



Improvement of Free Legal Aid System in Croatia: twinning light project with Lithuania

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Session:

Session 129 — Promoting global access to law: developing an open access index for official authenticated legal information. Part 2: Europe — Law Libraries Section with Government libraries, Library and Research Services for Parliaments, Government and Official Publications

Abstract:

Reform of the judiciary in Croatia started in 2005 with Strategy of the judiciary reform. Strategy objective was to improve efficiency and professionalism in the judiciary with regards to a broader access to justice. In May 2010 the Action plan was revised again since most of the planned activities were carried out - like adoption of Free Legal Aid Act (2009). With that Act Ministry of Justice has begun realization of an extensive task of the establishment of the free legal aid system. Beneficiaries are persons unable to bear the costs of legal services.

On the 16th of December 2011, the Delegation of the European Union, the Ministry of Justice of Croatia, and Service of legal aid guaranteed by the State of the Republic of Lithuania marked the official start of IPA Twinning light project “Improvement of Free Legal Aid system”. Project is based on Trainings for trainers, aimed at improving skills of employees of the Department for Legal Aid within the Ministry of justice and State Administration Offices. It will provide basis for future education of the personnel dealing with free legal aid.

Key words: *Free Legal Aid * Human rights*

1. Introduction

Reform of the judiciary in Croatia started in 2005 with *Strategy of the judiciary reform*. Strategy objective was to improve efficiency and professionalism in the judiciary with regards to a broader access to justice. With the aim of additional acceleration of judiciary reform the Action plan and the Strategy were revised several times in the period from 2005 to 2009. In this context we like to emphasize the importance of seven thematic sections (independence of the judiciary, impartiality of the judiciary, professionalism and qualification of the judiciary, efficacy of the judiciary, free legal aid, prison system and war crime trials) that were introduced with the aim of establishing strategic objectives. In May 2010 the Action plan was revised again since most of the planned activities were carried out¹, and Republic of Croatia has started with new phase of promoting justice through international projects. One of the major projects for the general development of the judiciary in Croatia was Justice Sector Support Project (JSSP). JSSP basic project objective is to improve the efficiency of Croatian justice system, which is proposed to be accomplished throughout support to implementation of key reforms in the judiciary. These reforms are important for modernisation and harmonisation of Croatian justice system with the EU standards. The Republic of Croatia and the International Bank for Reconstruction and Development signed the Loan Contract on the JSSP. The Contract entered into force on 12 July 2010, and it will be implemented during 5-year period. It is financed by the World Bank Loan (EUR 26 million) and from state budget (EUR 1.9 million)².

As we already mentioned, in May 2010 the Action plan was revised since most of the planned activities were carried out - like adoption of Free Legal Aid Act (2009). With that Act Ministry of Justice has begun realization of an extensive task of the establishment of the free legal aid system. Beneficiaries are persons unable to bear the costs of legal services. State authority concerned on the implementation of that Act is Directorate for the European Union and International Cooperation³.

¹ See: Strategic plan of the Ministry of justice. Available at: <http://www.mprh.hr/Default.aspx?art=543&sec=547> (17.05.2012.)

² See: Justice Sector Support Project. Available at: <http://www.mprh.hr/Default.aspx?art=442&sec=166> (17.05.2012.)

³ See: Directorate for the European Union and International Cooperation. Available at: <http://www.mprh.hr/Default.aspx?sec=452> (17.05.2012.)

Directorate for the European Union and International Cooperation is an administrative organisation of the Ministry of Justice of Croatia that performs administrative and professional activities tasks related to criteria for membership in the EU in the field of judiciary. The Directorate coordinates, supervises and participates in creation of provisions from Ministry's jurisdiction in order to ensure they are harmonised with *acquis communautaire* and enforced on time. The Directorate prepares, develops, implements and coordinates the projects financed by the EU programmes. It monitors application of international documents on human and minorities rights and develops prescribed reports; develops cooperation with international organisations in implementation of these documents, and implements second instance administrative procedure according to requests for free legal aid approval and implements administrative and professional supervision, as well as the supervision over resources for provided free legal aid.

2. Learning with Lithuania

On the 16th of December 2011, the Delegation of the European Union, the Ministry of Justice of Croatia, and Service of legal aid guaranteed by the State of the Republic of Lithuania marked the official start of IPA Twinning light project *“Improvement of Free Legal Aid system”*. Through this project, the EU will support the Ministry of Justice in establishing more efficient system of free legal aid in Croatia according to the experience of Lithuania and EU. The system will be more understandable and accessible to citizens while organizational structure and working process of related stakeholders will be simplified. Associations, trade unions, law faculties with law libraries are also providers of the free legal aid and each can render specific legal aid services which will contribute to the improvement of judiciary effectiveness and provide wider access to justice to all social groups.

