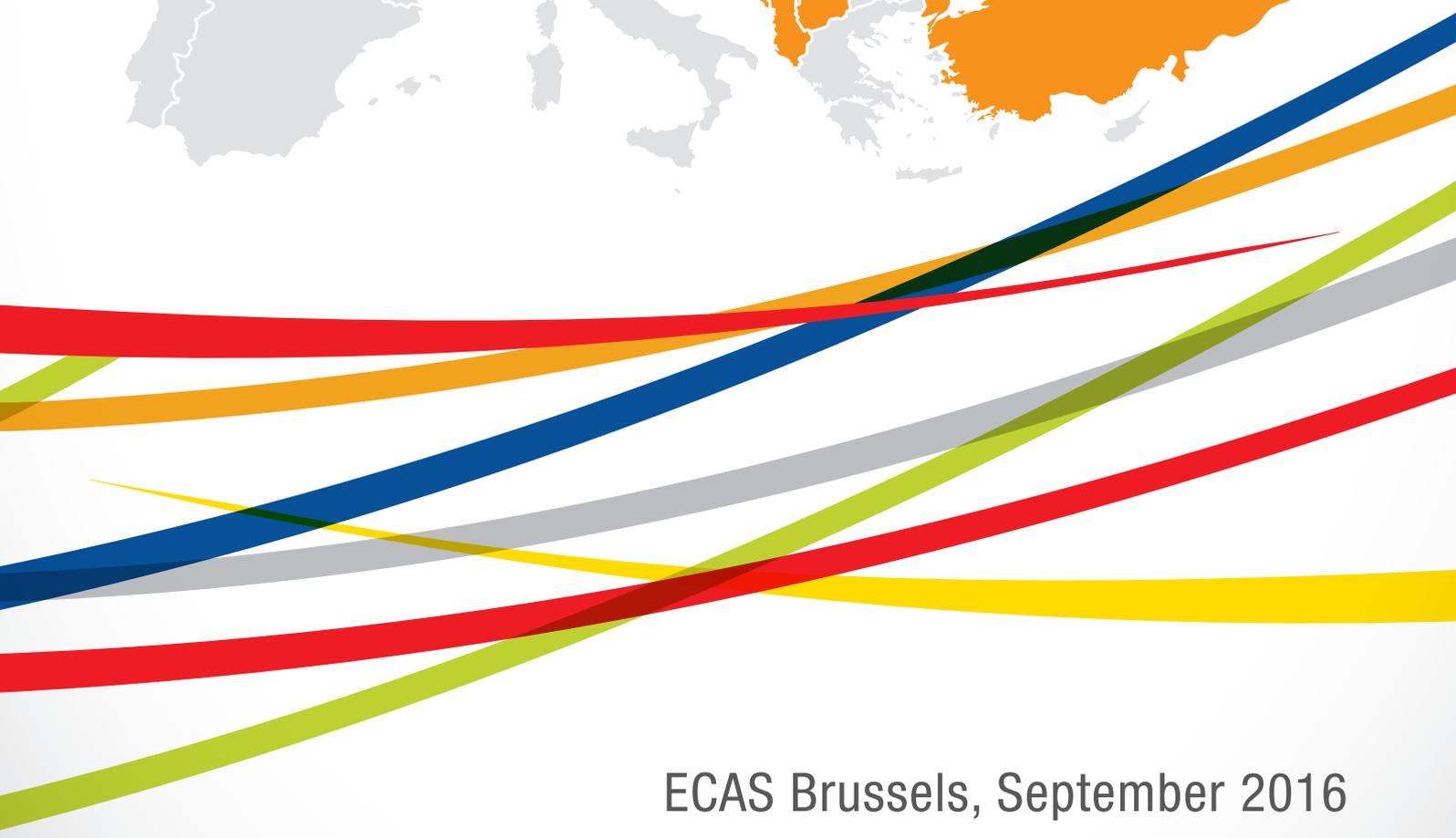




Triple A for Citizens

NETWORK

Advocacy Roadmaps in Western Balkans and Turkey Synthesis Report



ECAS Brussels, September 2016

This report is based on the national advocacy roadmaps prepared by the following organisations:

Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Association of Civil Society Development Centre (STGM), Turkey; Centre for Monitoring and Research (CEMI), Montenegro; Civil Rights Program (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; Macedonian Young Lawyers Association (MYLA), Macedonia; and Open Society Foundation Albania (OSFA).

Author: Kenan Hadzimusic, Senior Manager Programmes and Fundraising, ECAS

Editor: Assya Kavrakova, Executive Director, ECAS

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European Union Instrument for Pre-accession Assistance (IPA) Civil Society Facility (CSF)

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I. EXECUTIVE SUMMARY

The project Triple A for citizens – access to information, advice and active help (or free legal aid) encourages non-governmental organisations (NGOs) to empower citizens to exercise their rights in the Western Balkans and Turkey.

It has been implemented in the framework of the European Commission’s Partnership programme for Civil Society Organisations (CSOs) (Regional and Horizontal Programmes Ref. Triple A II 2014/351-417) by a consortium of CSOs led by the European Citizen Action Service (ECAS), Belgium. The partnership includes: Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Association of Civil Society Development Centre (STGM), Turkey; Centre for Monitoring and Research (CeMI), Montenegro; Civil Rights Program (CRP/K), Kosovo; Law Centres Network (LCN), UK; Lawyers’ Committee for Human Rights (YUCOM), Serbia; Macedonian Young Lawyers Association (MYLA), Macedonia; National Association of Citizens Advice Bureaux (NACAB), Romania; National Association of Citizens Information Services (NACIS), Ireland; and, Open Society Foundation Albania (OSFA).

The main outcomes of the project are the **Triple A for Citizens network** and the **National Advocacy Roadmaps** in all of the countries of the Western Balkans and Turkey.

The **Mission** of the Triple A network is to “ensure equal access to justice and protection of human rights for all citizens from the Western Balkans, Turkey and the EU through the provision of high quality information, advice and free legal assistance. It aims to strengthen the capacity of its members, promote cooperation with other stakeholders, and support the EU accession agenda of the candidate and potential candidate countries”.

The basis of the network is a set of self-regulatory Quality Standards which ensure openness and transparency and enhance the standing of CSOs in relation to their governments, donors and citizens.

The seven National Advocacy Roadmaps have served as the basis of national campaigns for a more enabling policy and legislative environment for the provision of Triple A services at national level and have informed the identification of **common regional issues** and the formulation of the following **General Recommendations**¹:

- Governments should devise **legislation** related to the provision of free legal aid in consultation with CSOs and other relevant actors, which would allow CSOs to play an active role in the free legal aid system and ensure its effective implementation.
- CSOs should engage in dialogue with the governments in order to come up with a predictable and fair **system of public financing of free legal aid services** which will be embedded in law. Different models should be examined and modalities adapted to fit national circumstances, avoiding a “one size fits all” approach.
- It is necessary to organise public campaigns for **raising the awareness** of citizens of their rights and direct them to Triple A service providers that can help in solving their problems. In

¹ Detailed policy recommendations are elaborated in chapter VII.

addition, an ongoing **needs assessment** should be carried out in all of the countries in order to identify common issues and help shape the kind of free legal aid that should be offered to citizens.

- In order to build professional organisations, gain the trust of the citizens and the government and attract funding, providers of direct services to citizens should invest in the development and implementation of **quality standards**.
- **Networking** between providers of Triple A services should be stimulated in order to foster better signposting, increase efficiency and facilitate the exchange of best practices, and should be accompanied by common regional and national advocacy initiatives. Moreover, more cross-sectoral networking and collaboration is needed in order to foster a better understanding between CSOs, governments and Bar Associations.
- Within the framework of the EU accession process, Triple A members should develop and implement a **civic monitoring system** with regard to the implementation of reforms within the framework of Chapter 23 (Judiciary and Fundamental Rights). **Shadow civic progress reports** could be issued independently from both national governments and the EU institutions.

