



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

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| <b>Country:</b>                   | Republic of North Macedonia  |
| <b>Title:</b>                     | New Law on Free Legal Aid provides clear ground for protection in discrimination cases |
| <b>Date:</b>                      | 3 June 2019  |
| <b>Expert:</b>                    | Biljana Kotevska   |
| <b>Context</b>                    |  |
| <b>Issue at stake:</b>            | New Law on Free Legal Aid, relevant for discrimination cases, adopted                  |
| <b>Grounds of discrimination:</b> | All grounds  |
| <b>Field of application:</b>      | All fields   |
| <b>Source:</b>                    | National Legislation   |
| <b>Applicable law:</b>            | Law on Free Legal Aid  |

### Content

**Law development:** The Assembly of the Republic of North Macedonia (hereinafter the Parliament) adopted a new Law on Free Legal Aid (FLAL). This law will replace the 2009 Law on Free Legal Aid (the old law). The law was adopted in a very participative process. Very prominent CSOs which provide free legal aid took part in the drafting of the FLAL, and expressed satisfaction with the version of the FLAL that was adopted.<sup>1</sup> The FLAL, which entered into force on 22 May 2019 and will be implemented as of October 2019, transposes the Council Directive 2002/8/EC on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

**Key points of analysis:** The old law was criticised on many points, and primarily by civil society organisations (CSOs) which provide free legal aid. The law was said to provide legal aid only for a narrow set of strictly listed legal areas and for a small part of the expenses. The law applied for procedures related to securing 'rights in the field of social, health, pension or disability insurance, labour relations, protection of children, victims of domestic violence, protection of victims of crime, protection of victims of human-trafficking, recognition of the right to asylum and property-legal issues.' (Article 8). As can be read from this provision, cases of discrimination were not explicitly included in this provision, thus making the right to free legal aid for discrimination cases subject to interpretation.

The free legal aid did not apply to 'cases of mandatory defense anticipated in the Criminal Procedure Code nor to the exemption from payment of the procedure costs anticipated in the Law on Litigation Procedure and the Law on General Administrative Procedure' (Article 7). The criteria for getting free legal aid were strict, thus aid was unavailable to many. According to the old law, free legal aid was available to persons who, 'regarding their material position, are not able to exercise their rights guaranteed by the Constitution and

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<sup>1</sup> Pravdiko (2019), 'The New Free Legal Aid Law with Improved Solutions for Access to Justice' [Новиот Закон за бесплатна правна помош со подобрени решенија за пристап до правда], *Pravdiko Website*, <https://www.pravdiko.mk/noviot-zakon-za-besplatna-pravna-pomosh-so-podobreni-reshenija-za-pristap-do-pravda/>.

law, without imperilling their own sustenance and the sustenance of the members of their family living in a joint household'. (Article 12 (1)). Only citizens were eligible for free legal aid, and in specific citizens that are: 'a child at risk, a child under suspicion that it has committed an act defined as a crime or offense under law, beneficiaries of social security, beneficiaries of the right to disability allowance, that do not generate other incomes on the basis of earnings or income from immovable property, beneficiaries of the lowest retirement living in a family community with two or more persons supported by him/her, and families or self-supporting parent with one or more juveniles exercising the right to child allowance.' (Article 12 (2)). Foreigners were eligible for free legal aid if they were 'asylum seekers, persons with an asylum status, internally displaced person, as well as displaced or expelled person who has a temporary residence on the territory of the Republic of Macedonia, a foreign citizen, who in accordance with the international agreements, no matter if he/she has a permanent or temporary residence on the territory of the Republic of Macedonia, exercises his/her rights under the competence of the state body of the Republic of Macedonia, a stateless person legally residing in the Republic of Macedonia, and a citizen of a member state of the European Union under the conditions and in the manner determined by this Law.' (Article 12, (2, 3)). In addition, CSOs have alerted to the fact that the decision-making process for awarding free legal aid was highly centralised and slow, there was no independent body overseeing the implementation of the Law on Free Legal Aid, and the law did not align well with other laws, including laws regulating procedures.<sup>2</sup>

The recently adopted FLAL addresses all these points. The FLAL does not limit the provision of free legal aid to a list of areas but applies to all legal areas. The criteria for qualifying for free legal aid are fully revised. Any person, regardless of citizenship, can apply for free legal aid. They need to satisfy the criteria that they are not in a material position to cover the expenses of the process. The criteria are much better defined than before and take into consideration the fact that a majority of people own the place where they live (a house or a flat), and a piece of land and one car. While the old law would have rendered these people ineligible for free legal aid, the recently adopted FLAL does not. The income criteria is clearly set, and it is tied to the national minimum wage.<sup>3</sup> The person requesting free legal aid needs to have personal monthly income which is less than the national minimum wage, and if another member of their family has income too, their income needs to be smaller than 20% of the minimum wage (Articles 17-20, FLAL). The law is aligned with the other laws, including process laws, thus making it better situated within the overall legal system and better positioned to provide timely assistance and legal certainty for the citizens which are in need of free legal aid. In addition, the overall provision of legal aid is set to be improved on a long run, with a new grant scheme which will be run by the Ministry of Justice and which will support organisations which provide free legal aid.

**Source:** Law on Free Legal Aid [Закон за бесплатна правна помош], *Official Gazette of the Republic of North Macedonia*, No.101/2019 (22.05.2019).

Law on Free Legal Aid [Закон за бесплатна правна помош], *Official Gazette of the Republic of Macedonia*, Nos. 161/2009, 185/2011, 27/2014, 104/2015 (30.12.2009).

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<sup>2</sup> Access to Justice Project [Проект "Пристап до правда"], 'Opinion about the new Law on Free Legal Aid' [Мислење за новиот Закон за бесплатна правна помош], *Access to Justice Project Official Website*, <http://pristapdopravda.mk/wp-content/uploads/2016/09/Pismo-so-preporaki-za-noviot-Zakon-za-besplatna-pravna-pomosh1.pdf>.

<sup>3</sup> In April 2019, the minimum wage was 12 507 MKD (203 EUR).