



TRIPLE A:

ACCESS TO INFORMATION,

ADVICE AND

ACTIVE HELP

SYNTHESIS REPORT

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Executive Summary

This report was prepared by ECAS and its partners, the National Foundation for Civil Society Development (NFCSD), Croatia; the Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; the Civil Rights Program (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; the Association of Civil Society Development Centre (STGM), Turkey; the Law Centres Network (LCN), UK; the National Association of Citizens Advice Bureaux (NACAB), Romania; and the National Association of Citizens Information Services (NACIS), Ireland. The report is based on the result of research into the availability of citizens' information and assistance services in Western Balkans and Turkey undertaken within the context of the Triple A project.

The purpose of this research was to map existing information and assistance services in Bosnia & Herzegovina, Croatia, Kosovo, Serbia and Turkey and make recommendations on how such services might be strengthened. It also sought to identify the legal framework that underlies the provision of information, advice and active help to citizens. As part of the research, ECAS and partners developed a survey involving civil society organisations and government agencies that provide information, advice and active help to citizens in the project countries. Based on the responses received from participating organisations in the five countries covered by the project, partners provided analyses of the current situation and formulated recommendations.

The research shows that the provision of information, advice and active help to citizens is not the subject of specific legislation in the five countries which are the focus of this research, similar to the situation prevailing in most EU countries today. Instead citizens information and assistance services are subject to a variety of legislative provisions including legislation providing for right of access to public information and the legislative frameworks governing the right to legal aid. In some cases, the existing legislation places restraints on the ability of civil society organisations to provide information and assistance to citizens. The existence of information on citizens' rights which is presented in a user-friendly manner using clear language that citizens can easily comprehend remains uneven. While the survey shows that many civil society organisations provide assistance, on the whole this tends to be provided by organisations that provide specialised advice to specific target groups, rather than providing general advice on all aspects of citizens' rights.

The research also shows that funding for citizens information and assistance is an issue of concern. While EU countries tend to provide significant resources to such services – albeit such funding has been curtailed in several member states in the last five years – the allocation of state funds to citizens information and assistance in the five project countries remains below the average for European states.

1. Introduction

The project Triple A for citizens - access to information, advice and active help - is a project implemented in the framework of the European Commission's Partnership programme for Civil Society organisations (Regional and Horizontal Programmes Ref. EuropeAid/132438/C/ACT/Multi). The implementing partners are as follows: the lead organisation European Citizen Action Service (ECAS), Belgium; National Foundation for Civil Society Development (NFCSD), Croatia; Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Civil Rights Program (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; Association of Civil Society Development Centre (STGM), Turkey; Law Centres Network (LCN), UK; National Association of Citizens Advice Bureaux (NACAB), Romania; National Association of Citizens Information Services (NACIS), Ireland.

The Triple A project aims to encourage non-governmental organisations to provide information, advice and active help to citizens on their rights in the Western Balkans and Turkey. It also seeks to promote 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 should be able to influence government policy on key reforms and their implementation. The immediate objective is to spread the citizens' advice concept to Western Balkans and Turkey.

Triple A for citizens - access to information, advice and active help - is the organising 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 information about their rights in the most convenient way possible. Equal access requires reaching out to those most in need as a result of having a modest income or being in vulnerable situations because of a disability, social exclusion, or other reason.
- **Advice:** Citizens must find a free, personal, independent, confidential and impartial service they can trust. This can take the form of self-help manuals or interactive tools to resolve an issue through preventative action. In certain circumstances, however it is necessary to go into individual circumstances to find a solution face-to-face. In all cases, citizens should receive the same high level of service and care.
- **Active help:** Citizens should not be left in situations of impasse, or having to start the whole process over again each time they seek assistance. In a small number of cases it is necessary to go further often in cooperation with more specialised services (i.e. in debt, housing or social entitlements), pro-bono legal support or assistance towards preparing an administrative or judicial appeal. There is consensus that the

one-stop shop is the right approach since many citizens have a range of interrelated questions, i.e. about housing, social benefits, their wages or pension and expect to find at least a first answer without being sent from one service to the next. This is also the approach favoured by funders, particularly at a time of cuts in public expenditure. The trend is to encourage more advice services to come together and also for smaller ones to merge into larger units with wide geographical scope in order to achieve economies of scale.

Providing assistance to citizens is an important service in its own right, but it should not be seen as an end in itself. Preventative or problem-solving action can help solve individual problems, but there is a general interest in using this experience to seek solutions for those who do not approach the service. The experience of Triple A can be analysed and turned into evidence that can serve as the basis for advocating for changes in law and policy.

In the framework of the project two key preparatory activities are envisaged:

- Mapping of the existing citizens assistance and free legal advice organisations in the region through the use of surveys and face-to-face interviews;
- Synthesis report providing analysis of the results of the survey and face-to-face interviews relating to the existence of advice services in the Western Balkans and Turkey and examining models for the effective provision of advice services which exist in EU member states.

These activities were followed by an open call for proposal to civil society organisations to submit projects for sub-granting. The selected pilot projects (two per country making ten in total) should help embed the Triple A concept in the Western Balkans and Turkey and provide an impetus for the development of sustainable citizens-oriented services. The projects will benefit from a series of capacity building activities constituting in three study visits to assistance and advice services in the United Kingdom, Romania and Ireland and a mentoring scheme which will bring experts from the EU to the region to help set up and run citizens assistance services on the ground.

The second stage of the projects will depend on the results and impact of the ten pilot projects. The possible extension of the sub-granting to Macedonia and Montenegro, which are currently not covered by the project, would be the most logical development. Creation of a regional network of citizens' advice and active helps services would also constitute a useful and necessary step should the Triple A concept prove its worth and generate tangible results in the five project countries.

2. Existing Citizens Assistance Models in the EU

2.1 The UK experience

2.1.1 In the UK, citizens' assistance services are relatively well established with various organisations providing information, advice and active help to citizens. The first point of call for many citizens is their local Citizens Advice Bureau (CAB). Founded in 1939 to help meet the needs of the civilian population in war time, the Citizens Advice Bureaux now operates from over 3,000 community locations provided by 338 individual member organisations. Members are organised by a national umbrella organisation – Citizens Advice – that is independent of the government and has charitable status. Separate organisations exist in England and Wales, Scotland and Northern Ireland¹ that mirrors the United Kingdom's three distinct legal systems.

2.1.2 Today, CABs provide general advice to citizens on all issues including debt, employment, immigration and consumer issues. In 2012/13, Citizens Advice provided advice to over 2 million people in connection with over 6 million problems. This

Benefits and tax credits	2,349,000
Debt	1,956,000
Employment	481,000
Housing	465,000
Relationships and family	312,000
Consumer*	245,000
Legal	237,000
Financial services and capability	118,000
Immigration and asylum	79,000
Health and community care	74,000
Tax	51,000
Education	23,000
Other	106,000

assistance is provided through a variety of channels including face-to-face advice, telephone and email enquiries. The CABs employs 6,500 staff who are supported by over 22,000 volunteers.

Graph 1: Nature of assistance provided by Citizens Advice Bureaux in 2012-13²

2.1.3 In addition, Citizens Advice also operates an online self-help information service adviceguide.org.uk and which recorded 22 million page visits in the last year. This website tends to contain more detailed information than that available on the UK government portal www.Gov.uk and provides practical assistance to help people

¹ The Citizens Advice has a dedicated website for England and Wales: <http://www.citizensadvice.org.uk>, for Scotland: <http://www.cas.org.uk/> and Northern Ireland: <http://www.citizensadvice.co.uk/>

² Source: Citizens Advice, *Introduction to the Service* (2013): http://www.citizensadvice.org.uk/index/aboutus/publications/introduction_citizens_advice.htm

overcome their problems by themselves (for example, the website provides model letters of complaint as well as factsheets).

2.1.4 Funding for CABs come from a variety of sources. At present Citizens Advice is funded by a core grant from the UK government's Department of Business, Innovation and Skills (approximately 75%), project-based grants (18%), trading income (7%) and some other income (less than 1%)³.

2.1.5 Aside from Citizens Advice and the UK government website, another source of general information on citizens' rights in the UK is AdviceNow⁴, which operates a websites that aims to provide legal information in a user-friendly and accessible way⁵. It has also been commissioned by the government and the courts to develop various guides for the public. Another non-profit organisation, Law for Life⁶, provides public education on legal issues.

2.1.6 In addition to these generalist assistance services, there are several specialist citizens' assistance services that provide help on targeted issues or to a specific target base. Those operating on a national level include ACAS (Advisory, Conciliation and Arbitration Service) that provides assistance in employment issues⁷; the national charity for the homeless, Shelter⁸; National Debtline⁹ and Stepchange¹⁰ which help on debt issues. There are also several advice networks that group together specialised citizens' assistance services, such as the Scope /DIAL network that brings together disability information and advice services¹¹, Age UK which supports a network of over 170 local organisations that help the elderly¹² as well as Youth Access¹³ and NYAS¹⁴

³Citizens Advice, *Annual Report 2012*:

http://www.citizensadvice.org.uk/index/aboutus/publications/annualreports/annual_report_2012.htm

⁴ Advicenow is an independent, not-for-profit website providing accurate, helpful information on rights and legal issues for the general public: <http://www.advicenow.org.uk/>

⁵ Further information on the organisation's "Better Information" can be found on its website:

<http://www.advicenow.org.uk/better-information/>

⁶ Law for life is a charity working to equip ordinary people with the knowledge, confidence and skills that they need to deal effectively with everyday law-related issues: <http://www.lawforlife.org.uk/>

⁷ ACAS (Advisory, Conciliation and Arbitration Service) aims to improve organisations and working life through better employment relations. Their website is accessible here: <http://www.acas.org.uk>

⁸ Shelter is a charity that works to alleviate the distress caused by homelessness and bad housing:

<http://www.shelter.org.uk/>

⁹ National Debtline is a national telephone helpline for people with debt problems in England, Wales and Scotland: <http://www.nationaldebtline.co.uk/>

¹⁰ Stepchange – formerly the Consumer Credit Counselling Service – provides advice on all aspects of debt:

<http://www.stepchange.org/>

¹¹ Scope supports the DIAL network, an independent network of local disability information and advice services run by and for disabled people: <http://www.scope.org.uk/dial>

¹² Age UK aims to improve later life for everyone through our information and advice, services, campaigns, products, training and research: <http://www.ageuk.org.uk/>

¹³ Youth Access is the national membership organisation for young people's information, advice, counselling and support services (YIACS). YIACS provide a holistic response to young people's social, emotional and mental

which offer assistance to young people. There are also numerous organisations providing specialised information and advice services to citizens on a regional or local basis.

2.1.7 AdviceUK is the UK's largest support network for free, independent advice centres which provides capacity development resources to its members and represent its members' interests to the government, funders and supporters¹⁵. In addition, there is also an overall umbrella body for advice networks, the Advice Services Alliance which promotes the development of high quality information, advice and legal services and has developed dedicated quality standards for the delivery of citizens' assistance services in the UK¹⁶.

2.1.8 These information and advice services are complemented by networks of legal assistance providers. State-funded legal aid is available in criminal and civil cases, although recent changes mean that many cases involving family, housing, employment, social security or immigration issues have now been taken out of the scope of legal aid. Following the recent changes, legal aid in England and Wales is now administered by the Legal Aid Agency as an executive arm of the Ministry of Justice¹⁷ and essentially funds lawyers to provide legal advice and representation in both civil and criminal matters. The Agency also employs lawyers through the Public Defender Service to provide advice and representation in criminal cases. Eligibility for legal aid depends on financial considerations and in some cases on the merits of the case. In the other parts of the UK, a similar framework is administered by the Scottish Legal Aid Board¹⁸ and the Northern Ireland Legal Services Commission¹⁹. Approximately 60% of legal aid in the UK concerns criminal cases²⁰, with the next significant category of caseload involving family law. Although the UK government spent approximately €45

health needs through a range of services provided 'under one roof', including social welfare advice, advocacy, counselling, health clinics, community education and personal support: <http://youthaccess.org.uk/>

¹⁴ NYAS is a UK charity providing information, advice, advocacy and legal representation to children, young people and vulnerable adults through a network of dedicated paid workers and volunteers throughout England and Wales: <http://www.nyas.net/>

¹⁵ Further information on AdviceUK is available on its website:

<http://www.adviceuk.org.uk/>

¹⁶ The Advice Services Alliance has developed the Advice Quality Standard as a sector-owned, independently audited standard that focuses on advice. Organisations are audited every two years and have to demonstrate that they are accessible, effectively managed, and employ staff with the skills and knowledge to meet the needs of their clients. Further information is available on its website: <http://asauk.org.uk/>

¹⁷ Further information on the Legal Aid Agency can be found here: <http://www.justice.gov.uk/about/laa>

¹⁸ For further details of the Scottish Legal Aid Board, please visit: <http://www.slab.org.uk/>

¹⁹ The Northern Ireland Legal Services Commission has its own website: <http://www.nilsc.org.uk/>

²⁰ European Commission for the Efficiency of Justice, *Access to Justice*, CEPEJ Studies No. 9 (2010), p. 60:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1702042&SecMode=1&DocId=1657228&Usage=2>

per person on the provision of legal aid in the UK in 2012²¹, the government's spending on legal aid has been reducing over time (it was over €52 in England and Wales in 2004²²) and the coalition government plans to further reduce legal aid spending²³.

2.1.9 Aside from the government-run legal aid services, citizens can also obtain free legal advice and active help from various legal networks. The Law Centres Network²⁴ brings together independent law centres that work with some of the most vulnerable and disadvantaged people in society. The Network provides support services to its member law centres and is part of the UK Government's consultation group on legal aid. It also develops new services by bringing the law centre membership together to address local needs for legal advice. Law centres have existed since the early 1970s and work within their communities to defend the legal rights of local people. Law centres offer legal advice, casework and representation to individuals and groups and often specialise in social welfare law. Since their inception law centres have been at the forefront of the development of social welfare law in areas such as education, mental health, immigration and discrimination. Spotting local trends and issues in the course of their work, the Network collates and analyses this information to advocate for necessary policy changes and to prevent future problems. Law centres also help build capacity within local communities by training and supporting local groups and educating people about the law and their rights. Law centres operate on a not-for-profit basis and are accountable to their communities, with local people acting on their management committees.

2.1.10 Other organisations providing free legal advice include LawWorks²⁵ a charity set up by the Solicitors Pro Bono Group and the Law Centres Network which aims to provide free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid. LawWorks support a nationwide network of free legal advice clinics run by universities or non-governmental organisations – mainly specialist law centres or Citizens Advice Bureaux – in partnership with pro bono lawyers and law firms. Legal clinics provide free initial advice to individuals on various areas of law including social welfare issues, employment law, housing matters and

²¹ European Commission for the Efficiency of Justice, *European judicial systems Edition 2012 (data 2010)*, *Efficiency and quality of justice*, CEPEJ Studies No. 18 (2012): p. 45-46, accessible online: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf

²² European Commission for the Efficiency of Justice, *Access to Justice*, cited above, p. 67-68.

²³ 'Legal aid: Government consults on £220m savings plan', BBC, 9 April 2013 accessible online: <http://www.bbc.co.uk/news/uk-22075141>; 'Making legal aid fairer for taxpayers', Ministry of Justice press release, 9 April 2013: <https://www.gov.uk/government/news/making-legal-aid-fairer-for-taxpayers--2>

²⁴ Further information on the Law Centres Network is available on their website:

<http://www.lawcentres.org.uk/>

²⁵ Further details on LawWorks can be found on their website: <http://lawworks.org.uk/clinics>

consumer disputes. LawWorks also exists in Scotland²⁶. As the legal profession in the UK is split between solicitors and barristers/advocates, the Bar Pro Bono Unit²⁷ and Free Representation Unit²⁸ also provides free specialised legal representation in court cases in England and Wales. The equivalent organisation in Scotland is the Free Legal Services Unit Court²⁹. These provide representation is provided by barristers or advocates on a pro bono basis following a referral from other advice agencies. In Northern Ireland, the NI Lawyers Pro Bono Group provides pro bono services from solicitors and barristers³⁰. Membership-based organisations such as trade unions may also offer free legal assistance to their members.

2.1.11 The current economic crisis has had a large impact on the provision of citizens' assistance services. Cuts in government funding, at both local and national levels, combined with reduced private donations has led to many services either merging or in some cases even closing. Many organisations are exploring different ways of providing services by making greater use of technology, joining up services through partnerships and in a number of cases creating trading subsidiaries or social enterprises. One such example of such an initiative has been set up by the Islington Law Centre³¹ to provide advice and casework in some areas of law that have been removed from legal aid via a Community Interest Company³². The company will be separate from the Law Centre and housed in a separate building offering advice at a fair price similar to the Fair Trade principle. It is anticipated that any surplus funds will go to support free services. The Fair Price initiative will expand to encourage others to adopt the same principle.

2.1.12 At the time of writing, the future of free rights-based advice and representation looks uncertain. The major source of funding for advice services, the UK government, has withdrawn its support to many sources of advice and assistance in the areas of law which impact most on the lives of marginalised and disadvantaged people. The current government's endeavour to reform the welfare state is resulting in severe hardship for

²⁶ The website of LawWorks in Scotland is: <http://www.lawworksscotland.org.uk/>

²⁷ The Bar Pro Bono Unit's website contains further information: <http://www.barprobono.org.uk/>

²⁸ Further information on the Free Representation Unit can be found here: <http://www.thefru.org.uk/>

²⁹ The Free Legal Services Unit of the Faculty of Advocates has a website:

http://www.advocates.org.uk/FLSUwebsite/agencies_flsu.html

³⁰ The NI Lawyers Pro Bono Group is a joint venture of the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland:

<http://www.barlibrary.com/about-us/ni-lawyers-pro-bono-group/>

³¹ The Islington Law Centre's website is accessible here: <http://www.islingtonlaw.org.uk/>

³² A community interest company (CIC) is a new type of company introduced by the UK government in 2005 under the Companies (Audit, Investigations and Community Enterprise) Act 2004. The Act is designed to encourage social entrepreneurs who want to use their profits and assets for the public good. The Act aims to facilitate the establishment of CICs using the flexibility and certainty of a limited liability company, but with additional features that aim to ensure CICs work for the benefit of the community.

those who are dependent on such services. At the same time, those affected by the reforms have seen their ability to obtain free legal advice has been restricted. However, the UK Government has sought to mitigate somewhat the effects of funding cuts. To assist advice-giving organisations in continuing to provide advice to vulnerable people, a number of funding streams have been established by the Office for Civil Society within the Government's Cabinet Office. In 2010, the Cabinet Office undertook a review of funding in anticipation of the funding cuts. Following its review, it has established the Transition Fund. This fund consisted of £104.5m that was awarded to the not-for-profit sector – including advice organisations – to encourage non-governmental organisations to prepare for funding cuts by restructuring their services in an effort to become more sustainable. Again in 2012, following interventions by private trusts and research carried out by the Cabinet Office, further funds were made available targeting the advice sector alone. The Advice Services Transition Fund³³ provided funds (£68 million) at the local municipal level to encourage local advice services to merge or join up services. Other funding initiatives from private trusts have been made available to the advice sector targeting particular areas – such as immigration advice – but it remains an uncertain future for the long term sustainability of advice services in the UK.

2.1.13 One development that has followed from funding cuts to advice services and legal aid in the UK has been the drive towards the use of technology, in particular the provision of advice and legal aid via a telephone gateway. In 2008, the Ministry of Justice issued a tender for the provision of legal aid via the telephone³⁴ with backup specialist services being provided on referral from the gateway to contract-holders providing casework and, if necessary, representation. This was a major change for the method of delivery of advice which had previously been provided through face-to-face meetings. One of the benefits for the Ministry is its perceived ability to exercise closer scrutiny of eligibility for legal aid.

2.1.14 Following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in April 2013 and the further expansion of some telephone services³⁵ and online delivery³⁶, user numbers have increased dramatically. Nearly 120,000 calls were

³³ Further information is available here: <https://www.gov.uk/government/policies/making-it-easier-to-set-up-and-run-a-charity-social-enterprise-or-voluntary-organisation/supporting-pages/advice-services-transition-fund>

³⁴ Community Legal Service Direct was set up by the then Legal Services Commission as part of the Community Legal Service. It aimed to provide legal aid in civil cases in England and Wales. It comprised a telephone helpline and advice centres and developed a series of advice leaflets.

³⁵ Details of the Civil Legal Aid telephone gateway are accessible here: <https://www.gov.uk/civil-legal-advice>

³⁶ Civil Legal Aid is also provided online: <https://claonlineadvice.justice.gov.uk/>

received in 2012/13³⁷ with roughly the same volume of calls being answered just in the first six months of 2013/14³⁸. This has been matched by a similar decline in the demand for face-to-face legal aid services which have fallen from almost 560,000 users in 2012/13 to just under 75,000 for the first six months of 2013/14³⁹. It is too early to identify the causes of the decline in the demand for face-to-face services. One theory is that the campaign against LASPO and the cuts in legal aid had been successful in communicating to the general public the message that access to free legal aid has been severely restricted in the UK.

*Graph 2: Nature of assistance provided over the telephone by Civil Legal Advice (April-September 2013)*⁴⁰

	Cases by category	Closed at Operator Service (referred to face-to-face provider ; out of scope or client not eligible)	Referred to CLA Specialist Provider
<i>Debt</i>	22,288	93.84% (20915)	6.15% (1371)
<i>Discrimination</i>	3,640	48% (1747)	52% (1893)
<i>Education</i>	2,037	64% (1304)	36% (733)
<i>Family</i>	18,668	73% (13628)	27%(5040)
<i>Housing</i>	14,375	58%(8337)	42% (6038)
<i>Welfare Benefits</i>	7,421	94% (6976)	6% (445)
<i>Actions against police</i>	535	100%	
<i>Clinical Negligence</i>	799	100%	
<i>Community Care</i>	427	100%	
<i>Consumer</i>	3,489	100%	
<i>Crime</i>	6,260	100%	
<i>Employment</i>	3,645	100%	
<i>Immigration</i>	2,591	100%	
<i>Other</i>	27,134	100%	
<i>Mental Health</i>	298	100%	
<i>Personal Injury</i>	827	100%	
<i>Public Law</i>	993	100%	
Total	115,427		

³⁷ Legal Services Commission, *Legal Aid Statistics in England and Wales 2012-2013*:

<http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf>

³⁸ Source: Civil Legal Advice, call volumes and outcomes (October 2013) not yet available online.

³⁹ Source: Legal Aid Agency, new matter starts 2013-14 (October 2013) not yet available online.

⁴⁰ Source: Civil Legal Advice, call volumes and outcomes (October 2013) not yet available online..

2.2 The Irish experience

2.2.1 The Citizens Information Board (CIB) is the statutory body which supports the provision of information, advice and advocacy on a broad range of public and social services. It hosts the Citizens Information website⁴¹ and supports the voluntary network of Citizens Information Centres and the Citizens Information Phone service. It also funds and supports assistance services for debt and mortgage advice and advocates on behalf of persons with disabilities⁴². The CIB has a statutory remit and legislative responsibility to support the provision of information, advice and advocacy services. The Citizens Information Act 2007 also gave CIB a mandate to provide information on the effectiveness of current social policy and services and to highlight issues which are of concern to users of those services.

2.2.2 Although there had been some previous work by voluntary organisations, the development of what has become the Citizens Information Services can be traced back to 1974 when the Irish government considered “the desirability of offering Government support towards the establishment of a Citizens Advice Bureau” as services provided by the Department of Social Welfare had become increasingly complex. A memorandum from the Government in that year declared that the service – to be named Community Information Centres – should not be run by political parties or by individual organisations. Each CIC should have its own independent board of management. Twenty-five Community Information Centres were opened in 1974. They were modelled on the Citizens Advice Bureaux in the UK.⁴³

2.2.3 In 1990, the Community Information Centres voted to change their name to Citizens Information Centres. In June 2000, the National Social Service Board (NSSB),⁴⁴ the statutory body, was amalgamated with the National Rehabilitation Board to create Comhairle (“counsel” in Irish) under the patronage of the Department of Social Community and Family Affairs.⁴⁵ The goals were to support the provision of

⁴¹ The website is accessible here: www.citizensinformation.ie. The Citizens Information Board also provides a website aimed at people who are unemployed or facing a reduced hours situation at work. This site is called losingyourjob.ie. We have also developed a website on mortgage and rent arrears in conjunction with the Money Advice and Budgeting Service (MABS) called keepingyourhome.ie and a microsite aimed at self-employed people whose incomes are reduced called selfemployedsupports.ie.

⁴² These are the Money Advice and Budgeting Service (<http://www.mabs.ie/>), the Mortgage Arrears Information Helpline and the National Advocacy Service for People with Disabilities respectively.

⁴³ A.M. McCourt, Evolution, Rationale and the Future of Citizens Information Centres, University of Limerick (2005).

⁴⁴ As established by the National Social Service Board 1984:

<http://www.irishstatutebook.ie/1984/en/act/pub/0002/index.html>

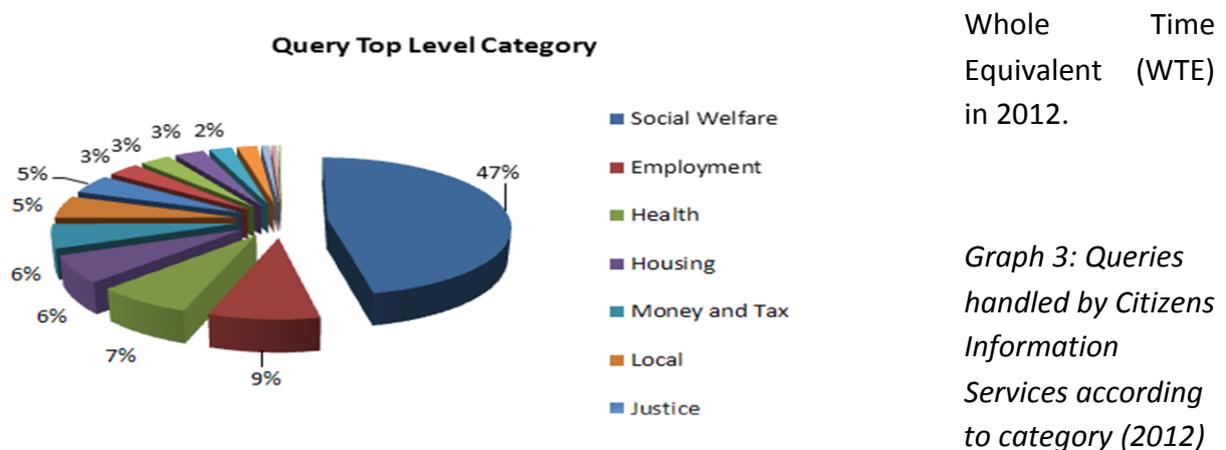
⁴⁵ The Comhairle Act 2000 is accessible here:

<http://www.irishstatutebook.ie/2000/en/act/pub/0001/index.html>

Information, Advice and Advocacy. Finally, in 2007 the Citizens Information Board replaced Comhairle as the statutory body.⁴⁶

2.2.4 A number of policy developments have helped the growth of the CICs network and facilitated their work. The accession of Ireland to the European Economic Community in 1973 encouraged the Irish Government to move forward with new community actions such as the setting up of Community Information Centres.⁴⁷ The Freedom of Information (FOI) Acts 1997 and 2003⁴⁸ impose various duties on public bodies which are subject to it, and give certain rights to individuals to access the records of the public body concerned. Since the primary activity of Citizens Information Services is the provision and dissemination of information about public services, the Freedom of Information Acts apart from facilitating the work of CISs have empowered citizens to access information from government institutions. At the same time, information about the functions, activities and decision-making processes of the Citizens Information Board is available in the manner required by the legislation.⁴⁹

2.2.5 Citizens Information Services provides face-to-face, telephone and email advice from 42 services and 260 locations nationwide. Citizens Information Services employ 269 staff, 1136 volunteers and 210 Scheme Workers, totalling the equivalent of 524.5



2.2.6 In 2012, the services handled 629,168 callers with 997,287 queries. Consistent with recent years almost half (47%) concerned social welfare issues and the number of social welfare related queries continues to far outnumber other queries. The next highest category was employment (9%), followed by housing (6%) and money and tax (6%).⁵⁰

⁴⁶ A.M. McCourt, Evolution, Rationale and the Future of Citizens Information Centres, University of Limerick (2005).

⁴⁷ Ibid.

⁴⁸ Freedom of Information (FOI) Acts are accessible here: <http://foi.gov.ie/legislation>

⁴⁹ Citizens Information Board (2010) *Freedom of Information Act Section 15 and 16 Reference Manual*

⁵⁰ National Summary CIS Activity Report 2012, Citizens Information Board

2.2.7 The response to the majority of advice/assistance queries dealt with by services was to explore the options available to the client in relation to their rights and entitlements (61%). The next highest category of responses by services was to provide assistance in filling out a form (13%), followed by making a phone call to a government department or agency on behalf of the client (10%) and calculating the amount of the caller's benefit entitlement (10%). Callers have required more time to answer queries, and there has been a gradual year-on-year increases in queries that take 10- 20 minutes to deal with and those that take 21-40 minutes to deal with, suggesting increased complexity in the issues presenting to services.

2.2.8 Advocacy continued to develop as a key feature of CIS service provision. The largest number of advocacy interventions (23.5%) was in the area of assistance with an appeal. Services also actively engaged in research and case preparation work on behalf of the client in 18% of cases. Other types of advocacy intervention were negotiations on behalf of the client (16%), intensive self-advocacy support or coaching (10%), and assistance with a formal review or meeting (7%). Most advocacy cases (48%) related to social welfare, followed by employment (27%) and housing (7%). The remaining cases (18% of the total) were spread across a range of subjects (health, consumer matters, money and tax, moving country, justice, education and training). Most clients self-referred to the CIS advocacy service (67%) or were referred by a Citizens Information Centre (18%).

2.2.9 The Citizens Information website was developed and is maintained to provide comprehensive information on public services and on the entitlements of citizens in Ireland. It provides information from various government departments and agencies and presents it in an easy-to-understand way. The site has been specially designed around the needs of users for information about their rights and how to they can obtain civil and social services in Ireland. The website is an Irish eGovernment initiative, and was originally established under the Government's first action plan for the Information Society. 6.6 million users visited the website in 2012.⁵¹

2.2.10 Citizensinformation.ie was named "Most Useful Website in Ireland" at the Realex Irish Web Awards in October 2010 as the website provides comprehensive information on every aspect of living in Ireland clearly, simply and effectively.

2.2.11 In April 2012 the Citizens Information Board won the Ireland eGovernment Mobile Award for developing m.cinfo.ie, a mobile version of the Citizens Information website citizensinformation.ie. The new mobile version of the website facilitates access to an ever increasing number of users.

⁵¹ Further information about the website is accessible here:
http://www.citizensinformation.ie/en/about_citizens_information.html

- 2.2.12 CISs continue to actively engage in joint working initiatives with a range of other service providers targeting the local community. Over 60 different projects were reported on in 2012, such as the Prison In-reach Service, the Cuisse (Cancer Support) Outreach Service and Jobs-club monthly presentations. The majority of these were aimed at reaching the information and advice needs of the local community, with a small number of community initiatives focused on people with disabilities (11.5%), travellers (9.8%) and older people (6.6%).
- 2.2.13 There were 132 community outreach services provided in 2012 in a range of locations including Family Resource Centres (FRCs), Community Development Projects (CDPs) and other community and voluntary groups. Services reported that they provided 745 different occasional outreach services to meet the information needs of the community, Most of the outreach provided was to the general community (34%), followed by people with disabilities (22%) and older people (15%) with the remainder targeting the unemployed, women, migrants and travellers amongst others.
- 2.2.14 The Citizens Information Board is funded by and comes under the remit of the Department of Social & Family Affairs. Each Citizens Information Service receives grants from the CIB, has its own Board of Directors and is a limited company with charitable status. Services receive some support from other government departments, for example through nominal rents from premises owned by the local authority or the Office of Public Works. Many services also use government employment schemes to augment the provision of their services and some services also receive small grants for specific projects from other funders. However the majority of funding comes from the Citizens Information Board.
- 2.2.15 CISs also provided a number of specialist services during 2012 including free legal advice in conjunction with FLAC (as further discussed below), chartered accountants voluntary advice⁵², immigration related services and financial information services.⁵³
- 2.2.16 In addition to Citizens Information Services, there are a number of Information, advice and advocacy organisations that target specific groups. The Money Advice and Budgeting Service (MABS) is a free, confidential, independent and non-judgmental service for people in debt, or in danger of getting into debt in Ireland.⁵⁴ Joint work between MABS and CISs is being developed nationally through the MABS Cross Referrals Project, which promotes consistency in service delivery for clients who present to either a CIS or MABS.

