 100 000 inhabitant or twenty-seven times as many as Croatia and UK Scotland 2 226,2 or sixty-eight times as many. Turkey is at the top with 4021,7 legal aid cases per 100 000 inhabitant. The median is 169,6 cases per 100 000 inhabitant or five times the Croatian provision and the average 757,3.<sup>56</sup>

Croatia had a per capita GDP in 2008 of 10.683 euro. It ranked no. 28 of the 47 member states<sup>57</sup> that have provided data for the „European judicial systems” – edition 2010 (data 2008). The lowest was Moldova with 1.151 euro - or only one tenth of the figure for Croatia and the highest Luxembourg with 80 600 euro or 8 times as much as Croatia.<sup>58</sup> Except Slovakia, the states that provide less legal aid than Croatia -- like Moldova -- also are significantly poorer. Hungary and Estonia both have a GDP on the level of Croatia but provide significantly more legal aid.

Data on CLAA that went into force in 2009 are mainly gathered from MOJ. In Croatia we face the following amount of cases regarding applications for legal aid and their dispositions

<sup>53</sup> European judicial systems Edition 2010 (data 2008) *Efficiency and quality of justice*. European Commission for the Efficiency of Justice (CEPEJ). Council of Europe Publishing Strasbourg. Oct 2010. (CEPEJ 2010) Downloadable from [http://www.coe.int/t/dghl/cooperation/cepej/default\\_EN.asp](http://www.coe.int/t/dghl/cooperation/cepej/default_EN.asp).

<sup>54</sup> CEPEJ 2010 table 3.3 p 52-53.

<sup>55</sup> Croatia has commented Q24 of the CEPEJ questionnaire from which the figure is drawn:

„According to data delivered by Croatian Bar association (hereinafter: CBA) out of the total number of 1951 applications, 1449 were granted in civil cases.

The provision of Art. 21 of the Law on Legal Profession and Advocates does not foresee free legal aid in criminal cases. These matters are regulated by the Criminal Procedure Act; therefore, according to the provisions of this Act the court shall appoint the defence counsel ex officio. As mentioned in Q 13., the Ministry does not have such data at its disposal.” See [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010\\_Croatia.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010_Croatia.pdf) for details.

<sup>56</sup> CEPEJ 2010 table 3.3 p 52-53.

<sup>57</sup> UK England and Wales, UK Scotland and UK Northern Ireland are listed separately in the statistics.

<sup>58</sup> CEPEJ 2010 table 1.1 p 12.

(figures available for 2009 have been reduced to 12 months on average, figures for 2010 have been extrapolated using data of October 21<sup>st</sup> 2010 to make them comparable):

Months	Year	Amount					IN PROCESS OF APPROVAL
		SUBMITTED APPLICATIONS	ACCEPTED	REFUSED	REJECTED	SUSPENDED	
"13 months"	2009	4.647	3.190	971	160	140	186
<b>01.01.-31.12.</b>	<b>2009</b>	<b>4.283</b>	<b>2.940</b>	<b>895</b>	<b>147</b>	<b>129</b>	<b>171</b>
01.01.-21.10.	2010	7.052	5.033	1.359	252	245	163
<b>01.01.-31.12.</b>	<b>2010</b>	<b>8.755</b>	<b>6.248</b>	<b>1.687</b>	<b>313</b>	<b>304</b>	<b>202</b>

In the year 2010 in relation to 100.000 Croatian inhabitants 197,43 applications have been submitted, 140,91 of which were „accepted”, meant granted with legal aid. The figure is significantly higher than the 32,7 grants reported to CEPEJ for 2008 and the number of orders granted more than doubled from 2009 to 2010. In relation to the median value of 170 cases per 100.000 inhabitants in Europe in the year 2008 this is 83 % of that volume. According the median of 170 „accepted” applications the total number of „accepted” cases expected for Croatia would be of 7.500 a year instead of 6.248 cases registered in 2010.

It means that the CLAA has become significantly more effective. If the growth continues Croatia should soon reach the European median of 170 legal cases per 100 000 inhabitants.

It should be kept in mind as well that an order for secondary legal aid is limited to „specific types of proceedings and instances” (CLAA art 30(2)), which means that a court case might demand more than one order. Four fifths of the orders issued in the period were for secondary legal aid.<sup>59</sup>

It is not possible to read from the Ministry’s report how many people actually received legal aid over the scheme during its first year of operation. Only a fraction of the orders seems to have been finished during the period since the expenses for the 2.416 orders were calculated to 1.319.000 Kuna while the Ministry paid only 37.000 Kuna or less than 3 percent of the calculated expenses during the reported period. Even if the share of orders completed is higher than the share of the costs, it seems safe to conclude that very few of the orders issued have been finished during the first year’s operation of CLAA.

We will not try to figure out the reasons behind. Statistics over several years probably are necessary to establish if all or most of the orders issued during the first year actually are used by the grantees. We only want to mention that the number of finished cases per year has to improve dramatically if Croatia shall maintain the same level of coverage as provided by the scheme in 2008 before CLAA went into force.

### 8.2.2. *Geographic distribution.*

The mean or average number is just one aspect of legal aid coverage. Another is how the coverage is distributed within Croatia. The Ministry's report provides some data about the

<sup>59</sup> MOJ 2010, p. 16.

distribution of the orders provided on the different legal aid offices (SLO) that can be used for assessing the geographic distribution.<sup>60</sup> The results are shown in the next table:

**Table: Geographic distribution of legal aid orders March 2009-March 2010<sup>61</sup>**

County office	Pop	Area km <sup>2</sup>	Orders	Orders per 100.000 inhabitants	Population per km <sup>2</sup>
<i>Bjelovar</i>	133084	2638	41	31	50
<i>Sl. Brod</i>	176765	2027	85	48	87
<i>Dubrovnik</i>	122870	1782	24	20	69
<i>Pazin</i>				24	73
<i>Karlovac</i>	141787	3622	104	73	39
<i>Pozega</i>	85831	1821	37	43	47
<i>Rijeka</i>	305505	3590	157	51	85
<i>Sisak</i>	185387	4448	272	147	42
<i>Zadar</i>	162045	3643	109	67	44
<i>Koprivnica</i>	124467	1734	64	51	72
<i>Krapina</i>	142434	1230	62	44	116
<i>Gospić</i>	53677	5350	37	69	10
<i>Čakovec</i>	118426	730	86	73	162
<i>Osijek</i>	330505	4149	189	57	80
<i>Šibenik</i>	112891	2994	67	59	38
<i>Varaždin</i>	184769	1260	155	84	147
<i>Virovitica</i>	93389	2021	78	84	46
<i>Split</i>	463676	4524	101	22	102
<i>Vukovar</i>	204768	2448	305	149	84
<i>Zagreb</i>	309696	3078	86	28	101
<i>Zagreb city</i>	779145	640	305	39	1217
<b>Total</b>	<b>4.437.430</b>	<b>56.542</b>	<b>2.413</b>	<b>54</b>	<b>78</b>

<sup>60</sup> MOJ 2010, p 7-11.

<sup>61</sup> Data on population and area of the Croatian counties are gathered from [http://hr.wikipedia.org/wiki/Hrvatske\\_%C5%BEupanije](http://hr.wikipedia.org/wiki/Hrvatske_%C5%BEupanije) (Popis županija).

The county with the poorest coverage (Dubrovnik) shows 20 orders per 100.000 inhabitants against 149 per 100.000 for the best covered county (Vukovar). The average for the 3 counties with the poorest coverage is 25 orders per 100.000 against 127 for the 3 counties with the best coverage or 5 times as high. Coverage therefore appears very uneven. Although there are significant differences in the poverty rate between the counties that impact on the need for legal aid, they cannot explain such huge differences. It is unlikely that the people who qualify for legal aid in Vukovar have 6 times as many problems as the people who qualify in Dubrovnik. However, the 6 counties that suffered most from the war<sup>62</sup> have 93 orders on average which is almost twice as many as the national average of 54.

Neither does the degree of urbanization seem to correlate with the coverage. Dubrovnik has 69 inhabitants per km<sup>2</sup> – a bit under the average of 78 while Vukovar has 84. The 3 counties with the poorest coverage have 87 inhabitants per km<sup>2</sup>, while the 3 counties with the best coverage have 70 inhabitants per km<sup>2</sup>. Gospić with only 10 inhabitants per km<sup>2</sup> has 69 orders per 100 000 inhabitant, while Zagreb with 1 217 inhabitants per km<sup>2</sup> has only 39.

Lawyers delivered three quarters of the legal aid. It seems that the lawyers are a highly urbanized profession in Croatia as well as elsewhere. The lawyer density in Zagreb is very high. According to the Bar Association approximately half of them work in the Zagreb area while less than one quarter of the population lives there. Despite a number of orders well below the national average, the lawyers in Zagreb City only provided 30 percent of the legal aid delivered there. The rest was provided by the associations.<sup>63</sup> Only Osijek had a similar distribution. In all other counties the attorneys provided all or almost all of the aid.

Since the associations are limited to providing primary legal aid, it is reasonable to believe that the distribution of the two types of legal aid also is very different in Zagreb and Osijek compared to the rest of the counties.

The main factors behind probably are lack of information to the users and deficits in the organization of the delivery system. As far as we know, the legal aid authorities have not attempted at identifying standards for what a proper coverage should be or to find out if sufficient capacity is available among the lawyers and associations working in the different counties.

We also will draw attention to the distribution of cases between the lawyers and the associations. An estimate of the overall delivery of legal aid in Croatia just before CLAA went into force showed that the associations provided approximately 70.000 cases a year against approximately 7.000 by the attorneys. It seems beyond doubt that the associations are the main providers of legal aid in Croatia. Most of their cases do not concern litigation. According to the statistics from the Ministry of Justice 80 percent of the orders were issued for secondary legal aid and only 20 percent for primary legal aid and 76 percent of all the orders went to lawyers against 24 percent to associations.<sup>64</sup>

During the drafting process, it was agreed that primary legal aid should be an important element of the system, and that it will be funded in the approximately the same amount as the secondary legal aid. The underlying idea is that legal advice is important also as

<sup>62</sup> Vukovarsko-srijemska, Šibensko-kninska, Osječko-baranjska, Zadarska, Ličko-senjska, Sisačko-moslavačka,

<sup>63</sup> MOJ 2010, p. 16.

<sup>64</sup> MOJ 2010 p. 16.



an element of preventing litigation, and that it may be more effective than *ex post facto* remedies.

There are several reasons for developing an extensive legal advice system. Several of the jurisdictions with the highest number of legal aid cases per 100 000 inhabitant have established extensive legal advice systems both run by the public sector and by civil society organizations and the recognition of advice services as an important part of legal aid is also increasing. Among the reasons are:

- Many (potential) legal conflicts will be avoided and solved at an early stage with far less resources through the courts.
- Modern citizenship builds on legal literacy, while legal alienation, lack of legal knowledge and self confidence in legal matters are widespread. People need advice about how to utilize the increasing specter of rights they are provided with from modern government, as in working life, as wage-earners and self-employed, and as property owners, consumers, recipients of health and welfare benefits, etc. as well as in their family life.
- For many, effective access to court presupposes user-friendly advice at an early stage of the conflict. If not, many will give in even if they are protected by the law, simply because they are unaware of their rights or think it impossible to have them protected for example because they think lawyers are far too expensive or do not know about the availability of legal aid.

However, for the funding for the NGOs and clinics was right from the beginning reserved less money, and this trend is continuing.<sup>65</sup> There are fears that in the future the law will effectively be reduced to (some) forms of secondary legal aid, and that funding from the legal aid scheme will be given only for the services of lawyers.

### 8.2.3. Types of problems

When we look at the types of problems covered during the first year of the scheme we find that they concern a rather limited selection of the categories listed in CLAA. The approved applications concerned:<sup>66</sup>

- Family matters (50 %)
- Ownership of housing and means for work (13 %)
- Enforcement (12 %)
- Domestic violence (5%)
- Other matters (5%)
- Less than 5 %:
  - ✓ Labour law disputes
  - ✓ Administrative proceedings related to pension insurance
  - ✓ Social welfare rights
- Less than 1 %:
  - ✓ Victims of crime
  - ✓ Legal status

<sup>65</sup> See MOJ 2010. The less funding for primary legal aid was awarded by the Legal Aid Commission in spite of the CLAA provisions which could be interpreted as encouraging equal distribution – see art. 53(2).

<sup>66</sup> Source MOJ 2010 p 13-14. The most detailed categorization of the cases handled under CLAA is listed countywise on p 32-46, with the total for Croatia on p 46-47 – see Appendix IV.

- ✓ Proceedings before the Administrative Court
- ✓ Extraordinary remedies
- ✓ Proceedings before the European Court of Human Rights
- ✓ Immigrant issues

The list of problems covered in CLAA article 5(2) contains 13 categories of problems. The statistics of the legal aid actually delivered use somewhat different categories than in article 5(2) although most of them seem similar.

„Family legal proceedings” are the uncontested largest category that probably consumes most of the legal aid budget. „Ownership of housing and means for work” is the second largest category. „Enforcement” is the third largest category. Together, the three categories – family proceedings, housing matters/means for work and enforcement – made up three fourth of the orders. They cover four of the thirteen categories listed in art. 5 (2).

The rest seems insignificant in practice. Labour law disputes amount to 3 per 100.000 inhabitant, pensions, welfare and health together to 5 per 100 000 inhabitant and victims of crime to 0,7 cases per 100 000 inhabitant. Given the welfare importance of the types of problems listed in the narrowly shaped criteria of CLAA and how widespread they must be in Croatia, it seems safe to infer that the scheme at present only covers a tiny fraction of the people and problems that qualify.

#### 8.2.4. *Other schemes*

In Chapter 5.2.2. we listed several civil legal aid schemes legislated outside CLAA. Statistical information on those schemes are incomplete or lacking.

As to the legal aid provided under the Code of Civil Procedure, in spite of the fact that essentially the same rules were in effect for over 80 years, there is little or no systematic data about the scope of its usage in practice or the expenses finally paid by the state on that account. All we have are incidental attempts to find some information on the account of individual projects, e.g. reporting for the Council of Europe.<sup>67</sup> It seems that the overlapping of this system of legal aid with the other legal aid schemes (e.g. with *pro bono* attorneys awarded by the CBA) led to significant practical decrease in the use of this scheme. While the decisions on waiver of court fees are regularly being granted, the courts now tend to deflect the applications for *pro bono* lawyers appointed by the courts, pointing the applicants to the other schemes in order to save the court the time and money.