For a more comprehensive insight into the functioning of the Croatian and Lithuanian legal system we present a brief overview of development of the institute of free legal aid in these two countries.

State-guaranteed Legal Aid in Lithuania

Up to the 2001 Lithuania did not have free legal assistance provided by the State. As it is known Convention of protection of European Human Rights and Freedoms regulates a person's right to a fair process, establishes the State's duty to provide free legal assistance if a person can not afford a lawyer and when the interests of justice require so. The subject of providing free legal aid in Lithuania was started to discuss in 1999. A working group, which drafted a conception of the system of the state –guaranteed legal aid, was formed under a decree of the premier of Lithuania. The same working group also drafted the Law of the State-Guaranteed Legal Aid and the law was adopted by the Seimas of the Republic of Lithuania in March 2000 and entered into effect on 1 January 2001. Under this Law Lithuania guarantees legal aid to persons who cannot properly protect their rights and law protected interests because of their insufficient financial situation. The state-guaranteed legal aid includes legal information, legal consultations, defense and representation in the procedure of cases.

There are *three types* of the state-guaranteed legal aid in Lithuania: a) primary legal assistance (legal information and legal consultations are guaranteed by executive institutions of local governments to the persons whose annual income corresponds to the limit prescribed by law), 2) state legal assistance (state-guaranteed defense and representation in legal proceedings providing by lawyers and their assistants covered from the state's budget) and 3) legal assistance provided by public institutions. As the financial situation of the State did not allow to provide primary legal assistance to all who needed, very important role was played by private initiatives as the third type of legal aid.

Free Legal Aid Act in Croatia

According to the Law of free legal assistance from 2008⁴ in Croatia mainly existed two types of free legal aid: primary and secondary legal aid. *Primary legal aid* comprises: general legal information, legal advice, legal assistance in drawing up documents before administrative bodies and public authority, representation in administrative matters, legal aid in peaceful out-of-court settlement of disputes, representation before the European Court of Human Rights and international organizations. *Secondary legal aid* consists of: representation before courts, legal aid in peaceful settlement of disputes before a court, drawing up documents in court

⁴ See: Free Legal Aid Act, Official Gazette (Narodne novine, No. 62/2008)

proceedings. approval of any form of legal aid includes exemption from payment of taxes and the cost of proceedings. According to the provisions to this Act providers of the legal aid are: attorneys, authorized associations and institutions of higher education.

Institutions of higher education offering university courses in the field of Law may provide primary legal aid through law clinics in accordance with their own general acts, and as primary legal aid, give general legal information, legal advice and draw up documents. The procedure for approval of legal aid is instituted by submitting an application to the office at Ministry of justice.

Human Rights Center ⁵ at the end of the 2010 presented the final version of technical analysis, titled "Evaluation of the Croatian Free Legal Aid Act and its implementation", project financed by the Embassy of Finland in Zagreb. That was independent professional evaluation of implementation of the existing Law on Free Legal Assistance in Croatia, with specific recommendations for its "improvement". Document of evaluation was prepared by independent international experts: Professor Jon T. Johnsen of the University of Oslo, Professor Georg Stawa, the Ministry of Justice in Austria and Professor Alan Uzelac, Faculty of Law Zagreb⁶.

Since that time, Free Legal Aid Act was revised twice in 2011⁷ and two new types of free legal aid were introduced. According to these amendments we have now: a) primary legal aid, b) secondary legal aid, c) exemption from payment of court fees, d) exemption from payment of litigation costs.

⁵ The Human Rights Center in Zagreb was established in January 2003 as a Technical Cooperation Project between the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) and the Government of the Republic of Croatia. After functioning as a part of the UN system for two and a half years, the HRC was transformed into a national human rights institution. HRC is registered as a public institution on 1 August 2005 with the goal of independantly promoting human rights in the Republic of Croatia.

⁶See: Human Rights Center. Available at:

<http://www.human-rights.hr/vijesti/vijesti/evaluacija-zakona-o-besplatnoj-pravnoj-pomoi-u-hrvatskoj-i-njegova-provedba.html> (15.05.2012.)