II. ABOUT THE TRIPLE A FOR CITIZENS PROJECT

The Triple A for Citizens project – access to information, advice and active help (free legal aid) – encourages non-governmental organisations to empower citizens to exercise their rights in the Western Balkans and Turkey. It also promotes the role of civil society in giving citizens a voice and holding governments to account. By aggregating the complaints and evidence they receive, citizens' information and legal advice services are in a position to influence government policy on key reforms and their implementation. The underlying objective of the Triple A project was to spread the citizens' advice concept to the Western Balkans and Turkey.

Triple A for Citizens – access to information, advice and active help – is the conceptual framework and strategy for the partnership:

- **Access:** Everyone has an equal right to “come to our door”, irrespective of income, status, language or belief, and be treated with dignity and respect. People should be able to find and access basic information about their rights in the most convenient way possible.
- **Advice:** Citizens are entitled to a free, personalised, independent, confidential and impartial service they can trust. In certain circumstances, however, this may involve meeting face-to-face to find a solution. In all cases, citizens should receive the same high quality service and care.
- **Active help:** In certain cases, it is necessary to go beyond advice to provide pro-bono legal support or assistance with preparing an administrative or judicial appeal.

III. MAIN OUTCOMES

A. Triple A for Citizens Network

Through the implementation of the project, a **functioning network of Triple A providers** has been created.

It is composed of the project partners and 21 sub-granted organisations, who were recipients of small grants from 2012 until 2016. Citizens Advice International, with its 11 members, also joined in 2014.

The **Mission** of the network is to “ensure equal access to justice and protection of human rights for all citizens from the Western Balkans, Turkey and the EU through the provision of high quality information, advice and free legal assistance. It aims to strengthen the capacity of its members, promote cooperation with other stakeholders, and support the EU accession agenda of the candidate and potential candidate countries”. The basis of the network is a set of self-regulatory Quality Standards which ensure openness and transparency and enhance the standing of CSOs in relation to governments, donors and citizens.

The **Triple A network’s Vision** is a democratic Europe of open societies based on the rule of law, where citizens are aware of their rights and well informed of the means for their enforcement.

As for its **Values**, the network strives to ensure the following principles:

- **Impartiality, Confidentiality and Accessibility** – Our services are secure, easy to access and available to everyone.
- **Human rights and justice** – We respect everyone’s rights and dignity.
- **Non-discrimination** on grounds of sex, gender, race, colour, language, sexuality, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- **Quality and high standards** – We provide clear, accurate and up-to-date information and commit ourselves to high professional standards in service provision and in cooperating with others.
- **Sustainability** – We empower our members and the communities they serve by ensuring local ownership of our work.
- **Cooperation and partnership** – We endeavour to create a united voice, working together in a manner that enables us to achieve our collective goals and abide by our shared values. We encourage cooperation among stakeholders in order to achieve our mission and vision.
- **Transparency and accountability** – We advocate for improved public services and hold institutions and governments to account.
- **Independence** – We are a network of non-partisan and independent organisations.

B. National Advocacy Roadmaps and Campaigns

The advocacy campaigns in all seven countries of the Western Balkans and Turkey were based on evidence gathered from the direct provision of services to citizens, informing key recommendations to the legal reform processes regarding access to justice, public funding of free legal aid, and the recognition of CSOs as quality providers of information, legal advice and free legal aid. Seven national roadmaps were developed offering an analysis of access to justice in each country, but also setting out a clear advocacy plan, the main stakeholders, existing consultative mechanisms with governments, as well as defining the drivers of the advocacy actions.

C. Quality Standards

In order to reach the goal of building ever more professional and accountable CSO service providers, the network decided to create its own self-regulating mechanism to be enforced by all its members. The objective is threefold. First of all, it was deemed crucial to ensure accountability to citizens in order to provide them with a high quality service. Secondly, to demonstrate to governments that CSOs are more than capable of ensuring access to information alongside government agencies, bar associations and other actors. This was important in the perspective of future government funding of free legal aid in the Western Balkans and Turkey as well as the legal reforms which would grant CSOs the status of recognised free legal aid providers (be it primary or secondary advice). Thirdly, it was essential to provide assurances to potential donors that the CSOs are serious about the quality of services they provide. In other words, it was not only central to show the need for free legal aid, which is manifest across the whole of Europe, but also to commit to ensuring access to quality justice for the most deprived.

The Quality Standards set out key requirements in the main areas of activity of CSOs which work directly with citizens, whether face-to-face, or via e-mail or phone. They cover the following areas of operations: governance and strategy, financial management, human resources, responsibility to citizens, running the service, case management and case file management.

The Quality Standards are currently being tested among the partners and are expected to be refined and extended to other members of the network in 2017.

D. Web Platform

As part of the survey completed by the partners in the Western Balkans and Turkey, a thorough mapping of CSOs providing Triple A services was accomplished. On the Triple A portal (<http://triplecitizens.eu/regional-service-provider/>), organisations in each country are categorised according to the specific service that they provide. This online map has several applications as it can be used both by citizens looking to identify a service provider close to them and by organisations wanting to refer clients to a more specialised service. This provides the basis for the application of the one-stop-shop principle, whereby citizens will always receive the basic information on what to do next if they are unable to get a comprehensive response or if there is a more qualified and/or specialised CSO nearby.

E. Direct Support to Triple A Providers in the Western Balkans and Turkey

Since the end of 2012, as an integral part of the project, a total of 21 local CSOs have received support ranging from €5,000 to €10,000. These funds were allocated through an open call for proposals and were project based. In addition to the funding, all the representatives of these organisations took part in study visits to London, Dublin and Bucharest, where they learnt first-hand how citizen advice and information services operate. They were also introduced to the judicial system, quality standards, fundraising schemes and all the facets of the free legal aid systems of these countries. In addition, they benefited from a mentoring visit, including a review of their projects and the work processes within their organisations, as well as thematic training sessions. These additional capacity building activities contributed to improving the working methods of the organisations and allowed them to incorporate best practices in service provision into their work and, thus, increased their effectiveness and professional standards.

IV. THE METHODOLOGICAL BASIS

The National Advocacy Roadmaps were the basis of the advocacy work carried out in the region. They are the outcome of extensive research, surveys and data gathered from first-hand interactions with citizens and their problems. The roadmaps have been refined through extensive consultations, which included input from peer organisations, both in the region and in the EU, and are embedded in the established processes of consultations with national governments in the region.

Surveys were the main method of gathering data. Using a set of commonly elaborated questions related to legal reform in the area of access to justice and the capacities of service providers, the national partners gathered responses from the main actors in the field. Therefore, the conclusions of the national reports stem from a pool of empirical knowledge and the expertise of the main protagonists in the area of free legal aid.

The National Advocacy Roadmaps, which will be presented in the following chapters, have served as the basis for the elaboration of the *regional* policy recommendations for future advocacy activities, as outlined in section VII. National specificities have also been clearly indicated when deemed essential to generating change at national level.

V. MAIN FINDINGS OF THE NATIONAL ADVOCACY ROADMAPS

1. Albania

a) Legal Framework

In 2008, a new law on legal aid² was adopted by the Parliament, laying down the main principles, criteria and procedures for providing/obtaining legal aid. It defines the type of legal aid, the responsible

² Law no. 10039, dated 22.12.2008, "On Legal Aid" as amended.

institutions in this regard – the Ministry of Justice, the National Bar Association and the State Commission for Legal Aid (SCLA) – and their competencies.³

The SCLA exercises its competences in legal aid provision through the Local Legal Clinics, which provide primary legal aid and assist individuals in preparing their applications and relevant documents for obtaining secondary legal aid.⁴ Currently, there are 6 legal clinics operating in Durrës, Gjirokastra, Korça, Shkodra, Tirana and Vlora. They decide on applicants' rights to benefit from primary legal aid services and whether the requested aid falls under the legal aid law. The clinics are also responsible for the legal education of citizens through mobile clinics, television or other media campaigns, and other similar means.

