

Minutes and conclusions of the round table What type of Law on Free Legal Aid do we need? Belgrade, February 5th 2014

Autonomous Women's Center organized round table „What type of Law on Free Legal Aid do we need“ on February 5th, 2014, in cooperation with the organization Praxis and the coalition of civil society organizations, which provide free legal aid services and which had sent their general comments on the Draft law.

The aim of the Round table was to give the critical view of the proposed provisions in relation to the characteristics and the needs of beneficiary groups, the characteristics of current and specialized service providers, and all this in relation to the international standards and agreements ratified by the Republic of Serbia.

The round table was attended by 39 representatives of the relevant state institutions and ministries (Ministry of Justice and Public Administration, Ministry of Labour, Employment and Social Policy, the Office for Human and Minority Rights, Social Inclusion and Poverty Reduction Unit within the Office of the Minister without Portfolio in charge of European Integrations, representatives of Commissioner for Gender Equality Office, Ombudsman Office and Provincial Ombudsman), Women's Parliamentary Network, international institutions and organizations (EU Delegation to the Republic of Serbia, OEBS, UNHCR Office in Belgrade, ISC) and non-governmental organizations (Autonomous Women's Center, Praxis, Reconstruction Women's Fund, Fenomena, ASTRA, Familia, Friends of Children Zemun, Centre for Child Rights, Network Women against Violence) and media.

Representatives of the organizations and institutions pointed out the serious problems in relation to the key issues of the Draft law:

- **At the same time insufficiently inclusive and broad definition of beneficiaries**, which put citizens in an unequal position in relation to the place of life and leaves enormous discretion in making decisions who has the right to exercise a secondary legal aid. All possible life situations are not taken into account in defining beneficiary groups (e.g. all victims of violence and torture, children without parental care, children after leaving accommodation up to the age of 26, persons deprived of or in the process of deprivation of their legal capacity, legally invisible persons, people with disabilities, people who are not able to complete a request for free legal aid), neither the principle of equality is respected. It is necessary to precisely define the categories of beneficiaries and increase the threshold for achieving financial social assistance by 30%, since the current proposal is very restrictive, and to consider the possibility of partial participation of beneficiaries in the price of services. In addition, it is necessary to make a political decision if the government wants a Law on free legal aid (FLA) only for the poorest citizens or law which protects human rights and freedoms.
- **Penal provisions and control the quality of free legal aid providers**, which are not funded from the budget of the Republic of Serbia, which can directly affect the independence, autonomy and sustainability of civil society organizations. It is necessary to reconsider the stipulated penalty provisions that may lead to a complete cancellation of any *pro bono* provision of free legal aid by all existing providers.

- **The selection of the Centre for social work (CSW), as an administrative body**, that decides on the request for exercising free legal aid, which neither has the resources, nor the enough knowledge in areas outside of social protection. Also, in some cases CSW might be in direct conflict of interest. It is necessary to determine who will be the authority to approve requests for the provision of free legal aid, as well as whether or not requests should be submitted for the provision of secondary legal aid or for secondary and primary free legal aid.
- **Providing primary free legal aid, for which there is the greatest need**, will not be financed from the state budget, in which way the state does not guarantee the exercising this fundamental human right. It is necessary to determine how the service of primary free legal aid will be financed and to incorporate additional (alternative) sources of funding into the law.
- **The procedure for exercising the right to free legal aid is complicated**, because makes it difficult for certain groups of citizens to access the public administration body, that decides on the request, and in some cases legal proceeding needs to be taken before a person become entitled to free legal representation.
- **It is necessary to separate the criminal and civil legal proceedings**, so that this law will include only civil cases, and to put provisions related to criminal proceedings in the Serbia's Criminal Procedure Code.
- **Disrespect of the existence of specialized free legal aid providers** in certain fields of law.
- **Non-recognition of the state's obligation to guarantee the free legal aid to citizens in accordance with international agreements**, accepted by the Republic of Serbia. It is necessary to take into account the obligations undertaken by accepting international agreements (the law must include all beneficiary groups in accordance with international standards).
- **It is envisaged the adoption of a large number of by-laws**, which can slow down and/or prevent the application of the law.
- **Gender-insensitive language**.

Representatives of the relevant ministries have partially agreed with the indicated problems regarding the Draft law and proposed solutions, but the impression of civil society organizations is that there is no fundamental understanding on key issues that have to be changed.

Participants of the round table suggested following activities for the further advocacy process:

- Civil society organizations should continue discussion with the decision-makers in order to achieve an acceptable Draft law. In this regard, all the interested public and international organizations should be mobilized, and the potential of MPs used, so as to consider all the perspectives and find out an agreeable legal solution.
- The issue of free legal aid should be considered in correlation with the opening of the Chapters 23 and 24 within the EU accession process and the fact that the Republic of Serbia has reporting obligation under international agreements, including Special Report on violence against women, which will be submitted in 2015 to the CEDAW Committee.
- It is necessary to check the solutions and experience of neighbouring countries (Croatia and Slovenia), as well as the other EU countries, with regard to their legislation and the system of free legal aid. The key issues in this Draft should be set up on a better basis, so that it reflects and corresponds to reality, to be rational, functional and sustainable, as well as fair and equitable.
- The financial analysis, which is being drafted by the World Bank, should be made publicly available and a discussion regarding this aspect of the law organized.