⁵² Further information on CAVA can be found here: <http://www.charteredaccountants.ie/>

⁵³ National Summary CIS Activity Report 2012

⁵⁴ Information on MABS is available on their website: <https://www.mabs.ie>

2.2.17 Threshold, the National Housing Charity, provides advice and advocacy services to tenants and support to people who are risk of homelessness.⁵⁵ INOU, the Irish National Organisation for the Unemployed, seeks to represent the interests and views of all unemployed people and their dependents at a national level.⁵⁶ Treoir is the National Specialist Information Service for unmarried parents and their children.⁵⁷ The Immigrant Council of Ireland advocates for the rights of migrants and their families.⁵⁸ Spunout is a youth-led organisation that offers young people non-judgemental advice in order to assist them in making informed decisions.⁵⁹

2.2.18 Free legal advice is offered at 60 Citizens Information Centres through FLAC, the Free Legal Advice Centres.⁶⁰ With an overarching aim of promoting access to justice, FLAC organises its work into providing basic legal information and advice, conducting legal research and analysis in core areas, and advocating for legal reforms.

2.2.19 According to an external evaluation of the organisation's work in 2012: "There is good evidence that FLAC is making a difference in increasing access to justice across its core areas of law in a very challenging operating environment. During 2012 it made a significant contribution to the public, policy and political debate in its core areas of law and in particular in the area of consumer credit and debt. It has contributed to legislative and administrative changes which will provide or have the potential to provide greater access to justice, rights and entitlements for disadvantaged people."⁶¹

2.2.20 FLAC has consistently campaigned for debt law reform for over a decade. Therefore, personal debt and supports for insolvent households continued to form a large part of FLAC's policy and campaign work in 2012.⁶²

2.2.21 FLAC also lobbied the government to establish a civil legal aid scheme. After achieving that aim,⁶³ it continues to advocate for the establishment a comprehensive scheme by the government. Over the years, FLAC has produced reports which highlight the right to civil legal aid and the inadequacies in the current system. Since 2005, when FLAC published its report "Access to Justice – Right or Privilege?" there has been an increased emphasis on alternative dispute resolution in family law

⁵⁵ <http://www.threshold.ie>

⁵⁶ <http://www.inou.ie>

⁵⁷ <http://www.treoir.ie>

⁵⁸ <http://www.immigrantcouncil.ie>

⁵⁹ <http://spunout.ie>

⁶⁰ Further information on FLAC can be found here: <http://www.flac.ie/>

⁶¹ FLAC Annual Report 2012.

⁶² Ibid.

⁶³ See the Civil Legal Aid Act, 1995: <http://www.irishstatutebook.ie/1995/en/act/pub/0032/print.html>

matters, an updated website, a lowering of the means test threshold for qualification for legal aid and a wider range of information leaflets.⁶⁴

2.2.22 The countrywide network of FLAC centres are run in conjunction with Citizens Information Centres all over Ireland. FLAC volunteer lawyers provide information and advice at these clinics but do not represent clients. Almost 13,000 people had access to free legal advice in 2012 in FLAC centres. Most of the queries were related to family (34.4%), employment law (15.3%), and credit and debt law queries (9.7%).⁶⁵

2.2.23 The FLAC national telephone information and referral line provides basic legal information for free and in confidence from a low cost number. The telephone line took 12,459 calls in 2012. The website also had 65,980 unique visitors over the course of the year.

2.2.24 As an independent law centre FLAC also takes on a small number of cases each year and engages in strategic litigation.

2.2.25 The Public Interest Law Alliance (PILA),⁶⁶ a project of FLAC was established in 2009 to promote the use of law in the public interest for the benefit of marginalised and disadvantaged people. PILA's pro bono referral scheme matches the legal needs of NGOs and law centres with law firms, barristers and solicitors who have signed up to PILA's pro bono register.

2.2.26 Key statistics for 2012 from FLAC's basic legal information and advice services show continuing and emerging trends in public legal need; they also show that a more comprehensive and widely available system of legal help is required.⁶⁷

2.2.27 The Legal Aid Board provides legal advice and legal aid in relation to civil law matters to those who satisfy the Board's financial eligibility requirements and merit's test. It does not provide legal aid in criminal matters. The Legal Aid Board was founded in 1979 and was put on a statutory footing in 1995. The legislation relating to legal aid in Ireland includes the Civil Legal Aid Act 1995⁶⁸ and the various regulations made under the Act. The main Regulations are the Civil Legal Aid Regulations 1996,⁶⁹ which were

⁶⁴ FLAC (2009) Civil Legal Aid in Ireland, 40 years on (p.1)

http://www.flac.ie/download/pdf/cla_in_ireland_40_years_on_final.pdf

⁶⁵ FLAC annual report 2012 (<http://www.flac.ie/publications/flac-annual-report-2012/>)

⁶⁶ <http://www.pila.ie/>

⁶⁷ FLAC Annual Report 2012, (<http://www.flac.ie/publications/flac-annual-report-2012/>)

⁶⁸ <http://www.irishstatutebook.ie/1995/en/act/pub/0032/index.html>

⁶⁹ <http://www.irishstatutebook.ie/1996/en/si/0273.html>

amended by the Civil Legal Aid Regulations 2002⁷⁰ and by the Civil Legal Aid Regulations 2006.⁷¹

2.2.28 Legal advice is given by solicitors or barristers and can include writing letters on the client's behalf or acting for the client in negotiation with other persons. Clients can also access legal aid. A solicitor or a barrister will represent the client in the District, Circuit, High or Supreme Courts, or also before the Refugee Appeals Tribunal.⁷² The Board's services are provided by a variety of means including a network of thirty three full time law centres located throughout the country and a number of other part time law centres.

2.2.29 At the end of 2012 there were 5,068 people waiting for a first appointment with a solicitor, with average waiting times varying hugely across the country from just one month in Monaghan to 15 months in Clondalkin and Wicklow.⁷³ The Legal Aid scheme does not cover administrative Tribunals such as the Employment Appeals Tribunal, the Social Welfare Appeals Tribunal or the Equality Tribunal.

2.2.30 In Ireland there are also a small number of Community Law Centres and Specialist Law Centres. They are independent, non-profit organisations. The Northside Community Law & Mediation Centre (NCLMC) provides information, advice and representation in Dublin North-East and Dublin North-Central. 3,182 people without access to legal services because of social or financial disadvantages benefitted from the services of this Community Law Centre in 2012. Family and debt constituted the most common issues dealt with.⁷⁴

2.2.31 The Mercy Law Resource Centre, an independent law centre, which the Sisters of Mercy set up in 2009 in Dublin, provides legal services to the homeless or those at risk of becoming homeless.⁷⁵ Trade Unions also offer free legal services to their members.

2.2.32 The Bar Council of Ireland established the Voluntary Assistance Scheme in 2004. The scheme provides advice and assistance in areas not covered by civil legal aid to those who cannot afford legal advice or representation. It works through non-government organisations and charities. Personal debts, mortgage related debt and debt arising from failed businesses constituted the largest issues in cases referred to the scheme in 2011.⁷⁶

⁷⁰ <http://www.irishstatutebook.ie/2002/en/si/0008.html>

⁷¹ <http://www.irishstatutebook.ie/2006/en/si/0460.html>

⁷² <http://www.legalaidboard.ie/LAB/Publishing.nsf/Content/Home>

⁷³ FLAC Annual Report 2012, p. 15 (<http://www.flac.ie/publications/flac-annual-report-2012/>)

⁷⁴ Annual Report 2012, Northside Community Law & Medication Centre

⁷⁵ <http://www.mercylaw.ie/>

⁷⁶ Annual Report 2011, Voluntary Assistance Scheme of The Bar Council of Ireland

2.2.33 Since 2008 Citizens Information Services have seen an increase in demand for services with the onset of the recession. The Irish economy experienced a period of unprecedented growth from 1994 to mid-2007 as there was a huge increase in property development and bank lending during this time. The collapse of the property market in 2008 resulted in increasing unemployment and huge personal debts. The Irish government's decision to provide an unlimited guarantee to bail out Irish banks in 2008 led to enormous national debt and has resulted in cuts to public services. The subsequent rescue package by the EU/ECB/IMF troika in 2010 led to further austerity measures. National debt soared from 20% of GDP in 2007 to 84% in 2012.

2.2.34 Increasingly CISs report that their clients are going through difficult times, negotiating the rising costs of living, annual changes to the social welfare system and increasing unemployment. Services, as a result are dealing with more difficult queries, in an information environment which is rapidly changing with many clients experiencing financial and family related problems due to the economic downturn. Some public spending cuts announced in Budget 2012 took immediate effect; others have taken longer to implement and present longer term uncertainty for CIS clients, many of whom are social welfare dependent. The complexity of client queries arising from job loss, mortgage issues, and debt and relationship breakdown has increased the intensity of the workload of services. Services are attempting to deal with more clients with fewer resources.⁷⁷

2.2.35 The CIS Activity Reports 2012 reveals a commonality in the issues faced by CISs of all sizes and geographical locations: queries are increasing in their complexity and most services are required to provide a deeper level of engagement with their clients. Queries in relation to indebtedness, loss of employment, difficult personal and economic circumstances are all reported on by services. Many services express concern about delivering a quality advocacy service while providing increasingly complex information and advice.

2.2.36 Currently the greatest challenge faced by the network is that services are struggling to meet the demands for information, advice and advocacy and are attempting to deal with more clients with fewer resources.

⁷⁷ National Summary CIS Activity Report 2012

2.3 The Romanian experience

2.3.1 The National Association of Citizens Advice Bureaux (NACAB) was founded to support and direct the activities of the Citizens Advice Bureaux (CABs) in Romania. NACAB is made up of 37 NGOs and CAB branches in over 60 localities throughout Romania, both in urban and rural environments. NACAB coordinates the activities of the CABs, promotes the network of the CABs at the national level, and represents the network of the CABs in relation with public authorities and aims at elaborating documents with potential of impact in what concerns public policy making and social services sector, based on information furnished by the CABs.

2.3.2 Much progress has been achieved in Romania in the field of citizen participation in decision-making and citizens' access to public information. NACAB was created to assist citizens in navigating through the web of legislation relating to their rights and responsibilities. In this respect, Romania adopted the Freedom of Information Act in 2001⁷⁸ followed by the Sunshine Law⁷⁹ in 2003 to ensure better access to information for Romanian citizens and laying the groundwork for citizen participation in the public decision-making process.

2.3.3 Nonetheless, while these legislative developments are to be welcomed, it is apparent that access to information and citizens' participation remains marked by shortcomings in the performances of the public institutions. It has previously been noted⁸⁰ that there remains a need for public institutions to move beyond mere compliance with the literal provisions of the transparency laws to a situation where citizens are more significantly involved in decision-making. Consultation of citizens by the public institutions – which is still in its infancy in Romania – needs to be improved to ensure citizens are properly consulted and their opinions fully taken into consideration. Thus, there remains a salient need for public institutions to make more extensive use of the provisions of the transparency laws in their consultation process so that a viable link between citizens and the public institutions can be created.

2.3.4 A joint NACAB/CeRe study also found that the local authorities in rural areas barely provide citizens with information concerning the decision-making process at local level⁸¹. This study revealed the existence of geographical discrepancies between urban

⁷⁸ Law 544/2001 on free access to information of public interest. An English version of the law is available here: <http://www.dci.ro/En/Legi/544.pdf>

⁷⁹ Law 52/2003 on transparency for public administration in decision-making process. The law is available in English here: <http://www.mdrt.ro/en/transparenta/prezentare-generalala/-9092>

⁸⁰ CeRe, *Public Participation in Romania – Reality or Fairy Tale?* (2007) accessible here: <http://www.ce-re.ro/ENG/documente&c=5>

⁸¹ NACAB and CeRe, *In Quest of Democracy – Practices of Transparency in Rural Milieus* (2007), only available in Romanian: <http://www.robcc.ro/media/diverse/In%20cautarea%20democratiei%20rurale.pdf>

centres and rural communities, with citizens in rural areas experiencing significant constraints in accessing relevant information.

2.3.5 However, from the perspective of an organization active in the field of citizen information and participation since 2002, it can be observed that there is still a lot to be done in this area. Citizens need to be provided with free access to complete and intelligible information as a pre-condition for their involvement in the public decision-making process. The key to having a functional system of citizen involvement in Romania thus revolves around the concept of complete information: citizens need to be able to access information in order for them to take the most appropriate decisions. By the same token, public institutions must enable the public to access information in order to engage citizens in the consultation process and thereby enhance the relevancy of the results of public consultations. Without access to complete information, citizens cannot actively engage in the decision-making process and, in consequence, they cannot make their voice heard.

2.3.6 In addition, citizens in Romania need constant assistance in resolving the problems they may be faced with. Such assistance does not merely involve providing citizens with access to information, it extends to offering advice and guidance to enable citizens to find the best possible option for resolving their problem. This ensures that the citizen awareness-raising process can fulfil its goals. Citizens should be provided with more than simply information, they should also be made aware of the consequences of following a particular course of action, so they can take informed decisions in full knowledge of how these may affect them in the future.

2.3.7 The concept of complete information also dictates that citizens of Romania should be able to have recourse to an integrated information and advice service. In this context, integration means that citizens should be able to access a service, rather than simply making the sheer bulk of public information available to them. As a result, it is of utmost importance in this connection that CABs are able to provide information and advice in such cases. At CABs, every citizen firstly passes through a process to diagnose their problem before being provided with the information that is necessary for them to know prior to making a decision. Citizens are actively assisted by at CABs in solving their problems – not only are they receiving information, they are also presented with a selection of options that they can choose from and they are informed of the consequences of those options. This ensures that citizens are able to make an informed decision.

2.3.8 For over 10 years, NACAB has administered a network of CABs that offer standardised, high-quality information and advice to citizens. Over 180.000 citizens have benefited from the direct services of the CABs since their founding, enabling them to benefit

from information and advice to resolve their problem. At the CABs, all citizens are treated equally, they receive all the information and assistance they need, and their experiences feeds into a larger process that is designed to advocate for changing law and policy affecting societal misfortunes.

2.3.9 NACAB now has 37 member organizations spread throughout Romania. Most members offer their services to citizens in general, with a focus on vulnerable groups such as the unemployed and people on low incomes. However, some of the CABs have also developed specific expertise. For example, the CAB in Timisoara is linked with The Federation of Tenants' Association Timisoara. They provide information and advice regarding housing and property and tenants' rights and have built partnerships with tenants' associations at local level to improve living conditions and reform the rules and regulations applying to people living in blocks of flats. The CAB in Oradea, Bihor County, works with Roma communities in particular, while the CAB in Campia Turzii deals with consumers' rights. While all CABs can provide information in all policy areas, CAB counsellors are able to draw on the specialised knowledge of their colleagues when more detailed advice is needed and CAB councillors are encouraged to help each other in resolving cases.

2.3.10 CABs provide independent information and advice services to citizens free of charge and assist them in resolving their problems and in exercising their rights and complying with their responsibilities. CABs in Romania offer information and advice in 12 policy areas, namely healthcare, social assistance, social insurance, labour relations, consumer protection, civil rights and obligations, property, taxation, education, notarial procedures, child protection and other public services. In 2011, CABs in Romania delivered information and advice to more than 20,000 people all over Romania, with 15,000 cases registered. The data gathered in August 2012 shows that by July 2012 the CABs had already addressed more than 8,000 cases. Over 50% of cases concern labour and work relations, unemployment, benefits and social assistance.

2.3.11 Moreover, NACAB's jobs campaign program delivered basic training to over 900 people in rural areas, targeting vulnerable groups (unemployed, people working in subsistence agriculture, domestic workers, etc.). NACAB offered five types of basic training on basic computer skills, how to find job and how to start a small business.

2.3.12 NACAB helps to coordinate the CABs' activities and runs training courses for CAB staff offering extensive training programs to over 200 counsellors to assist and guide citizens. NACAB also represents its members in its relations with public authorities and helps to promote their activities. NACAB is an important factor of change as far as

citizens participation and access to information in Romania is concerned, focusing on institutional development and the performance of public institutions.

2.3.13 NACAB was originally founded in 2002, under the EU's PHARE Programme to strengthen civil society. NACAB also benefited from the support of the Romanian Government (the Department of Liaison with the Political and NGO Environment) and of the British Government (the Department of International Development). In 2011, 83% of its funding came from European Union programmes and the remainder from other sources including membership fees and private donors.⁸²

2.3.14 In its twelve years of existence, NACAB has evolved in terms of organizational development and is on its way to achieving a mature more stable organisational structure. Its services for citizens are quite established in the communities in which CABs function, but, in order to achieve its mission, NACAB needs to further strengthen its organizational capabilities in order to become a stable landmark in mitigating the relationship between citizens (and their consequent problems and needs) and public institutions (and their responsibility to involve citizens in the decision making process).

2.3.15 The current challenges facing information and advice services in Romania are mainly financial in nature. While such services remain needed, especially in rural and small urban areas where internet services are not yet accessible to all citizens, the current funding available for CSOs tends to be focused on innovative approaches and more proactive services. While delivering information and advice services remains the core business of CABs, project-specific funding means that CABs have had to develop other types of initiatives such as launching advocacy campaigns at the local level, creating citizens groups to work on local policies, and jobs campaigns.

2.3.16 The last years have seen NACAB encourage the CABs to embrace new initiatives such as by developing knowledge on community development and community work, organising debates on specific issues or outside CABs' constituencies, campaigning for citizens' interests, and establishing online counselling. All these initiatives constitute pre-requisites for enhancing the visibility of CABs, expanding services delivery, developing organisational capacity, and generating new project ideas for the organisation in the future and therefore broaden fundraising efforts.

2.3.17 One of the main changes foreseen related to service delivery by CABs. Given that the delivery of information and advice is a dynamic process and not a static action, it is of great importance to adapt service delivery constantly to cater for external factors, and to improve the IT infrastructure which is used to collect data on citizens' information

⁸² NACAB, Annual Report 2011 accessible here:

<http://www.robcc.ro/media/diverse/Annual%20report%202011engleza.pdf>

and advice needs currently contained on InfoBCC, NACAB's informational system. The changes we envisage in the future will focus on further professionalising the services which CABs already deliver, by increasing the capacity of CABs to deliver information and advice of a high standard, with a continuous emphasis on adapting to local needs. The aim is to enable CAB coordinators and staff to become better informed of citizens' needs at local and community levels and to ensure that CAB's core services can empower citizens groups to initiate change in their communities. NACAB's organisational development approach is currently based on the core service of information and advice and NACAB has now started to include community development and community organisation as part advocacy initiatives targeting the local level.

3 Towards a Common Concept of Citizens Assistance Services

- 3.1 The Triple A project aims to encourage non-governmental organisations to provide information and advice to citizens on their rights in the Balkans and Western Turkey. The activities encompassed by the collective term “information, advice and active help services”⁸³ span a multitude of assistance provided to citizens⁸⁴.
- 3.2 The partners therefore agreed to a common understanding of what amounts to citizens’ assistance services, the principles on which it rests, its objectives, methods of delivery and role in society and governance.

General principles

- 3.3 Citizens’ assistance services are provided in response to peoples’ needs to find information concerning their rights as citizens and to empower citizens in exercising those rights. These encompasses a multitude of services provided to citizens to enable them to access information on their rights as well as obtain advice and active help in exercising them.
- 3.4 They find their base in the more general principle of the rule of law. Their objective can be said to enhance access to justice, which the UN Development Programme has defined as the ability of people who suffer a grievance to seek and obtain redress through formal or informal institutions of justice⁸⁵.
- 3.5 All the European states, which have acceded to the European Convention on Human Rights and similar United Nations’ declarations, have accepted the principle of equality before the law and access to legal aid. The EU Charter of Fundamental Rights recognises that access to justice must be effective⁸⁶ and recognises the right to good

⁸³ In the remainder of these guidelines the term *Triple A* or *services* will be used to refer information, advice and active help services.

⁸⁴ In these guidelines, the word 'citizen' as used in these guidelines is used in the broader sense of an inhabitant or resident of a particular country.

⁸⁵ UNDP, “Access to Justice Practice Note” (2004) available here:

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf

⁸⁶ Article 47 on the right to an effective remedy and a fair trial states:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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.

administration⁸⁷. The Charter therefore provides a good foundation upon which the principles, rights and values on which citizens' assistance services should be based.

- 3.6 The project foresees the services as encompassing three broad categories: (1) facilitating access to information to promote awareness of rights and both formal and informal means of redress among citizens; (2) providing advice to citizens to make the law comprehensible to them thereby addressing informational barriers to justice; and (3) active help that offers free or low-cost personalised assistance and, if need be, tailored legal advice or representation before the courts.
- 3.7 Citizens' assistance services are based on the principle that everyone has the right to be informed of their rights. In line with international and European human rights standards, the services provided should be accessible to all regardless of social, political, ethnic, confessional, linguistic or similar distinctions. It is particularly important that the service should be accessible to those most in need as a result of having a modest income or being in vulnerable situations because of a disability, social exclusion, or other reason. The services should be provided free of charge to those in need. Citizens' assistance services should be confidential, independent and impartial. All citizens should receive the same level of service and assistance. This is exemplified by what Citizens' Advice (UK) describes as its FAIR strategy (fair, accessible, inclusive, relevant)⁸⁸.

The idea of the one-stop shop

- 3.8 In some cases, assistance provided to citizens may be targeted towards particular groups in society: women, elderly people, children, patients, disabled people, refugees or migrants, or other vulnerable groups. Assistance that targets specific groups may cover all the needs of that particular group in the population. For example, assistance may focus on protecting against violence or human trafficking. It may also be highly targeted towards the users of a particular utility (for example gas consumers) or take

⁸⁷ Article 41 on the right to good administration declares:

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. *This right includes:*

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions. ...

⁸⁸ Citizens' Advice (UK) service-wide equality and diversity policy (2004) is available here:

http://www.citizensadvice.org.uk/citizens_advice_service_equality_and_diversity_strategy.pdf

the form of consumer advice in general. Indeed there are close links between the consumer rights movement and citizens' assistance services. While these reflect the many different forms which such assistance may take, they target specific beneficiaries.

- 3.9 Services foreseen by this project are different from approaches which target specific groups or particular issues. They may work alongside or in partnership with the more specialised organisations which deliver services to specific target groups or on specific issues. Citizens' assistance services on the other hand have the objective of equipping everyone with better knowledge of their rights and the ways of enforcing them.
- 3.10 The holistic approach represented by citizens' assistance services is based on the awareness that people, in a complex modern society, are often frustrated by not knowing where to turn to for assistance, or are sent from one service to the next. Moreover the questions they have about tax, social benefits or housing are often linked to each other. They therefore expect to find in one place – a one-stop shop – at least a first answer to all their questions. In order to help those most in need, such a multidisciplinary approach is required since social exclusion can have many causes. For these services to command public trust they must be close at hand, locally based, and supported by the community. In order to make the principle of equality before the law – which provides a basis for citizens' assistance services – a reality, it is evident that they should extend to all parts of the country. A start has to be made in specific localities but the long-term aim should be a network of one-stop shops providing national coverage.

Access to information, advice and active help in practice

- 3.11 Citizens' assistance services and the one-stop shop are ways of responding to the legal needs of citizens, but their organisation in practice presents a number of challenges:
- The need to find at least a first answer to one's questions in one place can lead to the supply of a generalist but superficial service.
 - The one-stop shop can discourage specialisation because no single adviser can necessarily cover all aspects of citizens' rights in depth.
 - The service is free and therefore relies on support from the tax payer and/or private donations. The problem here is that fundraising for specialised services on targeted issues may be relatively easier than more general services.
- 3.12 To maximise the advantages of the one-stop shop and minimise the impact of these challenges, it should help to make a clear distinction among the different stages in what should be regarded as a "cascade system" rather than a single service. Citizens'

assistance services should be understood as providing citizens with access to information, advice and active help along the following lines:

- Access to information. The public expects to find a service open at convenient times and accessible. People will want to get help in the way they choose: by phone, face-to-face or at a distance through self-help materials (paper guides or electronic sources). The answer may be simply to provide the right address and contact details. Face-to-face services are most important for vulnerable groups and those who suffer the more important grievances. This first stage should however essentially be one of diagnosis and rapid response. Either there is a quick answer or the citizen is directed towards a self-help solution. (This could represent as much as half the inquiries). Or if the problem is more difficult, either the citizen is referred to another service or an appointment is made with an advisor who can provide advice and/or active help.
- Advice. The extent to which it is necessary to ask the citizen to move on to the next stage of advice and arrange an appointment with an advisor depends on the nature of the problem. More specialised personnel such as lawyers or trained volunteers will not necessarily be present at all times, but may come in at fixed times arranged in advance, thereby allowing advice sessions to be grouped over a day or more. It should also be noted that the general provision of advice on citizens' rights does not necessarily require that advice by a lawyer at all times. As a result, it should also be possible to train advisors who do not have a legal education background to a level where they can answer more mundane queries and refer problematic cases to more experienced staff or lawyers as the problem may require. In terms of the principles of citizens' advice and access to legal aid, the service should focus on those most in need⁸⁹.
- Active help. This next stage may involve more active assistance such as writing a letter on the citizen's behalf to the administration, a supplier of another service, or possibly even advising the citizen about how to make an appeal or represent themselves in court. Sometimes this process can be difficult, as with those who have complex or multiple needs. In the current economic crisis, financial advice and helping people with serious debt problems is an expanding area. Assistance may extend to putting a file together for the lawyer taking the case. In some instances the only way forward will be to take the case to a specialised tribunal or general court.

⁸⁹ Citizens' Advice in its service strategy 2010-2014 has adopted the criteria that can assist in determining who is in greatest need (page 9), which is available here:
http://www.citizensadvice.org.uk/pdf/citizens_advice_service_strategy_2010-2014.pdf

Legal representation would, depending on the country, be provided by lawyers working for state-run or independent legal aid organisations, those offering pro bono services, or alternatively pro se projects that train people to represent themselves or even paralegal-based organisations that train and employ people to serve as interlocutors with officials of the justice sector.

Record-keeping: traceability and outcomes

- 3.13 In the cascade system, the response to demand may be organised in different ways with increasing degrees of specialisation, going from the general to the particular needs of the individual. It is important however that accurate records are kept so that the process is traceable and continuous through all stages of the cascade system, so that the citizen does not have at each stage to start from scratch and explain the problem all over again. It is also important for the accountability of the services towards the public and funders. Records are essential to show qualitatively and quantitatively what the service has achieved. The annual report of a citizens' advice service would normally include the numbers of inquiries, their breakdown according to categories of the population and main areas of concern. The reports would also contain examples of particularly striking cases and follow up, advocacy or litigation.
- 3.14 In this process, there are a number of probably feasible outcomes for citizens. The process of accessing first level information and advice about one's rights is often preventative: the result is to access entitlements or avoid additional expense which is not necessary. Sometimes citizens use advice services too late, after the problems have occurred. They may be able to assist in claiming compensation for lost benefits, negotiating manageable terms for repaying debts or avoiding threats of homelessness and loss of employment.
- 3.15 There are also advantages for the administration in that better-informed and advised claimants can take a burden off their shoulders. It should be stressed however that a well-functioning system of citizens' advice should not become a pretext for reducing the responsibilities and accountability of the public administration. To solve everyday citizens' problems reliable services and a reasonably well-functioning administration are both necessary.

Campaigning and advocacy

- 3.16 Providing assistance to citizens is an important service in its own right, but it should not be seen as an end in itself. Preventative or problem-solving action can help solve individual problems, but there is a general interest in using this experience to seek solutions for those who do not approach the service. The experience of citizens'

assistance services can be analysed and turned into evidence that can serve as the basis for advocating for changes in law and policy. As Citizens' Advice (UK) put it in their strategy for 2010-2014 "We will use the experiences clients share with us anonymously, to campaign for improvements in the policies and practices that affect peoples' lives." As mentioned in the project proposal, advice services carry strong credibility with politicians and policy-makers because of their link to the citizens and their evidence through real life stories of what is working or not. The decision-makers receive input from interest groups arguing a particular viewpoint on proposed legislation or policy. The advantage of Citizens' assistance services is that they bring to the advocacy process the experience and stories of ordinary people. They make a link between public policy and its impact on everyday life. This approach is also appealing to the media, which in turn gives the services more credibility with the decision-makers.

3.17 Bringing together and aggregating the evidence from citizens' assistance services can serve different purposes that show:

- How an existing law is working and whether national or local authorities are meeting their obligations towards citizens;
- What can be learned from citizens for the purposes of new legislation, changes to existing legislation, or better enforcement;
- In other cases, by bringing together evidence from citizens, the service providers can campaign against corruption and maladministration;
- The evidence collated can also form the basis for preparing test cases in court or intervening in on-going court proceedings.

3.18 The extent to which services can be followed up effectively by campaigning and advocacy depends on the traceability of records from the start of the process and a well-functioning system of selection of significant cases and reporting.

Working in partnership

3.19 The European Union - in particular the European Commission - has a track record of supporting citizens' assistance services for the contribution they can make towards the process of reform. Citizens who are more aware of their rights can encourage better administrative practices and become watchdogs for the process of reform and the application of new laws.

3.20 There is however a limit to the amount of support which can be expected from the European Union or other international donors. These services are shaped by peoples' demands which relate to the impact of domestic legislation in areas such as welfare benefits, taxation, housing, health or education. The volume of questions and

complaints which relate to EU laws or have an international dimension because of migration is likely to be in the order of 10%, or too low as a viable basis on which to build a rights advice movement. Creating local and national partnerships is therefore a condition for success.

3.21 Complementary partnerships should be established:

- At the local level, the ideal form of partnership is where civil society organisations targeting specific issues or sections of the population come together to create a general citizens' assistance services network;
- In turn this requires partnership with the local or city authorities. This can mean that local politicians should be involved in the process to convince them of the benefits of citizens' assistance services to the functioning of the local economy and society;
- At national level, a key issue is to identify which government agencies should be the interlocutor for the citizens' assistance service providers since ministries of justice, social affairs, and other line ministries are all concerned to a certain extent. Also concerned are cross-cutting services providing information to the public, or working on the modernisation of the administration;
- A number of national organisations and professional bodies are natural partners for citizens' assistance services: the ombudsman, legal aid bodies, bar association, faculties of law, consumer and specific law reform advocacy groups, trade unions.

Factors Affecting Sustainability

3.22 Having reviewed the current practices and the past experiences of citizens' assistance services in Europe, it is possible to identify some of the factors which tend to promote sustainability of such services.

3.23 In particular the following factors are likely to ensure the long-term continuation of citizens' assistance services:

- persuading central and local government to provide funding to NGOs providing rights advice;
- ensuring that a high quality of services is achieved also helps to publicise the existence of the service and encourage its recognition by the public;

- recognising that citizens' assistance services are time-consuming and developing adequate case management systems to monitor and evaluate the services;
- ensuring that work force includes both volunteers and "pro bono" workers and establish partnerships with bar associations, universities and law firms that can offer pro bono work;
- utilising government-supported employment schemes, to get graduates interested in working and accumulating experience;
- finding suitable premises to promote visibility of the service;
- exploring the availability of low rent arrangement with local municipalities;
- making full use of information technology in delivering services;
- establishing partnerships with government, although this can prove difficult to maintain it in the long run because retaining independence is vital;
- providing a service that helps citizen help themselves, rather than being mere passive recipients of rights advice.