According to Article 11, Point 1, of the law on legal aid, "...legal aid shall be provided by authorised lawyers under the specific conditions established by this law...". In this context, the National Bar Association is the responsible body for regulating and controlling the legal profession.⁵ In addition, there are other institutions and organisations which are involved in the process, such as the Ombudsman, and various NGOs operating in the field of human rights protection and who, in order to fully guarantee the respect of the rights of individuals, also provide legal aid services.

Although the legal framework in Albania defines in detail the right to legal assistance, the main principles applied and which institutions guarantee this right, the implementation of the legal provisions has been problematic.

The budget allocated by the government to the institutions providing free legal aid remains very low, leaving a large number of people in need without proper legal aid.

The number of established local legal clinics is very low compared to the large number of individuals in need of legal aid services. Moreover, there is lack of adequate capacity in the institutions that provide free legal aid, which leads to shortages in service quality and provision.

The lack of clear and adequate information regarding the provision of free legal services is also an issue. Even the information that is available is not clear and understandable by the individuals in need of such services, whose educational level is, in most cases, very low. In addition, the application procedures for free legal aid are deemed to be unclear, very complicated and too difficult for individuals in need.⁶

Lack of awareness and information has also been identified in some institutions, especially the pre-detention and custody institutions, where information regarding the approved list of lawyers providing free legal aid is missing. For this reason, in most cases, the detained/arrested person is provided legal assistance only before the court and not from the first moment of detention, as provided for by the legislation.⁷ Training of staff in these institutions is a must.

³ Art. 10 of the law.

⁴ Art. 12/1 of the law.

⁵ Art. 17, point 3 of Law no. 9109, dated 17.07.2003, "For the profession of lawyer in the Republic of Albania" as amended.

⁶ See EU Commission Albania Progress report 2014, p. 43.

⁷ See AHC Report on the monitoring of the situation of human rights of the detained persons Police directorates and commissariats/stations and other custody and penitentiary institutions, 2014, p. 28.

The fee applicable for the payment of lawyers appointed by the court or the prosecutor is very low, leading to unprofessional and low-quality services provided to defendants.⁸

Another issue is the existence of a dual system regarding the appointment of lawyers providing free legal aid in Albania: (i) lawyers appointed by the prosecution offices or the court according to criminal law; and, (ii) lawyers appointed in accordance with the list approved by the SCLA.⁹ The first one is very problematic since it is clear that, having an open conflict of interest, the prosecutors and judges tend to apply low criteria when selecting a lawyer to provide legal aid to defendants who cannot afford a lawyer of their choice.¹⁰

b) Civil Society Organisations

The challenges related to the implementation of the legislative framework for free legal aid provision have resulted in legal aid services in Albania being mostly provided by CSOs operating in the area of human rights protection and which are financed mostly through foreign organisations.¹¹

The results of a survey conducted among 20 providers of free legal aid (15 CSOs) in Albania show that their services are nationwide, but also regional and local. Except for the Municipality of Tirana, which only serves the Tirana district area, all the other respondents offer national services, mostly relying on, and employing, lawyers or law students, but also social workers, students and/or graduates. Regarding the type of advice given, 75% of respondents (15) offered both general and specific advice dedicated to particular groups, such as women (73.68%), children and young people (63.16%), the unemployed (63.16%), Roma (57.89%), low income individuals (57.89%), people with disabilities (42.11%) and the elderly (42.11%).

c) Recommendations

- Measures regarding the increase of collaboration between state institutions and CSOs in relation to free legal aid services should be put in place. The State should gradually assume full responsibility for the provision of legal aid.
- The performance of the SCLA needs to be enhanced in order to cope with the pressing needs of a considerable number of vulnerable citizens.¹²
- The introduction of a nationwide system of well-trained community-based paralegals who provide quality legal aid, especially in cases/regions where access to lawyers is limited.
- Adopt and promote other, non-litigious forms of conflict resolution such as mediation, negotiation or arbitration, thus minimising recourse to the courts.

⁸ See AHC Report on Human Rights 2014, p. 19 and Analysis of the Justice system in Albania by the Parliamentary Special Commission on Justice Reform, 2015, p. 244.

⁹ See Analysis of the Justice system in Albania by the Parliamentary Special Commission on Justice Reform, 2015, p. 244.

¹⁰ See Analysis of the Justice system in Albania by the Parliamentary Special Commission on Justice Reform, 2015, p. 244. and AHC Report on Human Rights 2014, p. 19.

¹¹ See ECRI Report on Albania, 2015, §§ 20 et seq and EU Commission Albania Progress report 2014, p. 43.

¹² See EU Commission Albania Progress Report 2015, pg. 53 & 60.

- Draft relevant sublegal acts for the implementation of the law and increase the budget/funds allocated to free legal aid services offered by the government.
- Insufficient availability of clear and adequate information about the provision of free legal aid services should be addressed urgently by the government through the creation of a dedicated website.
- An increase in the capacities of institutions responsible for providing free legal aid as well as other institutions, such as penitentiary and detention institutions, police stations and institutions responsible for human rights protection, is a must.
- Making the local legal clinics functional is of vital importance.

2. Bosnia and Herzegovina (BiH)

a) Legal Framework

The main shortcoming of the legislative framework in the country is that it is incomplete. The current free legal aid system in BiH is unable to provide minimum legal assistance to all citizens on an equal basis. The lack¹³ of a national Law on Free Legal Aid¹⁴ setting minimum common standards results in an asymmetrical and decentralised system which reinforces discrimination and unequal access to justice to all citizens. It is necessary to continue the activities to establish a system which will provide equal access to justice for all BiH citizens and, as such, be compliant with European and international standards.

Current laws on free legal aid were individually adopted in the Republika Srpska, Brčko District, and in eight of the ten cantons in the federation. The institutions' employees have differing statuses, as some are public servants while others are judicial officials. The internal organisation of these institutions depends enormously on the financial resources of specific territorial units.

Since there are 600,000 people in BiH living below the poverty line, citizens living in cantons that lack mechanisms for the provision of free legal aid and citizens requiring legal aid in court and administrative proceedings outside of their place of residence (refugees and displaced persons) have difficulty accessing justice and are fully dependent on assistance from CSOs in the exercise of their rights. Access to justice in the form of free legal aid is practically unavailable for citizens residing in rural areas, for beneficiaries of social welfare and individuals with disabilities, who are forced to travel to the nearest city in order to obtain free legal aid.

b) Civil Society Organisations

Because of the evident shortcomings of the existing free legal aid system in the post-war period, a number of NGOs, which were previously dealing mainly with the protection of fundamental human

¹³ The finding is based on the national advocacy roadmap which reflects the situation until 18.05.2016, before the adoption of the State Law on free legal aid.

¹⁴ The Law on Free Legal Aid (FLA) from the former Yugoslavia was adopted in 1977 and has still not been repealed; however, the circumstances that took place in the period following the adoption of the law, make the law unenforceable in practice.

rights, choose to work in the field of providing advice, information and legal aid. By signing a Memorandum of Understanding, 16 of these organisations have established a unique platform for the exchange of expertise between institutions and CSOs involved in the development, application and promotion of standards for legal assistance.

