

## ment of persons under w – Mapping the customary national migration law

### MARKS ABOUT AS THE GLOBAL FRAME

The field of migration is complex, ambiguous and often is probably due to the dual nature of domestic and international concern. On the one hand, it is usually considered as pertaining to the domestic law, and, the movement of persons across borders involves a triangular relationship between a state, the person and the receiving state.

The law with regard to migration is exacerbated by the governing the movement of persons across borders is scattered throughout a wide array of principles and rules of international law (including refugee law, human rights law, trade law, maritime and air law, diplomatic law, etc.). The great variety of these multifaceted dimensions of migration but also transcends existing branches of international law.

The international legal framework governing migration is a 'jigsaw puzzle', for which 'the design is still emerging'. Such fragmentation and application of existing norms. The design of this discrete international migration law thus provides the variety of rules regulating the movement of persons.

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# The Application of the Law on Free Legal Aid

from the Perspective  
of Internally  
Displaced Persons

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# Table of Contents

<b>4</b>	<b>Introduction</b>
<b>6</b>	Review of the provisions of the Law on Free Legal Aid important for the exercise of the right to free legal aid for the most vulnerable
<b>10</b>	Experience and views of internally displaced persons related to exercising the right to free legal aid
<b>10</b>	- The methodology of conducted focused groups
<b>12</b>	- Experience and views of respondents
<b>20</b>	- Concluding remarks of the participants of the focus groups on free legal aid, the Law on Free Legal Aid and the free legal aid application form
<b>21</b>	Case studies
<b>21</b>	- <b>Vanesa</b> - Instead of legal aid to initiate a procedure before the court, she received a court address
<b>24</b>	- <b>Ina</b> – Vulnerable groups need free legal aid to obtain free legal aid
<b>27</b>	- <b>Borka</b> – Arbitrary decision-making on free legal aid applications
<b>30</b>	<b>Conclusion</b>

# Introduction

The Law on Free Legal Aid was adopted after many years of discussions on the directions of development of this area. After various versions of the draft Law on Free Legal Aid, the final text was adopted in November 2018, and its implementation began on 1 October 2019 and brought numerous innovations in the provision of free legal aid that affected both beneficiaries<sup>1</sup> of the free legal aid system and providers.

When passing the Law on Free Legal Aid<sup>2</sup>, one of the most frequent assessments sent by those associations of citizens dealing with the protection of the most vulnerable citizens was that the proposed text did not fully take into account the needs and problems faced by the most vulnerable, and even that certain issues concerning the exercise of the right to free legal aid are regulated in a way that legal aid will be required in order to exercise the right to free legal aid. Some of the assessments also referred to the fact that the focus of the discussions on the new legal text was on the providers of free legal aid, and that the procedure for approving this aid and the circle of providers are such that those who are most vulnerable will be left to themselves. It was further pointed out that by this legal text the specialization in providing free legal aid was abandoned and that capacities, knowledge and experience of those providers who, in the absence of the Law on Free Legal Aid, were trained for years to provide legal support and help different groups of citizens, were not used.

However, the adoption of the Law on Free Legal Aid can also be seen as a new reality that has changed the way the system of free legal aid functions and certainly responded to some of the needs of citizens for better access to justice.

However, from the aspect of the work of the Initiative A 11, the focus is on those citizens who are most vulnerable and on the answers to the question of whether this Law has fully responded to their needs.

Therefore, this publication deals with the position of internally displaced persons in the free legal aid system, with special reference to the challenges faced by the most vulnerable displaced persons in need of better access to justice.

After the introduction, the analysis is divided into four parts. The first part refers to a review of relevant provisions of the Law on Free Legal Aid, while the second refers to the presentation of the results of four groups held with internally displaced persons in November 2020 in Nis, Novi Sad and Belgrade. The third part of the publication presents three case studies illustrating the problems faced by beneficiaries of the free legal aid system encountered by the Initiative A 11 in the first year of the application of the Law. Although limited in scope, we hope that this publication will contribute to a better understanding of the position of the most vulnerable in the free legal aid system and future talks in order to establish a more effective system that will provide citizens with equal access to justice.

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1 All gender-specific words used in this report denote and refer equally to both sexes.

2 "The Official Gazette of RS", no. 87/2018 as of 21.11.2018.

## Review of the provisions of the Law on Free Legal Aid important for the exercise of the right to free legal aid for the most vulnerable

Article 4 of the Law on Free Legal Aid prescribes the conditions for providing free legal aid. This article stipulates that free legal aid is provided to a citizen of the Republic of Serbia, a stateless person, a foreign citizen with permanent residence and another person entitled to free legal aid under another law or ratified international agreement, if he/she meets the conditions for exercising the right to financial social assistance or conditions to be a beneficiary of the right to child allowance. At the same time, starting from the fact that not all vulnerable persons are beneficiaries of the social protection system, and especially from the fact that not all vulnerable persons exercise the right to financial social assistance or child allowance, the Law prescribes that free legal aid can be granted to a person who does not meet the conditions to be a beneficiary of these two rights, but due to the payment of legal aid from his own income in a specific legal matter, he/she would meet the conditions to be a beneficiary of the right to financial social assistance or child allowance.