The Ministry of Justice informs that „from the beginning of implementation of the Ordinance on Free Legal Aid in Asylum Proceedings, until 31 July 2010, legal aid was provided in 101

<sup>67</sup>

In its replies to the CEPEJ Evaluation Scheme in 2008, the national correspondent tried to collect some relevant data and stated in the comments to Question 24 (p. 9) the following: “Courts – mandatory representation of parties was ordered in approximately 1,324 cases. Of these, 420 were civil cases. In 3,148 cases the parties were exempted from payment of court costs. Also, in 1, 879 criminal cases there were court appointed defense attorneys. These forms of legal aid are financed from the regular funds provided for the operation of courts. They are not recorded or monitored separately at the moment. Conclusion: there are many cases granted with legal aid but we can give only the framework numbers.” See the answers at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2008/croatie\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2008/croatie_en.pdf).

cases, based on appeals against the Ministry of Interior's decision to deny the request for asylum.“ The Ministry does not tell when the implementation began.<sup>68</sup>

As to the numbers of application and the number of appointed attorneys, although no systematic and comprehensive analysis exist, some data can be found in various sources. In the 1990s, the numbers of appointed attorneys were from 70 to about 600.<sup>69</sup> Seemingly, these figures were somewhat reduced in the beginning of the 2000s, rising again in the second part of the decade. The Croatian replies to the CEPEJ evaluation scheme give some figures for this form of legal aid. They are specified as 410 appointments in 2004; 530 in 2006 (out of 1130 applications);<sup>70</sup> and 1449 (out of 1951 applications) in 2008.

In the interviews conducted by the members of the expert group with the representatives of the Bar Association, it was emphasized that the Croatian Bar Association wishes to continue providing *pro bono* representation. It was also stated that the number of applications, in spite of enactment of the CLAA, has not been reduced, on the contrary, that the number of appointed lawyers continues to be high. It was argued that one of the reasons for such state of affairs is the lacking efficiency of the CLAA scheme. Also, some lawyers stated that, with the present level of compensation for legal aid provided by lawyers under the CLAA scheme, most lawyers rather prefer to work *pro bono* than within the “paid” scheme of the CLAA, which requires disproportionate level of engagement of time just to handle the paperwork necessary to qualify for financial compensation.

We have received no data on the number of cases where trade unions are involved in the provision of legal aid to their members. Equally, there is no reliable data on the functioning of the scheme under the Consumer Protection Act. As consumer protection is still under development in Croatia, we can draw little or no conclusions regarding the effectiveness of these schemes. The participation of the trade unions in the legal aid provided to workers in legal aid cases is significant, but is essentially not different from the similar assistance provided to individual members by other associations and organizations.

In this context, the civil society organizations remain the most important and comprehensive legal aid providers. They handled more than 70.000 cases in 2008, and are with no doubt the most accessible providers of legal aid in Croatia. A survey conducted by the Human Rights Centre in 2010 among the fraction of the organizations (12 “traditional” legal

<sup>68</sup> MOJ Response submission December 13, 2010 p 5

<sup>69</sup> See Uzelac, „Pristup pravosuđu. Analiza stanja u RH i pravci mogućeg razvoja“, 2000. According to the data supplied by the CBA for the purpose of a project commissioned by the Croatian Law Centre in 2000, the development of the number of applications was the following:

Year	Appointed lawyers
1993.	70
1994.	95
1995.	204
1996.	247
1997.	398
1998.	471
1999.	497
2000.	605

<sup>70</sup> It is also stated that in 2007, from January to September, there were 1311 appointments out of 1693 applications.

aid providers) revealed that those organizations handled in that year about 22.300 legal aid cases outside the system of the CLAA.<sup>71</sup>

## 8.2.5. Evaluations

*Human rights.* Human rights demand access to the courts to be *effective*. States are free to organize their legal aid schemes as long as they provide effective access. To our evaluation the Croatian legal aid act does not fulfil this criterion since it is supposed to cover all sorts of cases except for the ones covered by the specialized schemes (see chapter 5). Both the problem and the person criteria are too narrowly shaped to secure everyone proper access to the courts.

Obviously the scheme has not been very effective in providing legal aid within the criteria set in CLAA and the other schemes either, during its first year of operation. However, it should be kept in mind that the new procedure might need time to produce new cases. Controlling and gathering statistics concerning Legal Aid is essential to prove the effect of the implemented measures and to support improvements in the CLAA and the organisation of legal aid system. At this stage – regarding 2008 and 2009 – statistics within the MoJ seem not to deliver the relevant figures yet. Beyond number of cases with granted Legal Aid and the overall budget, the (average) amount of Legal Aid granted (per case) would be a vital indicator for the effectiveness of granting Legal Aid. EU's Progress Report for 2010 summarises the development of Croatia's legal aid delivery as follows:

„...In the area of legal aid, implementing legislation has been amended to simplify procedures and to increase the fees for lawyers to take on legal aid cases.

However, planning for implementation of the new system of administrative justice is at an early stage. Procedures for legal aid remain complicated and the overall level of aid provided is low. In practice, access to justice for vulnerable persons with insufficient means remains difficult. The provisions of the law on legal aid are still interpreted narrowly and are not enforced uniformly among the twenty county offices responsible for implementation. The number of applications for legal aid has been considerably lower than expected.

Between February 2009 and April 2010, a total of 5,152 requests were received, of which 3,536 were approved. NGOs continue to be the main providers of free legal advice and have ten times as many cases than those covered under the national system. However, they are experiencing a decline in funding.<sup>72</sup>

Our findings are in line with the report of the EU experts.

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<sup>71</sup> This is more than data for 2007 and 2008, but less than 29.359 cases in 2006. The sources of financing of these organizations were UNHCR, embassies of Finland, the Netherlands and Norway, EU Delegation, Ministry of Health, Ministry of Justice (outside the CLAA) and the Foundation for the Development of Civil Society (in total: about 5-6 million kn).

<sup>72</sup> European Commission. SEC(2010) 1326. Commission staff working document Croatia 2010 Progress Report accompanying the Communication from the Commission to the European parliament and the Council Enlargement Strategy and Main Challenges 2010-2011 EN {COM(2010) 660} Brussels, 09 November 2010 p 51-52. See [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/hr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/hr_rapport_2010_en.pdf).

## Recommendations

*A strategy of supporting legal aid delivery provided by the civil society organizations is important. They have developed delivery systems for many important categories of problems capable of providing legal advice on a mass basis. Today the lawyers in Croatia lack the organizational tools and generally do not prefer to be involved in the provision of primary legal aid. They probably also lack the capacity necessary to develop a similar service, and if they could, it would be significantly more expensive.*

*CLAA should provide for a payment system that produces incentives for the civil society organizations to maintaining and expanding their existing provision and supplement it with legal advice services from lawyers for problems not covered by the NGOs.*

*CLAA financing ought to increase as the foreign aid for legal aid decreases.*

### 8.3. *Means and merits testing*

#### 8.3.1. *The application process for receiving legal aid*

**Findings.** The application process for receiving legal aid is complex. In principle, each procedure for approval of legal aid has to be instituted by submitting an application to a legal aid office of the county administration. Exceptionally, the procedure for approval of primary legal aid may be instituted by direct submission of an application to authorized associations, unions or legal clinics (Art. 15). The application has to be filed on a form, prescribed by the Minister of Justice. The form contains various details about the applicant, as well as about the legal matter for which legal aid is requested. Inter alia, the applicants have to state the type and level of the proceedings for which legal aid is asked (e.g. administrative proceedings in the second instance). The form of legal aid (primary or secondary legal aid) has to be chosen, as well as its sub-type (e.g. „legal advice”, „drafting documents in legal proceedings”). Only one form of legal aid may be indicated in the application form.

Further on, the applicant has to provide a full disclosure of the financial status of himself/herself and the members of his/her household. For each member, a number of details have to be reported, including the relationship, personal identification numbers (OIB), data on the average monthly income realized during past 12 months; data on average monthly amount of the taxable income; names and addresses of the employers; data on immoveable property owned by the each member of the household including their addresses, usable space in square metres and market value; data on vehicles or vessels owned by them (including types, brands, models, years of production, registration plates and current market value of the vehicles or vessels). Data about the amount of savings or cash in banks should be disclosed as well, including the particulars such as the numbers of bank accounts and the SWIFT codes of the bank. Other assets of the applicant and his household members, such as the ownership on securities or shares, have to be disclosed in detail as well.

Under Art. 16 CLAA, the completed application form has to contain a number of attachments:

- a written statement by the applicant and all members of his/her household on their assets;
- a written statement by the applicant and the members of his/her household giving permission to inspect all data on their assets and revenue;
- various certificates on the status of the applicant issued by a competent body (e.g. beneficiaries of social welfare; asylum seekers, foreigners under subsidiary protection, victims of trafficking).

If the application is submitted directly to the authorized associations, unions or clinics, it also has to have attached a certificate from the tax administration on the amount of revenue of the applicant and members of his/her household on their assets – Art. 16(4).

The application forms have to be submitted personally or by registered mail to the State Administration Office (or its branch) competent according to the (permanent or temporary) residence of the applicant. After submission of the application form and the required attachments, the office (SAO) will have to verify the facts given in the statement. Although it is not necessary to check every declaration of the applicant, the SAO is obliged to verify at least ten percent of the requests.

The legal aid offices should regularly decide on the application within 15 days from the submission of the application – Art. 23(1). If application is rejected, the applicants may lodge an appeal within 8 days with the MoJ, and – if unsuccessful – further institute an administrative dispute with the Administrative Court.

If application is granted, an order (*uputnica*) certifying fulfilment of the conditions for legal aid is issued. This order is related to the type of legal aid requested (advice/representation; specific proceedings and the instance of proceedings). However, the issued order as such does not determine the legal aid provider: the beneficiary of legal aid should „freely” decide on the choice of provider of legal aid, „bearing in mind the authority of the provider to offer specific forms of legal aid” (Art. 30(3)). This means that the applicant has to find herself/himself the appropriate attorney or other legal aid provider, without any reference by the SAO or the other body.

**Evaluation.** The described system of processing legal aid applications is quite complicated, and to a large degree bureaucratized (which was a remark that the expert group heard from various sides). It is setting a number of both procedural and substantive obstacles, which can have a negative impact, both because a significant number of applications that would deserve to be accepted may be discarded, and because it discourages prospective applicants.

Another problem may be the dependence of the applicants on the good will of the members of their households. Eventually, the refusal of the member of the household to provide information on his assets or sign a consent form agreeing with inspection of her or his property can have the meaning of veto on the applicants claim for legal aid.

The obligation of the applicants to supply information about all members of their households is also not in line with the general approach and definition of legal aid in the CLAA, which relates to the financial situation of the users among which there exist a maintenance obligation.<sup>73</sup> A means test under which an applicant would not be eligible to receive legal aid if (s)he lives in the same household with a relatively wealthy relative, who, on the other side, does not have any legal obligation to support the applicant and pay his or her expenses, seems to be too strict and unfair.

The need for the applicant to opt for a specific type of legal aid already at the beginning of the process may be unfair and biased towards specific forms of legal aid. Legal aid applicants typically require legal aid before they know all the procedural options and before they are in position to recognize concretely their need for a specific legal aid provider. They are also more likely to choose under such conditions providers of secondary legal aid, because they are authorized to provide a broader scope of services – although for the specific cases providers from the non-governmental sector may have been more suitable.

Poor and underprivileged users therefore need help with their applications. CLAA seems to presuppose that filling in the application, producing the necessary documentation and forwarding it to the right SAO is the task of the applicant only. CLAA does not provide for any help to potential users in this respect. The application procedures obviously are too complicated for many who qualify under CLAA and (will) unfairly screen off many that would have succeeded in ascertaining their rights had they been capable of putting in a proper application.

<sup>73</sup>

See art. 2, which defines legal aid applicants as those who „would not be able to exercise their rights [of access to justice] without risk to their livelihood and the maintenance of the members of their household“.

It appears from our evaluation of the problem criteria in chapter 5 and the person criteria in chapter 6, that both are complex. For poor and underprivileged people it seems very difficult to find out on their own whether they qualify or not. We think the complex criteria combined with the complicated application procedures a main reason behind the limited use of the scheme. The strict rules in CLAA on misuse supported by rather draconic sanctions also will scare away poor people that actually qualify.

Necessary assistance might be provided by SAOs and other public information agencies.

During our visit to the City Office for General Administration in Zagreb we learned that the employees spent considerable time on explaining, helping and advising applicants on how to fill in their application forms and supply necessary accompanying documents. The SAOs also gather significant amounts of information digitally for their applicants through a special agreement on access to the network of the Ministry of Interior, Ministry of Finance and Ministry of Justice which significantly reduced the burden both for the applicants and the SAOs. We think that the strategies applied by the Zagreb office to reduce the requirements on the applicants are important. If similar practices and systems are lacking at other SAOs, they should be introduced.

Still the time use on the necessary preparation of the legal aid applications and decision making seemed astonishingly high. Obviously significant resources might be freed for other use – for example advising applicants on their problems and solving the simple ones – if the application procedures are simplified (see *infra* at 8.3.4).

We also learned the associations lack access to the information system used by the SAOs for gathering information necessary to the legal aid applications. We suggest that this deficit should be remedied, for example that the approved associations receive similar information from the SAOs for their applicants (eventually subject to their consent).

CLAA also ought to cover necessary work with legal aid applications as a separate category of problems. Then the providers can help potential users with putting in proper applications as part of their remunerated work. The Ministry of Justice might consider simplifying the application procedures. We agree that an effective means test must be nuanced. It might be asked, however, whether the necessary information can be provided from the instances that possess it directly to the SAOs, relieving the applicants from demanding bureaucratic tasks that many of them do not master.

**Comparison to the Austrian form.** It is worth to take a look at the „ZOBPP-1” Form prescribed by the Croatian Ministry of Justice<sup>74</sup> and to compare it with „ZPForm 1”, the Austrian pendant, as the effectiveness of the relevant instruments is mainly determined by the application form as the crucial entry-point. Main features of the two forms are summarized in the following table:<sup>75</sup>

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<sup>74</sup> We refer here to the entirely revised form, prescribed in January 2010, after the finding that the original application form was overly lengthy and difficult for users. See the text of the new regulation in NN 12/2010. The original form was enacted only a year before, see NN 13/2009.