4 Historical Antecedents in the Former Yugoslavia

- 4.1 The pre-conflict landscape in the Western Balkans greatly determined the framework for the provision of information, assistance and advice services to citizens across the region. The need to provide citizens with access to information on their rights had been a concern since the time of the Socialist Federal Republic of Yugoslavia.
- 4.2 The creation of information services for citizens of the former Yugoslavia dates back to the 1950's, when self-government was institutionalised as a form of decentralised governance by citizens. During this period the so-called "self-governing communities of interest" - known by the acronym as BVI – were established to provide a forum to discuss the quality and improvement of all public services, local government and society in general.
- 4.3 This system underwent changes with the Constitution of 1963 which provided that municipalities were to be given the main role in the organisation of citizens' affairs. During this period direct ways of participation through the mechanisms of referendum and civic gatherings were strongly affirmed. With these changes, self-governance was further expanded to cover labour organisations and other forms of political organisations.
- 4.4 With the amendment of the Constitution in 1974, decentralisation was further strengthened. In municipalities - the basis of the decentralised system - four categories of local self-government units were established, namely labour organisations, municipalities, social and political organisations (principle of political organisation) and self-governing communities of interest representing specific groups.
- 4.5 The 1974 Yugoslav constitution represented a first attempt to institute a social system of information (Article 75⁹⁰) and legal aid was seen as a social service (Article 180⁹¹). However, the possibility of assessing the implementation of this constitutional provision and the practical functioning of the service remains difficult due to the general unavailability of public data in this regard.
- 4.6 The Law on the Provision of Legal Aid of 1977⁹² broadly defined the providers of legal aid, but emphasised the role of municipalities and local workers' collectives as the main institutions for provision of free assistance.

⁹⁰ Article 75 provided that: "The social information system provides a coordinated record collection, processing and presentation of data and facts relevant to the monitoring, planning and directing of social development and the availability of information about these data and facts. Activities in the field of social information systems are of particular public interest."

⁹¹ Article 180 recognised that "Legal assistance is guaranteed by the legal profession, the latter considered as a social service, either independently or through other forms of legal assistance".

⁹² Zakon o pružanju pravne pomoći SR BiH. Službeni list SR BiH 11/77.

- 4.7 Following the breakup of Yugoslavia, legal aid services shifted away from the system developed in the former republic that is described by some stakeholders today as having been relatively efficient.⁹³
- 4.8 However, as will be seen in the following chapters, public institutions have been relatively less active in organising free legal assistance in a systematic manner following the end of conflict.

⁹³ Conference Report, “Local Governance in Service of Citizens: Strengthening Social Accountability in Sarajevo”, Institute for International Urban Development (I2UD) and others, December 2012.

5 Citizens Assistance Services in Bosnia and Herzegovina

Introduction

- 5.1 Although Bosnia and Herzegovina (BiH) has made significant progress since the conflict in the mid-1990s, it still faces significant development challenges, such as high unemployment, underdeveloped rural areas, and an under-resourced and inefficient social welfare system. The economy is at 70% of its pre-war level of development, and 20% of the population lives below the poverty line, which is very high, given that an additional 30% of the population lives slightly above the poverty line. Taking these facts into account, the establishment of an efficient free legal aid system is all the more important given the social status of BiH citizens and poverty rates in the country. In addition, many citizens remain uninformed about their rights and a large number of unresolved legal disputes instigated by citizens is hindering the efficient functioning of the courts in BiH.⁹⁴ Finally, the large majority of citizens of BiH throughout find that the country should have an equally guaranteed right to the minimum free legal aid (90%).⁹⁵
- 5.2 Despite these conditions, the current free legal aid system in BiH is unable to provide minimum legal assistance services to all citizens in BiH on an equal basis. As such, it does not fulfill the international and European standards in this regard. The NGO *Vasa prava*, the largest free legal aid provider in the country, states that the current free legal aid framework “is characterized by the absence of policy planning, many deviations from the Justice Sector Reform Strategy in BiH, as well as fragmentation and different approach[es] in dealing with issues of legal aid. Also, the role of NGOs in the system of free legal aid has been continually minimized, which led to the absolute exclusion of NGOs from the public consultation process.”⁹⁶ Public institutions have not been proactive in organising the provision of free legal aid in a systematic matter. Several legal aid services have recently been established in Republika Srpska, Brcko

⁹⁴ Research Center of the Parliamentary Assembly of Bosnia and Herzegovina, “Recommendations for modification and promotion of the proposed draft law on free legal aid” No. 03/10-50-3-96-9/10, Parliamentary Assembly of Bosnia and Herzegovina, Sarajevo, 25.10.2010, accessible online: <https://www.parlament.ba/sadrzaj/about/istrazivanja/default.aspx?id=20310&langTag=en-US&pril=b>. See also US State Department US Department of State, “2012 Human Rights Reports: Bosnia and Herzegovina” April 2013, which reports that “There was a backlog of an estimated two million unresolved civil cases, more than one-half involving unpaid utility bills.”, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204268.htm>.

⁹⁵ Pajić, Zoran and Popović, Dragan, “Facing the Past and Access to Justice from a Public Perspective” UNDP in BiH, 2012, accessible online: <http://www.undp.ba/upload/News/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf>

⁹⁶ NGO *Vasa prava*, “Lack of harmonization and inefficiency of the free legal aid system and the need to adopt the law on free legal aid on the level of BiH.” Draft. Accessed online: <http://www.vasaprava.org/wp-content/uploads/downloads/2012/04/MAGAZIN-29-2012-final-R.pdf>

District and several other cantons, but these remain unavailable in many other cantons and in most rural areas.

- 5.3 These and other similar issues have been identified as reasons for the adoption of a national legislative framework which would provide basic free legal aid and legal mechanisms for the reform of existing laws that may be a source of discrimination against citizens on the basis of the place where they may live. This research intends to add to the on-going policy debate by providing an analysis of the legal framework and current practice relating to the provision of information and assistance services to citizens and aims to identify several viable policy recommendations.

Legal framework

- 5.4 Bosnia and Herzegovina has not enacted any comprehensive legislation that specifically regulates the provision of information and assistance to citizens. However, there are a number of constitutional provisions and legislative enactments which govern or impact the provision of information and assistance services to citizens.
- 5.5 The Constitution of Bosnia and Herzegovina⁹⁷ (Article II) provides that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols are to apply directly in Bosnia and Herzegovina and are to have priority over all other laws. Over time, the case law of the European Court for Human Rights on Article 6 of the ECHR has also recognised the right to legal aid in civil cases⁹⁸. As a consequence, Bosnia and Herzegovina is under an obligation to provide free legal aid to its citizens in criminal, civil and other disputes involving “the determination of his civil rights and obligations”.
- 5.6 Regrettably, a national framework law on free legal aid has so far not been adopted. The Ministry of Justice has on several occasions sent a draft law on free legal aid to the Parliamentary Assembly of BiH for consideration, but the draft law has been repeatedly rejected by parliamentarians. Some commentators suggest that the reticence to adopt the law may be due to a perception held by some lawyers and bar associations that adoption of the aforementioned law would not be beneficial for them and they have accordingly lobbied for its dismissal⁹⁹. Furthermore, members of

⁹⁷ An official English translation of the Constitution of Bosnia and Herzegovina is available on the website of the Constitutional Court of Bosnia and Herzegovina:
http://www.ccbh.ba/eng/p_stream.php?kat=518

⁹⁸ The right to legal aid in civil cases has been the subject of judgments by the European Court of Human Rights in several cases including *Airey v. Ireland*, 9 October 1979, *Aerts v. Belgium*, 30 July 1998, *P., C. and S. v. the United Kingdom*, 16 July 2002, and *Steel and Morris v. the United Kingdom*, 15 February 2005.

⁹⁹ See for example, the views held by participants in the televised broadcast “Free legal aid in BiH” on Zabranjeni forum, TV Pink, 31 March 2013, accessible online:
<http://www.youtube.com/watch?v=FNtMCU12XOQ>

the Assembly of Republika Srpska entity blocked the adoption of the proposed framework law last time it was introduced for consideration, justifying their decision by the fact that Republika Srpska had already adopted such legislation and contested the jurisdiction of the Republic of BiH to enact legislation on legal aid at the state level. In spite of this opposition, civil society and legal experts continue to raise awareness of the important need to adopt a national legislative framework on free legal aid that will, firstly, ensure provision of legal aid for all citizens in need and, secondly, provide a basis for the harmonisation of rules and regulations in this area.

- 5.7 Although the country does not currently have a national law on legal aid, separate legal frameworks exist in its two constitutive entities Republika Srpska, the Federation of Bosnia and Herzegovina as well as in Brčko District, and several cantons in the second entity Federation BH adopted their own legislation on free legal aid. While Republika Srpska has its own legislation on the matter, the approach in Federation BiH has been further decentralized to its ten cantons, which have taken on the role as providers of legal assistance. As a consequence, these separate legislative frameworks lead to a situation of unequal access to justice.¹⁰⁰
- 5.8 Aside from the disparate legislation on free legal aid, the national Code of Criminal Procedure¹⁰¹, as well as the procedural codes adopted by the entities¹⁰², also recognise the right to free legal aid in Bosnia and Herzegovina.
- 5.9 In civil cases, the civil procedure codes in BiH¹⁰³ provide that the court may exempt a party from paying the costs of proceedings if the party's financial situation is such that payment of the costs of proceedings would jeopardise their ability to support

¹⁰⁰ For a more detailed analysis of the free legal aid regulation in BiH, see Milanović, Mirna and others, "Free Legal Aid System in Bosnia and Herzegovina" 2012, accessible online:

<http://www.mrezaprapnepomoci.org/ba/preuzimanja/brosure-publikacije-i-analize>

¹⁰¹ Code of Criminal Procedure of BiH ("Official Gazette of BiH", no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09), accessible on-line: <http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=4&id=40&jezik=e>.

The criminal procedure code in force in the Federation of BH is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=4&id=42&jezik=e>The criminal procedure code of Republika Srpska is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=4&id=43&jezik=e>

The criminal code of Brčko District is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=4&id=44&jezik=e>

¹⁰² Zakon o parničnom postupku („Sl. novine FBiH", br. 53/03, 73/05 i 19/06); Zakon o parničnom postupku („Sl. glasnik RS", br. 58/03); Zakon o parničnom postupku Brčko Distrikta („Sl. glasnik Brčko Distrikta 8/09, 52/10).

¹⁰³ Code of Civil Procedure Before Court of BiH ("Official Gazette of BiH", no. 36/04, 84/07, 58/13), Article .

themselves or members of their family. The exemption from paying the costs of the proceedings includes exemption from paying court fees, while getting a lawyer free of charge is part of a separate processes directed towards the free legal aid providers. As a result, only limited legal aid is available in civil proceedings in BiH.

5.10 Legal assistance in administrative proceedings is not regulated by legislation in BiH as the laws on administrative proceedings (national, two entity laws and one in Brcko District)¹⁰⁴ do not mention free legal assistance. However, these laws contain identical provisions on the principle of assistance to persons with limited education. This principle states that the authority conducting the procedure has to ensure that in a case involving a layperson, those proceedings should not cause prejudice to that person's rights. Although this provision does not include the right to free legal aid that would enable a person to have recourse to the services of a lawyer or some other form of professional representation, it does oblige the public institutions to provide legal assistance to citizens, particularly legal information. In practice, municipalities and courts have usually appointed personnel to assist citizens and some departments are even offering assistance to citizens in filing documentation in administrative proceedings.

5.11 In 2012, the Free Legal Aid (FLA) Network in Bosnia and Herzegovina was established following the joint signing of a Memorandum of Understanding between 14 organisations that provide free legal aid services throughout the country.¹⁰⁵ With the support of the UNDP¹⁰⁶, the FLA Network was created to share expertise among the participating organisations and to promote, apply and develop standards in the field of free legal assistance.

5.12 Another important legal instrument in terms of the provision of information, advice and free legal aid to citizens in Bosnia and Herzegovina is the Freedom of Information Act (FOIA) which was adopted at both the national and the entity levels¹⁰⁷ in 2001 at

¹⁰⁴ Zakon o upravnom postupku („Sl. novine FBiH”, broj 2/98-33 i 48/99-1861); Zakon o opštem upravnom postupku („Sl. glasnik RS”, broj 13/02-1 i 87/07-15-ispravka); Zakon o upravnom postupku Brcko Distrikta BiH („Sl. glasnik BD BiH”, br. 3/00-1, 5/00-164, 9/02-665, 8/03-513, 8/04-341, 25/05-887, 8/07-279, 10/07-384, 19/07-893, 2/08-45 i 36/09-881) i Zakon o upravnom postupku („Sl. glasnik BiH”, br. 29/02- 783, 12/04-1191, 88/07-10700 i 93/09-1)

¹⁰⁵ The NGOs involved are *Vasa prava* BiH, Center for Free Legal Aid of Republika Srpska, Office for Legal Aid Brcko District, Institute for Free Legal Aid in Tuzla Canton, Institute for Free Legal Aid in Zenica Doboj Canton, Cantonal Free Legal Aid Institute in Odžak, Cantonal Free Legal Aid Institute in Široki Brijeg, Cantonal Free Legal Aid Institute in Sarajevo, Institute for Free Legal Aid in Bihać, Institute for Free Legal Aid in Goražde, Center for Information and Legal Assistance in Zvornik, Center for Legal Assistance for Women in Zenica, and the Foundation for Local Democracy. See UNDP press release: <http://www.undp.ba/index.aspx?PID=7&RID=740>.

¹⁰⁶ Further details of UNDP's "access to justice" project in BiH can be found here: <http://www.undp.ba/index.aspx?PID=21&RID=95>.

¹⁰⁷ Freedom of Information Act for Bosnia and Herzegovina ("Official Gazette of BiH", no. 28/00, 45/06, 102/09, 62/11), Freedom of Information Act in the Federation of Bosnia and Herzegovina ("Official Gazette of

the request of the High Representative for Bosnia and Herzegovina. The FOIA provides a basis for citizens and civil society groups to request access to public information. It establishes “that every person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information.”¹⁰⁸ Although its implementation has been uneven¹⁰⁹, in recent years the law has become quite an important instrument for NGOs and civic groups in the country to obtain public data, including free legal aid organisations¹¹⁰. Several studies¹¹¹ have shown that the implementation of the FOIA has been more successful at the national level than at the level of the entities, cantonal and local government units. The FOIA does provide a basis for better protection of individual and collective human rights as journalists and human rights activists use it as a tool in monitoring the enforcement of human rights. Thus, the Law serves as a basis for demanding better public information and services.¹¹²

5.13 Unfortunately, the Parliamentary Assembly in Bosnia and Herzegovina is currently considering proposed changes to the FOIA that would significantly restrict access to public information and documents.¹¹³ Namely, the amendments potentially excludes the release of any public documents that contains personal data. This potentially covers information of great public importance, such as the use of public funds for social welfare, healthcare and unemployment benefits, as well as information concerning the performance of public office holders which is not included in a narrow list, all court decisions which are not included in a limited list of “cases of public

FBH”, no. 32/01, 48/11) and Freedom of Information Act in the Republika Srpska (“Official Gazette of RS”, no. 20/01). Unofficial English translations of the various FOIA are accessible on the website of the High Representative <http://www.ohr.int/ohr-dept/legal/laws-of-bih/public-info.asp>

¹⁰⁸ FOIA, Article 1.

¹⁰⁹ See Hodzic, Amra. “Making government transparent and accountable: Enabling access to information” Open Society Fund in BiH, Sarajevo, 2011, accessible online: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdfp_10-11/Studies/ENG_59_Amra_Hodzic.pdf

¹¹⁰ Savić, Milena. „Dokle je došao moj predmet? Primjena Zakona o slobodi pristupa informacijama u sektoru pravde“ [When will my case be resolved? Implementation of the Law on Free Access to Information in the justice sector in BiH] in the Access to justice in Bosnia and Herzegovina, The Justice Network in BiH, 2011, accessible online: <http://www.mrezapravde.ba/mpbh/latinica/txt.php?id=15>

¹¹¹ See Hodzic, Amra. “Making government transparent and accountable: Enabling access to information” Open Society Fund in BiH, Sarajevo, 2011, accessible online: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdfp_10-11/Studies/ENG_59_Amra_Hodzic.pdf; see also, US Department of State, “2011 Human Rights Reports: Bosnia and Herzegovina” May 2012, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186336.htm>

¹¹² The Institution of Ombudsmen for Human Rights of BiH is in charge of monitoring implementation of the Law, while each public institution is obliged to appoint a person or establish a department in charge for provision of information to the public. In case a public institution does not provide the requested information, a citizen can appeal the matter in administrative proceedings, but these tend to be long and complicated.

¹¹³ Center for Investigative Journalism. “Zakon o kojem se javnost ne pita: zaštita ličnih podataka ili zaštita institucija?” [Law that nobody talks about: protection of personal information or protection of institutions] Klix, 23 April 2013, accessible online: <http://www.klix.ba/vijesti/bih/zakon-o-kojem-se-javnost-ne-pita-zastita-licnih-podataka-ili-zastita-institucija/130423122>

interest” (“war crimes, organised crime, corruption, terrorism, tax evasion and other cases which represent cases of public interest”), as well as potentially other information concerning court proceedings which are on-going or even after decisions have been handed down. The supporters of this proposal claim it justified by the need to harmonise the FOIA with the Law on the Protection of Personal Data in BiH¹¹⁴. In this instance, many NGOs have addressed the Ministry of Justice through the public consultation process in order to advocate for the scope of the right of access to public information to be retained in its present form. Whether this civic initiative will be successful in preventing the adoption of the proposed changes to the FOIA remains to be seen.

Availability of services

5.14 A survey on the provision of information, advice and legal aid services in Bosnia and Herzegovina was organised throughout the period from March to May 2013. The purpose of the survey was to map existing citizens information and assistance services, to identify gaps in services and to develop policy recommendations. The survey was sent to an extensive number of public institutions - including municipalities and providers of free legal aid, as well as non-governmental organisations and trade unions were contacted in order. In total, 65 organisations participated in the survey, out of which 24 were public institutions (free legal aid institutions and municipalities) and 41 are non-governmental organisations.

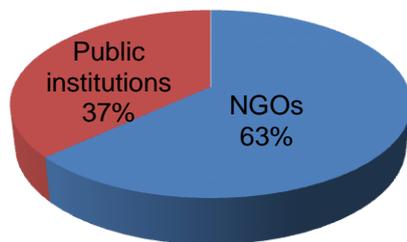
5.15 In practice, free legal aid in civil cases continues to be mainly provided by privately funded NGOs, while legal assistance provided in criminal cases is provided through court-appointed lawyers¹¹⁵. NGO legal service providers only tend to represent clients in civil and administrative cases and do not tend to represent them in criminal proceedings. There are several NGOs in BiH that provide legal aid depending on the mandate of the particular organisation and its priorities. NGO *Vaša Prava* is the leading and the largest free legal aid provider in the country. It has developed a network of legal aid and information centres throughout BiH with four offices located in Sarajevo, Mostar, Tuzla and Gorazde in the Federation of Bosnia and Herzegovina, and five offices located in Banja Luka, Prijedor, Trebinje, Srebrenica and Petrovac in Republika Srpska. Some mainstream human rights organisations also provide legal assistance to citizens, such as the Helsinki Committee for Human Rights in Sarajevo. On the other hand, there are several women’s rights NGOs that provide different

¹¹⁴ Law on the Protection of Personal Data in Bosnia and Herzegovina (“Official Gazette of BiH”, no. 49/06, 76/11, 89/11).

¹¹⁵ In 2011, legal aid was granted in 4,539 criminal cases European Commission for the Efficiency of Justice (CEPEJ), “Bosnia and Herzegovina Report 2011” Scheme for evaluating judicial systems, 2012, accessible online: www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

kinds of support and assistance to victims of domestic or other forms of gender based violence. Most of these organisations tend only to provide advice on rights and court or administrative procedures, as well as write submissions to the courts on behalf of their clients but rarely represent their clients in courts, mostly due to the lack of financial resources. The Foundation for Local Democracy (FLD) opened the Center for Free Legal Aid for Women in Sarajevo in 2010 and since then it has provided free legal assistance for single mothers, survivors of domestic violence, survivors of trafficking in persons and women who are victims of war violence. The legal assistance includes free legal counseling and possibility of free representation in the court proceeding and administrative bodies.¹¹⁶ Aside from these NGOs, the Centre for Information and Legal Assistance in Zvornik, the Centre for Legal Assistance for Women in Zenica, amongst other NGOs¹¹⁷ have also been significant providers of free legal aid.

Graph 4: Type of institutions that participated in the national survey



5.16 In addition to NGOs, public provision of legal aid has recently been established at the entity and cantonal level throughout BiH¹¹⁸. These public free legal institutions are: the Centre for Free Legal Aid of Republika Srpska, the Office for

Legal Aid Brcko District, Institute for Free Legal Aid in the canton of Tuzla, the Institute for Free Legal Aid in the canton of Zenica Doboje, the Cantonal Free Legal Aid Institute in Odžak, the Cantonal Free Legal Aid Institute in Široki Brijeg, the Cantonal Free Legal Aid Institute in Sarajevo, Institute for Free Legal Aid in the canton of Bihać, and the Institute for Free Legal Aid in the canton of Goražde. These public bodies, along with courts that granted waivers of court fees, together provided legal assistance in 2,589 civil cases in 2011.¹¹⁹

5.17 The majority of survey participants indicate that they provided information, general legal information and advice from a qualified legal officer, while only 12 organisations represent their clients in courts.

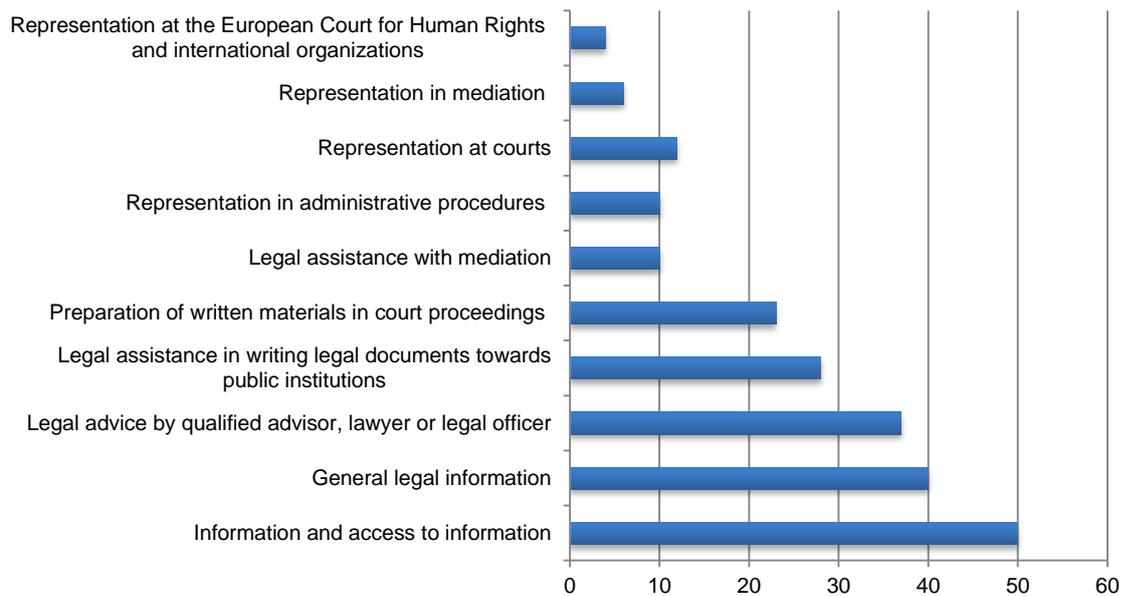
¹¹⁶ Sali-Terzić, Sevima. "Study on the capacities of the judicial institutions (courts) to address the needs and demands of specific groups: Persons with Disabilities, Roma, and women in Bosnia and Herzegovina. Strengthening Judicial Integrity through Enhanced Access to Justice." UNDP, November 2011. Accessed online: www.undp.ba/download.aspx?id=3029

¹¹⁷ Please see the organisations listed in Annex A.

¹¹⁸ 63% of institutions that participated in the survey are non-governmental organizations, while 37% of them are public institutions.

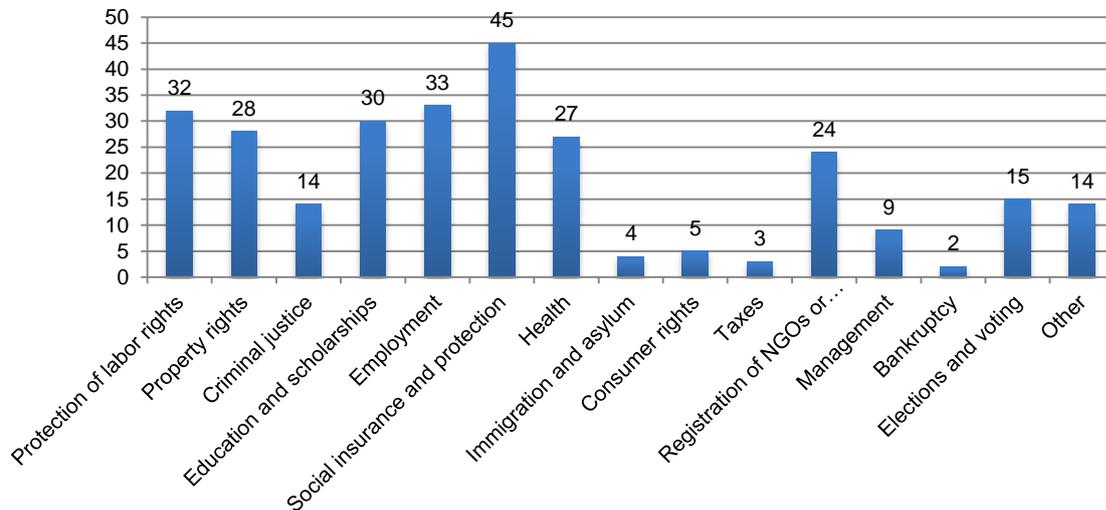
¹¹⁹ European Commission for the Efficiency of Justice (CEPEJ), "Bosnia and Herzegovina Report 2011" Scheme for evaluating judicial systems, 2012, accessible online: www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

Graph 5: Assistance offered by survey respondents



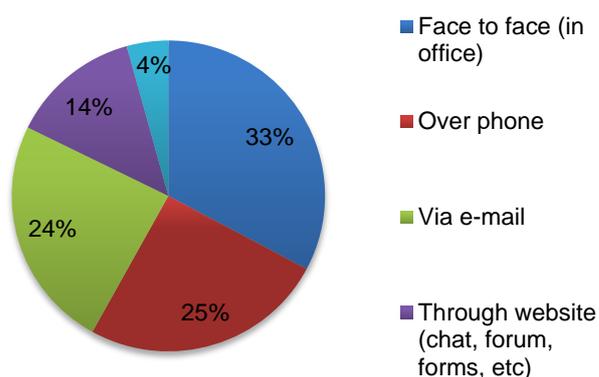
5.18 These services are offered in a variety of areas of law, with the majority of assistance being in the area of social welfare, then with employment, the protection of labour rights, property rights, and health.

Graph 6: Areas and sectors in which legal information and aid is offered



5.19 These legal services often tend to be provided face-to-face, with 33% of survey respondents indicating that their clients come to their offices and talk to their staff directly. 25% of respondents offered legal assistance over the phone, while 24% offered legal assistance by email. Interestingly, 13% organisations indicated that they offered legal assistance through their websites (chat, forums, and similar) while a smaller number (4%) provided assistance via postal correspondence as well.

Graph 7: Manner in which free legal information and aid services are provided



5.20 Based on the existing regulation¹²⁰ that sets down financial and other criteria for granting legal aid, the right to free legal aid is guaranteed to the following vulnerable groups:

- Welfare recipients,
- Unemployed persons with no regular income,
- Children without parental care,
- Poor persons,
- Pensioners (in some cantons only pensioners who receive a minimum pensions are eligible to receive legal aid),
- Persons whose capacity to exercise rights has been withdrawn by court decision and mentally ill persons kept in mental-health institutions (only in Republika Srpska),
- Persons who have been recently granted legal aid in another case (only in Republika Srpska).

Gaps in the availability of services

5.21 The mapping exercise of information, advice and free legal aid services in Bosnia and Herzegovina indicates a rather asymmetrical and decentralised practice in the provision of citizens' assistance services. While several legal aid institutions have been established throughout the country, they are currently missing in several cantons, such as in the Livno Canton and the Middle Bosnia Canton. The European Commission has emphasized the issue in its progress report on Bosnia and Herzegovina for BiH for 2012 and expressed the concern that "[t]he system of free legal aid in Bosnia and Herzegovina remains fragmented and unregulated in some Cantons of the Federation" and noted that the Framework Law on Free Legal Aid had not yet been adopted.¹²¹

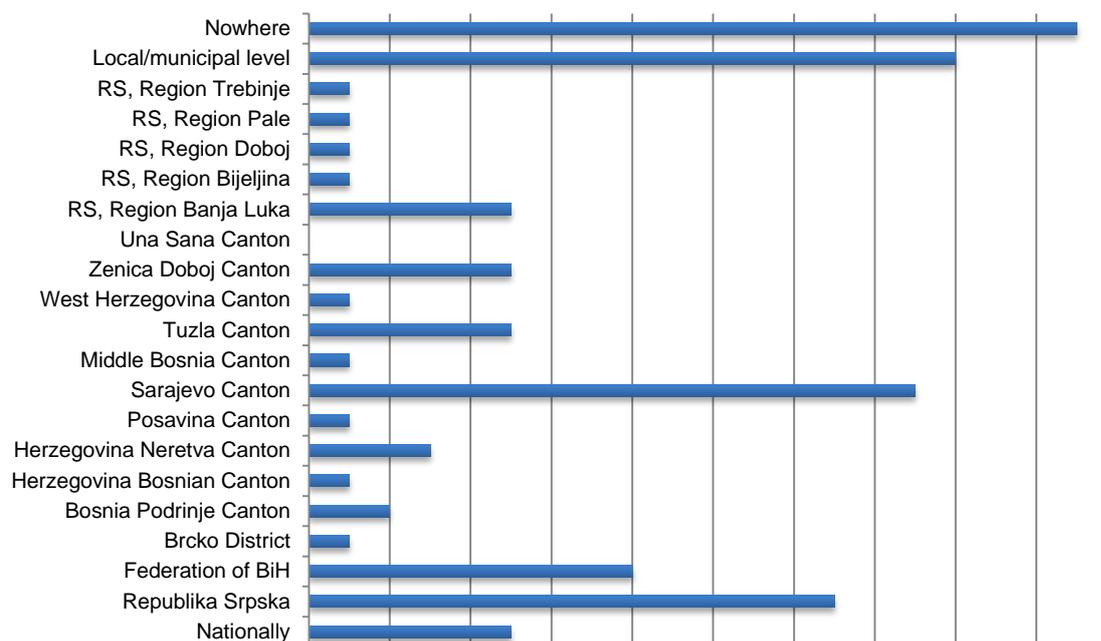
¹²⁰ The laws and other regulation are available online:

<http://www.mrezapravnepomoci.org/ba/preuzimanja/zakoni-pravilnici-i-obrasci>

¹²¹ European Commission, "Bosnia and Herzegovina 2012 Progress Report. Enlargement Strategy and Main Challenges 2012-2013" SWD(2012) 335 final, Brussels, 10 October 2012, p.16:

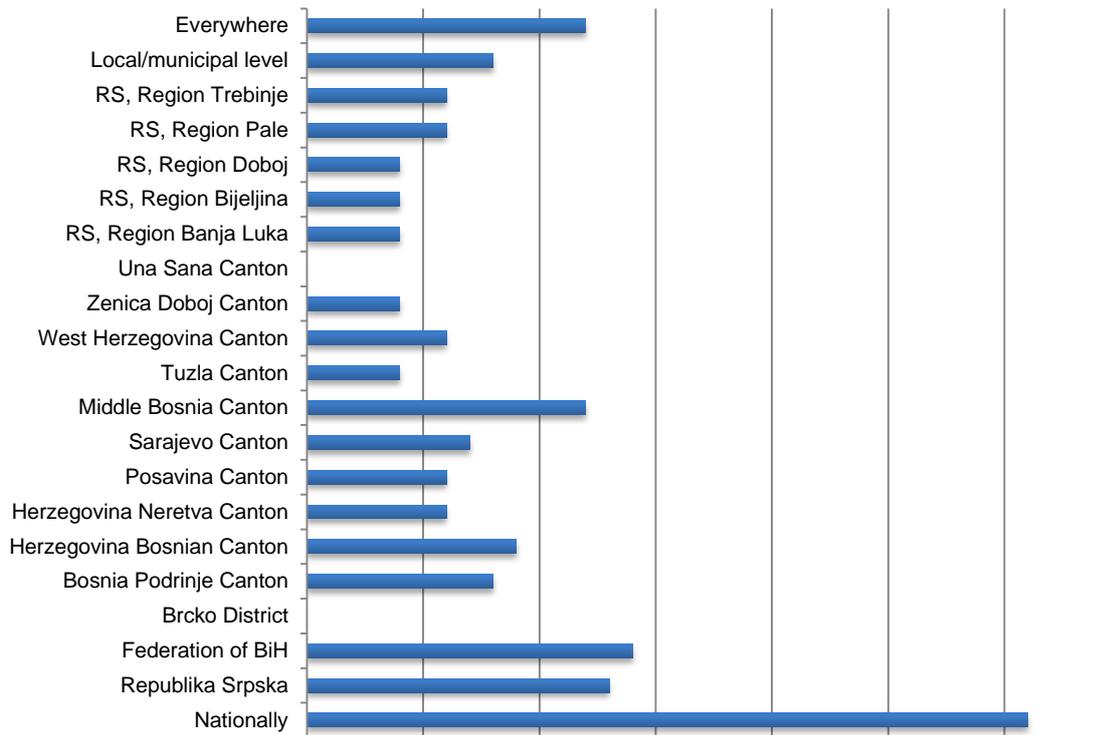
http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

Graph 8: In your opinion, in what areas of the country are the information, advice and assistance services to citizens well-developed?