Municipalities and NGOs are important service providers to citizens, providing verbal legal advice and assistance in the completion of forms and various other applications. The more complex cases that require the preparation of requests and appeals in administrative proceedings are referred to the Free Legal Aid Institutes.

c) Recommendations

- The adoption of a Law on Free Legal Aid at the state level, in order to establish a harmonised free legal aid system guaranteeing minimum standards of delivery throughout the country¹⁵;
- Amendments to the existing criminal procedure acts (and current free legal aid laws) to include the right to free legal aid for victims or injured parties in criminal proceedings, vulnerable witnesses and witnesses under threat, as well as victims of hate crimes, and domestic and sexual violence, and to determine the methodology of providing and financing free legal aid intended for the above beneficiaries;
- Guarantee the funds available and establish continuous educational programmes, consultations and training on free legal aid for police officers, prosecutors and other justice sector employees;
- Strengthen public awareness of the rights of citizens in the area of free legal aid and cooperation between CSOs which provide free legal aid and bar associations;
- Strengthen the awareness of citizens of the role and obligations of municipalities as free legal aid providers;
- Introduce a functional referral system, by establishing a single data base of all CSOs in BiH which provide free legal aid;
- Establish and implement uniform standards for the assessment and control of the quality of services provided;
- Establish field offices to enable access to information, consultations and free legal aid to citizens in rural areas.

3. Kosovo

a) Legal Framework

The respect for human rights and fundamental freedoms in Kosovo is guaranteed by the Constitution. Article 22 recognises the guarantees provided by a number of international agreements and

¹⁵ The recommendation is based on the national advocacy roadmap which reflects the situation as of 18.05.2016, before the adoption of the State Law on free legal aid.

instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR).

Access to legal aid is ensured by Article 6 of the ECHR, as an integral part of the right to fair trial. In this sense, over the years, the European Court of Human Rights (ECtHR) has delivered several decisions on legal aid ensuring that the principle of access to justice is well protected.

Article 53 of the Constitution of Kosovo further provides that constitutionally guaranteed human rights and fundamental freedoms are to be interpreted in a way that is consistent with the decisions of the ECtHR.

Law No. 04/L-017 on Free Legal Aid in Kosovo was adopted on 2 February 2012, replacing the UNMIK Regulation No. 2006/36. The Agency for Free Legal Aid (AFLA) was established pursuant to this law and the institutions which provide free legal aid deriving from this law are the regional offices of the AFLA covering the whole of the Republic of Kosovo, which provide legal aid in the municipalities through mobile units¹⁶, and lawyers and NGOs in partnership with the AFLA (*Article 26*).

This law establishes a comprehensive system of free legal aid in civil, administrative, minor and criminal procedures, by which it ensures effective access to justice for citizens with insufficient financial means. The gaps are mainly identified with regard to the proper implementation of the law and the coordination of legal aid service providers.

In terms of the geographic scope of services, gaps exist in the regions where regional offices are closed due to a lack of finances, e.g. Northern Mitrovica. The social groups that are the most neglected in the provision of services are children under the age of 18, elderly people, persons with family problems, the LGBT community, consumers, internally displaced persons, refugees, returnees and asylum seekers.

The types of assistance which are most problematic to provide to citizens are access information, active help, and legal assistance in the field of criminal law, because AFLA, despite the provisions in the Free Legal Aid Law, is not well enough resourced to provide legal aid services in this field. CSOs, on the other hand, do not provide legal aid services in the field of criminal law.

The legal profession in Kosovo is regulated by the Law on the Bar and other relevant laws. Paralegals are allowed to represent clients before the court only if authorised. They can give advice, draft legal documents, and undertake research but not represent clients in court proceedings. Individuals are not obliged by law to have an attorney, unless they are a minor, when they are accused of a criminal offence, or when their claim is before the Supreme Court. Students enrolled in a law degree cannot represent clients in court, but they can give legal advice. Law office practitioners cannot represent clients in court, however they can give legal assistance.

¹⁶ 'Mobile offices for free legal aid as a form of organization of legal services, act in those municipalities in which free legal aid offices are not established' Article 28, p. 2 of the Law No. 04/L-017, on Free Legal Aid).

b) Civil Society Organisations

There are well established CSOs in Kosovo involved in providing free legal aid and legal counselling services, providing a real contribution to the legal aid system. However, the legal aid primary and secondary legislation do not cover relevant provisions regarding the functioning of NGOs in the free legal aid sector.

The Law on Free Legal Aid authorises the provision of legal aid services when provided by an authorised lawyer (i.e. members of the Bar). NGOs operating in the legal aid sector consist of jurists/lawyers with many years of experience and who have passed the Bar exam, but they are not all necessarily members of the Bar. By becoming a member of the Bar, they would no longer be able to affiliate with respective NGOs. Similarly, the Regulation on the criteria for provision of free legal aid services by NGOs, in civil, administrative, misdemeanor and criminal fields (for citizens in difficult economic circumstances), is not clear or specific despite its purpose to regulate this area, as all the work in the legal aid system should happen in 'partnership' with AFLA. There are no eligibility criteria for NGOs when the partnership contract with AFLA is to be announced and the Regulation does not determine any criteria to which an NGO wanting to provide free legal aid should comply (See more, Regulation 2013/5).

Considering all this, the NGOs' work generally relies heavily on donor funding, and the services provided by these organisations include assistance, information, advice and court representation (in the areas of administrative and civil law).

Nevertheless, in parallel with the amendments to the Free Legal Aid Law, the Coordination Mechanism consisting of the main free legal aid providers from both governmental and non-governmental organisations has been established, with the ambition to address the free legal aid issues through better coordination, aiming at a more efficient and effective free legal aid system in Kosovo.

c) Recommendations

- Actively contribute to any changes/amendments of the Free Legal Aid Law and by-laws, which would improve the current system of free legal aid;
- Ensure the proper implementation of applicable laws in the field of access to information, advice and active help in order to address all identified shortcomings and gaps (geographical and in terms of target groups and types of services);
- Formalise and regulate the relationship between CSOs which provide free legal aid services and AFLA as the only public institution mandated to provide free legal aid;
- Support the harmonisation of legislation on legal aid and the legal profession;
- Determine the 'authorisation' criteria for NGOs that provide legal aid services;
- Determine the modalities of funding of activities in the field of access to information, advice and active help between donors and the government;
- Financially support NGOs providing free legal aid;
- Organise training for CSO staff providing legal aid services along with other service providers from the legal and social sectors.

4. Macedonia

a) Legal Framework

The Law on Free Legal Aid¹⁷ (LFLA) in Macedonia was adopted in December 2009, but, due to its complexity, its implementation was postponed for six months. Thus, the LFLA entered into force on July 7, 2010. The LFLA's objective is to ensure equal access to justice for all citizens. Even though access to justice is not defined as a fundamental human right, it derives from the right to equality, which is constitutionally guaranteed and constitutes the basis for the right to free legal aid.

Attorneys at law are the basic providers of Triple A services, especially when it comes to active help. Theirs is the only profession that can represent and litigate on behalf of beneficiaries in courts.

CSOs can also assist people with many different issues, but can never represent them in courts. In order to provide free legal aid in accordance with the LFLA, an organisation has to be registered as a provider with the Ministry for Justice (MoJ). Currently, there are 10 organisations officially registered with the Ministry of Justice.

The providers of Triple A services are the 34 **regional offices** of the MoJ, and other institutions that are part of the **public administration**. According to the Law on General Administrative Procedure, public servants are obliged to help every person who is need of advice or assistance; and the Office of the Ombudsman of Republic of Macedonia.

The practical implementation of the legislative framework has revealed the following shortcomings, which could be effectively addressed only by a substantial revision of the law in order to create a valuable, applicable and accessible system for providing information, advice and active help to those who need these services¹⁸:

- The state only reimburses costs for preliminary legal aid in cases in which free legal aid has been approved for court and administrative procedures (which burdens the normal operation of authorised associations without additional donor support).
- Preliminary legal aid is very narrow in scope.
- The requirements which the organisations must fulfil are inadequate and do not correspond to their authorisation.
- Associations are prohibited from pursuing any form of advertising to inform citizens about the services they offer and provide pursuant to the LFLA.¹⁹

b) Civil Society Organisations

Many organisations registered in Macedonia aim to provide one or more of the Triple A services, but not all of them are active. The 19 organisations surveyed are all non-governmental, established in the

¹⁷ "The Official Gazette of Republic of Macedonia" No. 161/09.