<sup>75</sup> For the full comparison see appendix III.



	"ZOBPP-1"	"ZPForm 1"
<b>Lenght</b>	4 pages	4 pages
<b>Readability</b>	Size of caracters: 11pt	Size of caracters: only headlines 11pt, Comments and notes smaller
<b>Structure</b>	numbered lines in boxes per chapter	numbered lines in boxes per chapter
<b>Overall number of fields to be read/max. possible fill-out-boxes</b>	129	87

Concerning length, readability, structure and number of to be filled out boxes, there is no big difference between the two forms. „ZOBPP-1” is more readable and better structured than the Austrian „ZPForm 1”. Though the „ZOBPP-1” requires more input, it is easier to understand and to fill out, as its standardized boxes provide easier choice and help than its Austrian counterpart.

To sum it up: The „ZOBPP-1” is a useful instrument for the administration of legal aid. It supports social distribution as well as planning, developing and managing the scheme. The form is now better readable and structured than the Austrian „ZPForm 1”. Its functionality is to some extent improved, especially regarding collection of data which enable analysis of the objectives and effect of legal aid. The instrument is indispensable in setting up the control systems of expenditures and the actual usage of public budget for legal aid.

The fact that the authorities managed to considerably change and improve the application form in a short time, based on the criticisms of the users, also displays good practice of timely response, which is also to be hoped in respect to many other issues outlined in this evaluation.

## Recommendation

*A system for assisting users with the application process ought to be established. SAOs and other information agencies might provide the necessary support. Legal aid should also cover necessary assistance with legal aid application from the providers. Simplification of the procedures should be considered and also a transfer to the SAOs of most of the data collection necessary for the form.*

*The need to submit written consents and declarations from all members of the household has to be reconsidered. The applicants’ right to legal aid cannot be conditioned by the good will of the members of their household.*

*In particular, the circle of those whose financial status has to be taken into consideration when performing the means test has to be narrowed. It should not take into account all members of the applicant’s household, but only those who have a legal obligation to support the applicant and take care about his maintenance.*

### 8.3.2. *Orders (vouchers) as a precondition for receiving primary legal aid*

**Findings.** There is practically very little difference between the application processes for primary and secondary legal aid. Irrespective whether the applicants seek representation in a complex court case in two instances (which, according to the estimates, may last for several months and years), or whether they need simple free legal advice in their matter, they have in principle to undergo the same complex application process (see *supra* 8.3.1.). One application may contain only a request for one type of legal aid, i.e. for one advice in one legal matter. If the same applicant seeks another advice in the same or related matter, the whole application process should be repeated, which involves submission of another set of forms, attachments and written declarations.

One of the rare departures from the usual flow of the application process consists in the possibility to apply directly to the associations and legal clinics (see art. 16). However, even in such a case, the applicants have to fill in all the forms and submit all the documents as if they would when applying to the SAOs. The associations and legal clinics may not check the applications themselves, but they need to transfer them to the SAOs, who have to decide on their own whether an order would be issued or not. In principle, any aid or advice provided by the associations and clinics before the issuance of the order is provided on their own risk. Strictly under the law, even if the applicant has addressed an association or a clinic directly, these providers of primary legal aid should wait until the order has been issued, and limit their involvement only to assistance in the application process (which is not counted as legal aid).

There is another further barrier for direct applications. Under art. 16(4), additional documents need to be supplied if the application is submitted directly to the legal aid providers (certificates from tax authorities for him and member of his/her household), which could be another discouraging element regarding direct applications for both users and the providers.

After presenting their draft recommendations, the experts received comments from an association actively engaged in providing legal aid which stated that the whole system of orders (vouchers, *uputnice*) is inefficient and should be abandoned. If for any reason such a system should be maintained, orders should be limited to representation in the whole sets of proceedings (one complete court or administrative proceedings).<sup>76</sup>

These comments are in line with the principal objections raised by practically all providers of primary legal aid encountered by the experts. They were criticizing the fact that the system of applications for orders (*uputnice*) is applicable even to the simplest forms of legal assistance (legal advice, drafting of simple documents). A lengthy administrative process in such cases is overkill: it is not proportionate to the nature of the need and the scope of the assistance provided. It is also not in line with the customary methods of financing organisations that provide legal aid out of court, especially if a significant part of communication with the beneficiaries is being done by telecommunication means (telephone, mail). The application of the system of orders (*uputnice*) on primary legal aid may be one of the main causes why registered associations and unions had such a large proportion of legal aid cases outside of the CLAA scheme.

**Best practices.** In its response submission of December 13, the Ministry of Justice argued that

<sup>76</sup>

Comments received by PGP (CRP), dated 17 December 2010.

...it can be noted that the legal aid system established in the Republic of Croatia follows the trends of some European countries and is taken as a close example of "best practices". [...] While drafting the Act in the Republic of Croatia, we focused on models that are closer to us in terms of an economic and political environment, like the Hungarian, Slovenian, Slovakian and the Lithuanian model.<sup>77</sup>

We will not discuss here whether Hungarian, Slovenian and the Lithuanian models can rightly be described as European "best practices".<sup>78</sup> If we only consider their results – the number of legal aid cases covered and the amount in the state budget allocated per case – we can also note that all three countries show huge differences among themselves (see the charts *infra* under 9.2.). Therefore, it may be questionable to which extent one can speak about one uniform model of legal aid with reference to these three countries.<sup>79</sup>

The only common denominator of legal aid systems of these countries (which is most likely referred to in the received comments) is in the fact that all those countries use a complex application process which results in the issuing of a specific act – an order or a voucher – which entitles the holder to receive legal aid. However, even if we take only this detail, the similarities between these "models" and the Croatian system will soon end.

While we do not dispose of comprehensive information about the cited legal aid systems in these countries, it can still be noted that in all of them the "voucher" application system is confined to secondary legal aid only.<sup>80</sup> The content of vouchers (orders) is also different (e.g. in Slovenia, the vouchers need to contain a reference to individual legal aid lawyer). The differences in financial value of the vouchers are also quite considerable (the average value in Slovenia is measured in hundreds of Euros). Finally, the bodies authorized to issue vouchers in these countries are typically either courts or special legal aid offices established at the courts, and not the general offices of state administration.

Therefore, it can be concluded that Croatian system cannot be taken as a replica of any established national or international legal aid model. It is quite unique, especially insofar that it stretches the complex filtering mechanism through vouchers to include also the simple and inexpensive forms of legal assistance, such as legal advice and other forms of primary legal aid. This may also be one of its unique weaknesses.

**Evaluation.** As stated *supra*, the processing of the applications requires considerable efforts and the astonishingly high engagement of time by the SAOs. The engagement of time and efforts on the side of the user is expected to be comparably high. Especially in the context of primary legal aid, this seems to be quite disproportionate to the required outcome and thus discouraging for the applicants. As demonstrated by the figures, very few applicants do in fact use the lengthy and demanding application proceedings for obtaining simple legal advice. This is certainly not in line with the best practices in legal aid and the ambitions of the law to

<sup>77</sup> Response submission, MoJ, at 5.

<sup>78</sup> None of these countries are listed in the Council of Europe Legal Aid Best Practices (see CJ-EJ(2002)2).

<sup>79</sup> The internal document of the Croatian Ministry of Justice produced in 2004 under title "Comparative Analysis of the Systems of Legal Aid in some European Countries with Special Reference to the Current State of Legal Aid in Croatia", does not distinguish these countries as one model either. In fact, it does not even discuss Hungary, but speaks of separate national systems existent in Austria, Czech Republic, France, Lithuania, Germany, Macedonia, Norway, Slovenia, Scotland and Great Britain. This study is the only known study in which some "models" and "best practices" were officially discussed in Croatia.

<sup>80</sup> This is certainly the case in Slovenia, which is geographically and historically closest to Croatia. Slovenia also guarantees the right to a free initial legal advice with no means or merits testing at all. According to the MoJ's own comparative analysis undertaken in 2004, Lithuanian system is even more different, and combines services of private attorneys (based on vouchers) with the system of direct provision of legal aid by the offices of public attorneys. See the Analysis, p 8-9.

create a comprehensive “standard” system of legal aid. The need to request a voucher for every legal advice is also unprecedented in comparative practices. Thus, we can safely conclude that the application process based on the issuance of orders (legal aid vouchers) in the administrative proceedings is entirely inappropriate in the context of primary legal aid.

We also question the value of the voucher system itself. A main motivation for using vouchers usually is that they provide legal aid clients with a freedom to choose a provider that best suits their needs and interests -- similar to market clients. A voucher system was thoroughly tested in "The Delivery Systems Study" as part of a large study of different delivery models carried out in 1977-80 in the US by the Legal Services Corporation.<sup>81</sup> The study included 38 test projects that were compared to a representative selection of 12 neighbourhood law centres drawn from 98 legal aid schemes all over the US.<sup>82</sup>

The study planned to test two models for voucher systems. In the first type the vouchers were given to the applicants themselves and contained a set sum that the applicant could use to buy service from a provider of his or hers own choice – similar to the Croatian vouchers. In the second type a set sum should be given to established organizations of poor people. It was left to the organizations to decide what sort of cases they would fund and how much to spend in each case. They also should choose the providers for their members.<sup>83</sup>

Only the first model became operational. No organization was willing to test the second one.<sup>84</sup> It functioned for one year only and was then abandoned because the essential feature – the free choice of lawyer -- did not work in practice. The applicants had little previous experience with the local lawyers, limited knowledge of them and had no preferences. Instead of forcing them to make uninformed choices, the project produced a list of local lawyers stating their background, experience and competence.<sup>85</sup> The study concluded that a voucher system had no special advantages over other delivery models because the free choice of lawyer had little meaning to poor people.<sup>86</sup>

## Recommendation

*The submission of the applications directly to the legal aid providers should be encouraged, and the requirement of submission of additional documents in such cases should be abolished. The associations should be empowered to undertake themselves the means and merits tests regarding the applicants, and make their autonomous decision on the eligibility for legal aid. Processing of legal aid applications by the associations and legal clinics should be credited as a part of their legal aid work.*

<sup>81</sup> Legal Services Corporation (1980) The Delivery Systems Study. A policy Report to the Congress and the President of the United States.

<sup>82</sup> Lc p 27-33.

<sup>83</sup> Lc p 23-26.

<sup>84</sup> Lc p 47.

<sup>85</sup> Lc p 67-68.

<sup>86</sup> Lc III.

*The need to obtain an order (voucher) for every legal advice, or for singular actions in court or administrative proceedings, is disproportionate to the efforts and the result, and should be abandoned. Complex application procedures are inappropriate for obtaining primary legal aid.*

*As an uninformed choice of lawyers has no advantage for the poor people, who have no previous experience with the local lawyers, limited knowledge of them and no special preferences, the system of orders (vouchers) that do not designate an appropriate legal aid provider should be reconsidered. Users should be assisted in making appropriate selection of legal aid provider.*

### 8.3.3. Case flow

Talking about efficiency and effectiveness of legal systems is ever to have a look on the case flow, spotting on caseload (as the relation of remaining to incoming cases), clearance rate (expressed as a percentage, is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100) and disposition time (case-turnover-ratio per year) as recommended by the CEPEJ in the following chart:<sup>87</sup>

		Amount			Caseload	Clearance Rate	Calculated Time of Disposition
Months	Year	Filed	Decided	Pending at the end	Rate	Rate	Days
"13 months"	2009	4.647	4.461	186	4%	96,00%	15,22
<b>01.01.-31.12.</b>	<b>2009</b>	<b>4.283</b>	<b>4.112</b>	<b>171</b>	<b>4%</b>	<b>96,00%</b>	<b>15,22</b>
01.01.-21.10.	2010	7.052	6.889	163	2%	97,69%	8,64
<b>01.01.-31.12.</b>	<b>2010</b>	<b>8.755</b>	<b>8.553</b>	<b>202</b>	<b>2%</b>	<b>97,69%</b>	<b>8,64</b>

According to these common parameters and benchmarks it is seen that the process of handling the cases is functioning excellent, at a low level of caseload the clearance rate is nearly 98% and increased in 2010 though the amount of filed cases doubled within one year.

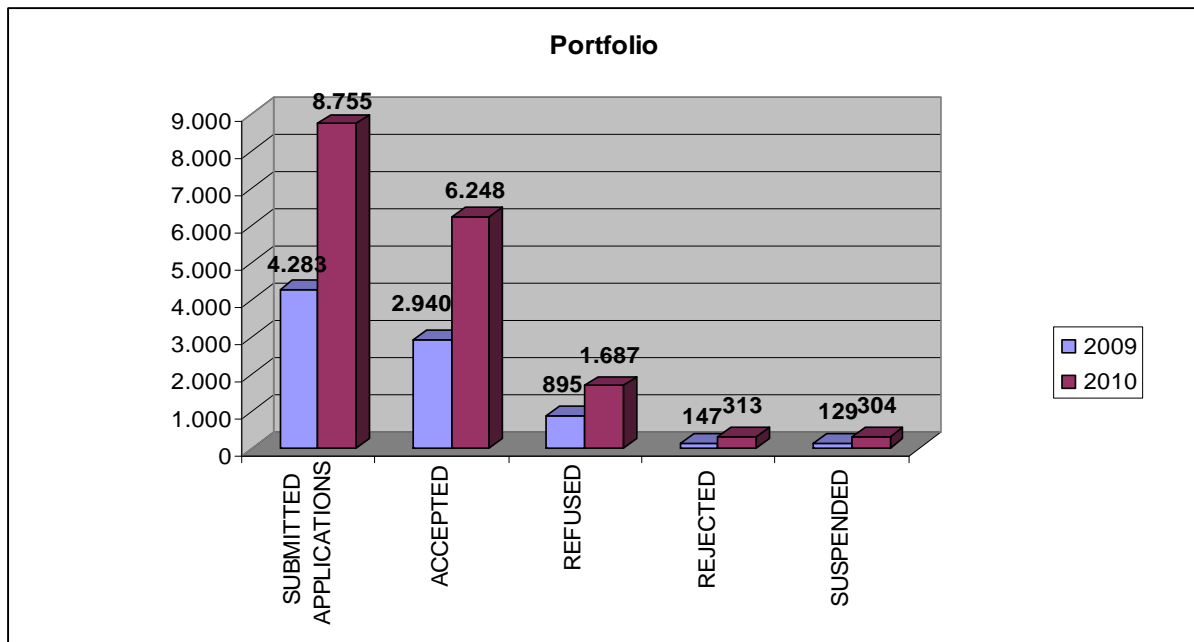
In the same period the disposition time decreased from 15 to almost nine days. The figures seem to show some typically features of the introduction phase of a new instrument with improvements of delivering more cases in a shorter time in the second year. It might be considered that the system is still not fully charged and ready for additional increase of cases.