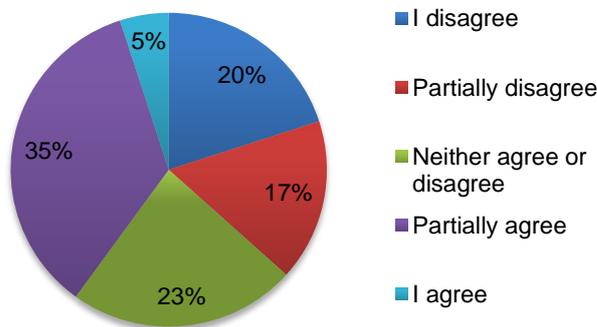
5.22 However, problems with access to legal assistance are not limited to the fact that it is not currently available in a number of cantons. The mapping of available legal assistance also shows that access to justice remains unavailable for many rural populations with the current system in place, while free legal aid tending to be available primarily to citizens living in larger cities and in some smaller towns. This is of most concern to recipients of social welfare and persons with disabilities living in rural areas who face significant obstacles to travel to the closest city in order to access free legal aid. Therefore, the question arises how this problem can be addressed by the current system since free legal aid providers in the Federation of Bosnia and Herzegovina tend to be based in the capital cities of cantons, while in Republika Srpska, providers are also concentrated in major cities in this entity. The way the free legal aid system is currently organised does not appear to cater adequately to rural populations. The survey respondents observed that access to legal aid assistance is most extensive in the canton of Sarajevo, while 50% of participating legal aid providers took the view that these services were not easily accessible throughout the country (Graph 9).

Graph 9: In your opinion, in what areas of the country are the information, advice and assistance services to citizens is not well-developed?



5.23 Furthermore, this fragmented legal aid system creates additional regulatory issues. The majority of survey responders voiced their dissatisfaction with the existing regulatory system on free legal aid because it does not provide sufficient support for the provision of legal assistance.

5.24 There is disagreement as to whether the existing legal framework provides a satisfactory basis for the provision of citizens' rights-based assistance services.



Graph 10: The existing laws provide a comprehensive framework for the provision of information, advice and active help to the public

5.25 The established public bodies for the provision of free legal aid in BiH have different statuses within their respective governance structures. For example, the Centre for the Provision of Free Legal Aid in Republika Srpska is an independent body established

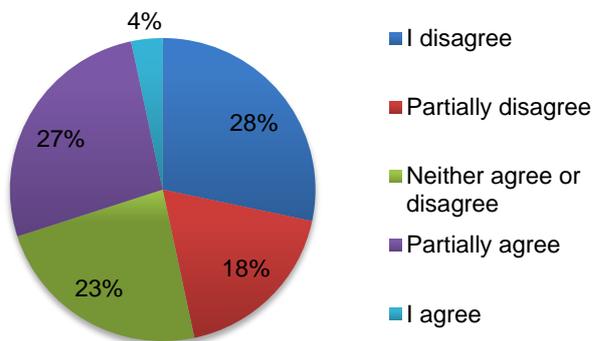
by the Ministry of Justice, while the Office for Free Legal Aid in Brcko District is an independent body operating under the auspices of the Judiciary. On the other hand, the cantonal institutions for free legal aid in the Federation of Bosnia and Herzegovina have been established within the relevant Ministry of Justice and as such, do not have the status of independent public agencies.¹²² Consequently, their employees have a different status: in some instances they are public servants and in some cases judicial personnel. In some instances they are obliged by the law to be lawyers and in some cases they are not.¹²³ Aside from different treatment of public employees providing free legal aid, the issue of how public legal aid institutions are established can generate additional problems. In Republika Srpska and several cantons in the Federation attorneys are employed by their justice ministries to provide criminal defence services, while also employing them as prosecutors on other cases. Civil liberties groups criticized this practice as a conflict of interest.¹²⁴ It is important to safeguard the independence of these public institutions to minimise possible interference from other governmental institutions, given that they may often be called to represent the interest of clients which are not in line with the interests of the government. As a way to safeguard these public institutions, they should be allocated with an independent budget for free legal aid and their activities should be directed by internal management bodies (for example, an executive board).

5.26 The review of the legal framework and survey respondents also illustrate that the criteria and procedures for the granting of free legal aid differ across jurisdictions in BiH. The existing legislation on the matter differentiates in many aspects and therefore creates possibilities for inconsistent practices and differences in treatment of citizens. For example, in the canton of Tuzla the Institute for Free Legal Aid can provide legal assistance on the territory of the whole country and represent citizens in cases at any court or institution in the country, whereas in the canton of Zenica-Doboj although the institute there provides legal aid to all citizens of BiH, it can only represent them before the cantonal courts and institutions. The Law on Free Legal Aid of Republika Srpska rules out legal assistance and representation before administrative bodies and in administrative proceedings.

¹²² Milanović, Mirna and others “System of Free Legal Aid in Bosnia and Herzegovina”, cited above

¹²³ Ibid.

¹²⁴ US Department of State, “2011 Human Rights Reports: Bosnia and Herzegovina” May 2012, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186336.htm>



Graph 11: The existing citizens advice services fully answers public's needs for information, advice and active help

5.27 The survey results indicate that almost half of free legal aid providers (46%) find the existing free legal aid system does not meet the needs of citizens for legal assistance (Graph 11).

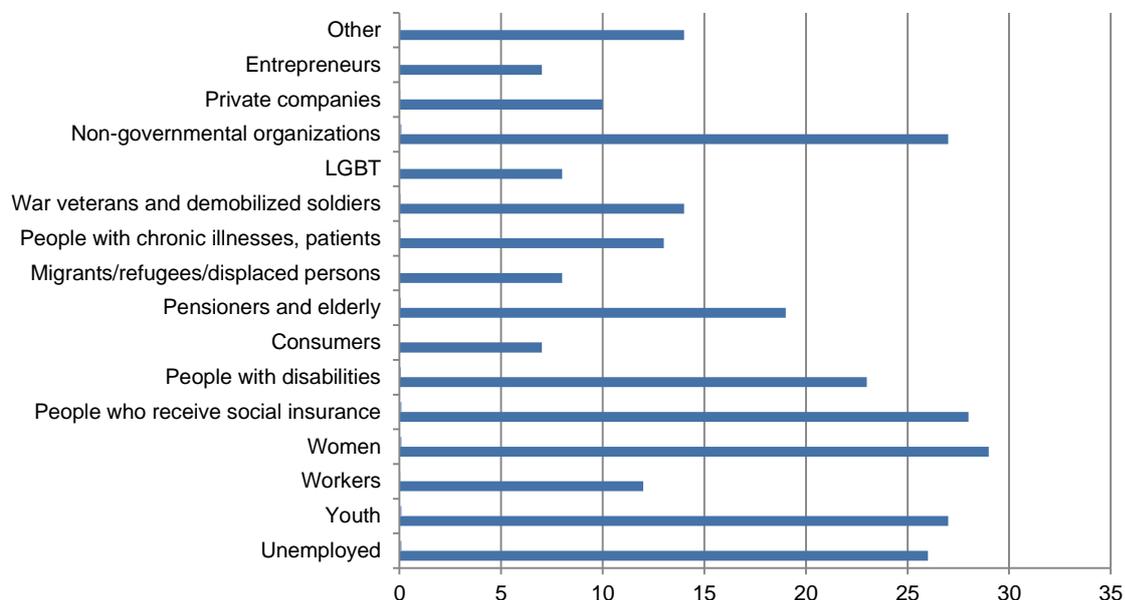
They also find that the legal needs of workers, consumers and entrepreneurs are not adequately met by the existing system in contrast to the legal assistance available to socially excluded, the unemployed and youth (Graph 12). Furthermore, survey respondents indicated that free legal aid services should be more developed for specific social groups, such as persons with disabilities, refugees and internally displaced persons, pensioners and the elderly (Graph 13).

5.28 Another issue tied to eligibility for free legal aid is the way social categories are defined. Since one third of population now in BH is in danger of social exclusion and poverty, the need for free legal aid is self-apparent. However, many NGOs and public institutions base their criteria for eligibility for free legal aid strictly on the status of the claimant (such as unemployment, civilian victims of war, etc.). As a result, many people who are in need of legal assistance cannot access it because it remains unaffordable even for employed people, especially in civil matters. For example, the average net salary in Federation in BiH for June 2013 amounted to 423 Euros¹²⁵, while the costs of litigation can amount to several thousand Euros, depending on the length and other elements of the case. Thus, legal aid is provided to social categories and not necessarily to those on a low income due to the fact that the social welfare system in BiH is based on belonging to a certain category and is not necessarily based on need.¹²⁶

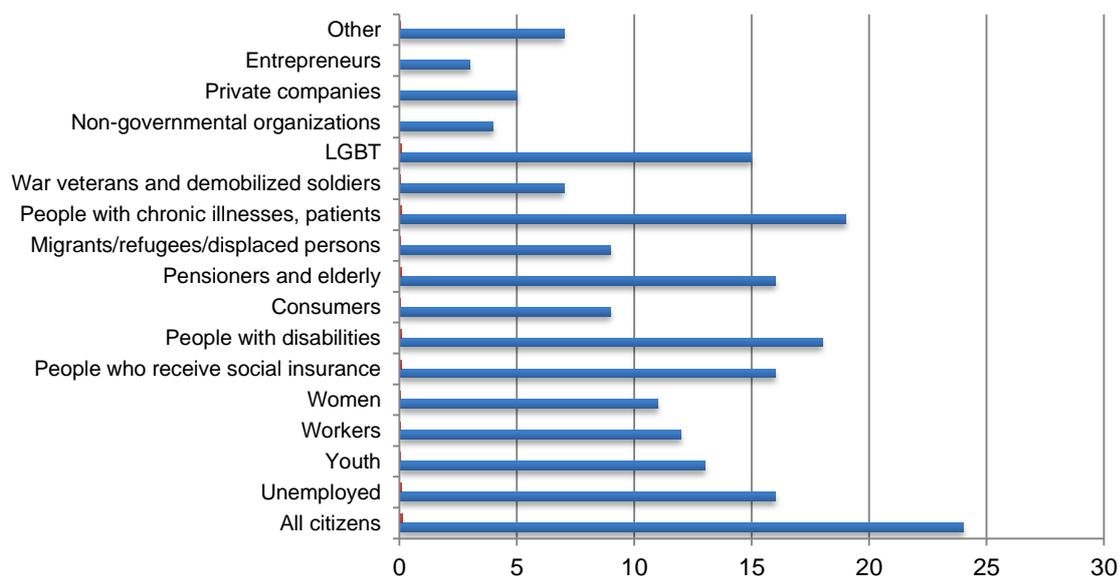
¹²⁵ Monthly Report. Federal Institute for Statistics. June, 2013.

¹²⁶ Demir, Elma. "At what price? Court costs, access to justice and legal aid to Bosnia and Herzegovina." Association for Democratic Initiatives and Center for Human Rights at the University of Sarajevo. Sarajevo, June 2013. See also the UNDP Report on Social Inclusion in Bosnia and Herzegovina published in 2007.

Graph 12: In your opinion, which target population groups are adequately serviced by your organisation and / or others, or can easily find information, advice or help if they need it?



Graph 13: In your opinion, which target population groups are not adequately serviced by your organisation and/or others, or cannot easily find information, advice or help if they need it?



5.29 In addition, it should be noted that the Gender Action Plan¹²⁷, the Law on Gender Equality¹²⁸ and the National Strategy for Prevention and Fight Against Violence¹²⁹

¹²⁷ Official Gazette of Bosnia and Herzegovina 16/03.

¹²⁸ Official Gazette of Bosnia and Herzegovina 41/09.

incorporate special measures that call for legal counselling and the provision of free legal aid to victims of domestic and sexual violence. However, the recognition and special attention which these victims should be entitled to is missing from the existing legislation and the provision legal counselling services remains to be implemented in practice.¹³⁰

5.30 Similar issues arise as regards to refugees and displaced persons. The existing free legal aid legislation does not recognise refugees, internally displaced persons and returnees as special categories deserving free legal aid. This problem is important because displaced persons are socially and financially the most vulnerable part of the population, and they experience constant existential uncertainty and social exclusion. Moreover, “most displaced persons do not have the financial means to pay for lawyers' fees and, also, the majority of lawyers are not familiar with the specific problems experienced by displaced persons, as well as the legislation of the countries of their origin or relevant international treaties and standards.”¹³¹

5.31 Another problem is the fact that free legal aid is not always available in claims of damages as compensation for harm resulting from unlawful actions by administrative bodies and public officials.¹³² Also, in criminal proceedings, there were several reported instances when the police failed to inform detainees of their rights or to allow effective access to legal counsel prior to being questioned.¹³³

¹²⁹ Official Gazette of Federation of BiH 84/12. All materials are available online on the website of the Gender Equality Center of Federation of BiH: <http://www.fgenderc.com.ba>

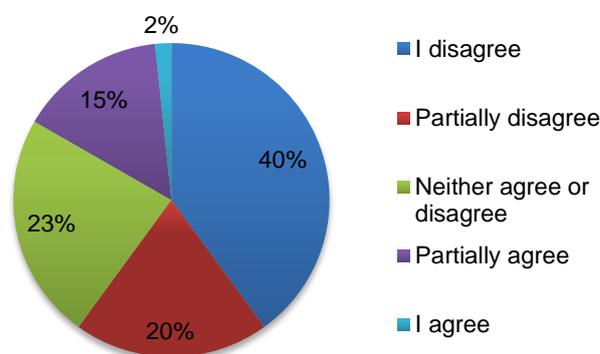
¹³⁰ NGOs *Udružene žene* and *Lara*, “Monitoring and analysis of criminal procedures and court practice in the area of sexual and gender-based violence in the Republika Srpska.”, Banja Luka, Bijeljina, 2011, accessible online: www.undp.ba/download.aspx?id=2861.

¹³¹ NGO Your Rights and others, “Access to free legal aid for displaced persons in the Western Balkans countries: Overview of the situation in Bosnia and Herzegovina, Croatia, Serbia and Montenegro” November 2011, accessible online: [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/7CF45F04A4181D87C125798900563FDF/\\$file/Full+Report_336.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/7CF45F04A4181D87C125798900563FDF/$file/Full+Report_336.pdf)

¹³² Ibid.

¹³³ US Department of State, “2012 Human Rights Reports: Bosnia and Herzegovina” April 2013, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204268.htm>. It also appears that defence counsel do not play an active role in defending clients: “Many persons complained that lawyers provided by authorities remained silent throughout the initial court proceedings.”

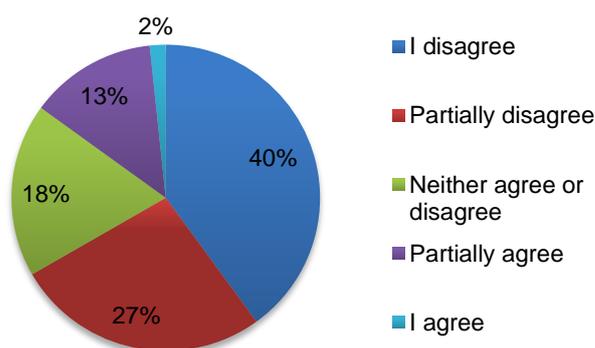
Graph 14: The existing information provided by the government to the public is too complicated to understand



5.32 Furthermore, the current system limits access to information and legal assistance simply due to its bureaucratic complexity. 60% of survey respondents found that the information and assistance provided by public institutions was too complicated for citizens to understand (Graph 14). 67% of survey respondents also found

that administrative procedures are unnecessarily complicated and not easy to understand for citizens (Graph 15).

Graph 15: Existing administrative procedures in most areas are simple and tailored to citizens and users



5.33 Education and training have unfortunately been neglected by the public institutions, despite this forming an important aspect of the efficient implementation of free legal aid system in practice. The Justice Sector Reform Strategy emphasizes the need to organise trainings for free legal aid providers in order to maintain the quality of legal aid services. The

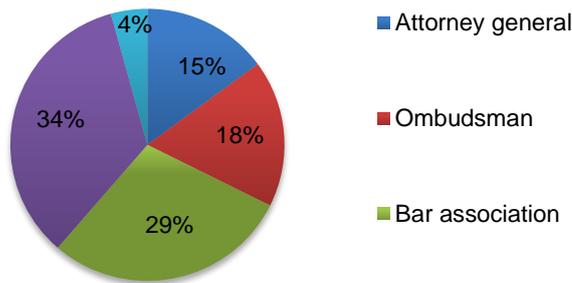
UNDP in collaboration with members of the Network of Free Legal Aid Providers in BiH has developed a study that aims to identify the capacity building needs of legal aid providers. The study identified gaps in the education offered to legal aid providers since their needs are not adequately being addressed by the training delivered by each entity's judicial and prosecutorial centre, while entity bar associations only hold occasional consultation sessions.¹³⁴

5.34 In addition, public outreach by free legal aid providers is another issue that needs special attention. Most citizens are not aware of legal assistance the newly established

¹³⁴ UNDP in BiH and Network of Free Legal Aid Providers in BiH, "Evaluation of educational needs of free legal aid providers from the Evaluation Report on capacities of free legal aid providers" draft 2013 available online at: <http://mrezappravnepomoci.org/ba/preuzimanja/brosure-publikacije-i-analize>

public institutions offer.¹³⁵ It is therefore not surprising that the UNDP’s recent report on access to justice¹³⁶ observes that the majority of citizens have most confidence in free legal aid services provided by non-governmental organisations followed by the bar associations (Graph 16). There is scope for public trust in the public institutions providing legal aid to be enhanced.

Graph 16: Organisations from which citizens firstly would seek free legal aid, source: “Facing the Past and Access to Justice from a Public Perspective.” UNDP in BiH



5.35 In certain jurisdictions in BiH, such as in Posavina Canton, it is not clear whether NGOs are recognised as providers of free legal aid. Another gap in the framework governing the provision of legal assistance is the lack of cooperation between the public and the non-governmental sector. Since

the various governments in BiH are not currently in the position to provide legal aid in a consistent way, it is regretful to note that cooperation with civil society organisations has not been established in a systematic basis, save on a few occasions in specific projects. Such public-private partnerships could potentially be useful in enhancing the provision of legal assistance, such as in the area of consumer protection or the protection of workers’ rights in collaboration with trade unions.

5.36 Although bar associations play a key role in the provision of free legal assistance in several countries, the role of bar associations in this respect has not been fully developed in BiH. Legislation on free legal aid in BiH does recognise bar associations as providers of free legal aid. In addition, the codes of conduct of the bar associations in both entities also foresee the provision of legal aid by members of the bar¹³⁷ Despite this fact, this service has not been used in practice due to lack of public outreach by the bar associations and the lack of awareness among citizens that such services

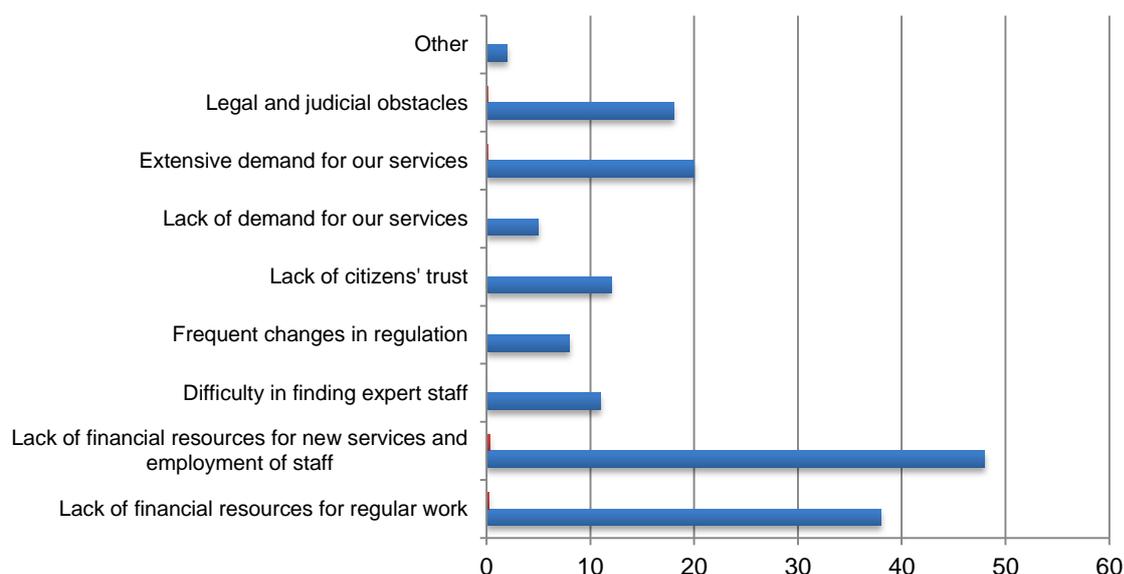
¹³⁵ Demir, Elma. “At what price? Court costs, access to justice and legal aid to Bosnia and Herzegovina.” Association for Democratic Initiatives and Center for Human Rights at the University of Sarajevo. Sarajevo, June 2013.

¹³⁶ Pajić, Zoran and Popović, Dragan, “Facing the Past and Access to Justice from a Public Perspective.” UNDP in BiH, 2012, accessible online: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/library/crisis_prevention_and_recovery/facing-the-past-and-access-to-justice.html

¹³⁷ Code of Conduct of the Bar Association of Federation of BiH, accessible online: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Code_of_Ethics_Bar_A27_1292580820.pdf. Code of Conduct of the Bar Association of Republika Srpska, Article accessible online: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Code_of_Ethics_Bar_A27_1292580602.pdf.

exist.¹³⁸ However, it should be noted that lawyers are not under an absolute obligation to provide legal assistance in all cases. The lawyer may refuse to provide legal assistance to any person when it is not in accordance with the Law on the Legal Profession, the bar association’s statute or other applicable legislation. The lawyer may also refuse to provide legal assistance in a number of circumstances. In practice, it appears that lawyers often refuse requests for legal aid claiming that they are too busy even if they may be indicative of significant human rights violations.¹³⁹

Graph 17: The main obstacles faced by the free legal information and aid organisation in providing their services



5.37 Finally, the financing of free legal aid remains problematic. Several NGOs state that it is becoming more difficult to find donors to support their regular legal assistance activities as donors have expressed the view that this should be the responsibility of the government. On the other hand, the public funding that is allocated to free legal aid is not considered sufficient and public free legal aid institutions face shortages of staff members. In this respect, 67% of survey respondents found that public funds for free legal aid is not sufficient. The CEPEJ reports that almost 3 million Euros was allocated to free legal aid in BiH in 2011.¹⁴⁰ For example, Sarajevo Canton Government allocated 125 000 Euros for the operations of its Institute for Free Legal Aid in 2013.¹⁴¹

¹³⁸ Milanović, Mirna and others. “Free Legal Aid System in Bosnia and Herzegovina.” 2012. Accessed online: mrezappravnepomoci.org

¹³⁹ Bejtović, Adela, “Free legal aid in Bosnia and Herzegovina” *Pravna misao* (Sarajevo), broj 9 – 10 / 2010, 57 – 78.

¹⁴⁰ European Commission for the Efficiency of Justice (CEPEJ), “Bosnia and Herzegovina Report 2011” Scheme for evaluating judicial systems, cited above.

¹⁴¹ “Siromašni građani KS dobili mogućnost besplatne pravne pomoći” [Free legal aid available to poor citizens of Sarajevo Canton] *Klix*, 7 March 2013, accessible online: <http://www.klix.ba/vijesti/bih/siromasni-gradjani-ks-dobili-mogucnost-besplatne-pravne-pomoci/130307074>

The issue of funding was identified as representing a challenge by a significant number of respondents. 23% of survey respondents indicated that a major obstacle in their work is the scarcity of funding for undertaking regular work, while 30% of survey respondents also felt that they lack funds to develop new legal assistance services which would require the employment of additional staff (Graph 17).

5.38 Financing is also identified as a major cause for the relatively small number of persons employed in the public institutions that provide free legal aid. The UNDP has reported that this situation is “usually a result of the inability to provide more funds for the financing of these institutions.”¹⁴² While the laws that regulate these institutions place restrictions on the qualifications of persons who can provide legal aid, the existing framework has not been utilised, which adversely affects the efficiency of these institutions and their ability to provide the free legal assistance to all persons who have a right and need for it.¹⁴³ This is evident from the fact that only 17 legal officers are employed by public free legal aid institutions in the entire BiH.¹⁴⁴

Conclusion and Recommendations

5.39 Due to a variety of reasons, the free legal aid system that was in place before the war has not been re-established after the conflict. Certain elements of the old system are still present through the on-going work of municipalities and trade unions. Although these possess great potential for the operation of a successful free legal aid system, these institutions have been neglected. Instead, the international community has partnered with several NGOs and fostered their capacity to provide legal services, while the local authorities have established new public centres and bodies at both entity and cantonal levels. Today, the provision of information, advice and legal aid services in Bosnia and Herzegovina mirrors the existing political system in the country: it is highly decentralized and the product of efforts of diverse stakeholders including national institutions, NGOs and international organisations.

5.40 Despite this fact, this research, as well as the existing local and international reports on the subject, clearly illustrate that there is no consistent system of free legal aid in BiH that would satisfy European and international standards and that would ensure access to courts and other relevant protection and redress mechanisms in general. As a result, this fragmented system of free legal aid falls short of satisfying the requirements of both the BiH Constitution and the ECHR as regards the right to a fair trial.

¹⁴² Milanović, Mirna and others, “Free Legal Aid System in Bosnia and Herzegovina” cited above.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

5.41 Based on the analysis of survey responses, the following policy recommendations can be formulated in order to improve the system of citizens' information and assistance services in Bosnia and Herzegovina:

5.42 **Recommendations addressed to the governments of BiH and the Entities:**

- A framework law on free legal aid should be adopted at the level of Bosnia and Herzegovina in order to create a coherent system of legal aid which will conform to European and international standards and practice.
- The role of municipalities, trade unions, NGOs, bar associations as well as other relevant social institutions should be recognised in the provision of free legal aid.
- Regulations on the provision of free legal aid in all BiH jurisdictions should be harmonised in order to ensure the minimum standards in the provision of legal aid in the entire territory of Bosnia and Herzegovina.
- Amendments should be made to the codes on criminal procedures (and free legal aid legislation) in order to include the right to free legal aid for victims or injured persons in criminal cases, to vulnerable witnesses and those under threat, as well as to the victims of domestic and sexual violence, and further how free legal aid is to be provided or financed for these beneficiaries.
- Legal aid legislation should be amended to revise the conditions of eligibility for free legal aid eligibility based on the financial need and not simply based on the fact that a person belongs to a certain social group or not and appropriate amendments should be made to the existing free legal aid legislative framework.
- The development and implementation of public-private partnerships between governmental institutions and civil society groups for the provision of targeted free legal aid services should be encouraged.
- Public outreach campaigns on free legal aid should be developed and sustained.
- The government should create and financially support educational programs, counselling and trainings on free legal aid to police officers, prosecutors and other judicial personnel through the entity centres for training of judges and prosecutors and other training agencies.
- New proposals for the harmonisation of the Freedom of Information Act with the Law on Protection of the Personal Data should be developed in a manner

that does not infringe the purpose and spirit of the laws governing free access to public information.

5.43 Recommendations addressed to civil society in BiH:

- Specific legal assistance should be developed for specific social groups, including persons with disabilities in collaboration with existing organisations that assist these groups.
- Free legal assistance should be extended to rural areas, including through field visits.
- A national survey on citizens' needs in relation to legal assistance should be developed and implemented, which can provide a basis for future policy developments.

5.44 Recommendations addressed to donors:

- Donors should provide sufficient material and financial resources to free legal aid providers.
- Educational programs, counselling and training for free legal aid providers should be created and financially supported.

5.45 Recommendations addressed to national and local bar associations in BiH:

- Bar associations should be encouraged to develop and implement free legal aid services by their members.

6 Citizens Assistance Services in Croatia

Introduction

- 6.1 While the Croatian Constitution¹⁴⁵ requires the legal profession to provide legal aid¹⁴⁶ subject to the conditions to be enacted in law, the provision of information to citizens is not the subject of all-inclusive legislative framework. Further progress was achieved in 2010 when the Constitution was amended to recognise the right to access information held by a public authority¹⁴⁷.
- 6.2 Although the Republic of Croatia became an independent state in 1991, it was not until 2008 that Croatia introduced legislation providing for legal aid during the accession negotiations that led to the country becoming the European Union's twenty-eighth member state. This followed on from recommendations contained in the Judicial Reform Strategy of Croatia and unveiled in 2005¹⁴⁸.
- 6.3 In February 2013, the Croatian government adopted a new Freedom of Information Act.¹⁴⁹ Amongst the series of changes made to the existing law of 2003 as amended in 2010¹⁵⁰, public authorities now have to proactively publish information, with specifications on what must be published, and adopt bylaws for the law's implementation. The Act also enables the reuse of public information, without costs, for any purpose whether or not commercial.
- 6.4 As a result of the process of reviewing domestic legislation to determine its compliance with the EU *acquis communautaire*, the Croatian Parliament enacted the Legal Aid Act (the LAA) on 16 May 2008.¹⁵¹ The Act's most important provisions have been in force since 1 February 2009. The purpose of the LAA was to provide access to professional legal aid to citizens who are on low incomes to ensure they can exercise their rights as well as obtain access to the courts and the state's other administrative bodies.

¹⁴⁵ An official translation of the Constitution of the Republic of Croatia can be found here:

<http://www.sabor.hr/Default.aspx?art=2405>

¹⁴⁶ Article 27.

¹⁴⁷ Article 38.

¹⁴⁸ Edita Bačić, *Improvement of Free Legal Aid System in Croatia*, University of Split Law Faculty (2012):

<http://conference.ifla.org/past/2012/129-bacic-en.pdf>.

¹⁴⁹ Zakon o pravu na pristup informacijama (Law on Free Access to Information), Narodne Novine (Official Gazette) No 25/13: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_403.html

¹⁵⁰ For a historical review of FOIA legislation in Croatia and analysis of the new law, see Robert Podolnjak and Djordje Gardasevic, *Great Expectations: The New Croatian Freedom of Information Act*, University of Zagreb Law Faculty (2013): http://campus.hec.fr/global-transparency/wp-content/uploads/2013/10/Paris-Podolnjak_Gardasevic.pdf

¹⁵¹ Zakon o besplatnoj pravnoj pomoći (Law on Free Legal Aid), Narodne Novine (Official Gazette) No 62/08: http://narodne-novine.nn.hr/clanci/sluzbeni/2008_05_62_2098.html

- 6.5 However since the law's enactment, civil society organizations, the Croatian Bar Association, legal experts, international organisations and beneficiaries themselves have been issuing regular warnings concerning problems in the functioning of the newly established legal aid system in the Republic of Croatia.
- 6.6 In 2011, the Constitutional Court found that several provisions of the LAA were contrary to the Constitution¹⁵² and these ceased to have effect from 15 July 2011¹⁵³. The Croatian Parliament moved to amend the Legal Aid Act at its session held on 8 July 2011¹⁵⁴.
- 6.7 Unfortunately, the last amendments to the Legal Aid Act from 2011 did not bring about the desired changes, nor did they contribute to enhancing the efficiency and effectiveness of the Croatian legal aid system. The most serious recurrent problems concern the functioning and inadequacy of the system, particularly in relation to the vulnerable groups which the Act was intended to benefit as made evident by the comparatively small number of persons who were able to access legal aid.
- 6.8 Through the implementation of the project "Civil Society Organizations' Initiative for Changes in Anti-discrimination Policy",¹⁵⁵ a number of Croatian civil society organisations were tasked with monitoring the implementation of the LAA, including the collection and analysis of data. On the basis of the analysis and surveys conducted among legal aid providers during 2012, it was found that legal aid had been provided through the state legal aid system that financed by the Ministry of Justice in less than 400 individual cases. At the same time, the NGOs found that legal assistance provided outside the state system – the financing of which is to a large extent provided by international donors – accounted for interventions in over 14,500 individual cases. In percentage terms, this means that approximately 2% of legal assistance was provided within the state legal aid system, whereas the remaining 98% was provided outside the state system¹⁵⁶.