In addition, these persons may be granted the right to free legal aid in a number of other cases. Thus, it is prescribed that the right to free legal aid may also be granted to the above-mentioned persons if the specific procedure concerns one of the following legal situations:

1. A procedure is conducted on the rights, obligations or law-based interests of the child before a court, other state bodies or public authorities;
2. In case of a person against whom a security measure of compulsory psychiatric treatment and custody in a health institution or a protective measure of compulsory psychiatric treatment is being carried out;
3. In case of a person against whom the procedure of partial or complete deprivation or restoration of legal capacity is being conducted;
4. In case of a person who enjoys legal protection from domestic violence;
5. In case of a person exercising legal protection from torture, inhuman or degrading treatment or punishment or trafficking in human beings;
6. In case of a person seeking asylum in the Republic of Serbia;
7. In case of a refugee, a person under subsidiary protection or an internally displaced person;
8. In case of a person with a disability;
9. A child who is protected by the service of accommodation in the social protection system;
10. Children and youth whose social accommodation service has been terminated until the age of 26;
11. Adults and the elderly who are placed in a social protection institution without their own consent;
12. In case of a person who exercises the right to determine the time and place of birth in accordance with the law governing a non-contentious procedure;
13. In case of persons affected by the procedure of forced eviction and relocation in accordance with the law governing housing.

Despite the broadly defined range of life situations that enable free legal aid also to persons in need of free legal aid who are not beneficiaries of the social protection system or the right to child allowance, the key question that arises here is whether persons who are so vulnerable, such as those against whom a procedure for deprivation or restoration of legal capacity is conducted, “legally invisible” persons or those affected by forced evictions, can actually **access the free legal aid system**. Simply put - whether they can successfully meet the conditions for exercising the right to free legal aid that will be provided to them in order to resolve some of their vital issues, which is why they address courts or state bodies in administrative procedures.

Of the provisions relevant to the analysis of how the free legal aid system responds to the needs of the most vulnerable, the one contained in Article 7 of the Law on Free Legal Aid is also significant. This provision stipulates, inter alia, that free legal aid will not be granted in those procedures in which the value of the dispute would be in an obvious and significant disproportion to the costs of the procedure. However, in practice, it happens that certain disputes do not have **the value of the dispute that is in proportion to the costs of the procedure**. For example, the Law on Court Fees<sup>3</sup> stipulates in the Article 33 that in administrative disputes, when the subject of the dispute is not assessable, the value of the subject of the dispute shall be the amount of 3,000 RSD.

This problem can be illustrated by the experience of Zoran<sup>4</sup>, a refugee from the former Yugoslavia in the procedure before the Constitutional Court, upon the constitutional complaint he filed for incorrectly and illegally calculated tax and discrimination in the procedure before the Administration of Public Revenues in the city where he lives. Specifically, the Constitutional Court rejected the constitutional complaint filed by Zoran for violation of the principles and rights from Articles 21, 32 and 58 of the Constitution of the Republic of Serbia, provisions of Articles 6 and 14 of the European

<sup>3</sup> “The Official Gazette of RS” no. 28/94, 53/95, 16/97, 34/2001 – other law, 9/2002, 29/2004, 61/2005, 116/2008 – other law, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015 and 95/2018.

<sup>4</sup> The name has been changed.

Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol 12 and Article 1 of Protocol 1 to the European Convention. The Constitutional Court rejected the constitutional complaint in this case because the issue raised in this case was “monetized” in such a way that it reduced all the above arguments of the applicant to the fact that the challenged judgment of the Administrative Court determined that the applicant shall pay the amount of 7,053.34 RSD in the name of property tax.<sup>5</sup> By a similar argument, many requests for free legal aid could be rejected because there is no balance between the value of the dispute and the value of the free legal aid provided. Therefore, it is necessary to determine the content of this provision more precisely in practice, so that it would not be reduced to its opposite and prevent users of the free legal aid system from obtaining this assistance.

Finally, as a particularly important provision of the Law on Free Legal Aid, which greatly affects the fulfillment of the conditions for exercising the right, is the one concerning the content of the request for free legal aid prescribed by Article 28 of this Law. Specifically, it stipulates that the request for granting free legal aid, in addition to the personal data of the applicant, also contains a description of the problem due to which free legal aid is requested and documents on the described problem, if the applicant has them.