More detailed data on the length of proceedings show, however, that some offices have surpassed this time limit (e.g. in Ličko-Senjska County the duration was continually in average 20 days, and in some months several counties declared average durations in the 20 to 30 days range; in December 2009, in Bjelovarsko-Bilogorska County, duration of the proceedings was 73 days.). The law provides for the possibility to issue an order instantly in urgent cases (Art. 23(2)), but the Report does not contain any information which would indicate that this option was used by the SAO.<sup>88</sup> In the first half of 2010 the longest monthly average duration was 25 days and the shortest three days.

<sup>87</sup> Source: Croatian Ministry of Justice.

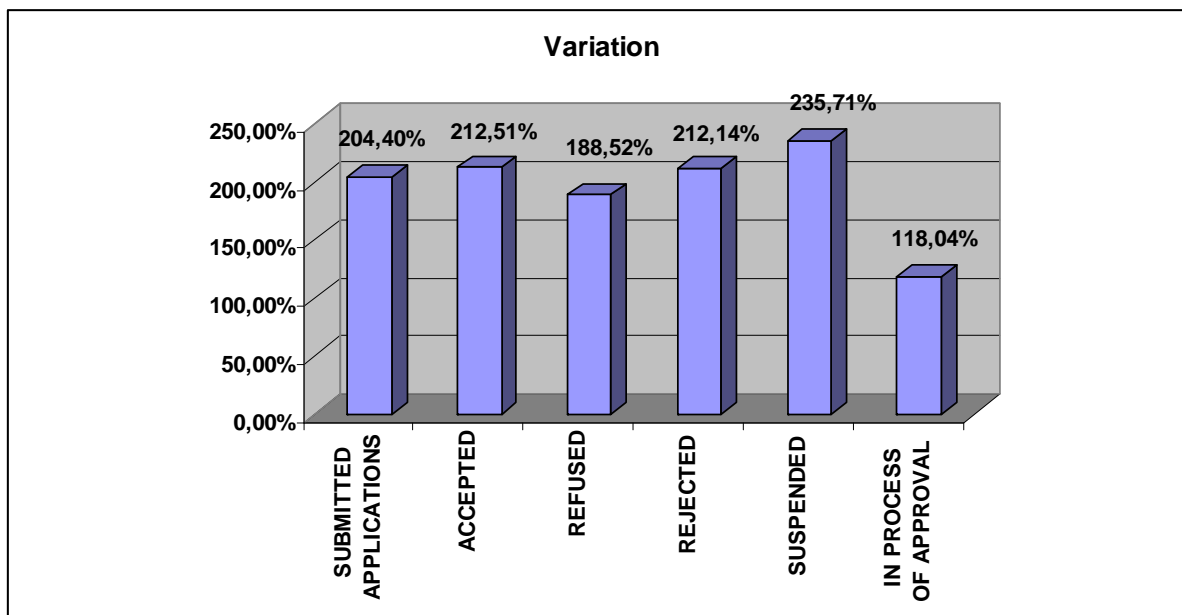
<sup>88</sup> Source: Croatian Ministry of Justice: Length of proceedings in 2009; Length of proceedings in 2010.

A closer look at the tables reveals that only three offices had any monthly variations in their average monthly case handling time in both 2009 and 2010. Three offices with an invariable monthly case handling time in 2009 increased their case handling time at the turn of 2009 to a higher invariable level in 2010.<sup>89</sup> 11 offices reported the legal maximum of 15 days for every month recorded in 2009 and 13 in 2010. It seems a bit astonishing that the bulk of the offices do not show any variation in monthly case handling time during one and a half year.



<sup>89</sup>

Brodsko-Posavska 7 days average all of the months in 2009, 15 days all of the first six months of 2010, Virovitičko-Podravska average of 18 in 2009, 25 in 2010, Vukovarsko-Srijemska average of 13 in 2009, 15 in 2010.



Talking about effectiveness, it is remarkable that in 2010 the amount of submitted applications increased about 204%, whereas the accepted applications increased for 213%. The development of those figures in the coming periods will be more than interesting.

COUNTRY	YEAR	SUBMITTED APPLICATIONS	ACCEPTED	RATE OF ACCEPTANCE
Austria	2008	19.171	15.318	79,90%
	2009	22.354	17.825	79,74%
Croatia	2009	4.283	2.940	68,65%
	2010	8.755	6.248	71,37%

Accordingly a slight decrease in the share of not accepted applications has taken place. The share is almost thirty percent, around 10% lower than i.e. in

Austria. This shows that uncertainty about the conditions for receiving legal exists and that at many of the applicants are too optimistic about the extent of the coverage.

### 8.3.4. Ban on advertising

CLAA article 9(4) forbids providers to use „any form of advertising” of their legal aid offer. We do not know the reasons behind. The provision might have been caused by an uncritical parallelism with ban on advertising applicable to professional lawyers in their commercial dealings, which is rather strictly imposed and applied by the Croatian Bar Association. Both research and experiences from other countries show that users are poorly informed about the existence of legal aid schemes and the qualification criteria and the practicalities on how to go about to apply for legal aid and find a provider. When knowledge of legal aid is lacking, their considerations of whether to use legal services will be made from their knowledge of the market prices and to poor people they usually appear prohibitive.

The very low and uneven use of CLAA during its first year of operation shows that those findings are applicable on Croatia.<sup>90</sup> It is paramount to efficient use of CLAA that information campaigns are launched and that the SLOs, other information services and other instances that get in touch with potential users also inform them about legal aid.

In this respect the ban on advertising seems counter-productive. It is, of course, important that advertising is objective and the information correct. Proper advertising – for example on

<sup>90</sup> See 8.4 below.

TV and internet – obviously will be of great help to the users especially if they receive information locally about where to go. Advertising also is a very important sign to the deprived users that the providers value them as customers and have an interest in serving them. Many poor people are afraid of approaching lawyers and think they are not interested in their legal problems. When it comes to the associations, the risk of misleading advertising seems limited since they are non profit organisations.

### 8.3.5. *Functioning of SAOs*

The 21 State Administration Offices (SAO) all over Croatia provide access and help to get access to legal aid by two employees each (occasionally shared with other public services).

The Zagreb City SAO visited by the experts offers this service exclusively by seven employees (three lawyers and four administrative clerks) working on average 11.760 hours total a year. From March 2009 to March 2010 this office issued 305 orders. Even having in mind the still increasing numbers of issued orders and the fact, that according to an acceptance-rate of app. 71% in 2010 app. 429 applications were to be processed, the available amount of working-hours per case shows room for additional tasks.

Therefore it might be recommendable to offer not only orders for access to legal aid but primary legal aid itself by these offices (in particular because they are also staffed by lawyers!). This would disburden NGOs in the area, improve efficiency on primary legal aid dramatically, and raise the quality of service from the client's perspective („one-stop-shop”) at the same expenses (the same staff).

## Recommendations

*The ban on advertising ought to be lifted and proper advertising encouraged. Some measures that secure that advertising is objective, reliable and helpful to the users might be introduced. In addition, advertising raises public awareness on the legal aid system and will increase and improve its general acceptance.*

*SAOs should not only offer orders for access to legal aid but primary legal aid itself in a framework of a „one-stop-shop” concept.*

### 8.4. *Payment*

It would be from the outmost interest to analyse the appropriateness of fees and the fee structure in respect to secondary legal aid (lawyers) and in respect to primary legal aid (advice and assistance given by associations/unions/clinics). Both sectors complained in interviews about the inadequacy of fees and/or allocated budget related to their work. As stated by the Croatia 2010 Progress Report by the European Commission of October 2010 {COM(2010) 660}, measures have been taken to increase the fees for lawyers to take on legal aid cases.

In both cases of primary and secondary legal aid, reliable facts for a detailed evaluation are not available. Those available for 2009 (which was the starting phase of the system) are not consistent. Due to the introduction of the new application form and the available control regarding the issuing of the orders, data should become available to enable a comparison of at least the appropriateness of fees and their structure in the years 2010 onwards.



It seems that one of the intentions of the reform of legal aid was to support professional legal aid provided by professional lawyers. If this support is given at the expenses of the legal aid provided by non-governmental sector, a by-product may be that the stream of legal aid cases (and some streams of funding) would be deflected from (some of) the NGOs towards the bar. This could further have negative impact on the activities of NGOs, which used to be addressed by the users seeking all kinds of advice. Although only a fraction of the financing of the NGOs used to arrive from the funds given specifically for legal aid cases, from the perspective of the NGOs this may create the impression that they are not supported adequately anymore. What will really happen, i.e. whether legal aid (and especially legal advice) delivered by the NGOs would significantly decrease, and the legal aid provided by the lawyers would simultaneously increase, cannot be established without relevant and reliable data which will arrive in the course of next months and years. Yet, this is a political question, too.

Payment is a very important instrument in the provision of legal aid. For lawyers who are a market oriented profession, the level of remuneration for legal aid has an impact on their capacity for legal aid work. If the level is low compared to what they earn from the clients on the market, the economic incentive will be to allocate as much as possible of their available capacity to such clients. Only capacity that is left over after the “market” clients have been served will be allocated to legal aid. If the legal aid payment does not cover more than office costs, the lawyers might prefer to spend the time off instead. If legal aid commissions pay comparably well, the incentive will be the opposite.

NGOs do not work for profit and their providers usually are on a salary. Their incentive is to help people, not to earn a living from what their clients pay. However, they also do have office and personnel costs that must be covered. If payment received from legal aid does not cover such costs, the service must be reduced or abandoned or paid from other sources. According to CLAA article 11(3)c all associations must hire providers with the state professional or bar examination and at least two years of work experience and also provide for professional liability insurance. This demand means that personnel costs will be relatively high and also difficult to adapt to fluctuations in funding. Office costs and other costs will add. A payment system that does not produce reasonable guarantees that such investments are going to be covered, discourages civil society organizations from providing legal aid.

From the Bar Association we learned that legal aid payment was far below the average payment from clients for similar services on the market. They estimated this relation to be as low as 15-20 percent or even less, which probably does not even cover office costs. With such limited payment it seems unlikely that any lawyer would take on legal aid cases from economic considerations – only from altruistic motives or from the sense of obligation. Although attorneys are not allowed to refuse legal aid clients that have been granted orders, there are exceptions. If the volume of legal aid work becomes significant and threatens the profitability of the practice it is hard to believe that the obligation to accept further legal aid commissions will work in practice.

For associations the main challenge seems to be the very low volume of orders (and even lower amount of order-related funding) they receive. According to our information only a few percent of their incurred costs for all of the free legal services they were running could be covered from the orders received during the first year of CLAA’s operation. We have learned that the associations that had the highest number of orders during the first year now will withdraw from providing primary legal aid under CLAA. If the present payment system

continues probably most of the existing legal aid services from the associations will be dismantled when their alternative funding ends.

From 2011 the present rates will increase with 50 percent. It is a step in the right direction but compared to the large discrepancy to the market fees for lawyers, it does not help much. For the associations the main challenge is the very low volume of orders. Even if each order pays better, the total income still seems far too limited for establishing and maintaining a service based on full time providers.

Payment is due only after the service has been delivered. With a long case handling time especially for court cases, lawyers who want to take on a significant volume of legal aid cases will also need credit for prepayment of fees and costs which adds to the expenses. Associations are faced with a similar challenge.

The voucher system means that a standard price is paid both in primary and secondary legal aid case independent of how much work is actually involved. From other jurisdictions we know that payment per case, court hearing or other category of work operation might encourage substandard work, because the faster finished, the larger the profit. Such payment systems also are vulnerable to so-called „cherry picking”. The lawyer accepts cases that are profitable according to the payment rates and turns away the unprofitable ones. Increasingly these challenges are met by introducing different kinds of quality control systems.