⁷ See: Free Legal Aid Act, Official Gazette (Narodne novine, No. 44/2011, 81/2011)

Twinning Light project “Improvement of Free Legal Aid System”

Twinning Light project “Improvement of Free Legal Aid System” is of great importance for Croatia in the framework of the EU accession process. The legal aid system enables Croatian citizens access to court and other public authorities, taking into account their material status. Establishment of the free legal aid system presents larger step towards protection of fundamental human rights relating to equal access to justice, right to fair trial and rule of law. The aim of this twinning light project is to achieve greater efficiency of free legal aid system in the Republic of Croatia, and also to enhance the procedure of granting legal aid and accelerate whole process in general. The improvement of free legal aid system will contribute to the improvement of judiciary effectiveness and provide wider access to justice to all social groups.

Twinning Light project is implemented by Kaunas Service of legal aid guaranteed by the Republic of Lithuania in partnership with the Ministry of Justice of the Republic of Croatia⁸. Below is basic information about the project, which is mainly related to the duration of the project and expected results (Fig.1).

⁸ See: Delegation of the European Union to the Republic of Croatia. Available at: <http://www.delhrv.ec.europa.eu/?lang=en&content=3913> (15.05.2012.)

Official title of the project	HR/2009/IB/JH/03TL “Improvement of Free Legal Aid System”
Country	The Republic of Croatia
Region/ City	Zagreb
Sector (standard sectors + symbols)	IPA 2009 (Facility for Project Preparation and Reinforcement of Administrative Capacity – FPP RAC)
Budget/EC contribution	EUR 230.000,00/ 90 % is paid by IPA
Implementation period	6 months starting from 27 November, 2011
Expected results	<p>Component 1: Recommendation on legal framework for free legal aid prepared</p> <p>Component 2: Free Legal Aid Implementation System enhanced</p> <p>Component 3: Access to information on free legal aid improved</p> <p>Component 4: Capacity of all relevant stakeholders working with the free legal aid system (Ministry of Justice, County State Administration Offices, NGOs, judicial officials) strengthened in order to improve implementation of free legal aid</p>
Coordinator	Diana Jarmalė , Kaunas Service of legal aid guaranteed by the Republic of Lithuania
Beneficiary	Ministry of Justice of the Republic of Croatia
Partners	Kaunas Service of legal aid guaranteed by the State Ministry of Justice of the Republic of Croatia

Fig. 1. Basic information about the project.

3. The Process of monitoring

Since the system established often faces difficulties in every day implementation of free legal aid, but this twinning light project will contribute to the improvement of the system by detecting limitations and deficiencies in procedures and try to eliminate them through better skilled personnel based on courses and study visits – duration is 24 months.

Conference "Three-year application of the Free Legal Aid Act – Experience and future challenges" was organised in Zagreb on 1 February 2012. The conference was a part of the Twinning Light project "Improvement of the Free Legal Aid System". Organiser's intention was to stimulate an open discussion regarding the evaluation of the free legal aid system taking into account all the key factors of this process. The Conference was attended by domestic and foreign experts who took part in the discussion.

Conference goal was to inform the public on the possibilities that the free legal system offers to citizens, especially in the light of the amendments to the Free Legal Aid Act.

In the opening speech participants were addressed by the Minister of Justice of the Republic of Croatia Orsat Miljenić, Deputy Minister of Justice of the Republic of Lithuania Tomas Vaitkevičius, representative of the Delegation of the European Union to the Republic of Croatia and the event moderator Kristijan Turkalj from the Ministry of Justice of the Republic of Croatia. The Deputy Minister of Justice, Sandra Artuković-Kunšt, emphasised that the number of requests for free legal aid was increased in the last three years.

However, Civil Right Project (CRP) - NGO from Sisak is of an opinion that it is very important to emphasize that there was around 3000 requests in 2010, which is extremely small number for Croatia, because CRP Sisak in 2010 had 3617 requests.

Kristijan Turkalj said that the Law on free legal aid improved since 15 July 2011. He said that 80 percent of the free legal aid cases are secondary legal aid cases that were provided by attorneys.

Anželika Banevičiene, the project manager from Lithuania, presented the Lithuanian system. The primary legal aid is provided in all legal cases and to all applicants, without going into their financial means. The primary legal aid providers prepare clients for secondary legal aid. The system seems to be compact and complete. Yearly, there are about 70000 cases. Experiences of the Croatian free legal aid beneficiaries showed that it is difficult and long lasting to gain the right to free legal aid.

University professor Alan Uzelac presented the work on the Legal clinic in Zagre (Faculty of Law). He showed that our free legal aid system is largely inefficient.