¹⁵² Constitutional Court decision No. U-I-722/2009 of 6 April 2011.

¹⁵³ Official Gazette, No. 44/11.

¹⁵⁴ Zakon o izmjenama i dopunama zakona o besplatnoj pravnoj pomoći (Law to amend the Law on Free Legal Aid), Narodne Novine (Official Gazette) No 81/11: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_07_81_1721.html

¹⁵⁵ This project was funded by the European Union through the Instrument for Pre-Accession Assistance programme for 2008 "Strengthening the Capacities and Role of Civil Society Organizations in Monitoring of the EU Acquis in the Area of Comprehensive Anti-discriminatory Strategy" and co-financed by the Office for NGOs of the Government of the Republic of Croatia: http://ec.europa.eu/enlargement/pdf/croatia/ipa/2008/2008-0101-04_enhancing_the_capacities_of_the_civil_society_sector_version_081010_en.pdf

¹⁵⁶ Edita Bači, 'Improvement of Free Legal Aid System in Croatia: Twinning Light Project with Lithuania', University of Spilt Law Faculty (2012): <http://conference.ifla.org/past/2012/129-bacic-en.pdf>. See also the statistics made available on the website of the Civil Rights Project Sisak: <http://www.crpsisak.hr/besplatna-pravna-pomoc/statistika/?lang=en>

- 6.9 Furthermore, the criteria for granting legal aid is relatively restrictive and lead to the exclusion from the system of a large number of citizens who cannot otherwise have recourse to legal assistance. As a result, many citizens on a low income, who are the intended beneficiaries of legal aid, are denied access to administrative and judicial bodies, which brings into question the entire system of judicial protection.
- 6.10 The general view is that the LAA should be amended in such a manner as to take into consideration the opinions of legal aid providers and legal experts and to establish more flexible criteria and simplify the procedures for granting first-tier legal aid to a wide range of beneficiaries who are in need of such assistance. In order to improve the effectiveness and efficiency of the system, it is necessary to ensure that funds intended for legal aid in the state budget are significantly increased, so that citizens of Croatia can enjoy the same rights and standards as citizens of European countries that have well-developed legal aid systems.
- 6.11 The European Commission has recognised the importance of legal aid and determined that it was necessary to ensure the protection of fundamental rights and protect against discrimination. In its 2011 Progress Report¹⁵⁷ the European Commission stressed that “further improvements to the system are needed, including in terms of facilitating access to legal aid as well as fostering the role of NGOs”. In the latest Report on Monitoring Preparations for Accession to the EU of 26 March 2013¹⁵⁸, the European Commission recalls the essential objectives of the proposed amendment of the LAA in 2013, namely that of facilitating access to legal aid to citizens on the one hand and fostering the role of non-governmental associations as legal aid providers on the other.
- 6.12 To its credit, by the beginning of 2013, the Ministry of Justice had already initiated the procedure to amend and improve the legislative framework of legal aid in Croatia. This resulted in the enactment of a new law on legal aid on 22 November 2013 which entered into force on 1 January 2014.¹⁵⁹
- 6.13 The new Law on Free Legal Aid provides that first-tier legal aid – namely general legal information and advice – can be provided by university law clinics and authorised organisations, whereas second-tier legal aid – court representation – remains the preserve of authorised lawyers. However, it remains to be seen whether the

¹⁵⁷ Croatia 2011 Progress Report:

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/hr_rapport_2011_en.pdf

¹⁵⁸ Monitoring Report on Croatia’s accession preparations: http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf

¹⁵⁹ Zakon o besplatnoj pravnoj pomoći (Law on Free Legal Aid), Narodne Novine (Official Gazette) No 143/13: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3064.html

government will allocate sufficient funds to provide effective legal aid to all those in need of information, advice and active help.

Legal framework

- 6.14 The new Law on Free Legal Aid sets out the categories of legal aid which eligible beneficiaries may obtain. Legal aid extends to Croatian citizens as well as certain categories of foreign nationals¹⁶⁰ and a specific section of the new law¹⁶¹ is dedicated to cross-border legal aid under Directive 2003/8¹⁶².
- 6.15 First-tier legal aid encompasses legal advice, the drafting of submissions before public bodies and international organisations, representation in proceedings before government agencies as well as legal aid using alternative dispute resolution mechanisms such as mediation¹⁶³. The new law no longer limits the scope of first-tier legal aid to certain categories of cases¹⁶⁴. However, the protection of employees' rights before employers remains excluded from first-tier legal aid, so that only attorneys are authorised to provide such assistance¹⁶⁵, although the law is silent on the role which trade unions should play.
- 6.16 As is the case under the former rules, the scope of second-tier legal aid is limited to certain categories of legal proceedings¹⁶⁶. It covers cases relating to entitlements (except for land and property cases), employment, family, enforcement and insurance cases as well as alternative dispute resolution¹⁶⁷. Provision is also made for granting secondary legal aid where exceptional circumstances warrant it¹⁶⁸. Second-tier legal aid also encompasses the exemption from paying court fees and the exemption from paying litigation costs¹⁶⁹.
- 6.17 Representation in criminal cases is not covered by the Law on Free Legal Aid since Croatia has a separate scheme for criminal defence that is covered by the Code of Criminal Procedure. It should also be noted that Article 21 of the Law on the Legal

¹⁶⁰ Article 5 of the new Law on Free Legal Aid, cited above.

¹⁶¹ Articles 26 to 33 of the new Law on Free Legal Aid.

¹⁶² Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (2003) OJ L 26/41.

¹⁶³ Article 9 of the new Law on Free Legal Aid.

¹⁶⁴ The former LAA limited first-tier legal aid to advice on administrative proceedings that affect citizens' status, the determination of pension, health insurance or other social welfare rights.

¹⁶⁵ Article 12 of the new Law on Free Legal Aid.

¹⁶⁶ Under the previous law, second-tier legal aid could only be granted in proceedings related to employment, family relations, insurance and enforcement proceedings, alternative dispute settlement and, exceptionally, in other court proceedings based on the beneficiary's specific circumstances.

¹⁶⁷ Article 13 of the new Law on Free Legal Aid.

¹⁶⁸ Ibid.

¹⁶⁹ Article 12 of the new Law on Free Legal Aid.

Profession also makes provision for pro bono legal assistance by the Croatian bar association¹⁷⁰.

6.18 Different eligibility conditions apply for first-tier and second-tier legal aid. First-tier legal aid is subject to a condition that the beneficiary is unable to afford legal advice¹⁷¹. There is no prior authorisation procedure and beneficiaries may have direct recourse to legal aid providers¹⁷².

6.19 Second-tier legal aid is subject to a means-test that takes into account both the income and the assets of the claimant¹⁷³. However this means-test is waived for certain categories of beneficiaries, namely children seeking to exercise a right to maintenance, victims of violence seeking to exercise a right to compensation, recipients of social welfare and veterans in receipt of a pension¹⁷⁴.

6.20 The procedure for granting second-tier legal aid is initiated by submitting a request to the competent administrative authority where the claimant resides using a prescribed form¹⁷⁵. The form requires the claimant to provide personal data, information concerning the matter and the nature of the assistance sought. Claimants must also provide information on their financial situation and those of the members of their household. Applications need to be accompanied by various certificates concerning the claimant's status. The relevant authority is required to reach a decision on the request within 15 days or earlier in urgent cases¹⁷⁶. Where a request is rejected, the claimant may lodge an appeal with the Ministry of Justice within 15 days and further appeal may be initiated by administrative review proceedings¹⁷⁷. Where the request is approved, legal aid is granted by way of a decision. The decision stipulates the type and scope of legal aid which is granted¹⁷⁸.

6.21 Legal aid providers provide legal aid for a fee. The amount of fee is stipulated by regulations, which have yet to be adopted¹⁷⁹. Beneficiaries of legal aid may have these

¹⁷⁰ See further Jon Johnsen, Georg Stawa and Alan Uzelac, 'Evaluation of the Croatian Legal Aid Act and its implementation' Zagreb Centre for Human Rights (2010) accessible here: http://alanuzelac.from.hr/pubs/E15-Evaluation_CLAA2010.pdf

¹⁷¹ Article 10 of the new Law on Free Legal Aid.

¹⁷² Article 11 of the new Law on Free Legal Aid.

¹⁷³ Article 14 of the new Law on Free Legal Aid.

¹⁷⁴ Article 15 of the new Law on Free Legal Aid.

¹⁷⁵ Article 16 of the new Law on Free Legal Aid.

¹⁷⁶ Article 17 of the new Law on Free Legal Aid.

¹⁷⁷ Ibid.

¹⁷⁸ Article 20 of the new Law on Free Legal Aid.

¹⁷⁹ The regulations that applied prior to the entry into force of the new Law on Free Legal Aid consisted in Uredbu o tarifi za utvrđivanje vrijednosti iznosa naknade za pružanje primarne i sekundarne pravne pomoći za 2011. godinu (Regulation on the Tariff for Determining the Amount of Compensation for Providing Primary and Secondary Legal Aid), Narodne Novine (Official Gazette) No. 33/11: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_33_745.html

costs borne by the state in whole or in part in accordance with the conditions laid down in the decree that grants legal aid.

6.22 Legal aid provision is funded by allocations from the state budget. In addition, the law also permits to allocate funds from budgets of local government and regional self-governing units, as well as donations¹⁸⁰. NGOs and legal clinics are under an obligation to submit financial reports detailing expenditure of legal aid funds and any unused funds must be returned to the state budget¹⁸¹.

Availability of services

6.23 Providers of legal aid include lawyers and authorised associations such as trade unions or university law clinics. Providers include NGOs such as Civil Rights Project in Sisak¹⁸², which also maintains a citizens information website¹⁸³, and law clinics such as the legal clinic established at Zagreb University Law Faculty¹⁸⁴. The complete list of authorised legal aid providers can be found on the Ministry of Justice's website¹⁸⁵. Amendments to the Act in 2011 extended the circle of legal aid providers to county state administration offices¹⁸⁶ and the Office of the City of Zagreb¹⁸⁷. The explicit former prohibition on legal aid providers that precluded them from engaging in any type of promotion related to the provision of legal aid¹⁸⁸ has been dropped from the new Law on Free Legal Aid.

6.24 50 organisations took part in the survey out of which 47 were non-governmental organisations, 2 were public institutions and 1 was a private company. As noted above, around 98% of advice and active help is provided outside the state funded legal aid system and this is somewhat reflected in the survey results with only 9 of the survey respondents being authorised by the Ministry of Justice to provide legal aid under the state system.

¹⁸⁰ Article 35 of the new Law on Free Legal Aid.

¹⁸¹ Article 36 of the new Law on Free Legal Aid.

¹⁸² Further details can be found here: <http://www.crpsisak.hr/>

¹⁸³ The "my rights" website is accessible here: <http://www.moja-prava.info/>

¹⁸⁴ Further information can be found on the Zagreb University Law Faculty website: <http://www.pravo.unizg.hr/>

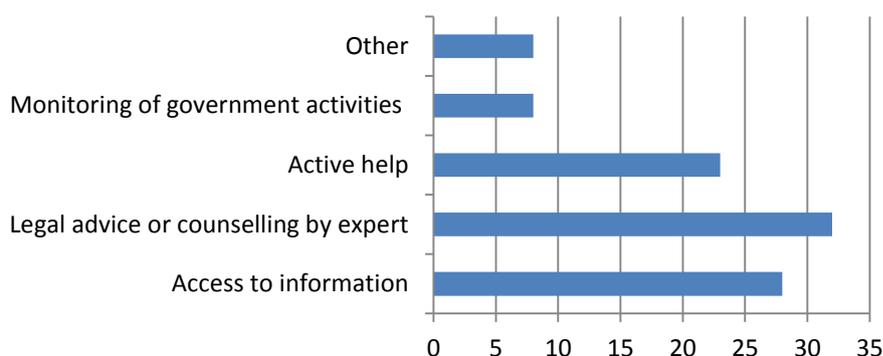
¹⁸⁵ The list is accessible here <http://www.mprh.hr/authorized-associations-and-legal-clinics>

¹⁸⁶ See further: <http://www.mprh.hr/list-of-state-administration-offices-in-counties-m>

¹⁸⁷ Ibid.

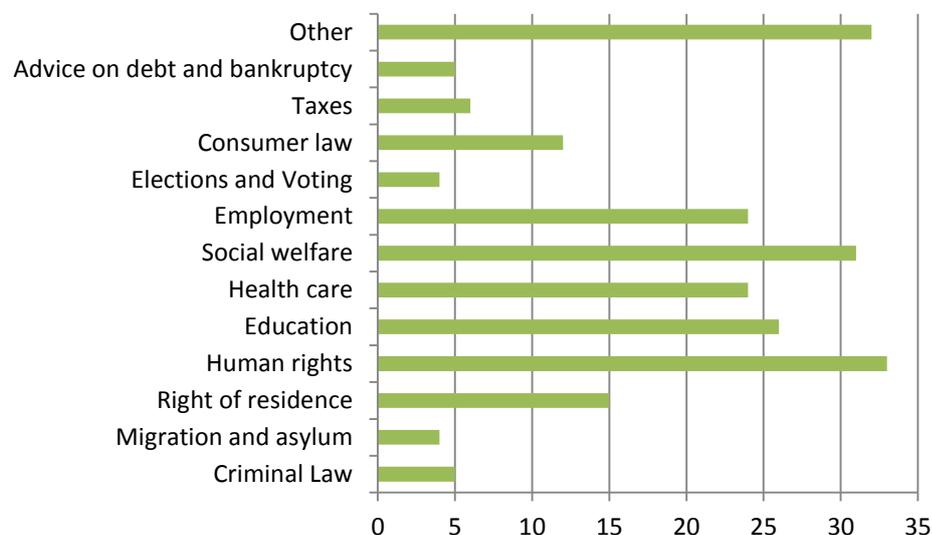
¹⁸⁸ Article 10 of the Law to amend the Law on Free Legal Aid.

6.25 The majority of the survey respondents reported that they provide legal advice, with half the respondents also engaged in providing access to information.



Graph 18: Assistance offered by survey respondents

6.26 This assistance is provided in a variety of subject matters with a high proportion of organisations providing assistance on human rights and social welfare rights. Over 75% of the respondents indicated they provided both general advice and specialised advice. For the most part, organisations tend to provide their advice using a combination of face-to-face interviews, telephone calls and email.



Graph 19: Areas and sectors in which legal information and aid is offered

Gaps in the availability of services

6.27 The scope of legal aid in Croatia has been limited but it is hoped that the new Law on Free Legal Aid will address some of the gaps in availability of citizens assistance services that were identified by the survey and which resulted from the previous regime.

6.28 One problem relates to eligibility conditions that apply to beneficiaries. The available statistical data indicate that as many as 21.1% of Croatian citizens live on the brink of

or below the poverty threshold¹⁸⁹, which comprises approximately 50% of pensioners¹⁹⁰. This represents approximately 904,000 Croatian citizens who are estimated to be at a high risk of poverty. This raises serious concerns about the scope of the legal aid rules given the very low numbers of persons granted legal aid according to the Ministry of Justice¹⁹¹ and would seem to indicate the conditions are unduly restrictive and excludes large numbers of persons who do not have the means to pay for advice or assistance.

6.29 The former Legal Aid Act excludes certain legal aid in certain categories of proceedings. Other excluded matters include property law, certain foreclosure procedures involving public bodies authorised to collect taxes. Legal aid for relating to civil status is not clearly defined. The new Act on Free Legal Aid has retained these exclusions.

6.30 While the law does leave a possibility of granting legal aid in other administrative procedures where exceptional circumstances may dictate due to the personal situation of the applicant and members of the household, the loose wording of the provision gives significant discretion to decision-maker and leads to the uneven application of legal aid. In the future, it is hoped that the Ministry of Justice will issue guidelines to promote a more consistent application of the rules.

6.31 According to the survey respondents, the former legal aid rules did not correspond to the needs of Croatian society and its citizens, because the rules fail to provide citizens with equal access to administrative and judicial bodies in order to exercise their rights. Only 13% of survey respondents indicated that the legal framework was satisfactory in

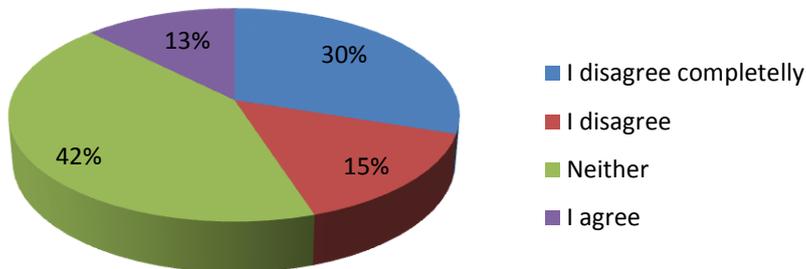
¹⁸⁹ The at-risk-of-poverty rate in Croatia in 2011 was 21.1%. The at-risk-of-poverty rate for a single person household amounted to 24,240 Kuna per year (approx. €3,200), while the at-risk-of-poverty rate for a household with two adults and two children younger than 14 amounted to 50,904 Kuna per year (approx. €6,700). According to Eurostat data, the at-risk-of-poverty rate for EU-27 countries in 2011 amounted to 16.9%. There are four EU countries in which the at-risk-of-poverty rate exceeds 20% (Greece, Bulgaria, Spain and Romania). With its 21.1% rate, Croatia is among the countries with the highest at-risk-of-poverty rate in the EU. The at-risk-of-poverty rate is the percentage of people with disposable income below the at-risk-of-poverty threshold. The at-risk-of-poverty threshold is determined by reference to 60% of the median value of the national income distribution. Further information is available here:

http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:At-risk-of-poverty_rate

¹⁹⁰ According to the statistical report of the Croatian Pension Insurance Institute (www.mirovinsko.hr) for December 2012, the total number of beneficiaries of pensions under the Pension Insurance Act was 1,127,821. Out of that number, 566,873 beneficiaries (50.2%) receive a pension below 2,000 Kuna per month (approx. €260), which on an annual basis is below the at-risk-of-poverty rate for a single person household in 2011. At the end of December 2012, the Croatian Employment Institute recorded a total of 358,214 unemployed persons. In January 2012, the number of unemployed persons increased by almost 7% or 23,863 persons. According to data provided by the Central Bureau of Statistics (www.dsz.hr), in 2011 a total of 402,338 beneficiaries of social welfare were recorded.

¹⁹¹ In 2009 there were 2,652 requests submitted at the entire territory of Croatia, in 2010 there were 3,297, in 2011 4,604, while in 2012 there were 5,877 requests submitted.

this respect. A similar proportion felt that existing citizens advice services fully answers public's needs for information, advice and active help.



Graph 19: The existing laws provide a comprehensive framework for the provision of information, advice and active help to the public

6.32 The reasons for this dissatisfaction is that the former legal aid rules were too restrictive in scope and provided limited possibilities for supporting all forms of legal counselling, a situation further compounded by complicated procedures and insufficient information being provided to citizens.

6.33 The new Law on Free Legal Aid has therefore sought to address these issues. Firstly, the scope of first-tier legal aid has been expanded to cover all legal matters and the eligibility conditions for accessing first-tier legal aid have been softened and procedures simplified by allowing direct recourse to legal aid providers without the need to prior authorisation. For second-tier legal aid, the conditions as regards the applicant's means have been relaxed. In order to assist in informing the public on the availability of legal aid, the prohibition on promotion has been abandoned.

6.34 The new Law on Free Legal Aid has also dispensed with the system of vouchers which was the subject of many objections coming from the legal profession and other civil society organisation. The main objection from civil society organisations pertained to the negative effect which the voucher system had on the timely and effective exercise of citizens' rights to legal aid. The consequences of such a system was that authorised associations and legal clinics were unable to obtain vouchers from the competent state administration offices in a large number of cases in which citizens requested the exercise of their right to primary legal aid. As a result, the funds that were allocated had to be returned to the state budget almost completely untouched. In their submissions on amending the Legal Aid Act, civil society requested that the Ministry of Justice seriously consider the possibility of abandoning the system of vouchers as a method of distributing funds for first-tier legal aid as well as to institute a system of project financing along with a system of financial checks to control the manner in

which allocated funds are spent. This system has somewhat been incorporated into the new law through a project-based funding system for authorised associations and law clinics¹⁹².

- 6.35 The provision of funding from the state has been an issue ever since the first law on legal aid was enacted. After four years of implementation of the LAA, it has become apparent that the total budgetary allocation for implementation of the Act has significantly decreased over time in relation to initial plans. In a recent survey¹⁹³ it was found that legal aid providers only managed to recoup 0.7% of their costs in providing legal aid through the voucher system. The remainder of the expenses incurred in providing legal aid was covered by international donors (approximately 5 to 6 million Kuna; €650,000-€750,000).
- 6.36 According to a report of the Ministry of Justice for 2011, a total of 4 million Kuna (approximately €525,000) was allocated in the state budget for legal aid, but following a redistribution it was cut down to 1.7 million Kuna (approximately €220,000), a 60% reduction. Further decreases in funds followed in 2012 and out of a projected 2.3 million Kuna, the actual allocation for legal aid was cut to 1.7 million Kuna. Since the end of 2012, the legal aid system has not been functioning due to lack of funds and citizens have not been granted legal aid, except in urgent cases. Thus, it comes as no surprise that survey respondents and participants of public discussion events seemed to agree that the lack of budgetary funds is the most significant problem affecting legal aid in Croatia today.
- 6.37 The fact that the Croatian authorities currently only allocates 0.5 Kuna per person to legal aid (approximately €0.07 per person, representing 0.001% of the state budget) is cause for serious concern, given that the average for the Council of Europe is €7.7 per person (representing 0.03% of the state budget)¹⁹⁴.
- 6.38 This is borne out by the views of survey respondents, who felt that the absence of interest shown by the Croatian government in supporting legal aid is a significant impediment to the provision of advice and assistance to citizens.

¹⁹² Article 36 of the new Law on Free Legal Aid.

¹⁹³ In a survey conducted by the Centre for Human Rights in 2010, which encompassed 15 associations - registered legal aid providers, it was established that associations had a total of 138 cases/vouchers within the legal aid system and 19,690 cases outside the system.

¹⁹⁴ European Commission for the Efficiency of Justice, *European judicial systems Edition 2012 (data 2010), Efficiency and quality of justice*, CEPEJ Studies No. 18 (2012): p. 45-46, accessible online: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf



Graph 20: The main obstacles faced by the free legal information and aid organisation in providing their services

6.39 The State must therefore be encouraged to dedicate further resources to legal aid in order to ensure that all persons living in Croatia are able to exercise their fundamental rights.

Conclusions and Recommendations

6.40 A number of recommendations can be formulated in respect of the provision of information, advice and active help to citizens in Croatia.

6.41 Recommendations addressed to the government of Croatia:

- The Government should significantly increase the funds allocated to legal aid from the state budget and other sources, particularly European funds, so that citizens of Croatia can enjoy the same rights and standards in access to justice which are enjoyed by citizens of other European Union countries which have well-developed legal aid system.
- The Government should provide financing of first-tier and second-tier legal aid from budget sources in equal measure, because of the preventive role which first-tier legal aid plays in avoiding unnecessary court proceedings.
- The Government should expand the categories of beneficiaries of legal aid to include all foreign nationals present in Croatia, by removing the condition of reciprocity for this category of beneficiaries, which will ensure that returnees to the Republic of Croatia who return within the programmes for return, reconstruction or housing accommodation have access to advice and assistance.
- The Government should publish statistical records of beneficiaries of legal aid kept by the Ministry of Justice and include disaggregated data on age, gender, occupation and ethnic affiliation among others to ensure a more systematic and comprehensive monitoring and reporting of legal aid in Croatia.

- For the purpose of increasing the efficiency of legal aid system, it is necessary to ensure better IT links between legal aid providers and state bodies to ensure the accelerated verification of eligibility conditions for granting legal aid.

7 Citizens Assistance Services in Kosovo

Introduction

- 7.1 The events of 1989 in the former Yugoslavia led to Kosovo's autonomous status being abrogated and the Constitution of 1974 being repealed. In 1990 Serbia introduced measures to repeal public mechanisms and dismantle institutions in Kosovo.
- 7.2 As a consequence of massive dismissals from work and the purging of institutions targeting ethnic Albanians who accounted for 90% of Kosovo's population, the community lost its trust in and support for the state institutions. As a result, the community in Kosovo created shadow mechanisms and institutions, mainly in the form of NGOs and foundations. This situation continued until the beginning of the 1998-99 war.
- 7.3 Following the end of hostilities, the UN Security Council adopted Resolution 1244 (1999) to establish a United Nations Mission in Kosovo (UNMIK), in order to provide an interim administration in Kosovo under the executive mandate provided by the resolution.
- 7.4 Laws which were in force on the territory of Kosovo prior to 24 March 1999 are to continue to apply in Kosovo provided they are not inconsistent with international standards any regulations issued by UNMIK¹⁹⁵
- 7.5 In 2000, the institution of Ombudsman for Kosovo was created under UNMIK / Regulation No. 2000/38.¹⁹⁶The institution is tasked with promoting and protecting the rights and freedoms of individuals and ensuring that all people in Kosovo can enjoy human rights and fundamental freedoms in accordance with international standards. The Ombudsperson has the power to receive and investigate complaints from any person or entity in Kosovo concerning violations of human rights as well as acts constituting abuse of office by the Civil Administration or by any central or local institution. The Ombudsperson is mandated to give particular priority to allegations of grave or systematic violations or violations of the prohibitions on discriminatory conduct.

¹⁹⁵Section 3 of UNMIK Regulation "The laws applicable in the territory of Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with standards referred to in section 2, the fulfillment of the mandate given to UNMIK under United Nations Security Council [resolution 1244 \(1999\)](#), or the present or any other regulation issued by

¹⁹⁶ The UNMIK Regulation is accessible online: http://www.unmikonline.org/regulations/1999/re99_01.pdf

- 7.6 The Ombudsman's jurisdiction extends to the entire territory of Kosovo. Ombudsperson may also handle cases concerning Kosovar citizens that relate to acts having taken place outside Kosovo.
- 7.7 The years 1999-2000 also saw the arrival in Kosovo of international human rights organisations (OHCHR, OSCE, UNDP, etc.) which sought to establish programmes for the provision of information services to citizens. These organisations financed and supported various non-governmental actors that were created to a variety of social problems at individual and group level or wider, including economic and social reforms, conflict prevention, social justice, and the promotion of access to public services.
- 7.8 In the light of the creation of organisations in Kosovo to help stabilise the country after the war, other international humanitarian and development organisations and donors (UNHCR, WEP, IOM, Mercy Corps, USAID etc.) also financed further projects for the provision of information services for citizens. Later, international organisations and donors began to support projects to enhance the capacity of local non-governmental organisations in Kosovo to provide legal aid (CRP / K, CLARD, QKTMT, etc.) by supporting on-going projects related to the provision of free legal aid and to advice and information to citizens.
- 7.9 The Legal Aid Commission was established in September 2007, under UNMIK Regulation No. 2006/36, as an independent body responsible for providing free legal assistance in the criminal, civil and administrative areas for the citizens of Kosovo. The establishment of this body, the first of its kind in the region foresees functionality of the three key institutions for legal aid;
- 7.10 The Legal Aid Commission (board) was assisted by a Legal Aid Coordination Office (executive office) with operations handled by six district bureau for legal aid (operating offices).
- 7.11 Following the declaration of Independence of Republic of Kosovo on 17 February 2008, the Assembly of Kosovo approved the Law on Free Legal Aid¹⁹⁷ which replaces UNMIK Regulation No. 2006/36. Under this law was established the Agency for Free Legal Aid as an agency working in partnership with NGOs and successor to the Legal Aid Commission. The Agency has its headquarters in Pristina and field offices in twelve locations.¹⁹⁸

¹⁹⁷ Law No. 04/L-017, available online:

<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20free%20legal%20aid.pdf>

¹⁹⁸ The Legal Aid Agency has a website: <http://www.knj-rks.org/index.php?lang=sq>

Legal Framework

- 7.12 The respect for human rights and fundamental freedoms in Kosovo is envisioned by the Constitution of Kosovo which, in Article 22, recognises the guarantees provided by a number of international agreements and instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR). As stipulated in Article 22 of the Constitution, these instruments are directly applicable in the Republic of Kosovo and take precedence over conflicting provisions of laws and other acts of public institutions¹⁹⁹.
- 7.13 The Constitution of Kosovo, in its Article 53, further provides that constitutionally guaranteed human rights and fundamental freedoms are to be interpreted consistent with the decisions of the European Court of Human Rights.
- 7.14 Access to legal aid, is ensured by Article 6 of the European Convention of Human Rights, as an integral part of the right to fair trial. In this sense, over the years, the ECHR has delivered several decisions on legal aid ensuring that the principle of access to justice is well protected.
- 7.15 Guided by the above, the Constitution of Kosovo has emphasized the basic principles in providing free legal aid to those without sufficient financial means if such assistance is necessary to ensure effective access to justice²⁰⁰.
- 7.16 As foreseen by the Law on Free Legal Aid²⁰¹, the delivery of free legal assistance is conditional upon the fulfilment of the following criteria: qualification criteria, financial criteria and legal criteria. According to the qualification criteria identified, free legal aid should be provided to the following: the citizens of the Republic of Kosovo residing in the Republic of Kosovo, persons with provisional residence in the Republic of Kosovo, other persons defined by law or international law instruments that bind the Republic of Kosovo, and persons to whom assistance on free legal aid is provided on the basis of reciprocity.
- 7.17 The financial criteria for the delivery of free legal aid is established according to the following: primary legal aid, which is provided to all persons are entitled to social welfare or are in similar situation; and, secondary legal aid, which is provided to all persons whose gross family income is lower than the average national family income.

¹⁹⁹ An official translation of the Constitution in the English language is available here:

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

²⁰⁰ Constitution of the Republic of Kosovo, Article 31(6)

²⁰¹ Law No. 04/L-017 on Free Legal Aid, Article 6,7,8,9 accessible online: <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20free%20legal%20aid.pdf>

- 7.18 Lastly, according to the legal criteria, the delivery of free legal aid is subject to an assessment of the validity of the case made by the court on: the monetary value of the claim; the relative merits of the case based on the persuasiveness of the evidence presented by the applicant; and, the likelihood of success of the claim.
- 7.19 The Law on Free Legal Aid also establishes the Agency for Free Legal Aid²⁰² and provides for its powers. The law also identifies the following institutions as providers of free legal aid: regional offices, mobile offices for free legal aid, lawyer's advocates and non-governmental organisations when they have entered into a partnership with the Agency.
- 7.20 Moreover, the Kosovo Chamber of Advocates provides free legal aid in criminal proceedings under order of the courts.
- 7.21 With regard to the obligations of the public authorities, the Government has a legal duty to publish all of laws ratified by the Assembly online through the Law on Official Gazette²⁰³. Despite this commitment, the legal system in Kosovo is renowned for suffering from a generally long period of *vacatio legis*, the delay between the date when a law is enacted and the date when it enters into force remains of concern.
- 7.22 In Article 41, the Constitution foresees the right of access to public documents according to which "every person enjoys the right of access to public documents" while also emphasizing that "the organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification."
- 7.23 The disclosure of public documents is regulated by the Law on Access to Public Documents²⁰⁴, which guarantees the right of every natural and legal person to have access, without discrimination on any grounds, on the basis of a prior application, to official documents maintained, drawn or received by the public institutions. The Law provides for several exemptions from the right of access²⁰⁵. Crucially, the Law on

²⁰² Further information on the Agency for Free Legal Aid can be found here: <http://www.knj-rks.org/index.php?lang=sq>

²⁰³ Law No. 03/L-190 on the Official Gazette, Article 4(2), available online: http://www.assembly-kosova.org/common/docs/ligjet/2004_47_en.pdf

²⁰⁴ Law No 03/L-215 on Access to Public Documents, Article 12, accessible online <http://www.assembly-kosova.org/common/docs/ligjet/2010-215-eng.pdf>

²⁰⁵ The following are considered as legitimate limitations on the scope of the right of access to documents: national security, defense and international relations; public security; prevention, detection and investigation of criminal activities; disciplinary investigations; inspection, control and supervision by public institutions; privacy and other private legitimate interests; commercial and other economic interests; state economic interests, monetary and exchange policies; equality of parties in court procedure and efficient administration of justice; environmental protection; and the deliberations within or between the public institutions concerning the examination of a specific matter.