### Recommendations

*The Bar Association suggested to us that legal aid fees should be raised to 50-60 percent of the average market fees. Legal aid would then be economically interesting to a reasonable number of Bar members. We think it a sensible proposal. Experiences from other jurisdictions tell that such a fee level makes the legal profession accept a significant amount of legal aid work.*

*The Ministry of Justice, in collaboration with the associations, should arrange a study of the costs connected to running advice service with a volume that is economically rational, on how it could be set up, what sorts of cases it should handle and how it should be advertised to achieve a desired volume. The study should also develop a payment system that relieves the associations from exposing themselves to significant economic risks in running legal aid services.*

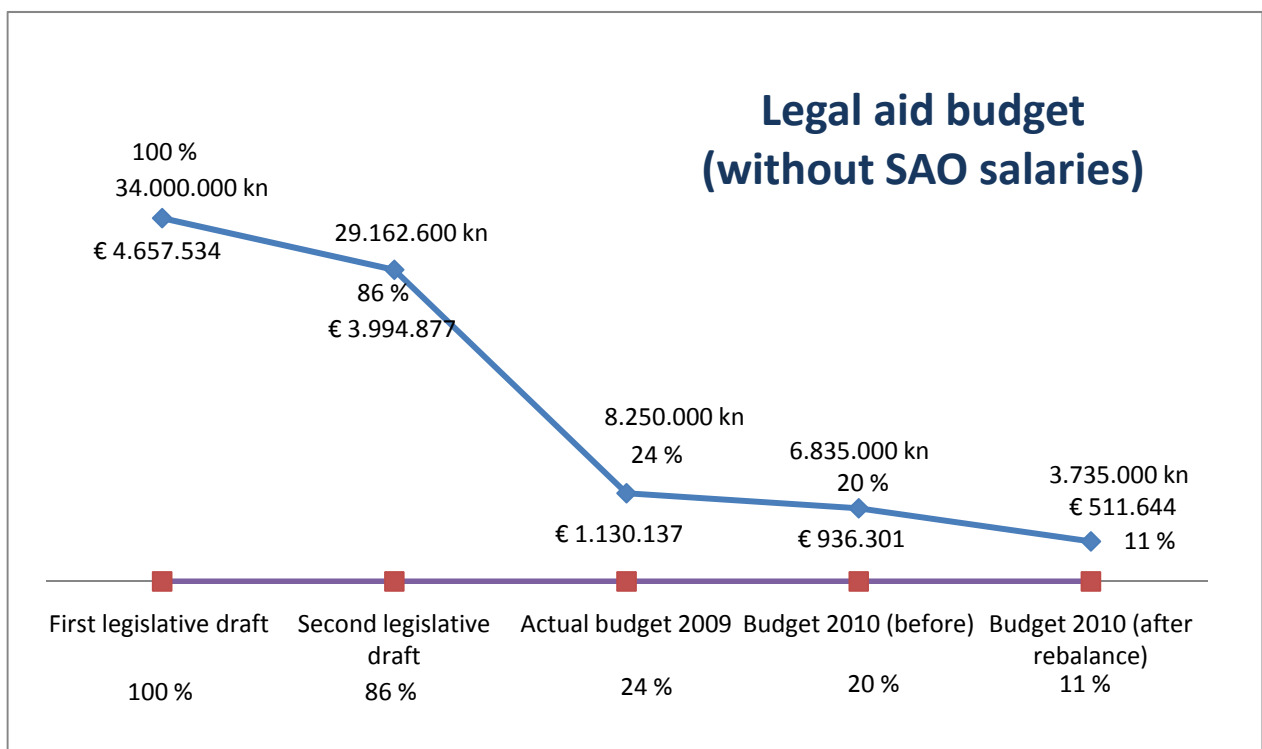
## 9. FINANCIAL MEANS

### 9.1. Total investment in legal aid (in comparison to other countries)

For 2009 the budget for the beneficiaries of free legal aid was 8.250.000 kn (per 1.1.2009 equal to 1.125.239 €). 4.500.000 kn were allocated to the State Administration Offices and the City of Zagreb for the secondary legal aid provided by lawyers. 2.010.000 kn were allocated to the Associations and Legal Clinic authorized to provide primary free legal aid after the completed tender procedure for financing the free legal aid.<sup>91</sup>

6.835.000 kn (per 1.1.2010 equal to 936.885 €) have been allocated in the year 2010 in the state budget for the provision of the free legal aid, 330.000 kn to the Associations and Legal Clinics authorized to provide primary free legal aid after a tender procedure for financing the free legal aid.<sup>92</sup>

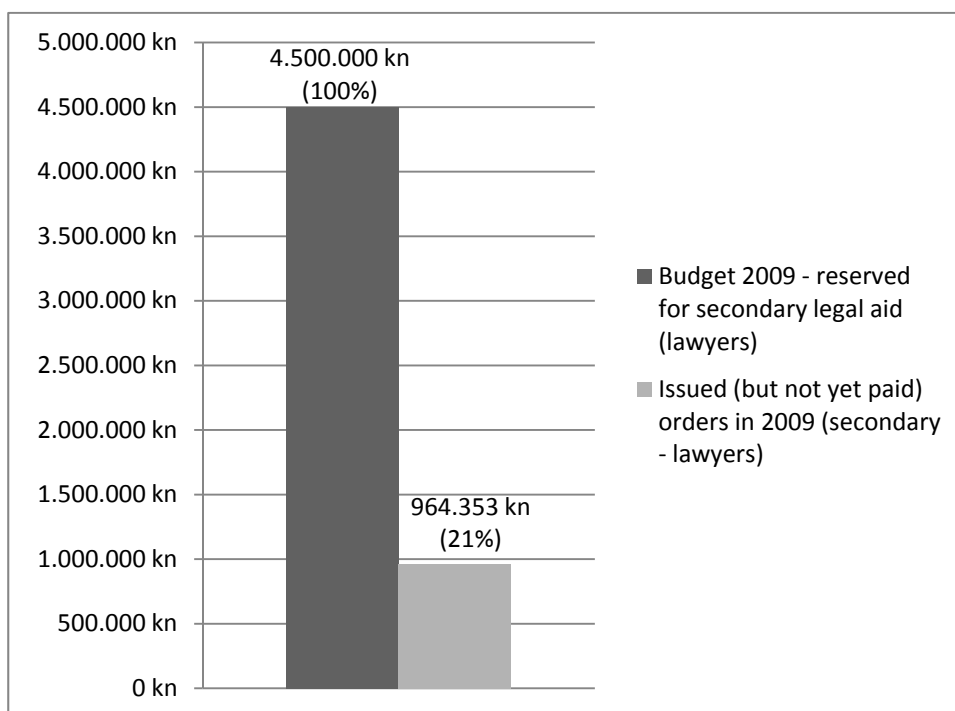
The rebalanced budget for 2010, however, is significantly lower. The following figure shows the budgetary developments since the first CLAA draft:



As shown, the budgeting process has resulted in a substantial decrease in the money supposedly available for legal aid. Also the 2010 budget has been cut by almost a half. However, it still seems sufficient to cover the orders actually issued.

<sup>91</sup> MoJ: Fact Sheet – Free Legal Aid.

<sup>92</sup> MoJ: Fact Sheet – Free Legal Aid.



The figure below shows that the orders for secondary legal aid issued in 2009 had a value of 964 000 kn. Even with a predicted doubling of the orders in 2010 and a fifty percent raise in the payment, a budget of 3.735.000 kn seems sufficient.

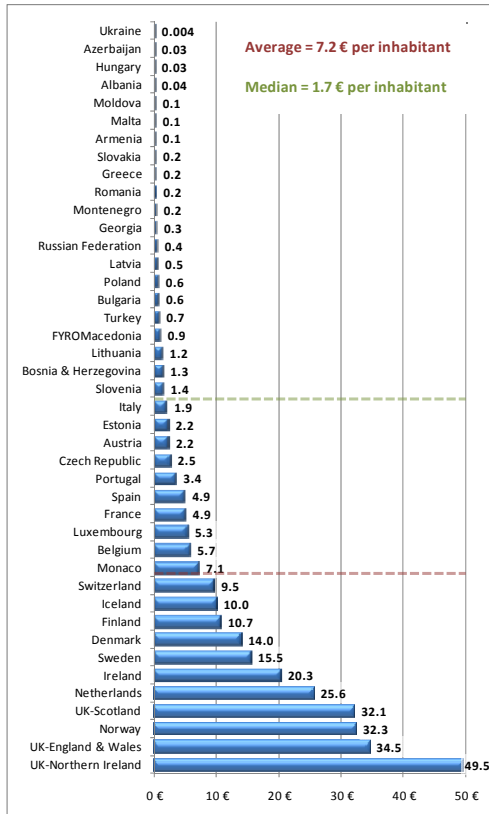
However, the figures also reveal that the ambitions of the reform to cover a large number of cases have been drastically reduced. If the present budget allows for 6 000 orders a year, the budget from the first legislative draft would have allowed for roughly 60.000 orders and probably more, since a larger share could have been used for primary legal aid which is priced far lower than secondary legal aid.

Until 31<sup>st</sup> of August 2010 citizens of poor economic status were exempt from paying the costs of the court fees and litigation costs by the courts for a total of 2.600.000 kn.<sup>93</sup>

To compare that with other countries we will rely on the Report „European Judicial Systems Edition 2010 (data 2008) Efficiency and quality of justice” by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe. Even if Croatia did not provide specific budgetary data regarding 2008 we may use other countries as an indicator.

7,2 € per inhabitant is spent on average by the public authorities to promote access to justice through the legal aid system. However, one can also consider the median value in Europe which is 1,7 € per inhabitant:

<sup>93</sup> MoJ: Fact Sheet – Free Legal Aid.



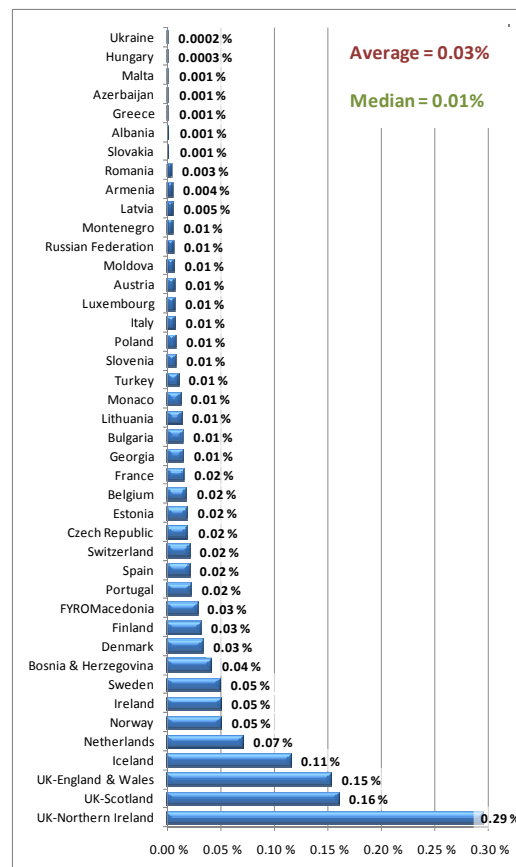
Regarding the median public budget allocated to legal aid per inhabitant in 2008 Croatia is providing 0,31€ per inhabitant (FYROMacedonia (0,9€), Bosnia & Herzegovina (1,3€) or Slovenia (1,4€) and Austria (2,2€)). In 2010 that benchmark dropped to 0,21€ per inhabitant, which is 12,35% of the European median of the year 2008. If we use the revised budget, Croatia is down to 0,11 € or 6,5% of the median (or 1,5% of the European average).

	Total budget on legal aid in Euro	Inhabitants	Total budget on legal aid per inhabitant
2008	1.364.359	4.434.508	0,31
2009	1.125.239	4.429.000	0,25
2010	936.885	4.429.000	0,21

Introducing the reference to the GDP is useful to measure the impact of the budgetary amount allocated to legal aid, in relation to the states' prosperity, to help people who do not have sufficient means find access to justice: Regarding

the annual public budget allocated to legal aid as part (in %) of the GDP per capita, Croatia (GDP and inhabitants of 2010 related to 2009 due to lack of more accurate data) is comparable to countries like Romania (0,003%) in 2008 and still significantly budgeting more money for legal aid (0,002%) than Albania, Greece, Malta (0,0001%) or Hungary (0,0003%), but five times below the European median of 0,01% .

	Total budget on legal aid in Euro	Inhabitants	GDP per capita in Euro	Total budget on legal aid as % of GDP per capita
2008	1.364.359	4.434.508	10.683	0,003%
2009	1.125.239	4.429.000	10.245	0,002%
2010	936.885	4.429.000	10.245	0,002%



If we use the revised budget for 2010 Croatia only provides around one tenth of the European median.

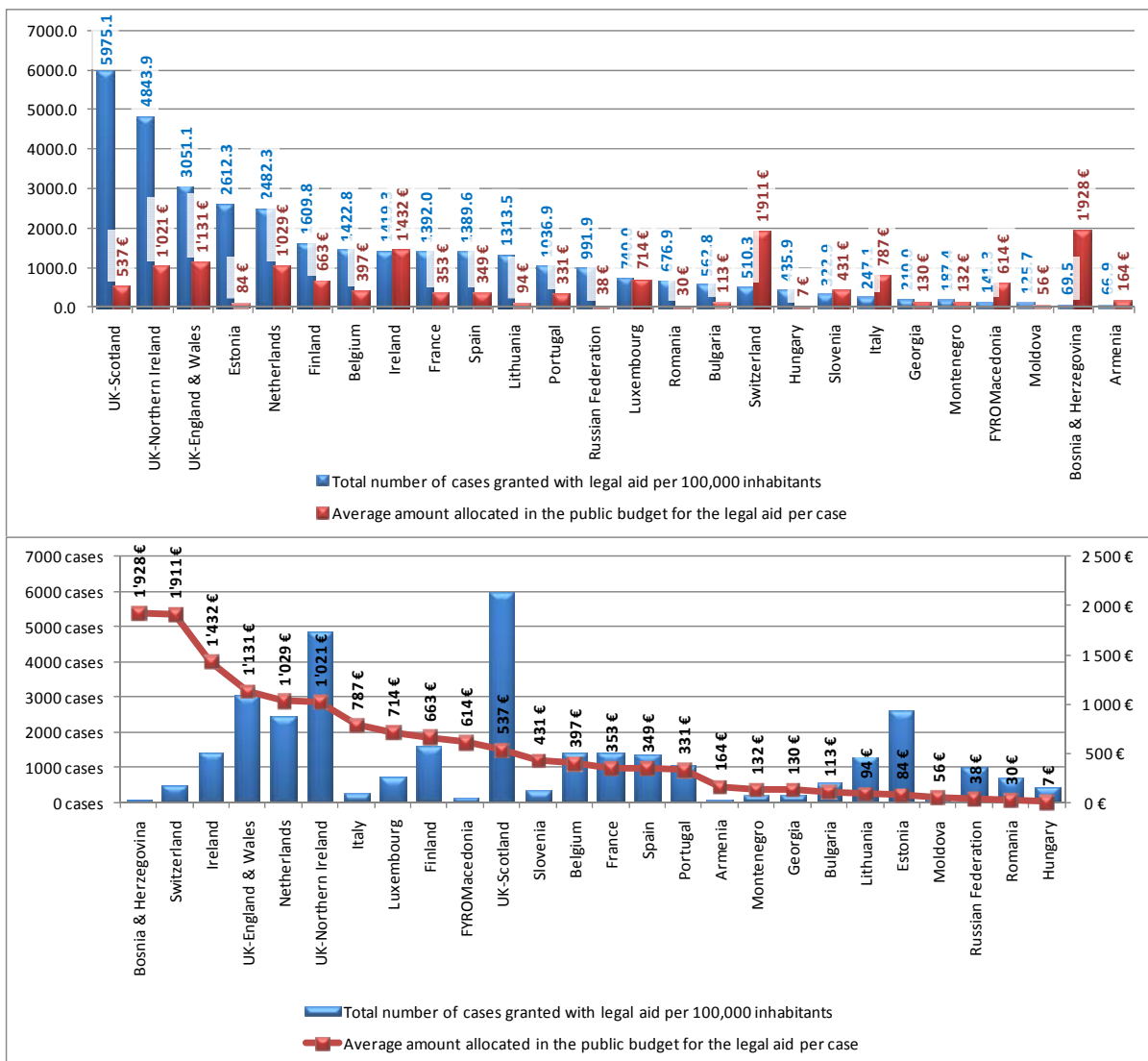
From the perspective of the amount of money budgeted for legal aid it can be stated that Croatia is budgeting relatively less money than

most of the European countries. The relevant question to ask next is, if the budgeted money is really applied to legal aid cases in the frame of the new CLAA.