¹⁸ Macedonian Young Lawyers Association, Foundation Open Society Macedonia; Report on the implementation of the Free Legal Aid Law in 2013; Skopje 2014, p. 20.

¹⁹ Foundation Open Society Macedonia; Report on the implementation of the Free Legal Aid Law in 2014-2015; Skopje 2015, p. 41.

period from 1987–2013. They have a wide range of activities and are recognised for their work among the general public and their beneficiaries.

More than half of the organisations (58%) provide their services at national level, 53% are active at the local level and 26% work at the regional level. These organisations have at their disposal substantial human resources for the provision of their services. Most of their employees are lawyers (68%) or law students (37%), followed by students in other social sciences or social workers.

Almost 60% of the organisations provide advice for both the general public and specialised groups such as minorities, women, refugees, etc. All of the organisations are active in the area of human rights, 80% are engaged in providing services regarding discrimination and social protection, 73% are providing Triple A services in the area of health, 63% in education, 52% in employment, approximately 40% in the areas of criminal law and housing, around 20% of the organisations are dealing with issues of migration/asylum and elections and voting; and a few are dealing with issues such as consumer rights and provide advice on debt and bankruptcy.

They are also engaged and participate in campaigns and advocacy activities.

Almost half of the organisations do not have any quality control mechanisms for the services they provide.

Funding for the organisations comes from many sources, but predominantly from foreign donors.

The organisations collaborate and cooperate with each other and direct clients to other organisations or institutions.

c) Recommendations

The government should either substantially amend the LFLA or adopt a new law in order to ensure:

- The facilitation of the criteria for approving free legal aid and harmonising them with the principles of the ECHR and the ECtHR;
- An increase in the role of CSOs in the provision of free legal aid;
- A broadening of the system of free legal aid to include additional types of criminal cases and secondary legal assistance in civil, administrative and misdemeanor cases;
- An improvement in cooperation and better definition of the respective roles of the state administrative body authorised to decide on requests for free legal aid, the Bar Chamber and the authorised associations that provide free legal aid;
- Improved instruments for financing the system of free legal aid and an increased budget, resolving the legal gaps in terms of who bears the costs for the judicial/administrative procedure, depending on the outcome of that procedure;
- Faster procedures for free legal aid when it comes to adopting a decision on approving/rejecting the request; harmonisation of the laws related to the LFLA such as the Law on Civil Procedure, the Law on Judicial Taxes, the Law on Criminal Procedure, the Law on General Administrative Procedure, etc.

- Providers should adopt the quality standards of the Triple A Network, which would help them to be recognised among beneficiaries and other stakeholders as reliable actors in the policy making processes.
- They should cooperate with other providers and consult beneficiaries when designing advocacy activities, and,
- Respect the principles of equality and non-discrimination.

5. Montenegro

a) Legal Framework

The right to a fair trial is a fundamental right guaranteed by the Constitution of Montenegro. Montenegro established its own system of free legal aid with the adoption of the Law on Free Legal Aid as of 1 January 2012, and the subsequent by-laws which completed the legal framework. The institutional conditions for the provision of free legal aid were created, with all basic courts establishing free legal aid offices. Judicial institutions have carried out informational campaigns to educate citizens on how to access the system. In addition, communication with CSOs has been established through projects and programmes of cooperation with a view to increasing the effectiveness of the system. The adoption of the Judicial Reform Strategy in Montenegro (2014-2018) marked a new chapter in the process of reform and further improvement of the judiciary. Despite the unequivocally positive effects identified through the establishment of the free legal aid system in Montenegro, it is recognised that there is room for a further strengthening of the institutional and legal framework in this area.

At present, the Law on Free Legal Aid recognizes lawyers and court services for free legal aid as the only ones authorised to grant legal assistance. Non-governmental organizations, trade unions, and law schools (legal clinics) are excluded from the system of free legal aid provision. Granting CSOs the status of authorised providers of legal aid could, potentially, greatly relieve the courts. Individuals, through legal counselling, could be instructed in overcoming legal problems outside of court procedures through alternative methods of dispute resolution, such as mediation, which have not yet been fully implemented in Montenegro.

Moreover, certain categories of persons, such as victims of torture or discrimination, are not recognised as priority beneficiaries of the law.

The Law stipulates that the Bar Association is required to provide a list of lawyers providing free legal aid to the Service of Free Legal Aid. The list of the practitioners is composed through the local jurisdiction of the basic courts. Since the establishment of the system of free legal aid, there are cases of refusal to provide free legal aid from lawyers on the list because of either already being engaged in other cases or not believing the party has a chance of winning in court.

Another concern is the level of information provided to citizens, the majority of whom (78%) are not aware of the rights and possibilities provided by the Law on Free Legal Aid.

b) Civil Society Organisations

All 14 CSOs surveyed were established in the period from 1999 to 2013 and all of them have organisational capacities and a track record in providing Triple A services to citizens of Montenegro. 10 of the organisations are providing services at national level while 4 of them are providing services at regional or local level.

Regarding the professional orientation of the people working in these organisations, they are mainly lawyers (80%), students (10%) and social workers (10%).

Almost all of the organisations/institutions are providing legal assistance in criminal law cases (80%) and cases related to the protection of human rights (70%). Others are active in education (30%), migration/asylum (30%), healthcare (27%), employment (22%), and consumer rights (22%).

Ten organisations/institutions have developed quality control mechanisms for services provided, while nine organisations do not have quality control mechanisms.

The main challenges that organisations are facing include insufficient financial resources (70%), excessive demand for the services they provide (40%), a lack of human resources (25%) and administrative/ legal obstacles (12.5%).

Most of the organisations do not have the capacity to perform advocacy work. In parallel to providing Triple A services, organisations are mainly focused on monitoring the performance of state and judicial institutions. Most of the organisations are active in working groups and bodies for the development of laws, by-laws and regulations.

c) Recommendations

- Revise the Law on Free Legal Aid to include NGOs dealing with human rights, university legal clinics and other subjects who have the necessary legal knowledge and experience in the provision of legal assistance.
- Define the form of free legal aid which can be provided by the authorities who are recognised by the law as legal aid providers and the forms of legal assistance that NGOs can provide.
- Define the criteria for non-governmental organisations authorised to provide free legal aid.
- Establish a registry of NGOs providing free legal aid.
- Apply models for the gradual introduction of the free legal aid system for citizens in relation to administrative proceedings.
- The Bar Association should work on revising the list of lawyers who provide free legal aid and make sure the list includes lawyers who have already provided free legal aid in multiple cases.
- Create the conditions for the accessibility of the offices for free legal aid to persons with disabilities.
- Mediation and other alternative dispute resolution methods should be used more frequently to filter the requests of potential beneficiaries of free legal aid and decrease budgetary expenses where possible, especially when referring to legal counselling.

- Intensify activities relating to the promotion of the system of free legal aid, especially in local communities, in cooperation with the courts and NGOs working on the protection and promotion of the rights of people from different social categories.
- Revise the academic programmes of the law faculties in Montenegro to establish legal clinics in which students in their final year of law school will, under the supervision of professors and legal practitioners (judges, lawyers, prosecutors, notaries, etc.), be able to gain practical experience by working on concrete cases while providing legal assistance to different categories of vulnerable citizens.

6. Serbia

a) Legal Framework

Article 67 of the Serbian Constitution²⁰ guarantees everyone the right to legal representation under conditions to be laid down by law. While the Constitution provides that legal representation is to be provided by “legal professionals” and “legal assistance offices established in the units of local self-government”, other legal aid providers are not mentioned. The constitutional provision does not prohibit the adoption of regulations allowing other entities to provide legal aid. Instead, Article 67 empowers the legislature to establish the principle of legal assistance in an effective way concerning lawyers and local authorities. Therefore, other providers of legal aid which form part of civil society can also participate in the implementation of this constitutional right, as indeed they should.