Milana Kreća presented the work of CRP Sisak. She explained that CRP statistics for 2011, which showed that there was a huge need for legal aid and that 98 percent of cases are covered outside the state legal aid system by international donors. The reasons for this are in the system itself, as is too bureaucratic and it takes more time than providing of legal aid. Milana Kreća emphasized that the present administration of primary legal aid needed to be simplified and that NGO's need to be financed through projects.

The Deputy Head of the EU Delegation in Croatia, Fulvio Bianconi, pointed out the importance of the free legal aid system and that it is necessary that legal aid is available to all citizens⁹.

4. Framework for Sustainability

Twinning light project „*Improvement of Free Legal Aid system*” is based on Trainings for trainers approach, aimed at improving skills of employees of the Department for Legal aid within the Ministry of justice of Croatia and State Administration Offices. It will provide basis for future education of the personnel dealing with free legal aid, according to the experience of Lithuania and EU.

Associations (NGO), trade unions and law faculties are also providers of the free legal aid and each can render specific legal aid services which is great opportunity for improvement of Free Legal Aid System in Croatia. The importance of the similar initiatives also we could find in the Lithuanian case. When financial situation of the State did not allow to provide primary legal assistance to all who needed, very important role was played by private initiatives as the third type of legal aid.

The best example of private initiative in Croatia we can see in practice of *Civil rights Project* (CRP)¹⁰. CRP is non-governmental organisation from Sisak that provides free legal aid in accordance with Law on Free Legal Aid (National Gazette No. 62/2008, 44/201, 81/2011). CRP provides primary free legal aid. Secondary free legal aid is provided through retained

⁹ See: "Three-year application of the Free Legal Aid Act – Experience and future challenges". Available at: <http://www.crpsisak.hr/2012/02/17/konferencija-%E2%80%99etri-godine-rimjene-zakona-o-besplatnoj-pravnoj-pomoci-dosadasnja-iskustva-i-buduci-zazovi/?lang=en> (16.05.2012.)

¹⁰ See: Free Legal Aid (Projekt građanskih prava Sisak). Available at: <http://www.crpsisak.hr/besplatna-pravna-pomoc/bpp/?lang=en> (19.05.2012.)

attorney-at-law, registered before the Croatian Ministry of Justice, who provides this type of aid in CRP. Extraordinary legal aid is provided in cases of protection of human rights and freedom in cases before the Constitutional Court; protection of the right to trial within a reasonable time cases; cases of protection of human rights and fundamental freedoms before the European Court of Human Rights.

Professional associations like *South East European Association of Law Libraries* (SEALL) can also help in the promotion of free legal assistance in Croatia and information dissemination to all citizens. South East European Association of Law Libraries (SEALL) was founded in 2009 (Croatia)¹¹. SEALL was established after war period to promote and enhance the value of law libraries to the legal and public communities and to provide open access to legal knowledge. Today SEALL represents large number of law librarians and related professionals from Croatia, Bosnia and Herzegovina, Slovenia, Serbia, Montenegro and Macedonia.

As a non-profit organization, the SEALL:

- supports educational and professional opportunities for legal information professionals, especially those from region, by providing support for annual course attendance and regular cooperation;
- shares legal knowledge and increases access to legal information on the regional basis through: Database, Newsletter and other publications, and its website;
- fosters networking among legal information professionals by creating and maintaining ongoing relationships between SEALL and other international, national and regional law libraries and related organizations;
- supports and encourages the development of national and regional legal information policies and intellectual freedom.

¹¹ See: South East European Association of Law Libraries (SEALL). Available at: <http://www.biblio-pravo.org/index.php?lang=en> (15.01.2012.)

5. Conclusion

IPA 2009 Twinning light project „*Improvement of Free Legal Aid System*” is based on Trainings for trainers approach, aimed at improving skills of employees of the Department for Legal aid within the Ministry of justice and State Administration Offices. It will provide basis for future education of the personnel dealing with free legal aid in Croatia, according to the experience of Lithuania and EU.

Attorneys, associations (NGO), trade unions and law faculties are also providers of the free legal aid and each can render specific legal aid services. Exactly in that part of Free Legal Aid Act we can see possibility for the sustainable development of free legal assistance. Active involvement of law librarians in the promotion of human rights through the work of professional associations is important for Croatia and for the whole regional environment, which mainly consists of the countries of new democracy.

In our opinion this is also a challenge and opportunity for law libraries to introduce new services for their users and improve chances for their own sustainability.