### 9.2. Actual expenditures and trends

Due to the fact we are missing hard facts on how much money was really applied on what amount and what kind of cases in 2009 and 2010 so far, it will be a workaround to have a closer look on the number of granted cases per inhabitants as well as the amount of money available in relation to the number of granted cases.

On average, in the 26 states or entities concerned in that chapter of the Judicial Evaluation Report given by CEPEJ, a case eligible for legal aid receives a grant of 536 €. The median value is 353 € per case.



However, significant discrepancies between several groups of states or entities can be noted from this information. Thus, it is possible to identify three groups of states or entities:

- those which allocate a significant amount to legal aid (more than 1.000 €): Bosnia and Herzegovina, Ireland, UK-England and Wales, the Netherlands, UK-Northern Ireland,

- those which allocate between 300 € and 800 € per case: Italy, Luxembourg, Finland, „the former Yugoslav Republic of Macedonia“, UK-Scotland, Slovenia, Belgium, France, Spain, Portugal and
- those which allocate less than 300 € per case Armenia, Montenegro, Georgia, Bulgaria, Lithuania, Estonia, Moldova, Russian Federation, Romania, Hungary.

The amount allocated per case must be related to the level of wealth in the state when analysing this issue more in depth.

In Croatia – having lack of consistent time-series of data regarding the money really spent on cases – we have to use the theoretical available budget per granted case:

Year	Total budget on legal aid	Cases granted	Available amount per case
2009	1.125.239€	2.940	<b>382,73€</b>
2010	936.885€	6.248	<b>149,95€</b>

Obviously the available amount per granted case dropped from 382,73 € (above the European median value of 353 € per case) to 149,95 € due to cut of budget and driven by the increase of granted cases. The level of available money per case in 2010 is similar to

Armenia and despite the drop significantly higher than the amount spent per case in Montenegro, Georgia, Bulgaria, Lithuania, Estonia, Moldova, Russian Federation, Romania or Hungary. It is important to mention, that several of these states have only recently started to develop a legal aid system and might be considered as good bench markers.

However, the real expenditure seems to become far lower. It appears from the figure on secondary legal aid above that the budget orders actually issued in 2009 amounted to far less than the sums set aside in the budget. We have learned that MoJ has calculated the expenses for the 2.416 orders issued from March 1, 2009 until March 31.2010 to 1.319.000 kn which mean a cost per case of 546 kn or 78 euro (see *supra*, 8.2.1.). With a predicted number of orders for 2010 of 6.248, the rebalanced budget of 511.644 euro means cost of 81 euro per case.

Assuming that with continuous increase of effectiveness of CLAA in the near future and an expectation of 170 „accepted” applications per 100.000 inhabitants, the total number of „accepted” cases for Croatia would be 7.500 a year instead of 6.248 cases registered in 2010. Keeping the financial input of app. 150 € per case, an overall budget for legal aid of 1.125.000 € (today equal to 8.319.583 kn) would be necessary to be applied. This amount is almost exactly the budget drawn for the year 2009 and about 1,4 Mio kn or around 20% higher than the budget draft for 2010. An average of 80 euro will need a budget of 600 000 euro or 4.320.000 kn.

### 9.3. Investment of other donors

Several of the civil society organizations that gave evidence to us, said that the introduction of CLAA had lead to a significant drop in international funding of legal aid. The numbers of cases handled over the new act could only compensate for a fraction of the reduction of coverage.

In our opinion that drop of international funding is not driven only by the new act itself, but in general by the withdrawal of international community from activities of supporting civil society Croatia as well, as Croatia is considered to be able to tackle its endurances by

itself nowadays. In case – and some might get the impression – NGOs were able to finance an important part of their activities by money labelled for legal aid in the past by donors, it is not logical this should remain the case. This is at least a strong commitment to public authorities to increase efficiency and effectiveness of public spending for legal aid (at least in economic crises), but also the volume of such spending.

According to the MoJ Report, in 2009 all registered associations and clinics were initially awarded 2.010.000 kn (about 270.000 Euro). However, due to the low number of orders that could be collected by the associations, it was requested that they return most of the money awarded. In such a way, 1.519.300 kn was returned. For 2010, the amount initially awarded to all the registered associations and clinics was only 330.000 kn (about 45.000 Euro), which is a drop of 85% in comparison to 2009.

A survey of the traditional legal aid providers among 12 associations conducted in 2010 by the Human Rights Centre revealed that they were able to include only 119 or 0,5% of their 22.300 cases in the scheme of CLAA (data for 2009). The total amount they received in that year from the CLAA scheme was about 135.000 kn (about 18.000 Euro, out of which only about 2.000 Euro from received orders). On the other hand, their activities in that period were supported by 5-6 million Kuna (700.000-800.000 Euro) from other donors, mainly the international organisations and foreign governments. However, during our study visit some of the largest donors, such as UNHCR, announced that they will be pulling out of country within the next year or two. One of the reasons for decreasing foreign funding is the very existence of the CLAA, as this is perceived as a sign that the state authorities will take over the funding previously provided by the international sources. As only about 2% of the funding was matched by the state money received from the CLAA scheme, even slight reductions of the funding from international sources could seriously diminish financial capacity of non-governmental sector to provide their legal aid services. On the other hand there is no proof on what percentage of cases the former legal aid procedure was providing legal aid in accordance to the CLAA.

**Best practice.** In a best practice perspective delivery should be need and user driven. The service needs as people experience them should be the main governing principle in organizing and managing legal aid schemes. Priorities should be made from a developed understanding of the volume, characteristics and welfare meaning of their legal problems. The legal aid system should be a learning organization.

Primary legal aid schemes should also include plans for cooperation with civil society organizations. They should build on the idea of the legal literacy and use a mass education approach. The individual advice and representation system ought to contain a well organized system for channelling and distributing problems according to their professional complexity. Secondary legal aid should build on equality in access and service and contain mechanisms against overuse. Primary and secondary legal aid should form a coherent system and strike a fair balance between legal aid before and outside the courts.

Quality management is important. Management should prioritize „as much aid as possible” for the resources available. A wide range of mechanisms for quality assurance ought to be used – including development of trial and counselling skills among the providers aimed at poor people. Emphasis should be on dedicated providers and development of their expertise in legal aid. Overloading of the providers should be avoided.



## Recommendations

*Funding for legal aid should be sufficient and varied. It should be sufficient for all needs covered under the scheme. Funding for first line legal aid (i.e. primary legal aid) should come from multiple sources, both in the public and private sector, from international stakeholders and also from client contributions. Funding for legal aid in court cases should be primarily government-based, but other contributions, such as those from pro bono work of the members of the Bar, are welcome as well.*

*Controlling on public spending must be strict to ensure sustainable funding, but should not overburden the process to get access to legal aid itself.*

*The quality challenges connected to the present payment system ought to be considered.*

## 10. CONCLUSIONS

We have evaluated the Croatian legal aid act from two main sets of standards; the minimum obligations contained in human rights and the best practice standards gathered from the most advanced European schemes. We have not attempted at covering all aspects of the act, but focused on six major elements of the scheme:

- The understanding of legal problems and effects of legal aid scheme,
- The scope of legal problems covered,
- The part of the population covered,
- The range of services offered,
- Delivery,
- Funding.

For each issue we have described the present function of CLAA, evaluated the way the scheme works from our two sets of standards and forwarded recommendations when we find that the standards are not met. When formulating recommendations our emphasis has been on the minimum requirements to legal aid in human rights, because we think it pressing that Croatia fulfils them as fast as possible.

### 10.1. Recommendations

Our main recommendations are:

#### *1 The understanding of legal problems and effects of legal aid scheme*

Croatia ought to undertake research of the functioning of the Croatian legal aid schemes and also secure access to the international body of research. The legal aid authorities ought to become aware of important findings and use them in their policy making. A survey should be carried out to map the need for primary legal aid.

We also recommend that the Ministry of Justice in collaboration with the associations conducts a study of the costs connected to running advice service with a volume that is economically rational, on how it could be set up, what sorts of cases it should handle and how it should be advertised to achieve a desired volume. The study should also develop a payment system that relieves the associations from exposing themselves to significant economic risks in running legal aid services.

#### *2 The scope of legal problems covered*

Primary legal aid ought to cover all types of legal problems and include pretrial advice on cases that qualify under the „reasons of fairness” criterion. For secondary legal aid CLAA ought to define a number of problem types of high welfare importance that are covered without further qualifications unless they are manifestly ill founded. All other categories of problems also ought to qualify after a fair merits test if access to the courts is of importance to the applicant and the prospects are fair. The „existential issues” criterion should be removed

from 5(1) CLAA. We suggest that CLAA should be formulated in a way that covers all categories of court cases that are not sufficiently covered by other schemes.

The civil schemes outside CLAA ought to be better integrated and co-ordinated with the system established by CLAA. All provisions on coverage ought to be restructured, and aligned with the Airey criteria. The user-friendly features of the schemes outside the CLAA, like the straightforward definition of legal problems covered, the direct provision of legal aid by the organisation that is approached by the user, and simple procedures for merits and means testing (or lack of such procedures) ought to be considered also for other categories of problems covered under CLAA.

### *3 The part of the population covered*

The means test ought to be reviewed and significantly extended in light of the Airey criteria developed in the case law of the European Court of Human Rights. Maximum contributions ought to be part of the contribution system and the contributions must be kept in accordance with the individual's capacity to pay. Coverage must include all types of trial costs that amount to a barrier to access to justice – including lawyer fees and court taxes, costs for expert evidence and other production of evidence, interpretation costs, costs to the counterpart and the applicant's own costs when deemed necessary for proper access to justice. The contribution system might be extended similarly.

### *4 The range of services offered*

Information and education in legal matters ought to be improved and make better use of the information that can be gathered from legal aid cases. Also a selection of collective strategies ought to be considered for inclusion into CLAA.

### *5 Delivery*

We suggest that advisers with a degree in law, but without the bar exam and also with other proper training irrespective of their degree in law are allowed to deliver primary legal aid in matters that are within their competence. Associations should be allowed to specialize according to their field of work.

A system for assisting users with the application process ought to be established. SAOs and other information agencies might provide the necessary support. Legal aid should also cover necessary assistance with legal aid application from the providers. Simplification of the procedures should be considered and also a transfer to the SAOs of most of the data collection necessary for the form.

The need to submit written consents and declarations from all members of the household has to be reconsidered. The applicants' right to legal aid cannot be conditioned by the good will of the members of their household.

In particular, the circle of those whose financial status has to be taken into consideration when performing the means test has to be narrowed. It should not take into account all members of the applicant's household, but only those who have a legal obligation to support the applicant and take care about his maintenance.

The submission of the applications directly to the legal aid providers should be encouraged, and the requirement of submission of additional documents in such cases should be abolished. The associations should be empowered to undertake themselves the means and

merits tests regarding the applicants, and make their autonomous decision on the eligibility for legal aid. Processing of legal aid applications by the associations and legal clinics should be credited as a part of their legal aid work.

The need to obtain an order (voucher) for every legal advice, or for singular actions in court or administrative proceedings, is disproportionate to the efforts and the result, and should be abandoned. Complex application procedures are inappropriate for obtaining primary legal aid.

As an uninformed choice of lawyers has no advantage for the poor people, who have no previous experience with the local lawyers, limited knowledge of them and no special preferences, the system of orders (vouchers) that do not designate an appropriate legal aid provider should be reconsidered. Users should be assisted in making appropriate selection of legal aid provider.

The ban on advertising ought to be lifted and proper advertising encouraged. Some measures that secure that advertising is objective, reliable and helpful to the users might be introduced. In addition, advertising raises public awareness on the legal aid system and will increase and improve its general visibility and accessibility.

SAOs should not only offer orders for access to legal aid but primary legal aid itself in a framework of a „one-stop-shop” concept.

The legal aid fees should be raised to 50-60 percent of the average market fees. Then legal aid would be economically interesting to a reasonable number of bar members.

The Ministry of Justice, in collaboration with the associations, should arrange a study of the costs connected to running advice service with a volume that is economically rational, on how it could be set up, what sorts of cases it should handle and how it should be advertised to achieve a desired volume. The study should also develop a payment system that relieves the associations from exposing themselves to significant economic risks in running legal aid services.

## **6 Funding**

Funding for legal aid should be sufficient and varied. It should be sufficient for all needs covered under the scheme. Funding for primary legal aid should come from multiple sources, both in the public and private sector, from international contributors and also from client contributions. Funding for legal aid in court cases should be primarily government-based, but other contributions, such as those from *pro bono* work of the members of the Bar, are welcome as well.

Controlling on public spending must be strict to ensure sustainable funding, but should not amount to a barrier that makes people give in when they qualify and are in need of legal aid. The quality challenges connected to the present payment system ought to be considered.

## **10.2. Final observations**

Besides these specific proposals, we would like to forward a few general considerations and recommendations. We agree with the EU report that

„...procedures for legal aid remain complicated and the overall level of aid provided is low. In practice, access to justice for vulnerable persons with insufficient means remains difficult. The provisions of the law on legal aid are still interpreted narrowly and are not enforced uniformly among

the twenty county offices responsible for implementation. The number of applications for legal aid has been considerably lower than expected.

..... NGOs continue to be the main providers of free legal advice and have ten times as many cases than those covered under the national system. However, they are experiencing a decline in funding.<sup>94</sup>

The Ministry of Justice has a pivotal role in developing Croatian legal aid. The international members of the evaluation group -- Johnsen and Stawa -- have noticed a significant tension between the Ministry and the civil society organizations both about the quality and functioning of the present legal aid scheme and the future development of legal aid in Croatia. The attitudes and arguments are characterized by suspicion and skepticism, not seldom with limited basis in reliable information.

It is not our task to evaluate or distribute the responsibility for the present situation. It is, however, clearly detrimental to an effective development of legal aid in Croatia and therefore also to the poorer part of the Croatian population who suffers from an insufficient scheme.