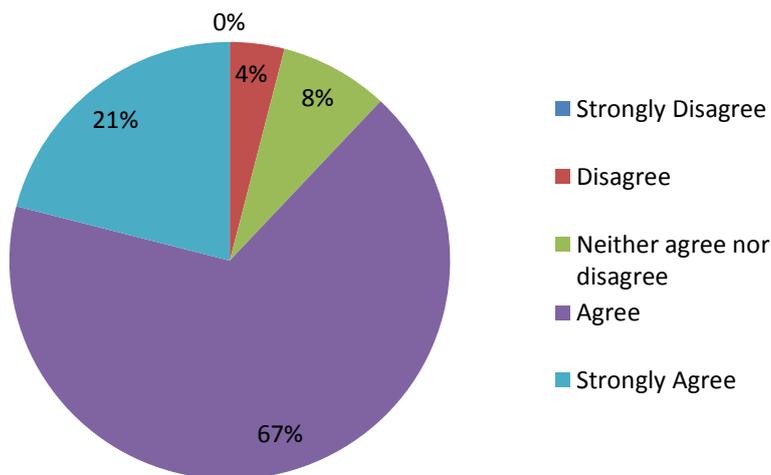
Access to Public Documents, foresees the imposition of fees for having access to public documents. The law on Access to Public Documents foresees that the fees should be paid, before the decision is taken to allow access in public documents (paying the fee does not necessary mean that the citizen will receive a positive decision to his request). This is of particular concern since the imposition of a fee acts as a disincentive to persons seeking access to public documents. Failure to disclose documents can only be challenged before the ordinary courts.

- 7.24 In Kosovo, the legal profession is organised by the Law on The Bar²⁰⁶ and the Law on Contested Procedure²⁰⁷. Paralegals are allowed to represent clients before the court only if authorized by the client. They can give advice, draft legal documents, and undertake research but not represent people in court proceedings. Individuals are not obliged by law to have an attorney, unless they are a minor, they are accused of a criminal offence, or their claim is before the Supreme Court. Students enrolled in a law degree cannot represent clients in court, but they can give legal advice.
- 7.25 One of the main recognized obstacles²⁰⁸ within the legal system in Kosovo is the failure to implement the law or its inconsistent enforcement. The majority of the laws do not provide for sanctions in case of a failure to implement or enforce, which often results in the ineffectiveness of the law and the lack of adequate control mechanisms by the courts.
- 7.26 To date, the Kosovo government has not foreseen nor proposed legislation that concerns the provision of information and assistance services to citizens. However, the large majority of respondents felt that the existing legal framework is satisfactory, with only 4% considering that the framework is not sufficiently comprehensive (Graph 21 below).

²⁰⁶ Law No 03/L-117 on the Bar , available online: http://www.assembly-kosova.org/common/docs/ligjet/2009_03-L-117_en.pdf

²⁰⁷ Law No 03/L-006 on Contested Procedure, Articles 85-95, accessible online: <http://www.assembly-kosova.org/common/docs/ligjet/Ligji-eng.pdf>

²⁰⁸ Kosovo Progress Report 2011, European Commission working documents SEC(2011)1207 final, paragraph 2, p.9 and paragraph 6, p. 14, available here: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf



Graph 21: The existing laws provide a comprehensive framework for the provision of information, advice and active help to the public

Availability of services

7.27 The research on the availability of information and assistance services for citizens in Kosovo has shown that the leading providers of information and assistance services are relatively small in number. Among the leading providers of information services and assistance to citizens are: the Ombudsman, the Legal Aid Agency, Human Rights Units within the ministries and municipalities, as well as non-governmental organisations.

7.28 The legal and constitutional mission of the Ombudsman Institution is the protection, supervision and promotion of the rights and freedoms of individuals and legal entities. The Ombudsman is funded mainly by the Government and international donor support accounts for less than 10 %.

7.29 In 2012, the number of requests received from citizens was 1670 and the number of cases reviewed requests amounted to 590. The Ombudsman institution has its head office in Pristina and five regional offices in Kosovo. The Ombudsman provides assistance to citizens in these following areas: criminal law, immigration / asylum, housing, human rights, education, health, social security, employment, elections and voting, taxes, and help with bankruptcy. The categories of beneficiaries covered all social groups, including the unemployed, persons with disabilities, women and young children, the elderly, displaced persons, returnees, migrants, Roma, patients, social welfare claimants, veterans of war, and LGBT community.

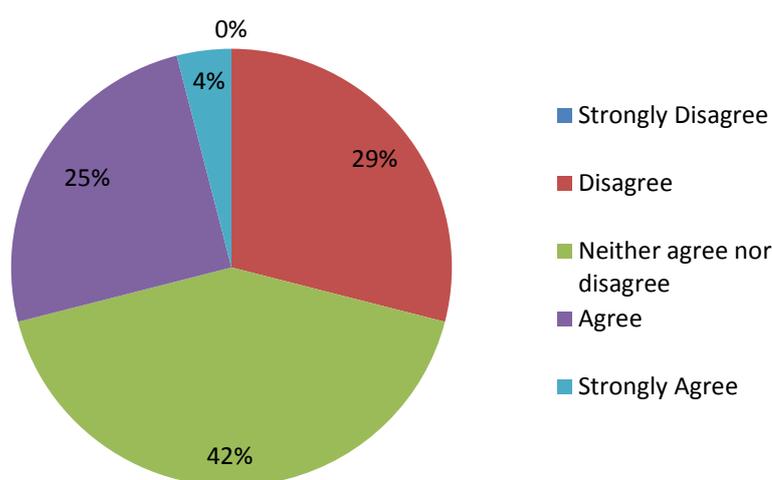
7.30 The Agency for Free Legal Aid was established by the Law on Free Legal Aid, and has the objective of giving advice and active assistance to citizens. Agency's head office is

funded by the Government, while six mobile offices covering the territory of Kosovo are currently funded by international donors.

7.31 The number of requests for assistance received from citizens in 2012 was 3940. The services provided to citizens by the Agency covered the following areas: criminal law, immigration / asylum, education, health, employment, taxes and help with bankruptcy. Again, the categories of beneficiaries of services by the Agency include all major social groups. The Agency also funds the Kosovo Chamber of Advocates to provide legal representation to citizens meeting the requirements for free legal aid.

7.32 Also providing services to citizens are the Ministries and municipalities through their Human Rights Units. Funding for these units is provided by the government and a small percentage of public donations. Administrative level municipalities provide services to citizens at local levels. Regarding the number of requests for service from citizens the number is quite small, since the service is only for citizens in the field of human rights. Social welfare claimants, the unemployed, persons with disabilities were the main categories of citizens that benefit from services from the Human Rights Units.

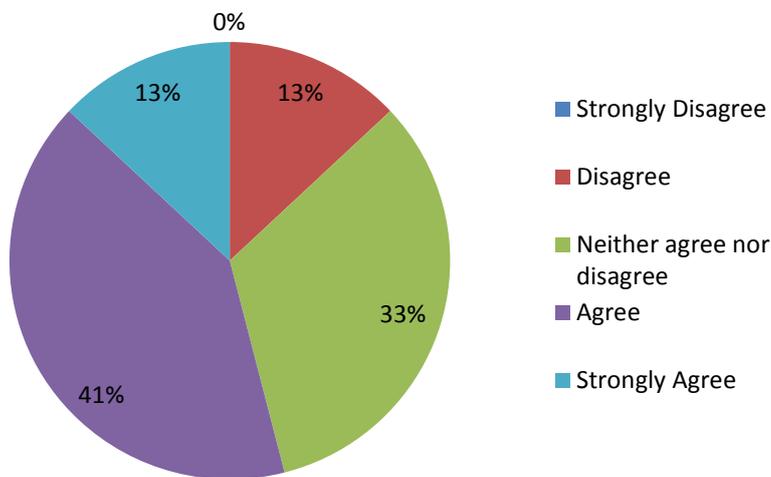
7.33 At present there is no government website that provides comprehensive information on people's rights. However, there is a general government web portal that links to different ministries and agencies²⁰⁹. Based on the survey results, it appears that survey respondents are equally divided on whether that the information that is made available by government websites is easy to understand or not, while 42% expressed a neutral opinion on the question.



Graph 22: The existing information provided by the government to the public is too complicated to understand

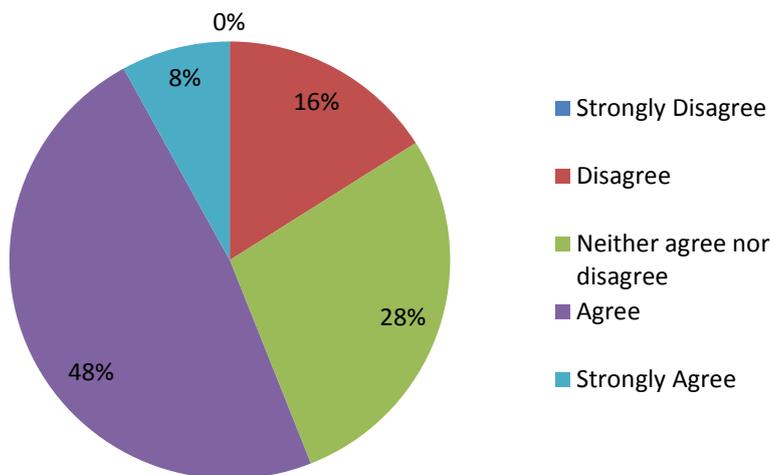
²⁰⁹ The website of the Republic of Kosovo Assembly does provide links to other institutions such as the Presidency, the Office of the Prime Minister and public services as well as to some NGOs. The website also contains a repository of all the laws approved by the Assembly of Kosovo: <http://www.kuvendikosoves.org/>

7.34 The survey also reveals that a small majority of survey respondents (54%) felt that administrative procedures were adequately explained.



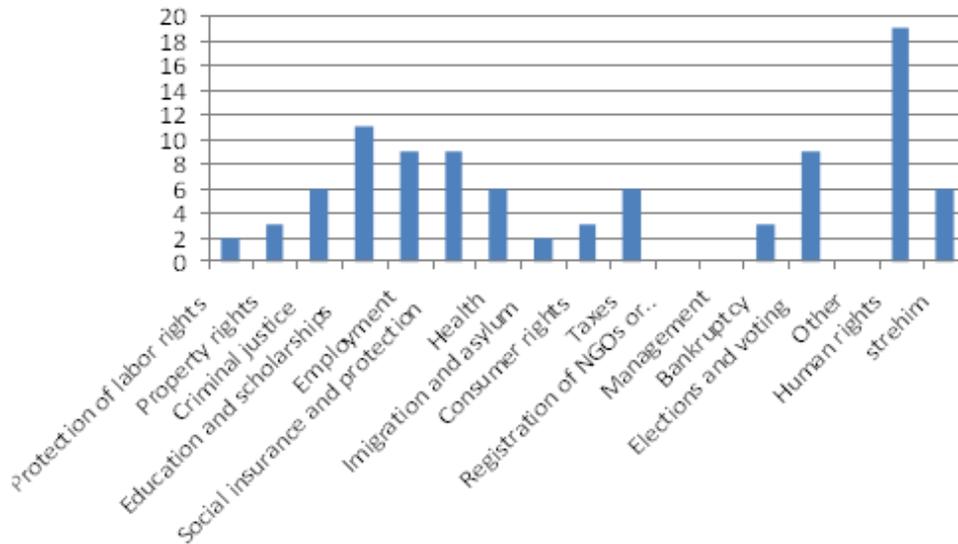
Graph 23: Existing administrative procedures in most areas are simple and tailored to citizens and users

7.35 The majority also felt that the public's information needs are adequately met by existing advice and information services.



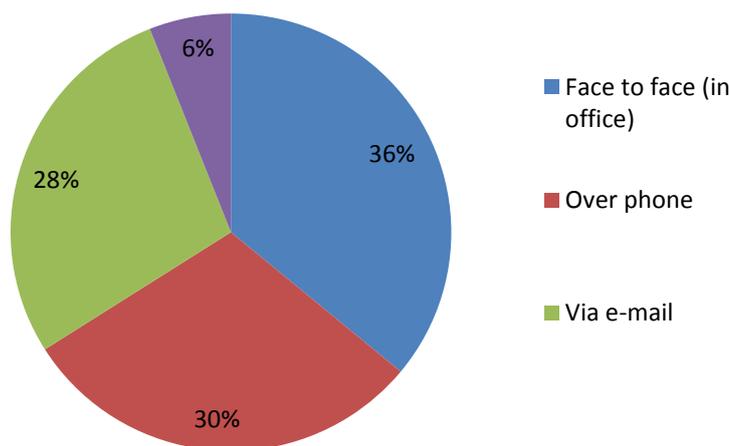
Graph 24: The existing citizens advice services fully answers public's needs for information, advice and active help

7.36 There are relatively few non-governmental organisations that provide services to citizens. Most of their activity attends to take place at their central offices, although some NGO's also have field offices. Their funding comes from various donors and some contributions from its members. The number of requests received from citizens for services amounted to 250 in 2012 and 150 case files were reviewed. The services provided by these organisations included assistance in the areas of criminal law, human rights, education, social security and employment. The categories of beneficiaries of these services included all major social groups.



Graph 25: Areas and sectors in which legal information and aid is offered

7.37 The survey indicates that advice and information services were provided face-to-face, by telephone and by email in equal measure.

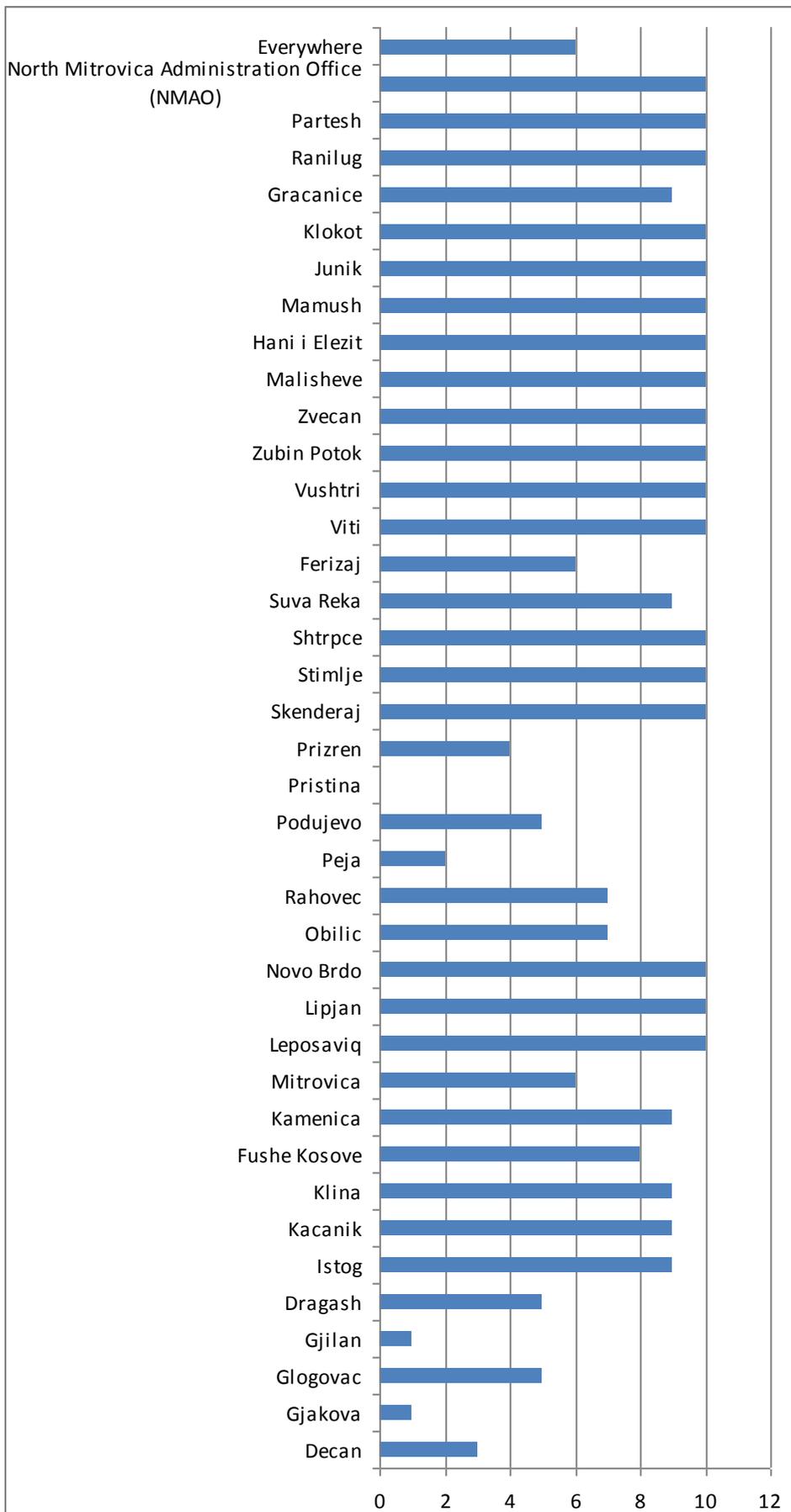


Graph 26: Manner in which free legal information and aid services are provided

Gaps in the availability of services

7.38 The research undertaken for this study was based on an analysis of the questionnaires sent to institutions in the public sector and civil society from which 65 responses were received. 75% of survey respondents were public institutions whereas civil society only made up a quarter of those who responded to the survey. We noted a general unwillingness of certain organisations to respond. A number of questions in the surveys sought to identify gaps in the provision of information and assistance to citizens in Kosovo. Based on the responses gaps were identified in terms of the

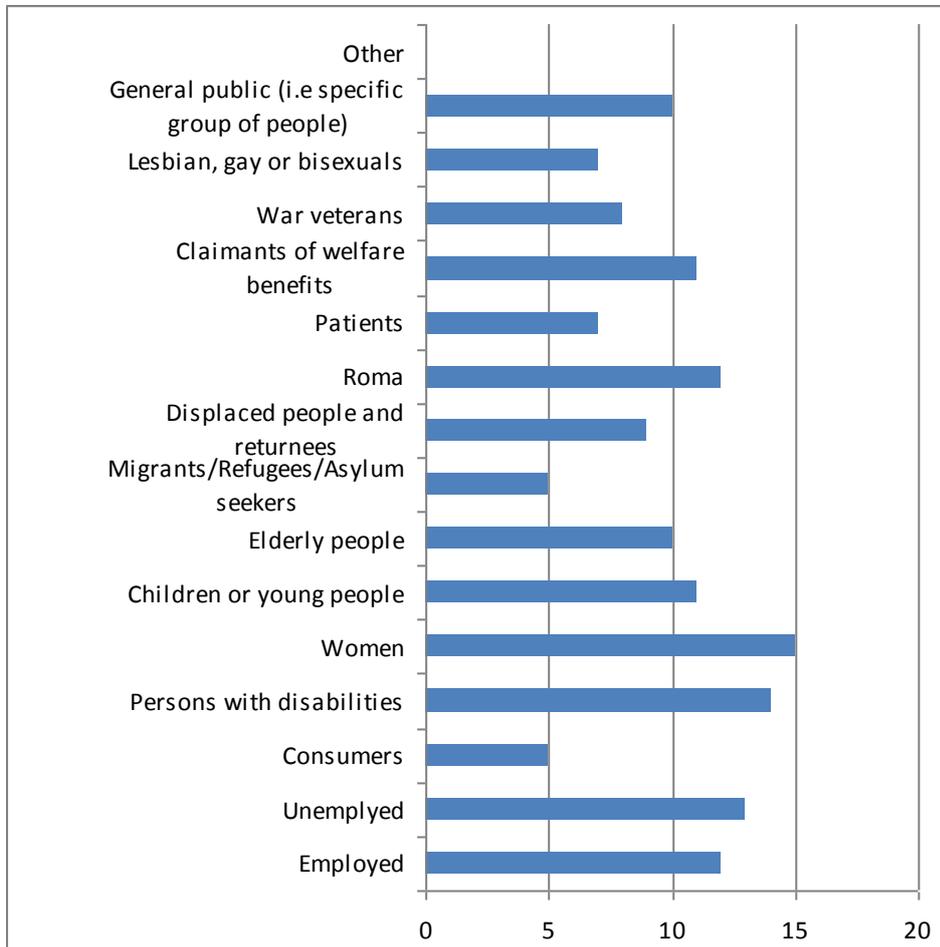
geographic scope of services, their beneficiary target groups and the types of assistance rendered.



7.39 Northern Mitrovica was identified by government institutions and agencies as a geographical location where the public lacks information about their rights as citizens of Kosovo among others. While the NGOs that responded to the survey identified the same problem regarding the north, they also noted another obstacle consisting in the absence of field offices of these NGOs in all the municipalities of Kosovo. The reason for the lack of field offices was identified as the lack of financial support from donors and government institutions.

Graph 27: In your opinion, in what areas of the country are the information, advice and assistance services to citizens is not well-developed?

7.40 The social group that respondents considered 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.



Graph 28: In your opinion, which target population groups are not adequately serviced by your organization and/or others, or cannot easily find information, advice or help if they need it?

7.41 The lack of information about the rights of children under the age of 18 was noted, Even if children may become aware of violations of their rights, there is a scarcity of organisations that can offer assistance to this group are scarce, and even those organisations that do provide assistance to this group age do not provide help without the presence of the legal guardian of the child in question, which may be problematic if the guardian is the source of the problem.

7.42 Persons with family problems also present particular challenges, because the problems are very rarely reported to the authorities due to the intimate nature of these problems and the fear of involvement by the public authorities. In this way these cases tend to remain under-reported.

7.43 According to the survey respondents, other social groups that may face a shortage of assistance neglected include the LGBT community. While some organisations provide advice to the community, they do not necessarily want their services mentioned in the

national report or in any other database. This is because some organisations fear that the prejudice displayed by certain sections of society may lead them to suffer harm in the event of the publication of their names.

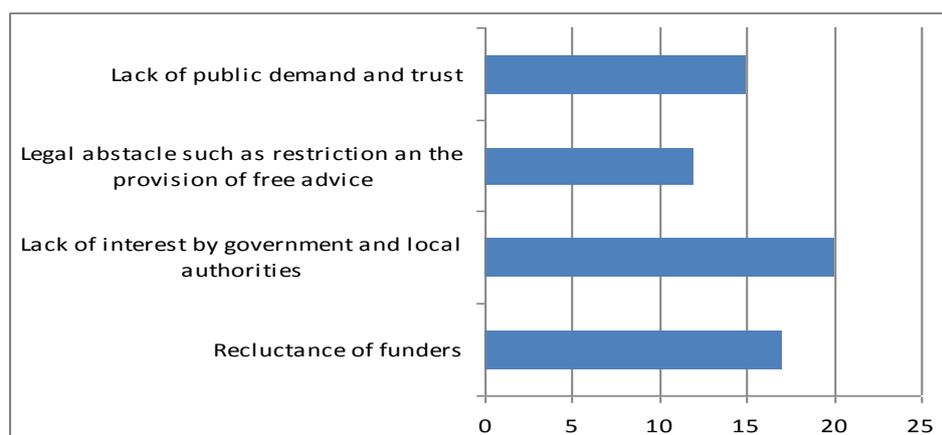
- 7.44 The survey also revealed that there is shortage of organisations that provide services targeting pensioners or consumers.
- 7.45 As regards displaced persons, refugees, returnees and asylum seekers, the only organisation that currently provides legal aid to protect their rights is the Civil Rights Program.
- 7.46 Based on this study the types of assistance that are more problematic to offer for citizens are: access to information, active help, and legal assistance in criminal proceedings.
- 7.47 The Law on Legal Aid requires providers of legal aid to obtain authorisation before being able to provide either first-tier or second tier legal aid. First-tier legal aid encompasses the following activities: the provision of information and legal advice regarding legal proceedings, the drafting of documents and any other technical assistance related to the conduct of a case, the provision of information and legal advice regarding legal proceedings; the provision of legal information and advice, as well as assistance in mediation and arbitration proceedings. Second-tier legal aid (active help) covers the following services: representation in civil and administrative proceedings, as well as defence and representation in all phases of criminal proceedings.
- 7.48 Aside from the need for authorisation, the provision of secondary legal aid presents the added challenge that court representation of clients can only be undertaken by legal counsellors who are registered members of a bar association and excludes the possibility for other advisors – even if legally trained – to provide free active help. The court also obliges persons accused of a criminal offence to be represented by a lawyer. This is a concern because, unless the person is able to obtain legal aid provided by the Agency for Free Legal Aid, access to justice is restricted by the fact that there are relatively few lawyers in Kosovo who provide pro-bono legal assistance. Moreover, the Agency is reportedly facing problems in funding and has acknowledged that applications for legal aid have had to be refused despite applicants meeting the eligibility requirements.

7.49 The respondents also identified a conflict between the Law on Legal Aid and the Criminal Procedure Code. While the Criminal Procedure Code²¹⁰ only allows lawyers who have passed the bar have the right to represent parties in criminal proceedings, whereas the Law on Legal Aid authorises not only lawyers but also legal officers of the Agency for Free Legal Aid as well as authorised NGO providers to provide citizens legal assistance in all judicial proceedings.²¹¹

7.50 In Kosovo, it was noted that there is no organisation that specifically deals with providing information and assistance to citizens who want to access to public information and documents

7.51 Most requests for access to public information currently come from the media and civil society organisations.

7.52 In terms of obstacles faced by providers of information and advice, a significant proportion of survey respondents felt that the main obstacle was the lack of interest of government and local authorities in supporting such services.



Graph 29: The main obstacles faced by the free legal information and aid organisation in providing their services

Conclusion and Recommendations

7.53 Legal aid is an essential tool in ensuring respect for the fundamental right of access to justice and remains of great importance in protecting the rights of citizens in a democratic society. The main purpose of the following recommendations is to ensure effective implementation of the right to a fair trial, which encompasses access to information about what rights citizens have and the possibility to obtain advice and active help including legal representation if need be.

²¹⁰ Law No 04/L-123 establishing a Criminal Procedure Code, Article 55, accessible online: <http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

²¹¹ Law No 04/L-017 on Free Legal Aid, Articles 5 and 26 accessible online: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20free%20legal%20aid.pdf>

- 7.54 Protection must be effective and substantive to ensure it is more than a mere formality. In seeking to enforce or defend one's rights, no one should be denied the right to a fair trial due to lack of funds.
- 7.55 While the study shows that even the legislation of Kosovo is in accordance with the European standards for free legal aid, it can be concluded that there are gaps in its implementation in practice. In addition, the study also reveals the absence of information provided to citizens about their rights and how to exercise them in Kosovo's system.
- 7.56 The survey has also shown that there is a shortage of help targeting certain social groups that restricts their ability to access information, and obtain advice and active help: children under the age of 18 years; persons over 65 years of age, LGBT, consumers and internally displaced persons, refugees, returnees, asylum-seekers.
- 7.57 The survey results also revealed a number findings regarding access to public documents under the Law on Access to Public Documents.
- 7.58 There is no dedicated organisation in Kosovo that provides assistance to citizens on obtaining access to public information. Even though the Law on Access to Public Documents has been adopted and it places overall responsibility on public authorities to provide access to information, it remains mainly unenforced and it does not provide effective mechanisms for obtaining access to public documents. As a result, access to accurate and timely information remains a problem in Kosovo.
- 7.59 This law is intended to enhance the participation of the citizens of Kosovo in decision-making by public institutions and to ensure that these public institutions enjoy legitimacy and greater transparency by being more accountable to the citizens of Kosovo. However, research shows that this law is not enforced in Kosovo and additional mechanisms should be created to supervise the implementation of this law. One way could be to extend the mandate of existing agencies as is the case in several European countries.
- 7.60 With this in mind, a number of recommendations can be formulated that should strengthen the provision of information, advice and active help to citizens.
- 7.61 **Recommendations addressed to the government of Kosovo:**
- The government, working in partnership with civil society, should undertake a public outreach campaign to inform the public of its rights as citizens using a

variety of media (distribution of leaflets, promotion in television, holding lectures in schools, conducting seminars in the workplace, etc.).

- Implement mechanisms to monitoring the work and quality of legal aid provided by public institutions.
- Support the professional capacity of lawyers and organisations that provide legal aid through training and seminars.
- The right of access to public documents should be brought within the mandate of independent bodies such as the Ombudsman and the Free Legal Aid Agency, to enable citizens to gain faster access to information or documents.
- The government should adopt and implement a strategy on public access to documents and information.
- Municipalities should train their officials on providing access to public documents.
- Municipal authorities should also be encouraged to inform citizens about their activities and acts which they issue.
- The Government should also conduct a public outreach campaign using both television broadcasts and public meetings to inform citizens of its activities.

7.62 Recommendations addressed to civil society in Kosovo:

- Implement mechanisms to monitoring the work and quality of legal aid provided by civil society.

7.63 Recommendations addressed to donors:

- Donors should support the capacity of civil society to provide free legal aid to citizens in Kosovo.

7.64 Recommendations addressed to the national bar association:

- The Kosovo Chamber of Advocates should support the professional capacity of lawyers and organisations that provide legal aid through training and seminars.

8 Citizens Assistance Services in Serbia

Introduction

- 8.1 The civil wars of the 1990s in the former Yugoslavia, led to the emergence in Serbia of a large number of refugees, defectors, victims of violence and torture. Since then, a number of anti-militarist organisations²¹² have been providing information, counseling and legal assistance to victims of war. One study²¹³ from 2003 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 was instituted (and helped the professionalisation of the Serbian army), amnesty was granted to political prisoners, the incidence of torture in prisons and detention centres was reduced, the criminal offence of domestic violence was introduced into Serbian legislation and numerous changes were made to Serbian family law.
- 8.2 After 2005, the majority of these organisations reoriented 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. Since 2008²¹⁴, some of these NGOs have also started to provide legal assistance to returnees upon readmission as well as to asylum seekers.

Legal framework

- 8.3 General citizens' information and assistance services do not exist in Serbia. However, in the past ten years, the foundations for establishing citizens information services have been laid down following the country's accession to the European Convention of Human Rights (ECHR) (2004) and adoption of the new Constitution of the Republic of Serbia (2006), as well as the Law on Free Access to Information of Public Importance (2004), the Law on Local Self-Government (2007) and the Law on Associations (2009). As a result, a fragmented system of citizens' information services currently exists, which is not coordinated or regulated.

²¹² These organisations include Centar za antiratnu akciju, Helsinki Committee for Human Rights (Helsinški odbor za ljudska prava), Međunarodna mreža pomoći, Srpski demokratski forum, Komitet pravnika za ljudska prava, Grupa 484, Danish Refugee Council (Danski savet za izbeglice), Norwegian Refugee Council (Norveški savet za izbeglice) and Beogradski centar za ljudska prava itd.

²¹³ Sanja Milojević and Biljana Mihić Organizations that provide assistance to victims of crime in Belgrade (*Organizacije koje pružaju pomoć žrtvaram kriminaliteta u Beogradu*) available online: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370301037M.pdf>

²¹⁴ 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 have been repatriated from the EU to Serbia.