Despite its importance as a constitutionally recognised human right, free legal aid does not, at present, appear to be adequately regulated in Serbia. For instance, adequate public data concerning the funding of legal aid and the number of cases is not presently available.²¹ There are serious gaps and limitations in the exercise of the right of access to justice. On the whole, these are the result of an inadequate legal framework and limited financial resources allocated to free legal aid.²²

At present, the law only provides for free legal aid in the area of criminal law. Due to the absence of a legal framework covering legal aid in civil proceedings, civil and administrative disputes do not currently qualify for legal aid.

Article 66 of the Law on the Legal Profession²³ mandates the Bar Association of Serbia and local bar associations to organise free legal aid services. Foreign lawyers who are registered with the Serbian Bar Association are excluded from offering legal aid under Article 26 of the law.

²⁰ Constitution of Republic of Serbia of 2006 (Ustav Republike Srbije (08.11.2006); Sl. glasnik RS", br. 98/2006). Available at: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

²¹ Proposed reforms to the system of legal aid currently being formulated will hopefully change this regrettable situation. Under the draft law on free legal aid the responsible ministry will need to keep records of legal aid cases in electronic form source of information as well as details of legal aid providers. This should make it will possible in future to undertake analysis of free legal aid which it is not present possible to do, due to a lack of sufficient publically available data.

²² Strategy for free legal aid system development in the Republic of Serbia of 2010 (Strategija razvoja sistema besplatne pravne pomoci u Republici Srbiji, Sl. glasnik RS", br. 74/2010).

²³ Law on the Legal Profession (Zakon o advokaturi; Sl. glasnik RS", br. 31/2011 i 24/2012 - odluka US). An unofficial version of the law is available on the website of the Serbian Bar Association: <https://aks.org.rs/en/legal-profession-act-3/>

On this basis, the local bar association of the province of Vojvodina has adopted rules on the provision of legal aid by members of the Bar Association of Vojvodina”.²⁴

According to the rules, citizens have a right to free legal aid if their income is below the threshold determined by the Executive Council. All members of the Vojvodina Bar Association have the right to provide free legal aid and can apply for registration provided no disciplinary measures have been taken against them and they have signed a statement that they accept the rules on free legal representation. Lawyers who provide legal aid are entitled to a fee of 40,00 Euros per procedure, converted to Serbian Dinars.

b) Civil Society Organisations

The civil wars of the 1990s in the former Yugoslavia led to the emergence in Serbia of a large number of refugees, defectors, and victims of violence and torture. Since then, a number of anti-militarist organisations²⁵ have been providing information, counselling and legal assistance to victims of war. One study from 2003²⁶ identified 18 organisations in Belgrade that provided direct assistance and support to victims of domestic or sexual violence, trafficking and torture as well as violence against children. The common characteristic of these legal aid providers is that they have advocated for legislative initiatives. As a result of their efforts, conscientious objection has been instituted (leading to the professionalisation of the Serbian army), amnesty has been granted to political prisoners, the incidence of torture in prisons and detention centres has been reduced, the criminal offence of domestic violence has been introduced into Serbian law and numerous changes have been made to Serbian family law.

After 2005, the majority of these organisations reorientated their services towards assisting victims of discrimination, mobbing and violence against women. Only a few organisations are now engaged in assisting internally displaced persons and the Roma. After 2008²⁷, some of these NGOs also started to provide legal assistance to returnees upon readmission as well as to asylum seekers.

c) Recommendations

- The state should amend the draft Law on Free Legal Aid to define a broader range of providers of free legal aid to include trade unions, bar associations, legal clinics, as well as other relevant social institutions, before the law is adopted. Furthermore, the state should recognise quality control standards and provide adequate funding from 2018 in order to create a sustainable free legal aid system.²⁸

²⁴ Rules of free legal representation by an attorney of the Bar Association of Vojvodina adopted on 12 September 2008 available at: <http://www.akv.org.rs/en/pravilnik-o-radu-sluzbe-besplatnog-pravnog-zastupanja-od-strane-advokata-akv/>

²⁵ These organisations include Centar za antiratnu akciju, Helsinki Committee for Human Rights (Helsinski odbor za ljudska prava), Medjunarodna mreza pomoci, Srpski demokratski forum, Komitet pravnika za ljudska prava, Grupa 484, Danish Refugee Council (Danski savet za izbeglice), Norwegian Refugee Council (Norveski savet za izbeglice) and Beogradski centar

²⁶ Sanja Milojevic and Biljana Mihic, Organizations that provide assistance to victims of crime in Belgrade (Organizacije koje pružaju pomoc zrtvama kriminaliteta u Beogradu) Available at: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370301037M.pdf>

²⁷ Agreement between the Republic of Serbia and the European Community on the readmission of persons residing without authorization came into force in January 2008. In the last seven years, 8,824 people were repatriated from the EU to Serbia.

²⁸ Draft Law on Free Legal Aid foresees its implementation starting on January 1st, 2018.

- The state – including relevant ministries and other public institutions – should be encouraged to view existing NGOs as partners in the provision of information to the public and should publish contact details for these organisations on their websites. It will increase the trust of citizens in both the state institutions and NGOs.
- It is also desirable to create a directory of information and advice services that will enable citizens to easily access all information and advice services, free legal aid, the eligibility conditions for obtaining assistance and the contact details of the nearest legal aid service or organisation that provides it.
- Legal aid services in municipalities should be separated from local government in order to avoid conflicts of interest when giving advice to citizens, particularly when the opposing party is a local authority.
- Government should support the development of legal aid services in all local autonomous governments in Serbia. The government – particularly the Ministries of Justice and State Administration – should develop special programmes to increase the capacity of municipal legal aid services. Given the differences between the local autonomous governments, as an interim solution, consideration should be given to reducing costs through the possibility of forming joint services covering several municipalities. Such a solution could also be supplemented by arranging to have lawyers on duty in the municipality on certain days. Also, establishing call centres using pre-recorded answers to common questions could be considered as a supportive measure.
- NGOs should identify opportunities for closer cooperation and collaboration between CSOs as well as between CSOs and other stakeholders and legal aid providers. NGOs should work together in order to improve the legal framework relating to the provision of information and advice to citizens. This will strengthen the impact of their efforts to shape government policy in the field of citizens' rights and access to justice. NGOs should collaborate in establishing a code of conduct and quality standards for the provision of advice and commit to respecting them in order to enhance public confidence in their work. The Serbian national and local bar associations should promote the provision of pro bono services by lawyers and law firms in Serbia either individually or through their engagement in NGOs, trade unions and law clinics of law faculties at universities.

7. Turkey

a) Legal Framework

The public sphere in Turkey is highly regulated. All information and services are provided only by state institutions regulated by law.

CSOs receive their public benefit status (for associations) and tax exemptions (for foundations) from the Council of Ministers, a process perceived as highly politicised and resulting in an ever decreasing number of organisations to which this status is granted.

The right to legal remedy and access to justice are regulated by the Code of Turkish Civil Procedure. Cases which rule on the Universal Declaration of Human Rights and the European Convention on Human Rights have been influential in increasing the level of active legal aid provision in Turkey.

There is no unified framework of legislation related to legal counselling services for citizens. Under the Law on the Right to Information²⁹ public authorities are required to supply information on their work and services. A Centre for Access to Information (the Communication Centre of the Prime Minister, Başbakanlık İletişim Merkezi, BİMER) is also in operation under the Prime Minister. The Committee on Petitions supplied information to the public before the Law on the Right to Information was enacted and still functions as a separate unit.