Independent of the history we hold it a main responsibility of the Ministry of Justice to improve the communications with the major providers and develop a policy that make all possible providers and stakeholders work together in a concerted effort to improve the system.

Today the Ministry's approach appears too focused on administration and cost control and does not seem to fully realize the extensive unmet need for legal aid that exists among the poorer part of the population. We think it unrealistic to meet these needs by using lawyers in private practice as the sole providers. International research shows that they are not the best providers for all types of legal aid either. High volume of simple advice in specialized areas can often be better and cheaper when provided by advisers with other sorts of training.

We regard it important for Croatia to produce a development strategy for legal aid that comprehends both long time and short time goals. A strategy of supporting legal aid delivery provided by the civil society organizations in Croatia is important. They have developed delivery systems for many important categories of problems and are capable of providing legal advice on a mass basis. Today the lawyers in Croatia lack the organizational tools and probably also the capacity necessary to develop a similar service, and if they could, it would be significantly more expensive. CLAA should provide for a payment system that produces incentives for the civil society organizations to maintaining and expanding their existing provision and supplement it with legal advice services from lawyers for problems not covered by the NGO's. CLAA financing ought to increase as the foreign aid for legal aid decreases.

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European Commission. Sec(2010) 1326. Commission staff working document Croatia 2010 Progress Report accompanying the communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010-2011 en {COM(2010) 660} Brussels, 09 November 2010 p 51-52. See [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/hr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/hr_rapport_2010_en.pdf).

## Appendix I: CoE resolutions and recommendations on legal aid

- *Resolution 76 (5)* on legal aid in civil, commercial and administrative matters, recommending that governments grant legal aid to all citizens of member states and to all residents on an equal footing with its own citizens.
- *Resolution 78 (8)* on legal aid and advice saying that economic obstacles to legal proceedings ought to be eliminated, and that an appropriate system of legal aid will contribute to that aim.
- *Recommendation No R (93) 1* on effective access to the law and to justice for the very poor.
- *Recommendation (2000) 21* on the freedom of exercise of the profession of lawyers suggests that states should encourage lawyers to provide legal service to persons in economically weak positions and ensure that effective legal services are available to them, in particular to persons deprived of their liberty.
- *Recommendation (2001) 3* on the delivery of court and other legal services to the citizen through the use of new technologies.

In addition to the recommendations and resolutions, the Council of Europe also collected experience and knowledge on legal aid systems and best practices, producing the following documents<sup>95</sup>:

- *Action Plan on Legal Assistance Systems*, document adopted on 6 March 2002 by the Commission of Experts for the Efficiency of Justice and the CDCJ, Strasbourg (CJ-EJ(2002)5 Addendum III).
- *Legal Aid Best Practices*. Preliminary Draft Guide, document adopted on 5 February 2002 by the Commission of Experts for the Efficiency of Justice of the Council of Europe, Strasbourg (CJ-EJ(2002)2).

<sup>95</sup>

See more at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/steering\\_committees/cdcj/Documents/20-02/1CJEJ5%20e%202002.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/Documents/20-02/1CJEJ5%20e%202002.pdf).

## Appendix II: CVs of the experts

### Jon T. Johnsen

#### *Background and positions*

Jon T. Johnsen was born in 1942. He holds a law degree (cand. jur.) from 1969 and a PhD in law (dr. juris) from 1986, both at the University of Oslo. He has worked as research assistant at the Department of Public and International Law, deputy judge at the city court of Tromsø, research fellow at the University of Tromsø and researcher at the Institute for Sociology of law at the University of Oslo, on a legal aid project commissioned by Norwegian Ministry of Justice. Between 1978 and 1990 he held a position as an assistant and then associate professor at the Institute for Sociology of Law and supervised Juss-Buss – a student legal aid clinic. In 1990 he became professor at the Department of Public Law and has taught criminal procedure and criminal justice, lawyers' law and clinical subjects.

Between 1990 and 1993 he also held a part time professorship at the Institute for Law at Tromsø University teaching sociology of law. He visited University of California, Los Angeles in 1989-90, University of California, Berkeley in 1995-96, The Law Faculty at Copenhagen University in 2002 and 2009 and was invited as IUEU Distinguished Research Fellow at Flinders University, Adelaide, Australia in 2008.

#### *Research*

Johnsen's main research fields are sociology of law, legal aid and criminal procedure and interdisciplinary issues. He has participated in international research projects on legal aid and the legal profession. Developing the student legal aid clinics at the Law Faculty in Oslo and later at the University of Tromsø has been important to him. He has drafted public reports for The Ministry of Justice on legal aid and criminal justice.

#### *Other commissions*

Johnsen has been head of the Institute of Sociology of Law, vice dean (1992-94) and dean (2004-2007) of the Faculty of Law. He has been member and leader of commissions that reformed the law study in Oslo during the 1990ies. Since 2003 he is an expert member of the European Commission on the Efficiency of Justice under the Council of Europe. He has been involved in the development of legal aid in Norway and internationally through most of his career. He has served as an adviser to the Norwegian Ministry of Justice several times since the 1970ies. Recently he has been hired as an independent expert by the Ministry of Justice with the task to supervise the implementation of a governmental policy report on major reforms in Norwegian legal aid.

**Georg Stawa**

*Education*

Born on April 17, 1969. Magister iuris degree obtained from University of Vienna in 1994.

*Positions*

Head of Department at the Austrian Ministry of Justice, charged with projects, strategy and innovation. Vice-President of CEPEJ, member of CEPEJ GT-EVAL. Deputy of the Austrian member of the JSB of EUROJUST.

*Professional experience*

Public prosecutor working on the issues of judicial management within the Austrian Ministry of Justice (2006-2010). Judge at the District Court of the 1<sup>st</sup> District of Vienna, fully assigned to the Ministry of Justice (2001-2006). Judge for the area of the Court of Appeal Vienna (1999-2001).

*Key qualifications*

- Controlling, Statistics and Court Performance
- Project management
- Specially trained in didactics and personnel evaluation
- General coordination and organization
- Public relations
- Participation in international research projects (Universities of Bologna and Utrecht, Council of Europe) dealing with the evaluation of judicial systems, the allocation of cases to courts and with recruitment, training and evaluation of judges.

*Specific experience in international projects*

Country	Date from - Date to
Montenegro	Oct 2010 - CEPEJ: Review of "The Analysis of the rationalization of the court Network" of Montenegro;
<i>Abu Dhabi, U.A.E.</i>	March 2010 - CEPEJ: Performance Study of the Judicial Department of the Emirate of Abu Dhabi, united Arab Emirates;
Montenegro	May-November 2009 - UNDP: Capacity Assessment of the Ministry of Justice of Montenegro;
Russian Federation	November 09 – CEPEJ peer review on court-statistics;
Portugal	March 09 – CEPEJ: “Dematerialization and the use of ICT”, proof of effect;
Montenegro	October 08 – EU Twinning “Justice reform”;
Turkey	April and September 08, January and November 09 – CoE: Project on Support to the Court Management System in Turkey, Assessing the current situation in the courts (of Antalya and Corlu), identifying shortcomings and needs and giving inputs on performance indicators and court management;
Croatia	June 06 – June 08 CARDS-Twinning Support to the Reform of the Croatian Court System – Phase 2,



	Component leader;
Montenegro	April 07 - Strategy of the reform of the judicial system;
Croatia	Oct. 06 - Regional Round Table – Strengthening the Human Resources Management and Budget Management in the Judiciary;
Turkey	Sep. 2006 - Seminar “Court Management and Quality of Justice”, organized by the Turkish Justice Academy and the Council of Europe, Ankara;
Croatia	2006 - World Bank: Development of the Court Statistics System and Judicial Performance Monitoring Mechanism, leading expert;
Macedonia	Feb. 2006 - Regional Round Table on “Case assignment, case tracking and filing”;
Montenegro	Nov. 2005 - Regional Round Table on IT and Court Statistics;
Croatia	May and Aug. 2005 - Strategy of the reform of the judicial system;
Croatia	Oct. 2005 - Regional Round Table on corruption;
Macedonia	July and Sep. 2004 - Strategy of the reform of the judicial system;

**Alan Uzelac***Education*

Born in Zagreb on June 15, 1963. Graduate studies: Zagreb University (Croatia), Johannes Gutenberg University, Mainz (Germany). Graduated from University of Zagreb - Faculty of Philosophy (B.A. degrees in philosophy and comparative literature) and Faculty of Law (dipl. iur. degree in 1988). Postgraduate studies: Zagreb University, University of Vienna, Austria (Visiting Fellow, 1992, 1995), Harvard Law School, USA (Fulbright Visiting Researcher, 1996). Postgraduate degrees received from Zagreb University - Master of Laws, 1992 and Doctor of Laws, 1999.

*Positions*

Dr. Uzelac is currently employed as Professor of Procedural Law at the Zagreb University, Faculty of Law, where he teaches Civil Procedure, Arbitration, ADR, Judiciary, Evidence and Protection of Human Rights in Europe. He is an active member of the International Association of Procedural Law, where he was elected to the Council of the Association. In the similar German-speaking organization - Internationale Vereinigung für Verfahrensrecht – he is also as member elected to the scientific board (Rat). He was involved in various activities of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, where he held different functions (Bureau member from 2003-2006, Member – national delegate 2003-2008; President of the Task Force on Timeframes of Proceedings of the CEPEJ 2005-2006); Member of the SATURN Group de pilotage 2007-2008. Since mid-90s, Dr. Uzelac has also been engaged as national delegate of Croatia in the work of UNCITRAL Working Group for Arbitration and Conciliation where he participated in drafting of the several international instruments in the field of alternative dispute resolution.

As a member of the Committee of Experts for the Efficiency of Justice (CJ-EJ) of the Council of Europe, in 2001 and 2002 Uzelac was a member of the working groups that produced the Action Plan on Legal Assistance Systems (CJ-EJ(2001)4 rev 3), and Legal Aid Best Practices (CJ-EJ(2002)2).

*Research and teaching in the field of legal aid*

Within the civil procedure as his main area of specialization, Professor Uzelac is in particular interested in the functioning of the civil justice systems as a framework for the protection of the rights of the individuals and businesses. This includes research regarding procedural costs as well as teaching and research regarding the regulation of legal aid and waiver of litigation costs (both being part of the mandatory course in civil procedure). Professor Uzelac has also been teaching an elective course at the final year of master studies in law, the course Organisation of Judiciary, which *inter alia* discusses legal aid systems. At the post-graduate level, he teaches courses on European Court of Human Rights and Protection of Human Rights in Europe, where issues of access to courts and judiciary, as well as other relevant aspects of the right to a fair trial within reasonable time are analysed. Legal aid systems are among the topics presented within two other post-graduate courses developed and taught by Professor Uzelac – the courses in Comparative Law and Comparative Civil Procedure.

Professor Uzelac is one of the organising course directors of the post-graduate course Public and Private Justice at the Inter-University Course in Dubrovnik, which has also featured current topics related to access to judiciary in modern societies.

Together with Professor van Rhee, he edited the book *Access to Justice and Judiciary*, (Intersentia: Oxford-Portland-Antwerpen, 2009), which featured a number of papers in comparative law concerned with the issues of access to justice and legal aid.

He was a mentor of several master papers and one doctoral dissertation on the topics of legal aid in Croatia and Europe. He also delivered in Croatia and abroad a number of speeches and lectures on the topic of access to justice and legal aid.

Since October 2010, Professor Uzelac was appointed by the Law School in Zagreb to lead the Zagreb Legal Clinic, which is the first live-client legal clinic established at the University of Zagreb to provide legal aid to specific groups of clients (e.g. victims of family violence; asylum seekers; various minorities; indigent people etc.).

### *Other commissions*

Dr. Uzelac was engaged in drafting of a number of documents in his home country and in international bodies. In Croatia he was the principal drafter or engaged in the drafting of the following acts: Law on Courts; Law on State Judicial Council; Arbitration Law; Conciliation Law; Anti-Discrimination Law.

He was also member of several working groups formed from 2004 to 2008 by the Ministry of Justice that has worked on several drafts of the Legal Aid Act.

In 2003, he was engaged by the Croatian Law Centre (HPC) on the project which analysed various aspects of access to justice in Croatia, which resulted in the first comprehensive study of that topic.

In 2006 and 2007, he collaborated with the Croatian Human Rights Centre and the Coalition of Legal Aid Providers, and contributed to the analysis of the draft legislative proposals and the common platform related to legal aid, endorsed by these institutions and submitted to the authorities and the public.

In 2009, Professor Uzelac was engaged as international expert (commissioned by the OSCE Mission in Podgorica) to evaluate the state of access to justice in Montenegro and produce a working document presenting a model for legal aid legislation in Montenegro.

### Appendix III: List of sources (background documents on legal aid in Croatia)<sup>96</sup>

1. Free Legal Aid Act of the Republic of Croatia (CLAA), Off. Gaz. 2008, (translation provided by the Ministry of Justice, available at <http://www.pravosudje.hr>)
2. Regulation on the Tariff for Determining the Value of the Amount on Compensation for Providing Primary and Secondary Legal Aid for 2009, <http://www.pravosudje.hr>.
3. Ordinance Establishing the Project Valuation Criteria of Associations Authorized for the Provision of Free Legal Aid and Legal Clinics and on the Project Reporting, Ministry of Justice, <http://www.pravosudje.hr>.
4. Application for the Approval of Free Legal Aid, Form ZOBPP-1.
5. Opinion of the Ministry of Justice to the County State Administration Offices regarding the implementation of the CLAA, Zagreb, 22 April 2010.
6. Ministry of Justice, Republic of Croatia, Report on the Realisation of the Right to Legal Aid and the Expenditure of Funds in 2009, Zagreb, March 2010 (translation provided by the HRC, cited as MOJ 2010).
7. Excerpts from the Croatian National Budget for period 2009-2013 (Sabor, Off. Gaz., data relevant for legal aid budget).
8. Ministry of Justice, Monitoring of the Expenditure of the Reserved Funds for Issued Orders by County in the Period from 1/02/2009 to 31/12/2009; from 1/02/2009 to 21/07/2010
9. Ministry of Justice, Monitoring of the Expenditure of the Funds for Issued Orders According to the Form of Legal Aid in the Period from 1/02/2009 to 31/12/2009
10. Draft analysis of the Croatian Free Legal Aid Act and its implementation, expert report of 24 November 2010.
11. Draft analysis of the Croatian Free Legal Aid Act and its implementation – response submission, December 13, 2010 (MOJ Response submission December 13, 2010)
12. Written comments on the Draft Evaluation Report from the Civil Rights Project (PGP) Sisak, e-mail dated 17 December 2010
13. CEPEJ, European Judicial systems. Edition 2010 (data 2008), downloadable from <http://www.coe.int/cepej>; Croatian national reports submitted to the CEPEJ, *ibid*.
14. Review of the Final Draft of the Act on Exercising the Right to Legal Aid, [http://www.human-rights.hr/attachments/457\\_Review\\_of\\_the\\_final\\_draft\\_of\\_the\\_act\\_on\\_exercising\\_right\\_to\\_legal\\_aid.doc](http://www.human-rights.hr/attachments/457_Review_of_the_final_draft_of_the_act_on_exercising_right_to_legal_aid.doc)
15. Common Principles for the Regulation of Free and Subsidised Legal Aid in the Republic of Croatia, [http://www.human-rights.hr/attachments/457\\_polazne\\_osnove\\_eng.doc](http://www.human-rights.hr/attachments/457_polazne_osnove_eng.doc)

<sup>96</sup>

This list contains only a selection of the most important documents pertinent to legal aid in Croatia; other sources are cited in the footnotes of this document.