- 8.4 The need to provide citizens with access to information on their rights has been a concern in existence since the time of the Socialist Federal Republic of Yugoslavia. Since then, the right of citizens to freely access information has been constantly reaffirmed in subsequent Serbian Constitutions. Hence, Article 10 of the 1990 Serbian Constitution provided that “The work of state administrative agencies shall be accessible to the public. Limitations to this right shall be regulated by law”. However, this provision retained a purely theoretical value and was not implemented in practice until 2004, when the Law on Free Access to Information of Public Importance²¹⁵ was adopted.
- 8.5 In order to ensure the application of the right of free access to information of public importance, the law has established a Commissioner for Information of Public Importance.²¹⁶ The Commissioner started operations on 1st July 2005 and the institution’s mandate has since been extended to the protection of personal data.
- 8.6 This institution has advocated for recognition of the right to information under the current Constitution of Serbia. The right to information is recognised by Article 51 of the 2006 Serbian Constitution which declares that: “Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organisations with delegated public powers, in accordance with the law.” All holders of public authority are obliged to appoint a person to act on the demands of citizens and legal persons²¹⁷, and regularly publish report on their work²¹⁸.
- 8.7 The 2006 Serbian Constitution, following European and international best practices, guarantees the right to legal aid for every individual (Article 67²¹⁹) and elevates the

²¹⁵ Law on Free Access to Information of Public Importance, Official gazette of the Republic of Serbia, no. 120/04, accessible online: <http://www.poverenik.org.rs/en/pravni-okvir-pi/laws-pi/881-zakon-o-slobodnompristupu-informacijama-od-javnog-znacaja-preciscen-tekst-sl-glasnikrs-12004-5407-10409-i-3610.html>

²¹⁶ After adoption of the Law on Personal Data Protection (2008), the Commissioner’s title was changed in 2009 to the Commissioner for Information of Public Importance and Personal Data Protection. The Commissioner’s website can be accessed at: <http://www.poverenik.org.rs/>

²¹⁷ Law on Free Access to Information of Public Importance, Article 38(1): “The responsible person in a public authority shall appoint one or more officials to respond to request for free access to information of public importance.”

²¹⁸ Ibid., Article 39 par. 1: “A government body shall at least once a year publish a directory containing key facts about its operations(...).”

²¹⁹ Article 67 (Right to legal assistance) provides that:

“Everyone shall be guaranteed right to legal assistance under conditions stipulated by the law.

Legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal

right to legal representation to the level of a constitutionally guaranteed human right. Under the Serbian Constitution the right to legal assistance, including free legal aid, is to be exercised in accordance with conditions laid down by law.²²⁰

- 8.8 The obligation to provide legal representation under Article 67 of the Constitution is directed towards the local self-government and legal professionals and is designed to function as an independent and autonomous service. While our study revealed that some municipalities in Serbia had already established free legal aid services in the 1970s-80s, most of the existing services were created after the adoption of the present Constitution.
- 8.9 According to the data from one previous survey conducted into the work of municipal legal aid organs in Serbia,²²¹ during the period 2001-2006 legal aid agencies were set up in a quarter of municipalities located on the territory of the Republic of Serbia. The survey found that these agencies engaged between one and three persons to deal with legal matters, while another one or two persons dealt with administrative and technical affairs²²².
- 8.10 In 2008, pilot projects were implemented in eight municipalities in accordance with “the Spanish institutional model” whereby free legal aid services were provided to citizens residing in these municipalities on the basis of agreements reached with local bar associations. In the autonomous province of Vojvodina, this model has been successfully implemented following following the conclusion of an agreement between the Executive Council of Vojvodina and the autonomous province of Vojvodina and covers the territory of the entire northern province.²²³
- 8.11 The right of access to information is guaranteed by the Constitution (Article 51²²⁴) as further expressed in the Law on Free Access to Information of Public Importance.

assistance offices established in the units of local self-government in accordance with the law. The law shall stipulate conditions for providing free legal assistance.”

An official English translation of the Serbian Constitution is available here:

http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en

²²⁰ See further, Strategy for free legal aid system development in the Republic of Serbia (Official Gazette of the Republic of Serbia, 05 No.: 750-7292/2010, 7 October 2010).

²²¹ Kosanović, S., ‘A survey into the work of municipal legal aid services in Serbia’ (*Istraživanje o radu opštinskih službi pravne pomoći u Srbiji*) in Gajin, S., Vodinelić, V., Kosanović, S., Čavoški, A., Knežević Bojović, A., Reljanović, M., *Legal Aid (Pravna pomoć)*, CUPS, Belgrade, 2007, p. 227-289.

²²² During this period a total of 142.800 cases were handled involving various types of service: advice - 85.680, submissions - 14.280, procedural matters - 7.140, and other assistance - 35.700.

²²³ See: Strategy for free legal aid system development in the Republic of Serbia (Official Gazette of the Republic of Serbia, 05 No.: 750-7292/2010, 7 October 2010).

²²⁴ Article 51 declares “Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organisations with delegated public powers, in accordance with the law.”

According to the law everyone has the right to be informed whether a public authority holds specific information of public importance and whether such information is accessible to the public. The right to access information of public importance involves being allowed to examine a document containing such information, being entitled to make a copy of that document, and being entitled to receive a copy of such document on request, by mail, fax, electronic mail or other method. Following receipt of a request, a public authority must within 15 days inform an applicant whether it holds the requested information and grant access to the document containing the requested information. Failure to respond to the request may be challenged before the Commissioner for Information of Public Importance and Personal Data Protection. Public authorities may refuse access in certain circumstances, including if publication of the information would pose a risk to the life, health or safety of another person or the information would seriously jeopardise the public interest²²⁵.

8.12 Article 67 of the Serbian Constitution²²⁶ 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. However, this does not necessarily mean that other providers are forbidden from offering free legal aid. The constitutional provision does not prohibit the adoption of regulations allowing other entities to provide legal aid. Instead, Article 67 mandates the legislature with the power 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.

8.13 Despite its importance as a constitutionally recognised human right, at present free legal aid does not appear to be adequately regulated in Serbia. For instance, adequate

²²⁵ Article 9 reads as follows:

A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Threaten, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously jeopardise national defence, national and public safety, or international relations;
- 4) Substantially undermine the government's ability to manage the national economic processes or significantly impede the fulfilment of justified economic interests;
- 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.

²²⁶ Constitution of Republic of Serbia of 2006: *Ustav Republike Srbije (08.11.2006)*; *Sl. glasnik RS*", br. 98/2006, available online: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

public data concerning the funding of legal aid and the number of cases is not presently available.²²⁷ 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 intended for free legal aid.²²⁸ According to the latest available research, only 11% of parties in court proceedings have made use of the available exemptions from court costs. 47% of those interviewed were not even aware that free legal aid exists. Persons with a more educated background are more likely to know about free legal aid and therefore make use of it: 14.8% of users of legal aid had an elementary school diploma, 10.4% of users had some a high school diploma, while 45.2% of users had a higher-level diploma and 29.6% of users had a college or university degree.²²⁹ These findings are of particular significance when giving consideration to the implementation of existing and future provisions for free legal aid when it comes to the dissemination of information on legal aid.

- 8.14 The legal profession provides legal aid as an independent service as prescribed by law. Court proceedings and the representation of clients is generally reserved to members of the bar associations. The Law on the Legal Profession²³⁰ organises the work of lawyers, the conditions of the practice of law, the rights, obligations and responsibilities of lawyers, trainee lawyers and the organisation and operation of the bar associations. Further rights and duties of lawyers are contained in various laws governing civil and criminal procedure.
- 8.15 According to Article 85 of the Civil Procedure Law²³¹, parties may only be represented by a lawyer if they do not represent themselves. However this provision has recently been declared unconstitutional by the Supreme Court which reasoned that because the Law on Free Legal Aid has not yet been adopted, the obligation to be represented by a Bar-admitted lawyer in civil proceedings represents a form of indirect discrimination of citizens on the grounds of their financial status²³². It is not yet clear what the

²²⁷ 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, discussed further below, 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.

²²⁸ Strategy for free legal aid system development in the Republic of Serbia of 2010: *Strategija razvoja sistema besplatne pravne pomoći u Republici Srbiji, Sl. glasnik RS*", br. 74/2010.

²²⁹ Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, SeConS, 2013, available at: http://www.yucom.org.rs/upload/vestgalerija_103_9/1363187570_GSO_BPP%20veliki%20_web.pdf

²³⁰ Law on the Legal Profession of 2011: *Zakon o advokaturi; Sl. glasnik RS, br. 31/2011 i 24/2012 - odluka US*. An unofficial English version of the law is available on the website of the Serbian Bar Association: http://www.advokatska-komora.co.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf

²³¹ Civil Procedure Law of 2011: *Zakon o parničnom postupku; Sl. glasnik RS, br. 72/2011*.

²³² Decision of Constitutional Court of Serbia of March 23rd, 2013: *Odluka Ustavnog suda Srbije* IY3-51/2012 available at: <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/8915/?NOLAYOUT=1>

implications of this judgment are as regards the possibility of lay persons to represent persons in need in the course of civil proceedings.

- 8.16 When it comes to the legal profession, free legal assistance, in practice, amounts to the provision of mandatory defence in criminal proceedings under the Criminal Procedure Code. 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 benefit from legal aid.
- 8.17 Defendants in criminal proceedings may apply to the court for a lawyer to be assigned to them if they cannot afford the services of a lawyer. In accordance with the Criminal Procedure Code²³³, a defendant has the right to apply for legal aid in cases when he is accused of a criminal offence that carries a term of imprisonment of over 3 years or if reasons of fairness require it. With the application the defendant must provide proof of his financial status. Lawyers are appointed according to the roster kept by the local bar association and are to be compensated by the courts for the provision of legal aid. Once assigned, a lawyer may be excused from providing legal aid if the financial state of the defendant changes so that a lawyer would not have been assigned in the first place.
- 8.18 The Law on the Legal Profession²³⁴, Articles 66, mandates the Bar Association of Serbia and local bar associations to organise free legal aid. Foreign lawyers who are registered with the Serbia Bar Association are excluded from the possibility of offering legal aid under Article 26 of the law. 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 Vojvodina²³⁵.
- 8.19 There is insufficient data on the number of legal aid lawyers assigned to represent indigent defendants. According to existing research, 14% of defendants who have been convicted of a criminal offense which is punishable by up to ten years of imprisonment did not have any legal representation, 54% of the defendants had no counsel when they gave their statement to the investigating judge, 46% of the

²³³ Article 77 of the Criminal Procedure Code of 2011: *Zakon o krivičnom postupku; Sl. glasnik RS, br. 72/2011, 101/2011 i 121/2012.*

²³⁴ 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: http://www.advokatska-komora.co.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf.

²³⁵ 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/novost.html?id=53>.

suspects were not represented during the pre-trial investigation and only 11% of defendants received legal aid based on the ground of indigence.²³⁶

- 8.20 At the local level, a municipality is responsible for providing free legal aid to its residents. Article 20, paragraph 31, of the Law on Local Self-Government²³⁷ requires the local authorities to offer legal aid in accordance with the Constitution and other legal provisions. The Constitutional Court of Serbia has held²³⁸ that it is unconstitutional for a municipality (in this case the district of Palilula in the capital Belgrade) to organise legal aid outside the municipal administration, either in cooperation or through other institutions, in this case through lawyers as members of the bar. The Constitutional Court found that the municipality has no legal authority to discharge its duty to provide legal assistance on other institutions and that the absence of legal aid to citizens in the municipality itself represents a violation of the right to legal assistance under the provisions of Article 67 of the Constitution.
- 8.21 In administrative proceedings, according to Articles 47 and 48 of Administrative Procedure Law²³⁹ a party may freely choose their representative in the proceedings, provided that the representative is a person enjoying full legal capacity. A lawyer is not necessary. In constitutional appeal proceedings, a party can represent himself or by anyone with full legal capacity, which would include NGOs and human rights institutions.
- 8.22 The Law on Asylum²⁴⁰ provides that a person claiming asylum in the Republic of Serbia is entitled to free legal aid and representation from the United Nations High Commissioner for Refugees or NGOs which are offering legal aid to refugees. Article 11 guarantees the right to be assigned an interpreter in case the person seeking asylum does not speak the language of the proceedings. The claimant may request the services of an interpreter of their own choice but at their own expense.
- 8.23 Proposals are under way to reform legal aid and a draft Law on Free Legal Aid²⁴¹ (DLLA) as developed by a working group. The draft is being revised by a further working committee. The DLLA will considerably expand the scope of legal aid beyond

²³⁶ Report on the provision of legal aid, PILI, 2005; Strategy for free legal aid system development in the Republic of Serbia of 2010: *Strategija razvoja sistema besplatne pravne pomoći u Republici Srbiji*, *Sl. glasnik RS*", br. 74/2010.

²³⁷ Law on Local Self-Government: of 2007: *Zakon o lokalnoj samoupravi*; *Sl. glasnik RS*", br. 129/2007.

²³⁸ Decision of Constitutional Court IUI 45/2009 of February, 18th, 2010: *Odluka Ustavnog suda, IUI broj 45/2009 od 18. februara 2010. godine, objavljena u Sl. glasniku RS, br. 55/2010 od 6. avgusta 2010. godine.*

²³⁹ Administrative Procedure Law of 1997: *Zakon o opštem upravnom postupku*; *Sl. list SRJ*", br. 33/97 i 31/2001 i "*Sl. glasnik RS*", br. 30/2010.

²⁴⁰ Article 10 of Law on Asylum of 2007: *Zakon o azilu*; *Sl. glasnik RS*", br. 109/2007.

²⁴¹ Draft law on Free Legal Aid (*nacrt zakona o besplatnoj pravnoj pomoci*) was previously available at <http://www.mpravde.gov.rs/>. The new working group provided us with the new draft law during the writing of this report, but the draft law is still not available online.

criminal proceedings and will cover civil, administrative, and constitutional proceedings as well as mediation and proceedings before regulators and independent agencies. Certain proceedings will continue to be excluded²⁴².

8.24 While Article 67 of the Serbian Constitution provides for legal assistance to be provided by lawyers and local authorities, the DLLA clarifies that providers of free legal aid will include not only lawyers and legal aid services established in local self-government units, but also notaries, mediators, associations and other forms of civil society organisations (in particular NGOs), trade unions, legal clinics at law faculties and consumer protection organisations. Individuals and entities will only be allowed to provide legal aid if they are on the register of legal aid providers. However, the registration process will differ according to whether or not the provider of legal aid is a member of the legal profession²⁴³. Legal aid providers such as NGOs and university legal aid clinics will be subject to more onerous requirements²⁴⁴.

8.25 The DLLA differentiates between first-tier and second-tier legal aid. First-tier legal aid encapsulates information, advice and assistance - other than legal representation before the courts or the drawing up of official acts - which is provided by lawyers, notaries, mediators, legal aid offices of municipalities, associations, law clinics, public authorities at all levels and by legal aid call centres. Second-tier legal aid involves the drafting of documents and pleadings, the initiation and participation in mediation, the

²⁴² Article 34 of the DLAA will exclude proceedings before commercial courts, applications for construction and other licenses in administrative proceedings, registration of commercial entities, citizens' associations and foundations, compensation of immaterial damages for the offence of honour and reputation (*povredu časti i ugleda*), and proceedings in connection with applications for a reduction in child support following a failure to pay. It is questionable whether all these exceptions are justified. For example, the exception applying to the compensation of immaterial damages is questionable considering that in most cases of discrimination and similar wrongful acts, the only adequate remedy may be such remedies. Discriminated groups are often also economically marginalised and therefore including legal aid in such cases may well be necessary. Likewise, a failure to pay child support may result from temporary financial difficulties of the debtor resulting from unemployment. It would be preferable for the Ministry to examine each application based on the applicant's individual circumstances rather than laying down a blanket exclusion.

²⁴³ The rules concerning the registration of legal aid providers operates a clear distinction between lawyers and other legal aid providers. All lawyers will be allowed to register for free legal aid, without a further quality check, provided the applicant has not been the subject of with disciplinary sanctions (similar to current model of the bar association of the Vojvodina). The application for registration will be processed by the local bar association. the applicant lawyer will be required to confirm their acceptance of the rules of professional ethics and indicating their field of legal expertise if relevant. A list of registered legal aid lawyers will then be provided to the Ministry of Justice by the bar association.

²⁴⁴ On the other hand, other legal providers have to follow a different, more onerous, procedure. In order to register, other providers have to furnish details of their legal status, identify the expertise of their staff, provide a list of technical equipment needed for the work and as well as a financial plan. They also have to employ the services of at least one lawyer having at least three years of experience who must supervise the provision of legal aid University law clinics will also have to state the number of professors, students and other persons who are part of the clinic. The Ministry of Justice will then assess registrations according to the need for legal aid where this is not being satisfied by lawyers and local authorities. The applicant's financial plan will also be subject to approval. These additional requirements could be considered as constituting obstacles that may prevent effective access to justice.

provision of defence and representation before the courts, administrative bodies and other public authorities.

8.26 The DLLA does not foresee that first-tier legal aid will be funded in contrast to second-tier legal aid. This is regrettable given that the latest research reveals that 61% of free legal aid consisting in information and advice has been offered at the first-tier level whereas only 8% consists in court representation constituting second-tier legal aid.²⁴⁵ A further 25% involves the provision of advice and 5% the drafting of submissions. Under such circumstances the lack of compensation for the provision of first-tier legal aid could constitute a significant obstacle to the exercise of the constitutional right to legal assistance²⁴⁶. It should also be borne in mind that effective first-tier legal aid may prevent the necessity for second-tier legal aid by solving problems without the need for court intervention and potentially lowering the total cost of legal aid to the state budget.

8.27 The Law establishing the Ombudsman mandates this institution with the protection of the rights of citizens²⁴⁷. The Ombudsman was established in 2005 and has the authority to control whether the rights of citizens are being respected by the public authorities. The office of the Ombudsman is also provided official recognition by the Serbian Constitution²⁴⁸.

²⁴⁵ Access to justice and free legal aid in Serbia - Challenges and Reform, YUCOM, cited above.

²⁴⁶ Furthermore it is not clear what the reasoning is for regulating the first-tier legal aid when the state will not provide compensation. This may be incompatible with international standards, since the draft act may have the effect of restricting the ability of citizens to have access to information regarding their rights, which should not be the monopoly of the government or the legal profession (see for example Council of Europe Resolution (78) 8 on legal aid and advice, March 2, 1978).. If first-tier legal aid is not covered by the state's legal aid budget, legal aid providers other than lawyers or local authorities will come under increasing financial restraints thereby affecting their long-term survival. In the long run, this could hamper the ability of the public to have access to effective legal assistance in accordance with Article 67 of the Serbian Constitution.

²⁴⁷ Law establishing the Ombudsman (*Zakon o Zaštitniku građana*; Sl. glasnik RS", br. 79/2005 i 54/2007). The Ombudsman's website is available at <http://www.ombudsman.rs/>.

²⁴⁸ Article 138 of the Constitution provides that

“The Ombudsman shall be independent state body who shall protect citizens’ rights and monitor the work of public administration bodies, body in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions to which public powers have been delegated.

The Ombudsman shall not be authorised to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor’s Offices.

The Ombudsman shall be elected and dismissed by the National Assembly, in accordance with the Constitution and the law.

The Ombudsman shall account for his/her work to the National Assembly.

The Ombudsman shall enjoy immunity as a member of the National Assembly. The National Assembly shall decide on the immunity of the Ombudsman.

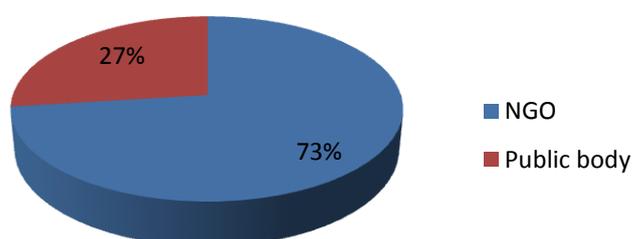
The Law on the Ombudsman shall be enacted.”

8.28 The Ombudsman is empowered to launch investigations following the receipt of a complaint from citizens or may do so on his own initiative, and may also issue recommendations to the public. The high number of cases handled by the Ombudsman - 4,744 in 2012 - further demonstrates the demand for free legal aid in Serbia.

8.29 For the sake of completeness, it should be mentioned that the Law Prohibiting Discrimination²⁴⁹ establishes the position of the Commissioner for Equality. The Commissioner registered a total of 602 cases in 2012, of which 465 were complaints, 117 were recommendations to achieve equality, six were requests to initiate court proceedings, five were lawsuits, and the remainder were opinions on draft laws, legislative initiatives or criminal charges and proposals to the Constitutional Court.

Availability of services

8.30 A survey on the provision of information, advice and legal aid was undertaken in Serbia during the period from March to May 2013. In total, 50 organisations



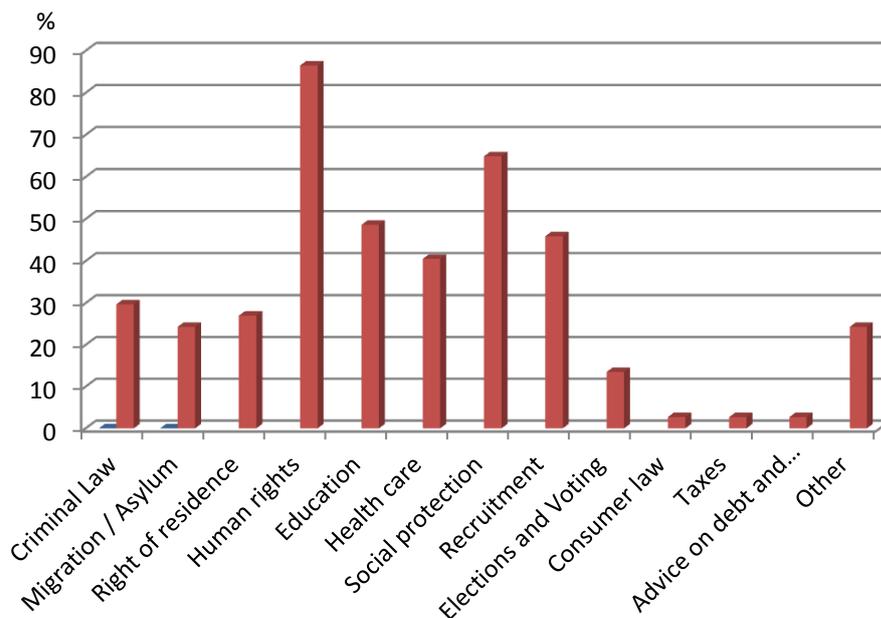
participated in the survey, out of which 19 were public institutions (free legal aid institutions and municipalities) and the remainder were non-governmental organisations.

Graph 30: Type of institutions that participated in the national survey

8.31 Aside from lawyers, the survey revealed that information, advice and assistance is also currently being offered by municipalities, associations and NGOs, the Ombudsman of the Republic of Serbia, the Commissioner for protection of equality, trade unions and law clinics of university faculties of law.

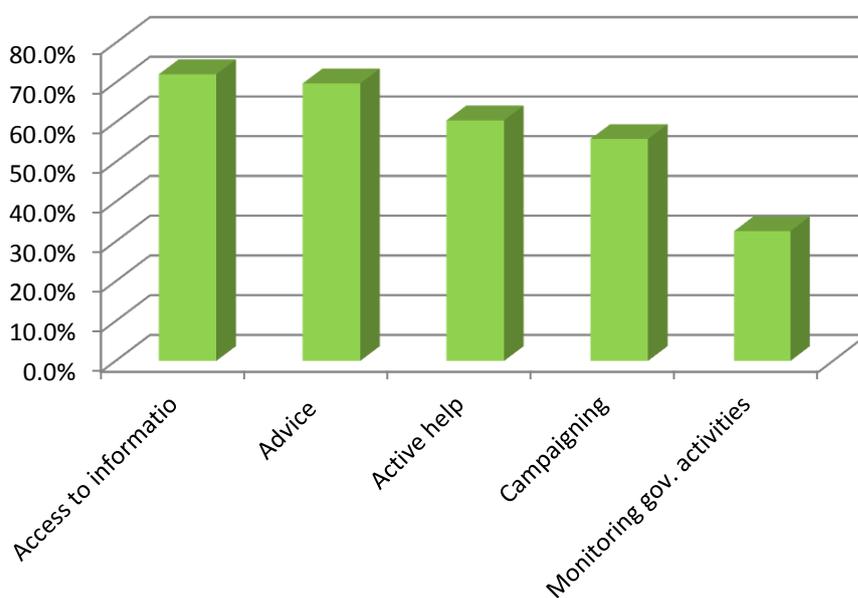
8.32 In terms of the subject matter of the assistance which existing services provide, most tend to provide advice on human rights and recruitment issues, while relatively few provide information and advice on taxes, debt and bankruptcy.

²⁴⁹ Law Prohibiting Discrimination of 2009 (*Zakon o zabrani diskriminacije Srbije*; Sl. glasnik RS", br. 22/2009).



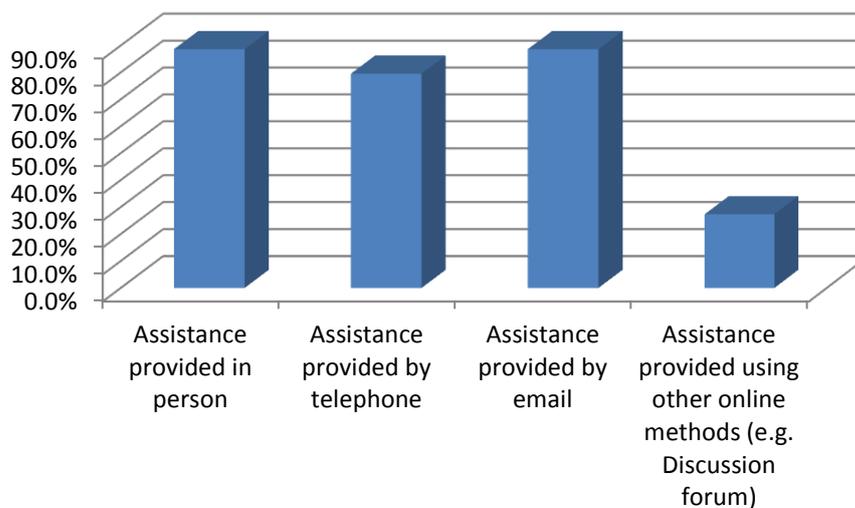
Graph 31: Areas and sectors in which legal information and aid is offered

8.33 The nature of the assistance provided also varies across organisations. 73% of respondents provide access to information and 70% provide advice by skilled advisers or by lawyers. 61% also provide active help while 33% monitor government activities and 56% engage in campaigning for law and policy reforms. Of those providing active help, 58% provide legal assistance (such as help in making submissions to the public administration or the courts), 23% provide legal representation of clients by a lawyer in court, while only 14% provide assistance in using alternatives to court (for example, mediation or conciliation).



Graph 32: Citizens' assistance services offered by survey respondents

8.34 The survey also provided a snapshot of the methods used to provide assistance. 85% NGOs provide service in the office (face by face), 80% NGOs provide service by phone, 92% by e-mail, and 8% online including chats. The survey revealed that the internet is not a predominant channel for requesting and getting legal advice: 76% of free legal aid users did not use the internet to search for information, which shows the need to enhance the use of this medium to communicate information on free legal aid. At the same time the task must be improving legal information on the Internet considering that only 16% of those getting advice online found the information is useful.



Graph 33: Manner in which free legal information and aid services are provided

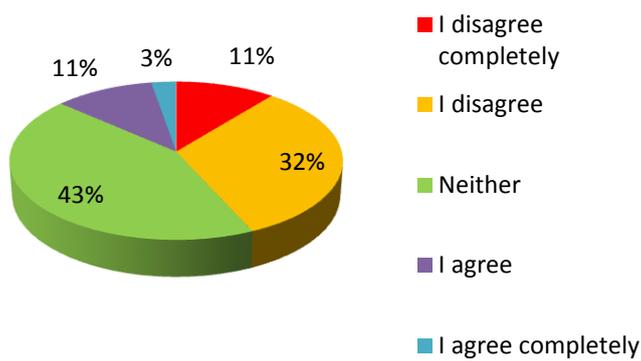
8.35 The Digital Agenda Administration of Republic of Serbia has developed one-stop-shop e-government web portal²⁵⁰ that contains information on public services, ministries and agencies, and provides e-services to the public²⁵¹. Ministries, although they have their own website, rarely have an information helpline that can provide assistance to citizens to exercise the rights within their areas of responsibility.²⁵²

8.36 In this respect, our survey conducted revealed that only 14% of all respondents believe that the information published on government's websites is well presented with 44% considering that it does not provide adequate instructions on resolving problems.

²⁵⁰ The portal is accessible here: <http://www.euprava.gov.rs>

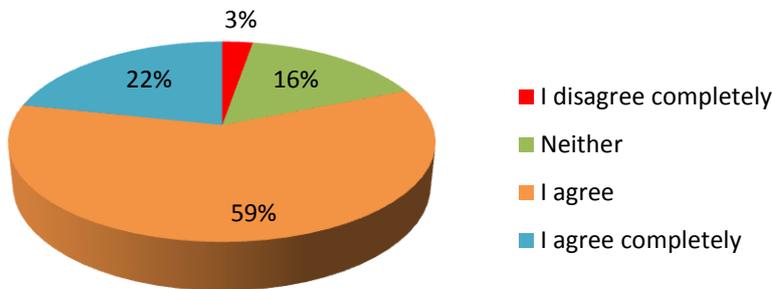
²⁵¹ On this portal, citizens can access the content such as e-services, news, frequently asked questions, etc. Electronic services can be searched by multiple criteria: life events, listings by alphabetical order, as well as the competent authority in charge of the implementation of the service.

²⁵² Our research revealed that only one out of 16 Ministries in Serbia - the Ministry of Labour, Employment and Social Policy - has established an information centre (est. 2008) through which the public can obtain information about their employment and social rights. The information provided covers labour law rights, social entitlements, family protection, the protection of persons with disabilities and veterans, domestic violence, pensions and disability insurance.



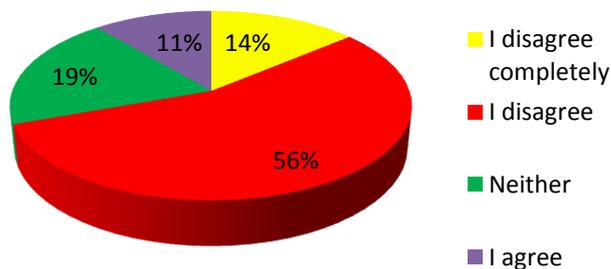
Graph 34: The existing information provided on government websites is sufficient to allow citizens to resolve their problems

8.37 Moreover, 81% of respondents felt that the existing information being provided by the government is too complicated to be understood.



Graph 35: The existing information provided by the government to the public is too complicated to understand

8.38 The survey conducted under this project revealed that 70% of all respondents felt that existing laws do not provide a sufficiently comprehensive legal framework for the provision of information, advice or active help to the public (Graph 36). Indeed, 82% of

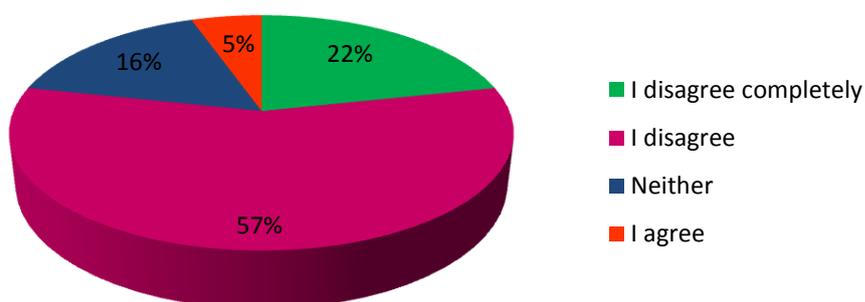


respondents expressed the view that the current legal framework creates obstacles to the provision of information and assistance to citizens.

Graph 36: The existing laws provide a comprehensive framework for the provision of information, advice and active help to the public

Gaps in the availability of services

8.39 The project's objective of establishing a general information service addressing all of citizens' information needs and questions appears particularly relevant in the case of Serbia. Indeed, not only does such a service not currently exist, but the existing institutions and bodies that do provide information and advice have limited capacities and lack mutual coordination. Indeed, 79% of the survey respondents stated that existing services of advising citizens do not correspond to citizens' needs for information, advice and active help.



Graph 37: The existing citizens advice services do not fully answer public's needs for information, advice and active help

8.40 In the absence of a general service that could be regulated by a binding legal framework, information is provided by various actors mainly operating on a voluntarily basis. Such a basis is insufficient to ensure citizens' access to information can be provided in a permanent way to meet demand.

8.41 Analysis of the results of the survey conducted for the Triple A Project indicates that active help in Serbia, especially legal representation and assistance in using alternatives to court are provided by few institutions. Results shows that only 14% of all respondents provide mediation and conciliation services and only 23% provide legal representation.