The Institution of the Ombudsman was established in 2010³⁰ to deal with complaints regarding the functioning of the administration. The election of the first Chief Ombudsman, Mehmet Ömeroğlu, raised objections from opposition parties,³¹ rights-based CSOs in Turkey and international CSOs,³² who were concerned about his pro-government position in the past.

Citizens can submit their applications on human rights abuses to the National Human Rights and Equity Institution of Turkey (TİHEK),³³ which investigates their complaints and may finalise the process with a recommendation. The establishment of both the TİHEK and its predecessor, the National Human Rights Institution of Turkey (TIHK), have been the subject of discussion amongst rights based CSOs in Turkey, and during the processes of making both laws on the TIHK and TİHEK, human rights CSOs raised their concerns regarding their organisational structure and operation.³⁴

Turkey is lacking a Citizens Advice Bureau type service with a wide scope and expertise. Only lawyers enrolled in a bar association are permitted by law to provide active legal representation or offer legal counselling. Bar associations in Turkey have been providing legal aid to citizens since the 1990s. Therefore, other organisations depend on their capacity to hire lawyers when providing active legal help. In other words, having sufficient funds is often a pre-condition for organisations to have the capacity to offer active legal help. The Helsinki Citizens' Assembly's Refugee Programme, Transparency International's Transparency Centre, and KAOS GL's legal aid programme are examples of legal aid and assistance involving hired legal professionals. In most cases, volunteers with expertise and volunteer lawyers answer the demands of citizens. Some CSOs, like Özge-Der, work in cooperation with bar associations' related committees.

²⁹ Law no. 4982 The Right to Information <http://www.resmigazete.gov.tr/eskiler/2003/10/20031024.htm> (in Turkish) http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=view&id=7&Itemid=8 (in English)

³⁰ For a detailed report on constitutional amendments, <http://arsiv.setav.org/public/HaberDetay.aspx?Dil=tr&hid=44410&q=constitutional-referendum-in-turkey>

³¹ <http://www.hurriyetdailynews.com/ombudsman-under-fire-for-his-verdict-on-dink.aspx?pageID=238&nID=35881&NewsCatID=338>

³² <http://www.hurriyetdailynews.com/human-rights-watch-slams-new-ombudsman.aspx?pageID=238&nID=36572&NewsCatID=339>

³³ <http://www.tihk.gov.tr/en/>

³⁴ Joint Press Announcements of Human Rights CSOs can be reach here http://ihop.org.tr/index.php?option=com_content&task=category§ionid=4&id=36&Itemid=92

Ad hoc lawyers' networks provide information, advice and legal aid on environmental issues and human rights violations.

With the advance of communication technology, there are also internet forums which citizens can refer to in order to gain information on different legal subjects.

Several Universities (Ankara University, University of Union Chambers and Commodity Exchanges of Turkey (TOBB), İstanbul Bilgi University and Eskişehir Anadolu University) have set up Law Clinics.

Recently, two new initiatives have been launched that have significant potential to reform the legal aid and citizens' information service systems in Turkey. In October 2015, the United Nations Development Programme (UNDP) and Union of Bar Associations of Turkey (UTBA), in cooperation with the Ministry of Justice General Directorate of Criminal Affairs, implemented a project entitled "Support to the Improvement of Legal Aid Practices for Access to Justice for All in Turkey". The Project aims to develop coordinated efforts for enhancing the quality of legal aid services in Turkey as well as the capacity of attorneys, particularly addressing the needs of disadvantaged groups, including the Syrian population in the southern provinces of Turkey. In addition, the project will also address the institutional needs of Bar Associations for an effective, coordinated and monitored legal aid system.

Secondly, the Ministry of Justice launched the EU funded Twinning project on "Strengthening the Legal Aid Services in Turkey" in June 2016. The main objective of this project is to ensure that the judicial services are delivered completely and fairly to all segments of society by strengthening the legal aid system in compliance with Article 6 of the European Convention on Human Rights.

b) Civil Society Organisations

In the 2000s, as the rules on the establishment and management of a CSO were liberalised³⁵, more and more CSOs were established in Turkey. Another important factor in the further development of the civil sphere in Turkey is connected to Turkey's accession process to the EU. As a result of the political and financial support of the EU, the number of rights based CSOs increased, with more and more CSOs managing to secure organisational sustainability. During this time, CSOs have become more active in providing access to information services on citizens' rights. In addition, CSOs gained more expertise in the subjects they are working on and, thanks to developments in telecommunications technology and decreasing communication costs, more CSOs managed to reach more citizens with their advice services.

Turkey is lacking a comprehensive system for informing and helping citizens on topics such as consumer rights, the tax system, municipal services, accommodation, social benefits, wages, social security and retirement. Existing services, which can be regarded within the scope of citizens' information provision, are limited either to a single topic or to a specific target group. Also, within the

³⁵ One of the important steps was the change of Associations Law. A comprehensive report comparing new and the old laws and recommendations of a CSO by TUSEV can be find here, <http://tusev.org.tr/userfiles/image/Image/tusev%20association%20law%20report%202004.pdf>

services that can be regarded as citizens' information services, coordination and coherence is limited and unsystematic.

Most CSOs giving legal aid do not have the capacity to sustain regular and continuous services. For most of the rights based CSOs, the sustainability of their services is mostly dependent on the continuation of the financial support of international donor organisations. Some CSOs do not advertise their services due to the potential risk of receiving more applications or requests than they have the capacity to deal with.

The majority of CSO service providers use internet based technologies in order to gather and disseminate information. 86% of the organisations indicated that they are forwarding the applications that do not match their expertise to an expert CSO. Most of the survey participants identified government information services as complicated and not easy to use.

A great number of the organisations are funded through donors and membership contributions. Some have income from services provided and very few have access to government funds or public donations. Some of the organisations do not have the capacity to monitor and evaluate their activities in relation to citizen information services. While staff capacities varied, most organisations (76%) have less than 25 people working and/or volunteering.

c) Recommendations

- The reporting and information gathering of public institutions should be standardised and new evaluation methods developed to better inform citizens. The e-Government portal should be designed to be more user friendly. A coherent and coordinated portal should be set up.
- The conditions of legal aid in civil matters should be broadened to supply access to information, advice and active help.
- All CSOs providing services should be identified and classified in terms of the subjects and services they provide, whether it be provision of information, advice or active help.
- An information network should be established among CSOs providing services in order to establish cooperation and signposting.
- Relationships between bar associations and CSOs in providing advice and active help to citizens should be discussed and sought to enable a one-stop-shop centre.
- Lawyers and citizens encounter problems when providing and obtaining help on legal matters. These problems should be addressed with the cooperation of bar associations and CSOs and instigated and shared with public authorities for a better provision of legal aid services.
- Mechanisms for exchanging and disseminating good practices should be established, creating space for reflection and critical thinking.

VI. COMMON ISSUES

A. Legal Framework

- A comprehensive legislative framework is already in place in most of the countries in the region. Bosnia and Herzegovina is an exception because of the lack of a state law on free legal aid³⁶ which results in an asymmetrical and decentralised system of service provision, with differing standards. The respective law in Macedonia is suffering from serious deficiencies which call for either a substantial revision of the law or the adoption of a new one. In Serbia, due to the absence of a legal framework covering legal aid in civil proceedings, civil and administrative disputes do not currently benefit from legal aid.
- All of the countries report serious challenges with regard to the practical enforcement of the legislative framework, ranging from gaps in the provision of Triple A services (information, legal advice, free legal aid) in terms of geographical coverage (Kosovo, Bosnia and Herzegovina), target groups (all countries in the region) and types of services to insufficient budgets and low administrative capacities of state institutions administering and providing free legal aid.
- An important issue for all countries in the region is the question of the place of the CSOs in the framework of the provision of information, legal advice and free legal aid. In all of the countries, legal representation in courts is reserved only for lawyers who are members of the bar associations. Some legal systems recognise CSOs as potential service providers as long as they are licensed to do so by the relevant state authority. Others are more restrictive.
- In most of the countries, there are serious efficiency challenges with the actual enforcement of the system for free legal aid because an insufficient commitment by lawyers (Montenegro), an unclear role for bar associations (Bosnia and Herzegovina) or contradictory rules regarding remuneration (Turkey).
- Low public awareness of both the rights of citizens and the enforcement mechanisms in place is a common characteristic in the region, requiring targeted efforts and a tailor-made approach in each country.
- Mediation and other dispute resolution methods, which could potentially spare costs for free legal aid provision, are widely unknown.