16. Novak, Jagoda, A Review of the Process of Public Discussion, Proposal and Adoption of the Bill on Free Legal Aid, with Emphasis on the Participation of Civil Society Organisations 1991-2007, Zagreb, Human Rights Centre, 2007
17. Human Rights Centre, Survey of the Legal Aid Cases Handled by the Traditional Legal Aid Providers (comparison of the caseload of legal aid cases of 12 associations within and outside of the CLAA scheme in 2008-2010 period), Zagreb, 2010
18. CARDS National Action Plan for Croatia 2004 (3.1.3. Improving Access to Justice by Establishment of the Legal Aid System in Croatia), Suggestion 1.
19. European Commission. SEC(2010) 1326. Commission staff working document Croatia 2010 Progress Report accompanying the Communication from the Commission to the European parliament and the Council Enlargement Strategy and Main Challenges 2010-2011 EN {COM(2010) 660} Brussels, 09 November 2010; [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/hr\\_report\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/hr_report_2010_en.pdf).

### Appendix IV: Form to apply for legal aid

	"ZOBPP-1"	"ZPForm 1"
<b>Lenght</b>	4 pages	4 pages
<b>Readability</b>	Size of characters: 11pt	Size of characters: only headlines 11pt, Comments and notes smaller
<b>Structure</b>	numbered lines in boxes per chapter	numbered lines in boxes per chapter
<b>Overall number of fields to be read/max. possible fill-out-boxes</b>	129	87

In the following table the fields and boxes of „ZOBPP-1” are listed and compared if they are also followed in the Austrian „ZPForm 1”. If different functionalities are relevant, comments are given:

"ZOBPP-1"	"ZPForm 1"	Comments
<b>A DETAILS OF THE APPLICANT</b>		
<b>A 1</b>		
NAME	yes	
SURNAME	yes	
FATHER'S/MOTHER'S NAME	no	
Male      Female	no	
DATE OF BIRTH	yes	
PLACE OF BIRTH/COUNTRY	yes	
CITIZENSHIP	yes	
TYPE OF IDENTIFICATION DOCUMENT (identity card or passport)	no	Helps to identify multiple applicants, but is not allowed in Austria due to data-protection law.
PLACE OF ISSUING AND ISSUING BODY	no	Helps to identify multiple applicants, but is not allowed in Austria due to data-protection law.
OIB (Personal identification number)	no	Helps to identify multiple applicants, but is not allowed in Austria due to data-protection law.
JMBG ( Registration Number of Citizen)	no	Helps to identify multiple applicants, but is not allowed in Austria due to data-protection law.
<b>PLACE OF RESIDENCE</b>	yes	
STREET AND NUMBER	yes	
PLACE/POSTAL CODE	yes	
COUNTY/COUNTRY	yes	
TELEPHONE	no	

<p><b>A.2. In circumstances when free legal aid is required by a minor or a person deprived of the capacity to exercise rights, the application in his/her name shall be submitted by the legal representative or guardian</b></p>		
<p><b>DATA ON THE LEGAL REPRESENTATIVE OR GUARDIAN:</b></p>		
<p>NAME AND SURNAME</p>	no	<p>The representation has to be documented outside the form in Austria, eventually be executed in a separate file, which is not automatically linked to the application for legal aid. Therefore the additional fields in the Croatia form provide more functionality, increase efficiency and reduce length of procedure.</p>
<p>CITIZENSHIP</p>	no	
<p>TYPE OF IDENTIFICATION DOCUMENT (identity card or passport)</p>	no	
<p>OIB OR JMBG</p>	no	
<p>THE CODE OF THE ACT WITH WHICH THEY ARE SET AS LEGAL REPRESENTATIVES</p>	no	
<p><b>PLACE OF RESIDENCE</b></p>	no	
<p>STREET AND NUMBER</p>	no	
<p>PLACE AND POSTAL CODE</p>	no	
<p>COUNTY/COUNTRY</p>	no	
<p>TELEPHONE</p>	no	

<b>B.DATA ON THE LEGAL MATTER FOR WHICH LEGAL AID IS REQUIRED (description)</b>		
<b>B.1. PRIMARY LEGAL AID</b>		
<b>1. ADMINISTRATIVE PROCEEDING</b>		
1.1. In status matters	no	In Austria anyone may seek legal advice free of charge (from a district court or the local lawyers chamber, public chambers, private associations or unions) on points of law and in order to examine the chances of success of entering into litigation. Where legal representation is provided, legal aid also covers the pre-trial advice given by the lawyer. This service is offered in general. Therefore it is not necessary to apply for primary legal aid. On the other hand there are no data available about the amount and kind of given services. There is no cost controlling. It is not clear how much money is spent on primary legal aid by the public and private sector "por bono". Further on it is not able to identify in Austria directly out from facts and figures, in which law is provoking most need of primary legal aid and i.e. might be improved. As Croatia is collecting data in section B.1. of "ZOBPP-1" also about areas where primary legal aid is demanded, it is able to identify needs of improvement by changing law and/or investing money.
1.2. In proceedings related to residence and work of foreigners in the Republic of Croatia	no	
1.3. In proceedings for establishing the health insurance rights	no	
1.4. In proceedings related to the retirement insurance	no	
1.5. In proceedings for establishing the rights from the social welfare system	no	
1.6. Other administrative proceedings	no	
<b>2. LEGAL AID PROVIDED IN PEACEFUL OUT-OF-COURT SETTLEMENT OF DISPUTES</b>	no	
<b>3. IN PROCEEDINGS WHERE THE OBLIGATION OF PROVIDING LEGAL AID DERIVES FROM THE INTERNATIONAL AGREEMENT</b>	no	
<b>4. PROCEEDINGS BEFORE EMPLOYER (only for trade unions and attorneys)</b>	no	
<b>B.2. SECONDARY LEGAL AID</b>		
<b>1.LEGAL PROCEEDING</b>		
2.1.In the proceedings related to the ownership of a house or flat necessary for housing of the applicant; ownership of the means for work of the applicant.	partially	In Austria a party with insufficient financial means may apply for legal aid when entering into litigation or at any time later as long as the civil proceeding is still pending. As far as required the court can give legal aid by (wholly or partially) freeing the indigent party from court fees and the other fees and by providing legal representation free of charge. The Austrian "ZPForm1" is asking the applicant to explain for "which case" he/she is applying of secondary legal aid. A general description may be given if no case is pending. The necessity of these is to enable the court to check if the claim proves to be manifestly unfounded or not brought in good faith. According to that general description no hard facts are available to control into what branches secondary legal aid is given, which legal branch is provoking most need of secondary legal aid and i.e. might be improved.
2.2. In labor law proceedings	partially	
2.3. In family law proceedings, proceedings concerning support and the proceedings which include a decrease in the amount of the support	partially	
2.4.In seizure proceedings when it concerns proceedings for which, pursuant to the provisions of this Act, legal aid shall be approved	partially	
2.5. In proceedings according to extraordinary legal remedies	partially	
2.6. In proceedings before the Constitutional Court of the Republic of Croatia	partially	



2.7. In proceedings before the Administrative Court of the Republic of Croatia	partially	As Croatia is collecting data in section B.2. of "ZOBPP-1" also about areas where secondary legal aid is demanded, it is able to identify where the investments are going to and the needs of improvement by changing law and/or adopting the invest of money.
2.8. Other legal proceedings	partially	
<b>2. MEDIATION PROCEEDINGS</b>	partially	
<b>3. IN PROCEEDINGS WHERE THE OBLIGATION OF PROVIDING LEGAL AID DERIVES FROM THE INTERNATIONAL AGREEMENT</b>	partially	
<b>C. FORM OF LEGAL AID</b>		
1.1. Legal advice	partially	The Austrian "ZPForm1" is asking the applicant to explain for what means of secondary legal aid he/she is applying for. This has to be done in reference to the correct paragraph and litterae of civil procedure code (§ 64 ZPO) without further standardisation or help by the form itself. In opposite to this section C. of "ZOBPP-1" is asking in standardised way for one of six categories. This is not only more user-friendly but also enabling controlling by the relevant categories.
1.2. Legal aid in drafting documents before administrative bodies	partially	
1.3. Legal aid in drafting documents before court	partially	
1.4. Representation in administrative matters	partially	
1.5. Representation before court	partially	
1.6. Other proceedings	partially	
<b>D. APPROVAL OF LEGAL AID FOR SPECIFIC CASES</b> (all the applicants enclose a <b>statement on status</b> , except the applicants specified in point 3)		
1. Recipients of rights from social welfare system and other forms of assistance	no	These categories are neither applicable nore asked in Austria. From the point of view of the croatian law the requested information is necessary to decide about the approval of lagal aid. In addition it allows analysis about the application of legal aid regarding social means.
2. Beneficiaries of the right to maintenance pursuant to the Act on the Rights of Croatian Homeland War Veterans and the Members of their Families and to the Act on Protection of Military and Civilian War Invalids	no	
3. Children, whose parents or other persons are obliged to support them, in procedures before competent bodies	no	
4. Victims of domestic violence	no	
5. Victims of trafficking in human beings	no	
6. Victims of the offence	no	
7. Asylum seekers	no	
8. Those granted asylum	no	
9. Foreigners under subsidiary protection	no	
10. Foreigners under temporary protection	no	

<b>E. DANA ON THE MEMBERS OF THE HOUSEHOLD OF THE APPLICANT</b>			
Name and surname	indirectly	The Austrian "ZPForm1" asks for the family status, if someone lives alone in his premises or to what extent she/he is responsible for family members/minors. It seems not that logical, why the croatian form/the law is relaying on members of the household but not on the question if someone is liable for the livelihood (I.e. the rich uncle might be part of my household but never liable to pay me a penny other than for rent and surplus).	
Date of birth	indirectly		
OIB ili JMBG	indirectly		
Relationship to the applicant	indirectly		
<b>F. THE FINANCIAL STATUS OF THE APPLICANT AND THE MEMBERS OF THE HOUSEHOLD</b>			
<b>F.1.</b>			
Name and surname of the applicant and the members of the household	yes	All requirements within the chapter regarding financial status cover at least those from the Austrian application form. The Austrian "ZPForm 1" goes beyond that asking also for debts and maintenace obligations as these are reducing the property regarding approval of legal aid.	
Incomes and revenues from non-independent/independent work	yes		
Name of the employer	yes		
headquarters/address	yes		
TOTAL AMOUNT:	yes		
Type of immoveable property	yes		
<b>F.2. DATA ON IMMOVEABLE PROPERTY</b>			
Housing accommodation (flat or house)	yes		
Other immoveable property ( business space, land, forest and other)	yes		
Owner (name and surname)	yes		
Address (street, number and place)	yes		
Useable space in m <sup>2</sup>	yes		
Market value in Croatian kuna	yes		
Total	yes		
<b>F.3. Dana on vehicles/vessels</b>			
Owner (name and surname)	yes		
Type, brand and model, year of production	yes		
Registration plate	yes		
Value in Croatian kuna	yes		
Type of property / receipt (saving, securities, shares in capital, pension and other property)	yes		
Name and surname of the owner/beneficiary	yes		
Amout in Croatian kuna	yes		

<b>F.4. Other property and revenues</b>		
Type of property / receipt (saving, securities, shares in capital, pension and other property)	yes	
Name and surname of the owner/beneficiary	yes	
Amount in Croatian kuna	yes	
Total	yes	
Date	yes	
Signature	yes	

**Appendix V: Categories of legal aid cases (MoJ Statistics)<sup>97</sup>**

ANNUAL MONITORING OF LEGAL AID ACCORDING TO THE TYPE OF PROCEEDINGS

FOR THE PERIOD FROM 02/02/2009 TO 01/03/2010

**TOTAL LEGAL ACTIONS**

In the proceedings related to the ownership of a house or flat necessary for housing of the applicant; ownership of the means for work of the applicant; ownership of the means for work of the applicant	423
Legal aid for the victims of an offence	33
Victims of an offence	30
Administrative proceeding is conducted in proceedings related to residence and work of foreigners in the Republic of Croatia	4
Administrative proceeding is conducted in proceedings for establishing the rights from the social welfare system	86
In legal proceedings for family law, except for proceedings which include a decrease in the amount of the support, when the person obliged did not pay their support obligation; in cases concerning the protection of minors and young adults with behaviour disorders and in proceedings which are conducted before courts according to international conventions to which the Republic of Croatia is a signatory, and that concern the protection of rights and the welfare of children	1,561
In labour law proceedings, related to workers and persons who are seeking employment	135
In proceedings before the Constitutional Court	13
Victims of domestic violence	173
Administrative proceeding is conducted in proceedings for establishing the rights from health insurance	31
Administrative proceeding is conducted in status matters	29
Administrative proceeding is conducted in proceedings related to pension insurance	98
In proceedings according to extraordinary legal remedies	10
In proceedings before the European Court of Human Rights	5
In execution proceedings when it concerns proceedings for which, pursuant to the provisions of this Act, legal aid may be approved	368
Other legal matters	175

<sup>97</sup>

Copied from MOJ 2010 p 46-47.