8.42 When the geographical coverage of assistance services is examined, it is apparent that in the autonomous province of Vojvodina the survey did not identify any providers of general legal representation²⁵³, bearing in mind that the provision of active help in the province by the municipalities under a pilot project with the Bar Association of Vojvodina has now ended. There are no NGOs in this region that provide legal

²⁵³ However, the Novi Sad Humanitarian Centre (NSHC) provides pro bono legal assistance to members of marginalized and out-of-reach social groups, such as Roma population and internally displaced persons, in several municipalities of Vojvodina province.

representation before courts. Data on the extent of legal aid provided by the Bar Association of Vojvodina could not be obtained.

- 8.43 Information and advice services are also lacking in rural areas throughout Serbia. It appears that it is mainly major urban areas that benefit from information and advice services. The need for direct accessibility of information and advice services in rural areas is all the more important given the low internet coverage of 33% of households²⁵⁴.
- 8.44 The Republic of Serbia consists of central Serbia and two autonomous provinces of Vojvodina and Kosovo.²⁵⁵ Available data^{256 257} indicates that legal aid in general is organised in a significant proportion of the existing municipalities in Serbia. In Serbia, there are 167 local self-government units including municipalities. 67 of them provide legal aid services from special units within municipality. 65 of them do not have legal aid services as a special unit within the municipality²⁵⁸. 28 of these reported that they do not have a unit dedicated to legal aid service but they said that free legal aid is provided by lawyers employed in municipality, municipality administrative officers or the municipality public defender.
- 8.45 All municipalities within the capital city of Belgrade²⁵⁹ are reportedly offering free legal aid. In some cases, legal aid may be targeted to certain groups. For example, the office for youth affairs of the municipality of Belgrade is offering free legal aid to all persons under age of 30.²⁶⁰
- 8.46 Outside of Belgrade, free legal aid is offered by some municipalities as well. In the autonomous province of Vojvodina, 20 of 43 municipalities have set up special units that offer legal assistance to citizens. 9 municipalities reported that they provide free legal aid even though they do not have a dedicated legal aid unit. 16 municipalities do

²⁵⁴ Statistical Office of the Republic of Serbia, *Usage of information and communication technologies in the Republic of Serbia, 2012*, p.15.

²⁵⁵ The situation in Kosovo is not further discussed in this part of the report but is the subject of the previous chapter.

²⁵⁶ Legal Aid report 2007: *Pravna pomoć (2007)*, Saša Gajin (ur.), Vladimir V. Vodinelić, Srećko Kosanović, Aleksandra Čavoški, Ana Knežević Bojović, Robert Sepi, Mario Reljanović, p. 279.

²⁵⁷ YUCOM also contacted all municipalities in Serbia in August 2013, by phone or request for free access to information. Also, 19 municipalities participated in the survey developed within the project. The figures provided are based on the responses received.

²⁵⁸ Five of the municipalities reported that they have closed recently their special unit that used to provide legal aid services.

²⁵⁹ Namely the municipalities of Barajevo, Voždovac, Vračar, Grocka, Zvezdara, Zemun, Lazarevac, Mladenovac, Novi Beograd, Obrenovac, Palilula, Rakovica, Savski Venac, Sopot, Stari Grad, Čukarica and Surčin.

²⁶⁰ Belgrade Youth Office which opened in May 2009: <http://www.kancelarijazamlade.rs/en/#office>.

not provide free legal aid²⁶¹. In central Serbia, 41 municipalities are providing legal aid²⁶² but it remains unavailable in 31 municipalities²⁶³.

- 8.47 Based on the survey data, there is significant disparity in provision of legal assistance between urban and rural areas throughout Serbia. This situation is especially noticeable in the less developed areas, where there is a higher risk of poverty and social exclusion, where the presence of NGOs is limited and where potential needs may therefore be significant.
- 8.48 Workers and employed people are the second least represented group among the categories of users of these services. Results of the survey showed there is a great need for assistance in employment and labour rights. The survey also makes it apparent that there are very few providers of information and advice on taxes, debt and bankruptcy in Serbia.
- 8.49 Quality standards and monitoring appeared to be an issue for a significant number of respondents, with 37.2% stating that they applied no quality standards or measures to the assistance they provided.
- 8.50 A significant number of respondents identified the existence of obstacles that might hamper efforts to enhance the provision of information and advice services to citizens in Serbia. 77% of all respondents felt that donors often hesitate to finance projects, which jeopardises the sustainability of existing NGOs that do provide information and assistance services to the public.
- 8.51 Moreover, there is also a need to convince the government of the benefits of providing such services to the public, since 90% of all respondents considered that there is a lack of interest of the government or local authorities in strengthening the provision of information and advice services to citizens. On a related note, 82% of respondents also stated that there is the lack of public advocacy and public trust also poses a challenge.

²⁶¹ The municipalities in Vojvodina where legal aid is not currently provided include Ada, Alibunar, Bela Crkva, Coka, Irig, Kovacica, Nova Crnja, Novi Becej, Novi Knezevac, Opovo, Pećinci, Plandiste, Secanj, Srbobran, Titel and Vrsac.

²⁶² These are the municipalities of the municipalities of Boljevac, Bajina Basta, Backa Topola, Bela Palanka, Bosilegrad, Bujanovac, Cacak, Cicevac, Doljevac, Gadzin Han, Golubac, Jagodina, Knic, Kragujevac, Krusevac, Lebane, Leskovac, Loznica, Mali Idjos, Merosina, Nis – Pantelej, Nis – Crveni Krst and Nis – Palilula, Nis-Niska Banja, Nis-Medijana, Novi Pazar, Odzaci, Paracin, Petrovac na Mlavi, Pirot, Pozarevac, Smederevo, Tutin, Uzice, Valjevo, Vranje, Vrbas, Zajecar, Zabaljal, Zagubica, Zitoradja.

²⁶³ Municipalities in central Serbia where legal aid is not currently provided are Sabac, Bogatic, Koceljevo, Mali Zvornik, Krupanj, Ljubovija, Osecina, Ub, Lajkovac, Mionica, Ljig, Velika Plana, Veliko Gradiste, Malo Crnice, Kucevo, Arandjelovac, Raca, Lapovo, Despotovac, Kladovo, Majdanpek, Knjazevac, Sokobanja, Kosjeric, Kosjeric, Pozega, Cajetina, Arilje, Priboj, Nova Varos and Prijepolje.

Conclusion and Recommendations

8.52 In order to improve the system of citizens' information and assistance services in Serbia, a number of recommendations can be formulated.

8.53 Recommendations addressed to the Serbian government:

- 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.
- The state should consider publishing contact details for these organisations on their websites. It will increase the trust of citizens in both the state institutions and NGOs. It could also help to address donors' hesitance in supporting projects.
- 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. It would be desirable to develop this directory as a joint project between all relevant ministries and the various assistance services. It is also necessary to enhance the capacity of public administrations in providing assistance to the public. This will reduce the number of inquiries directed to legal aid services which relate to the provision of basic information and advice and will allow them to dedicate their resources to providing more value-added assistance.
- Legal aid services in municipalities should be reorganised separately 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 self-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 self-governments, as an interim solution, consideration should be given to the possibility of forming joint services covering several municipalities to reduce costs. Such a solution could also be supplemented by arranging to have lawyers on duty in the municipality on certain days, as well as establishing call centres using pre-recorded answers to common questions.
- The draft Law on Free Legal Aid should be amended to define a broader range of users of legal aid to include victims of human rights violations who are not

necessarily socially disadvantaged. The law should be amended to ensure that financial status is not the sole criteria for granting free legal aid to this category.

8.54 Recommendations addressed to Serbian civil society:

- Non-governmental organisations should identify opportunities for closer cooperation and collaboration. 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.
- Non-governmental organisations should collaborate in establishing a code of conduct and quality standards for the provision of advice and commit to their respect in order to enhance public confidence in their work.

8.55 Recommendations addressed to donors:

- Donors should assist non-governmental organisations to enhance their capacity in providing quality free legal assistance, particularly to those belonging to vulnerable groups and other persons in need. Donors should ensure that their funding priorities match the needs of citizens.

8.56 Recommendations addressed to the Serbian national and local bar associations:

- The Serbian national and local bar associations should be encouraged to promote the provision of pro bono services by lawyers and law firms in Serbia. The Serbian bar associations should raise awareness of the benefits of public service and encourage lawyers to devote part of their time to providing free legal assistance either individually or through their engagement in non-governmental organisations, trade unions and law clinics of law faculties at university.

9 Citizens Assistance Services in Turkey

Introduction

- 9.1 An integrated system that has the capacity to inform citizens on their rights and responsibilities, to provide consultancy and to provide active help is not institutionalized in Turkey. More specifically, Turkey is lacking the existence of a comprehensive system which informs and helps citizens' on topics such as consumer's rights, tax system, municipal services, accommodation, social benefits, wages, social security and retirement.
- 9.2 At present, a multitude of civil society organisations (CSOs) provide legal aid and advice services in Turkey. In particular, rights-based organisations engage in public advocacy for establishing rights-based laws on critical issues, carry out activities to raise citizens' awareness on the importance of a rights-based approach in judicial procedures, and generally inform citizens of their rights.
- 9.3 Along with the CSOs legal aid services Bar Associations are the most active non-governmental organisations in providing advice and active help for citizens. Bar Associations only provide juridical aid and their services are regulated by law.
- 9.4 Existing services which can be regarded within the scope of citizens' information services are limited either by a unique field or a specific target group. Also within the services that can be regarded as citizen's information services, the coordination and coherence is limited and not systematic.
- 9.5 Unions, trade associations and bar associations have been very active since the early 1990s in providing access to information for citizens on their rights. Many organisations have had recourse to specialized committees (Human Rights Committee, Children's Rights Committee, and Women's Rights Committee). The service of these national based Committees mainly focused on providing legal advice upon the demand of citizens. The committees of trade unions, and Bar Associations fulfilled the gap created by the absence of rights based civil society organizations. The committees were mainly focused on providing legal support to the citizens who do not have access to legal support and these first examples of citizens legal aid committees were lacking an international perceptive.
- 9.6 One of the prominent organizations providing legal assistance is Human Rights Association-İnsan Hakları Derneği (HRA-İHD)²⁶⁴. HRA was established in 1986 with the goal to work on human rights and freedoms. One of the main activities of İHD was

²⁶⁴The association has a website: www.ihd.org.tr

providing legal assistance for the victims of torture and maltreatment of government officials.²⁶⁵ Establishment of IHD followed by the foundation of Human Rights Foundation of Turkey²⁶⁶ in 1990-both organizations were, and still do, provide legal assistance to victims of human rights abuses.

- 9.7 Another good example of prominent of citizen advice service is Mor Çatı Kadın Sığınma Evi-Mor Çatı Women's Shelter²⁶⁷, established in 1990. Mor Çatı is working on the establishment of women shelters, elimination of violence against women and giving support to female victims of violence.. One of the first act of support Mor Çatı provided was the legal aid given to the victims of violence.
- 9.8 In 2000s, as regulations on establishment and management of a CSO liberalized²⁶⁸, more and more CSO were established in Turkey. Another important factor on 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 CSO increased and more and more CSOs managed to secure organizational sustainability. During this time, CSOs have become more active in providing access to information services on citizens' rights. In addition CSOs gained more expertise on the subjects they are working with and thanks to the developments of telecommunications technologies-decreasing communication costs, more CSOs managed to reach more and more people with their advice services.
- 9.9 In addition to rights-based associations exemplified above, Bar Associations in Turkey are providing juridical aid to citizens since 1990s. Juridical aid services of the Bar Associations and the CSOs' legal aid services became different due to qualifications and scope of the services. Juridical aid of the Bar Associations are limited with the juridical processes and limited with the appointment of a lawyer by the Bar in order to represent the citizens during juridical processes.

Legal framework

- 9.10 In Turkey a code regulating the citizen's information offices or law centres does not exist. In this section existing legal framework and also citizens' right to information, legal aid mechanisms and related regulations are summarized.

²⁶⁵ For more information on establishment of IHD:

http://ekutuphane.ihop.org.tr/pdf/kutuphane/22_128_0000-00-00.pdf

²⁶⁶ For more information on establishment of TIHV: <http://www.tihv.org.tr/index.php?english-1>

²⁶⁷ For more information on Mor Çatı <http://www.morcati.org.tr/en/about-us/our-story>

²⁶⁸ 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>

- 9.11 The Constitution of the Republic of Turkey foresees the respect for human rights and fundamental freedoms. Article 10 guarantees equality of all individuals before the law²⁶⁹, although Article 16 provides that foreign nationals may have their “fundamental rights and freedoms ... restricted by law in a manner consistent with international law”. Article 36 further provides that everyone has a right to redress before the courts and benefit from a fair trial. No courts may refuse to hear cases within their jurisdiction.
- 9.12 The Turkish Code of Criminal Procedures was amended in 1992²⁷⁰ and inserted a new Article 138, which provides that persons accused of an offence who cannot afford a lawyer are entitled to legal representation from a lawyer at the expense of the state. In accordance with the Law of Criminal Procedure²⁷¹ enacted in 2005 Bar Associations have the duty to provide free lawyers whenever needed.
- 9.13 For those people who cannot afford a lawyer or afford court costs, and consequently cannot enjoy the right to access justice for economic reasons, a lawyer is appointed by the Bar Associations and court costs waived. Such services are regulated by the amendments made in 2011 to the Attorneyship Law (Law No. 4667)²⁷² and Code of Turkish Civil Procedure of 2011 (No.6100)²⁷³. The legal framework gives Bar Associations the mandate and authority to provide free juridical aid.
- 9.14 The right to a legal remedy and access to justice are addressed in the Code of Turkish Civil Procedure (No. 1086)²⁷⁴ (Articles 465-472) by regulating exemptions from court fees.
- 9.15 The Law on Attorneys (No. 1136)²⁷⁵ regulates the legal profession in Turkey. This contains provisions setting out under what circumstances attorneys are to offer free services including advice and active help and sets out detailed requirements for the

²⁶⁹ Article 10 of the Constitution provides that “All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

²⁷⁰ Law No. 3842 A Law Amending Certain Provisions of the Code of Criminal Procedures and Establishment and Trial Procedures of the State Security Courts Law. (Ceza Muhakemeleri Usulü Kanunu ile Devlet Güvenlik Mahkemelerinin Kuruluş Ve Yargılama Usulleri Hakkında Kanunun Bazı Maddelerinde Değişiklik Yapılmasına Dair Kanun):

http://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc076/kanuntbmmc076/kanuntbmmc07603842.pdf

²⁷¹ Law No: 5377. The Law Amending the Turkish Criminal Law <http://www.tbmm.gov.tr/kanunlar/k5377.htm>

²⁷² Law No. 4667 Avukatlık Kanununda Değişiklik Yapılmasına Dair Kanun, <http://www.tbmm.gov.tr/kanunlar/k4667.html>

²⁷³ Law No. 6100 Hukuk Muhakemeleri Kanunu can be reach here (only in Turkish)

<http://www.tbmm.gov.tr/kanunlar/k6100.html>

²⁷⁴ Law No. 1086 Hukuk Usulü Muhakemeleri Kanununun Bazı Maddelerinin Değiştirilmesi Dair Kanun

²⁷⁵ Law No. 1136 Avukatlık Kanunu can be reach here (Only in Turkish)

<http://www.barobirlik.org.tr/Detay5432.tbb>

provision of these services. Article 35 of the law specifies the work which only qualified lawyers registered with a bar association may undertake in Turkey and includes providing an opinion in legal matters, litigating and defending the rights of individuals and legal entities before the courts, arbitrators, and other bodies invested with judicial powers, and managing all documentation associated with these activities. Article 63 of the law also regulates the work of attorneys. Law prohibits the work of those as an attorney who are not registered to a bar association.

9.16 The Turkish Code of Civil Procedure (No. 6100) governs civil proceedings and provides for the exemption from court fees. The section on 'Legal Aid' regulates the conditions under which individuals can make use of free legal aid. Individuals with limited economic means can make use of legal aid provisions and allowed to be exempt from court fees. The purpose of legal aid is to make attorney services available to those who lack the wherewithal to pay attorney's fees and jurisprudence costs with a view to overcoming the obstacles to the right of the individual to seek justice and to ensure equality in exercising the right to seek justice as further provided by the Legal Aid Regulations of the Union of Bar Associations of Turkey. While juridical aid answers an important societal need it is different from legal aid services. As a result of the legal regulation Bar Associations are single service providers in the field.

9.17 Law no. 4982 Law on the Right to Information²⁷⁶ came into effect on April 24, 2004. As indicated at the Article 1 of the law, the object of the law is to regulate the procedure and the basis of the right to information according to the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government. According to the law everybody has the right to access information and local and national government bodies obliged to give information upon request of the citizens. Restrictions and exceptions of the rule also indicated at the law. As summarized by Yaman Akdeniz at his detailed report, limitations of the law provides a long list of exemptions. Articles 15-28 of the law lists the exemptions.²⁷⁷ Right to Information Law have also been criticized by other law professionals and CSOs²⁷⁸.

9.18 The Law on the Right to Information also brings the establishment of Right to Information Assessment Council (Bilgi Edinme Değerlendirme Kurulu-BEDK)²⁷⁹. The

²⁷⁶Law 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)

²⁷⁷ Prof Yaman Akdeniz's 2008 Turkey's FOI Report can be reached here http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=category§ionid=4&id=4&Itemid=11

²⁷⁸ Rights To Information, An article written by a prominent lawyer Fikret İlkiz can be reached here <http://www.bianet.org/bianet/insan-haklari/124886-bilgi-edinmeme-hakki> (only in Turkish)

²⁷⁹ <http://www.bedk.gov.tr/>

Council's activities were regulated according to article 14 of the Law No. 4982 and councils deal with appeals on rejected Right to Information requests. A report prepared by academics, on the work of the council shows that the work of the council cannot be regarded as a legitimate organization²⁸⁰.

9.19 On September 12, 2010 a referendum was held in Turkey to amend the Constitution²⁸¹. Amendments covered the establishment of an Ombudsman institution. As a result of the amendment of Article 74 of the Constitution, which regulates right to petition citizens, an Ombudsman institution was established. The Institution's mission is to deal with problems that may arise between state institutions and citizens. According to the amendment every citizen would be granted the right to request information and apply to the Ombudsman. Following the amendment of Article 74, Law No. 6328 on May 2012 came into force regulating the work of the Ombudsman.

9.20 The institution was established under the Grand National Assembly of Turkey's (TBMM) Presidency and will investigate complaints regarding the functioning of the administration. The public chief auditor was elected by the TBMM on November 28, 2012 following a secret vote for the duration of four years. The election of the first chief Ombudsman, Mehmet Ömeroğlu, raised objections from both opposition parties²⁸², rights based CSOs in Turkey and also international CSOs²⁸³ concerns.

9.21 Law on Human Rights Institution²⁸⁴ came into effect on April 24, 2004. As indicated in the Article 1 of the law, the object of the law is to regulate establishment of the Human Rights Institution of Turkey (TIHK), its mission and its competencies. According to Article 17 of the law, TIHK is responsible for the investigation of the applications on human rights abuses, evaluate the results of the investigations and coordinate the studies on measures to stop human rights abuses. .

9.22 Citizens can submit their applications on human rights abuses they have been subjected to, to the TIHK²⁸⁵. TIHK can conduct an investigation following the

²⁸⁰ http://www.bilgiedinmehakki.org/tr/index.php?option=com_content&task=category§ionid=4&id=5&Itemid=14 (in Turkish)

²⁸¹ For a detailed report on constitutional amendments, <http://arsiv.setav.org/public/HaberDetay.aspx?Dil=tr&hid=44410&q=constitutional-referendum-in-turkey>

²⁸² <http://www.hurriyetdailynews.com/ombudsman-under-fire-for-his-verdict-on-dink.aspx?pageID=238&nID=35881&NewsCatID=338>

²⁸³ <http://www.hurriyetdailynews.com/human-rights-watch-slams-new-ombudsman.aspx?pageID=238&nID=36572&NewsCatID=339>

²⁸⁴ Law no. 6332 Law on Human Rights Institution <http://www.resmigazete.gov.tr/eskiler/2012/06/20120630-2.htm>

²⁸⁵ <http://www.ihb.gov.tr/Basvuru.aspx>

application from the citizens and the process can be finalized with a recommendation from the institution.

- 9.23 Establishment of the TIHK has been a subject of discussion amongst rights based CSOs in Turkey and during the process of making the law on the TIHK, human rights CSOs raised their concerns regarding the organizational structure and operation of the TIHK²⁸⁶
- 9.24 The Turkish government has adopted a website that provides information to the public on their rights (www.turkiye.gov.tr). This web site provides one single portal for all e-services of all public institutions including central and local governmental bodies. Citizens can make inquiries on various issues such as legal files, taxes, penalties, consumer complaints, employment, commercial tenders, communication device registries, military services, education, residence address modifications, social security, health services, land titles and legislative procedures.

Availability of services

- 9.25 Within the scope of the survey undertaken for the project, a questionnaire was sent to over 4,000 organisations based in Turkey. The research contained in this report includes analysis of responses received from 30 organisations.
- 9.26 The survey focused on the activities of CSOs on citizens access to information services, CSOs' activities related to active help, obstacles that CSOs face in giving legal aid services and recommendations from CSOs on citizens information services. Considering the high numbers of CSOs active in Turkey and limitations of the questionnaire STGM also conducted a desktop research and interviews with leading CSOs giving such services. As a matter of course results of the survey and the desktop study is not reflecting the whole picture of citizens' information and legal aid services in Turkey. On the other hand we believe the report is valuable as it reflects the approach and experiences of rights based CSOs.
- 9.27 Results of the questionnaire shows that a considerable amount of CSOs in Turkey are to some extent engaged in citizen's information and assistance services with or without naming the service. While considerable time and labour of CSOs has been reserved to such services most of the CSOs do not label their work as citizens information or legal aid service and most of the CSOs do not advertise the work they do due to the risk of not having the capacity to answer the high numbers of demand they will be facing.

²⁸⁶ 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

- 9.28 On the other hand, whilst especially rights based CSOs in Turkey are providing legal aid and citizens information services within the limitations of their capacities, civil sphere in Turkey is lacking a Citizens Advice Bureau's type service provider with a wide scope and expertise. Organizations offer legal advice and consultancy services to applicants in their respective areas of expertise. However, only lawyers enrolled to a Bar Association are permitted by law to provide active legal representation or offer legal opinions. 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. Helsinki Citizens Assembly's Refugee Programme, and Transparency International's Transparency Centre, Kaos GL's legal aid programme are examples of legal aid and assistance with a hired law professional. In most cases volunteers with expertise and volunteering lawyers are answering the demands of citizens. Some CSOs like Özge-Der work in cooperation with Bar Associations related committees.
- 9.29 In order to create a deeper understanding of the services offered by the CSOs, in addition to the results supplied by the survey, we need to summarize some of the ongoing activities of rights based CSOs in Turkey. Considering as fact, citizens information and assistance services are mainly offered by rights based CSOs the desktop research mainly focused on rights based CSOs. We should also express that Citizens Information & Assistance Services Offered by Rights Based CSOs are not limited to the examples given.
- 9.30 İnsan Hakları Derneği-IHD (Human Rights Association), Mazlum-Der (The Association of Human Rights and Solidarity for Oppressed People), Türkiye İnsan Hakları Vakfı-THIV (Human Rights Foundation of Turkey) as being prominent CSOs active in the elimination of human rights abuses in Turkey are offering citizens information and assistance services on human rights abuses, torture, maltreatment to the citizens in need. While none of the organizations mentioned above have reserved communication channels for the questions and assistance demands of the citizens, web pages of the organizations mentioned involves the contact details. Upon demand of citizens IHD, THIV and Mazlum-Der offer legal assistance to the citizens in need of legal aid related to the human rights abuses. This legal aid mostly supplied by volunteer law professionals or volunteers who have expertise on the specific issue, like discrimination.
- 9.31 While none of the organizations reports the number of the assistance they supplied, yearly reports of the organizations implies the existence of legal assistance offered by the organizations.

- 9.32 The Humanist Bureau also provides consultancy services on children rights, human rights for public, private, national and international institutions, local governments, universities, CSOs, political parties, and individuals within the framework of European Union and international legislation. As mentioned at the introduction of this report, Humanist Bureau's study on citizen's information services is one of the important sources of information on the issue.
- 9.33 Mülteci-Der (Association for Solidarity with Refugees), Sığınmacılar ve Göçmenlerle Dayanışma Derneği-SGDD (Association For Solidarity With Asylum Seekers and Migrants), Helsinki Yurttaşlar Derneği-HYD (Helsinki Citizens Assembly), İnsan Kaynağını Geliştirme Vakfı-İKGV (Human Resource Development Foundation) are the CSOs active on the rights of asylum seekers and giving legal aid to asylum seekers in Turkey.
- 9.34 The legal aid programme of İKGV dates back to 2001 and İKGV is still giving legal aid to asylum seekers. Mülteci-Der, based in İzmir-one of the main entry points of asylum seekers in Turkey also gives basic legal aid to asylum seekers in İzmir.
- 9.35 HYD's Refugee Support Programme on the other hand can be regarded as the widest assistance programme of all with professional lawyers that have expertise on international law and refuge law. Asylum seekers who are registered in the United Nations High Commission of Refugees (UNHCR) in Turkey can for legal assistance about their applications to HYD. SGDD's working in cooperation with UNHCR, gives basic support to asylum seekers in Turkey. SGDD's support is limited to the application process of asylum seekers in seeking asylum.
- 9.36 Özge-Der (Association for Solidarity with Freedom-Deprived Juvenile), incepted its Youth Support Line (www.genclikdestekhatti.org) project in 2012. Initially, the Youth Support Line aimed to support young detainees during their rehabilitation into society. As a result of unexpected demand Özge-Der widened the scope of the hotline and nowadays answers diverse needs of children and youngsters. In order to answer demands for legal assistance Özge-Der is working closely with Ankara Bar Association's Children's Rights Committee and volunteer lawyers.
- 9.37 Gündem Çocuk (Agenda Child Association) in answering questions on the rights of children and legal aid demands of citizens foresaw a need for a legal aid programme. The organization is developing a project for the establishment of a hotline to meet identified need for legal aid.
- 9.38 Being one of the prominent CSOs giving legal aid to the victims of violence Mor Çatı continues its work to date. According to the latest report published by the

organization 654 women accessed the services provided, this included legal consultancy by the volunteer lawyers. Morçatı also provided lawyers via the Bar Associations to women in need (Mor Çatı, 2013-First Half Report)

- 9.39 Along with MOR Çatı, KAMER Vakfı (Women's Center Foundation) is one of the women's CSOs giving legal aid to women in need. Kamer's hotline named Urgent Support Hotline is open 24 hours a day. Urgent Support Hotline's target group is women who need legal and physiological support related to the violence they have been exposed to. In addition to legal and physiological support KAMER also gives employment consultancy via its hotline. According to the statistical data published on Kamer's web page, in 2011 4620 women (51.6% of total applications to the organisation) demanded legal support²⁸⁷ and the vast majority of the applications were guided to reach legal aid.
- 9.40 Çevre Hukuku Derneği-ÇHD (Association of Environmental Law) gives legal aid on issues related to environmental issues to citizens and also to the CSOs working on environmental issues. ÇHD also works closely with the Bar Associations. While they do not have a visible special citizens information and legal aid service a large part of the work load of ÇHD is occupied with legal aid.
- 9.41 Almost all of the LGBTT organizations (Kaos GL, Lambda İstanbul, Pembe Hayat and Siyah Pembe Üçgen) give legal aid to citizens, One of the organizations giving support with the contributions of a lawyer is Siyah Pembe Üçgen's support programme. The organization has a hotline reserved for legal aid calls and a lawyer of the organisation is reachable 24 hours. Thanks to the financial support of an international donor organization, Siyah Pembe Üçgen managed to continue its legal aid and legal assistance during 2013 without interruption.
- 9.42 Ruh Sağlığında İnsan Hakları Derneği-RUSİHAK (Human Rights in Mental Health Initiative) began providing legal aid via its hot line Hukuk Hattı- (Lega Aid Hotline) in 2010. Support generated via hotline that lasted 1 year and finalized with the end of the project. Acknowledging the need RUHİSAK relaunched the service in 2013 with the support of the EC. The Hotline will be in service until 2015. The service consists of one social worker, one psychologist and a part-time lawyer giving legal aid to the people who need support on mental disability issues.
- 9.43 İstanbul Bilgi Üniversitesi STK Eğitim ve Araştırma Birimi (İstanbul Bilgi University NGO Training and Research Centre) accept legal aid demands of CSOs via its e-mail address.

²⁸⁷ <http://www.kamer.org.tr/2011%20Y%C4%B1%C4%B1%20C5%9Eiddet%20Ba%C5%9Fvurular%C4%B1na%20ait%20istatistikler.ppt>

Legal aid to CSOs is given in cooperation with the universities Human Rights Law Research Centre.

- 9.44 Since its inception in 2005, Sivil Toplum Geliştirme Merkezi Derneği (Association of Civil Society Development Centre) STGM) gives legal support to rights based CSOs and for citizens wanting to start up a CSO. STGM also publishes previously answered questions via its web page. The search engine at STGM's web page allows CSOs to narrow the results of previously answered questions.
- 9.45 Transparency International Turkey (Şeffaflık Derneği) initiated the Advocacy and Legal Advice Centre²⁸⁸ with the financial support of the European Instrument for Democracy and Human Rights (EIDHR) and the EU Turkey Delegation. The Legal Advice Centre works in order to raise the consciousness of individuals about what they can do when they encounter corruption and about the current legal and institutional attitudes towards combating corruption.
- 9.46 Most of the service provider CSOs use internet based technologies in order to gather and disseminate information.
- 9.47 Most of the organisations are funded through donors and membership contributions. Some have income from provided services. Very few have access to government funds or public donations.
- 9.48 While staff capacities are varied, most organisations (76%) have less than 25 people working and/or volunteering.

Gaps in the availability of services

- 9.49 With regards to the results of the survey and findings of the desktop research conducted, a number of gaps in the availability of citizens information and assistance services have been identified.
- 9.50 A citizen's information and assistance services bureau does not exist in Turkey. Citizens mostly consult rights based CSOs on a specific issue. On the other hand an expert institution with the capacity of informing citizens on several issues does not exist in Turkey.
- 9.51 For most of the rights based CSOs giving legal aid services sustainability of these services is mostly connected to the continuation of financial support of international donor organizations.

²⁸⁸ http://www.seffaflik.org/Detay_en.asp?MenuID=138&GID=107&sayfa=About%20Call%20for%20Transparency%20Centre

- 9.52 Some service provider CSOs intentionally do not advertise their services due to the potential risk of receiving more applications or requests than they have the capacity to deal with.
- 9.53 Legal regulations hinder attorneys' pro bono work. Legally, attorneys cannot work voluntary and follow up cases and give legal support.
- 9.54 Weak financial capacity of CSOs is the biggest obstacle to CSOs employing an attorney.
- 9.55 Right to Information Law has a restrictive influence on the right to information.
- 9.56 Authority of and the impact of the Human Rights Institution is limited.
- 9.57 The number of Kurdish speaking staff is not enough to meet the demand.
- 9.58 Most of the CSOs giving legal aid services do not have the capacity to sustain regular and continuing services. 12 of the 25 organizations answering the relevant question in the survey indicate their need to increase capacity on this issue.
- 9.59 Some of the organizations cannot monitor and evaluate their activities related to citizen information services due to lack of capacity. As a result, there is insufficient reporting on beneficiaries of legal aid services.
- 9.60 Most of the participants identified government information services as complicated and not easy to use. There is a consensus that the existing information provided by the government is too complicated to understand. Most opinions on existing services are negative, which shows that there is high potential for the project to improve current services.

Conclusions and Recommendations

- 9.61 Turkey is lacking the existence of a comprehensive system which informs and helps citizens' on topics such as consumer's rights, tax system, municipal services, accommodation, social benefits, wages, social security and retirement. Therefore as being the least established areas of legal aid and services targeting specialist and/or marginalised groups contributes a considerable part of the report.
- 9.62 The most important obstacles to spreading citizens' advice in Turkey seem to be the lack of interest by government and local authorities. It is therefore will be one of the challenges to get them involved in the development of citizens information and

assistance. Respondents also believe that not only government authorities but bar associations should also be involved in this project.

9.63 These findings can be considered as an introduction for a wider debate on the issue.

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