B. CSO Capacities

- Most CSOs providing information, legal advice and active help in the region are recognised for their role and have the human capacity in place (lawyers, members of the Bar, law students, etc.) to carry out activities in fulfilment of their mission.
- Almost all of the CSOs that are service providers are largely dependent on donors' funds, posing a serious challenge to their sustainability. The absence of government funding to CSOs, which would cover the provision of legal aid, contributes to the unsustainability of the national systems.
- On average, only half of them have a system of quality standards in place.

³⁶ The finding is based on the national advocacy roadmap which reflects the situation until 18.05.2016.

- Although an increasing number of CSOs involve themselves in advocacy activities, their capacity for campaigning and policy influence remains low.
- In a number of countries, the need for more collaboration between CSOs who provide services is recognised in view of increasing the efficiency of the services they provide through signposting, exchange of good practices and common advocacy for a more enabling policy environment.
- The need for cross-sectoral collaboration and networking between state institutions, CSOs and bar associations is also acknowledged in order to foster exchanges of experiences, consultations related to the adoption of laws related to free legal aid, information, and signposting, and further clarification of roles and responsibilities.
- The establishment of legal clinics in law faculties is seen as a way to foster access to justice and educate young lawyers to help the most deprived citizens. The clinical model also has the advantage of allowing students to acquire social and civic competences while providing citizens with free legal assistance.

C. European Integrations

- All the countries of the Western Balkans and Turkey are either EU candidate or potential candidate states. Therefore, the ongoing justice reforms, including the adoption and implementation of legislation related to access to justice, is embedded in the framework of the accession agenda and alignment to the EU acquis (related to chapter 23 and 24). The advocacy activities and involvement of CSOs in different consultative fora alongside other actors is instrumental in facilitating these reforms.

VII. REGIONAL POLICY RECOMMENDATIONS

Free Legal Aid Legislative Framework

Because of the nature of their work, CSOs are more inclined to engage in advocacy activities on behalf of their users, which in turn has the potential to trigger structural legislative reforms, reforming primary and secondary legislation, and improving the position of their beneficiaries in society (the youth, the elderly, minorities, refugees, the disabled, patients, consumers, etc.). For that reason, they form an essential part of any free legal aid system.

- Governments should devise legislation related to the provision of free legal aid, in consultation with CSOs and other relevant actors, which will allow CSOs to play an active role in the free legal aid system;
- In countries where there is opposition to allowing CSOs to be integrated in the free legal aid framework, the argument should be made that effective access to justice and free legal aid to the most deprived, and finally to those that need it the most, can be better ensured with the active participation of qualified lawyers working for CSOs alongside other actors (bar associations, agencies, pro bono lawyers, etc.);
- In countries where free legal aid legislation does exist and where the role of CSOs is recognised, efforts need to be made to make the law effective and its implementation efficient.

Funding

The sustainability of service provision is an issue for a number of organisations operating across the region and in the EU. Since they are largely dependent on foreign donors, CSOs often work on a project basis, although the kind of basic services that they provide to citizens are continuous and should be financed through institutional or core funding, or based on the number of cases that they handle. Government funding for CSOs is absent in most countries of the Western Balkans and Turkey, which proves to be detrimental for organisations that do not manage to secure funds between project cycles.

- An analysis of the modes of financing of different free legal aid systems in the EU should be done in order to provide governments with best practices and different options for financing;
- CSOs should engage in dialogue with governments in order to come up with a predictable and fair system of public financing of free legal aid services which will be embedded in law. Different models should be examined and modalities should be adapted to fit national circumstances, avoiding a “one size fits all” approach;
- CSOs should also strive to diversify their funding sources in order to ensure the sustainability of their services.

Public Awareness

The culture of citizens’ advice is not yet fully developed in the Western Balkans and Turkey. Citizens often do not know that they can, under certain conditions, benefit from free legal aid services. Citizens are also disillusioned concerning the capacity of their government to adopt the necessary reforms or grant access to justice to those that are not able to pay for a lawyer, court fees, or the different taxes or expenses that accompany any legal procedure.

- It is necessary to organise public campaigns to raise the awareness of citizens of their rights and direct them to a Triple A service provider that can help in solving their problems.
- In order to know what kind of problems citizens encounter in their dealings with public administrations, surveys should be organised in all of the countries in order to identify common issues and help shape the type of free legal aid that should be offered to them (legal aid, advice, public information systems, mediation, on-line services, FAQs, guidelines, tutorials, etc.)

Quality of Service

Although alignment with quality standards in provision of direct services to citizens requires an investment in time and resources, it contributes to the sustainability of the organisations and shows that they are serious about constantly improving their work.

- In order to build professional organizations, gain the trust of the citizens and the government and attract funding, providers of direct services to citizens should invest in quality standards.
- One of the main priorities of the Triple A for citizens network, formed as a result of the cooperation established during the implementation of the Triple A project, should be to implement quality standards designed specifically for providers of information, advice and

free legal aid. They will allow CSOs to align their working methods to best EU standards and benefit from the expertise of seasoned professionals in the field.

Collaboration, Networking and Advocacy

Although certain positive reforms have taken place, none of the countries in the region have established a functioning or efficient system of free legal aid. Therefore, further efforts are needed both at regional and national level.

- Networking between providers of Triple A services should be stimulated in order to foster better signposting, increase efficiency and exchange best practices, and should be accompanied by common regional and national advocacy initiatives;
- The national advocacy roadmaps, produced in the framework of the Triple A project, should be regularly updated and campaigning for a more enabling environment for CSOs should continue;
- More cross-sectoral networking and collaboration is needed in order to foster better understanding between CSOs, governments and Bar Associations. This should contribute to the dissipation of distrust that might exist between them and demonstrate that it is only by working together that a functional free legal aid systems can be created.

European Integration

The EU accession agenda of the candidate and potential candidate countries in the Western Balkans and Turkey remains a priority both for governments and citizens. Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) are among the most challenging chapters to “close” and the crucial role of CSOs in providing expertise, monitoring and advocacy has been verified and recognized in previous rounds of enlargement.³⁷

- The EU’s integration reform agenda provides a useful structural framework for organizing advocacy efforts and should be prioritised in the area of free legal aid and access to justice in general;
- All members of the Triple A for citizens network in the Western Balkans and Turkey should actively take part in the consultation processes in the framework of EU integration;
- Triple A members should develop and implement a civic monitoring system with regard to the implementation of the reforms within the framework of Chapter 23. Shadow civic progress reports could be issued independently from both national governments and the EU institutions.
- In particular, they should advocate for a functioning system of free legal aid which entails specific legal reforms and effective implementation of the free legal aid legislation in order to ensure access to justice to the most deprived and vulnerable.

³⁷ Access to justice represents an important component of chapter 23 and a functioning free legal aid system is a vital acquis for citizens. Future Member States must ensure respect for fundamental rights and EU citizens’ rights, as guaranteed by the acquis and by the Fundamental Rights Charter(FRC). The article 47 of the FRC stipulates clearly that “Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”.



European Citizen Action Service

📍 77, Avenue de la Toison d'Or
B-1060 Brussels, Belgium

☎ +32 (0) 2 548 04 90
+32 (0) 2 548 04 99

✉ info@ecas.org

www.ecas.org