Based on this provision, the Ministry of Justice has prescribed an application form for free legal aid, which in practice has proved to be an insurmountable obstacle for a number of free legal aid applicants, especially those most vulnerable because of the lack of education, language skills or knowledge about procedures due to which they need free legal aid. The fact that the application form for free legal aid is too extensive and that it requires information which administrative bodies can obtain faster and easier is also evidenced by the fact that the form asks the applicant to state “the number of the document of the social welfare center approving social assistance” or “the number of the document of the body of the local self-government unit approving

<sup>5</sup> The Constitutional Court, Decision, UŽ – 2101/2018 as of 11.9.2019.

child allowance”, as well as other evidence of the fulfillment of conditions. Simply, instead of stating that the beneficiary is someone who is entitled to financial social assistance or child allowance, which administrative bodies that decide on approving applications for free legal aid can check by inspecting official records and exchanging data with local social welfare centers or *other organizational units* within the local self-government unit, the applicant is required to state the number of the “document” as well as other evidence that he is a beneficiary of the right to financial social assistance. It is similar with the data on the financial standing of the applicant, which includes data on the income of the applicant for free legal aid, as well as data on the income of family members, i.e. members of the applicant’s household, which these *persons fill in* according to the guidelines in the Application Form. In cases where the free legal aid applicant is a person who is also a beneficiary of financial social assistance or child allowance, it is unclear why the data on income, basis for receiving income, name and seat of the employer (person who exercises the right to financial social assistance cannot be employed) are again requested. Also, it is not clear enough why filling in data on real estate, vehicles or other property is important for exercising the right in these cases, which are all data that in accordance with the Regulation on income and revenues that affect the exercise of the right to financial social assistance<sup>6</sup> already determined in the procedure before the competent social welfare center.

6 “The Official Gazette of RS” no. 36/2011 as of 27.5.2011.

## Experience and views of internally displaced persons related to exercising the right to free legal aid

### The methodology of conducted focused groups

In order to examine the views and information of vulnerable groups on how to exercise the right to free legal aid, in the period from 16 to 20 November 2020, four focus groups were organized (two in Belgrade and one in Novi Sad and Nis each). The internally displaced persons and individuals from other vulnerable groups, including beneficiaries of financial social assistance, unemployed persons, single parents and victims of domestic violence<sup>7</sup>, who meet the requirements for exercising free legal aid, participated in focus groups. The focus groups lasted about two hours on average, and the discussion took place on the basis of a pre-defined and structured guide.<sup>8</sup>

7 A total of 32 participants participated in the focus groups, of which 48.1% were internally displaced persons, 14.8% were single parents who met the financial conditions for exercising the right to free legal aid, 7.4% were beneficiaries of financial social assistance and 25, 9% unemployed. Of the total number of participants, 46.9% were women and 53.1% were men. The structure of participants in terms of education is as follows: 6.3% of participants did not finish primary school, 21.9% finished primary school, 53.1% completed secondary school and 18.8% had higher education. In terms of age, 15.6% of participants were aged 20 to 29, 40.6%, between 30 and 49, 37.5% of participants aged 50 to 69, while 6.3% of participants were older than 70 years.

8 Questions and a guide for the focus groups and criteria for selecting participants were prepared by the Initiative A11, and the recruitment of participants and discussion in the focus groups was conducted by Ninamedia, which also prepared a draft focus group report that served as the basis for this section of the publication.

Having all this in mind, the experiences and views of the respondents cannot be considered representative, but they provide a deeper insight into the accessibility of free legal aid and the possibility of the most vulnerable citizens of Serbia to exercise the right to free legal aid.

The focus groups had the following goals and thematic units:

- examining the level of information of members of vulnerable groups about free legal aid, the Law on Free Legal Aid and the procedure for exercising the right to free legal aid;
- identifying key problems faced by the most vulnerable citizens in accessing free legal aid;
- examining the views of the participants of focus groups on the Law on Free Legal Aid and the free legal aid application form.

### **Experience and views of respondents**

About a third of participants of the focus groups had never heard that they could apply for free legal aid, nor did they know that they had the right to seek it. Those who knew they could exercise this right, assessed the work of local free legal aid services as inaccessible.

It is further pointed out that all participants of the focus groups believe that the importance of the Law on Free Legal Aid cannot be discussed if the majority of citizens for whom it is intended do not know about it. Most of the respondents of focus groups think that information on free legal aid is not transparent and clear. The main reason why participants of the focus groups gave up asking for free legal aid is the impoliteness or rejection of officials to explain the procedure or refer them to places where they could receive free legal aid. Because they did not know who to address for free legal aid or due to the negative experience in trying to exercise that right, some participants were forced to pay for

legal aid themselves and thus endangered the existence of their family.

Most of the participants of focus groups agree that the terminology of the application form for exercising the right to free legal aid should be adapted to citizens so that they have clearer guidelines for filling it out.

### **The level of information of participants of the focus groups on free legal aid**

Within this section, the following issues that were the basis for discussion with participants of focus groups are highlighted:

- Associations of the participants of focus groups regarding free legal aid;
- The level of information of the participants of focus groups about free legal aid providers and
- The procedure for exercising the right to free legal aid.

From the answers of the participants during this thematic unit, it is noticeable that the range of information of internally displaced persons about free legal aid is wide - from complete information to complete lack of information. Other vulnerable categories (beneficiaries of financial social assistance, single parents, the unemployed, victims of domestic violence) in most cases are not sufficiently informed about the possibilities of exercising the right to free legal aid.

The differences in terms of information on the possibility and manner of exercising the right to free legal aid are also present depending on the region from which the participants come, so the participants of focus groups in Belgrade are best informed about the availability of free legal aid. A medium level of information was noticed among the participants in Nis, while the participants of the focus group from

Novi Sad were mostly uninformed about the possibility of exercising the right to free legal aid. Participants from Novi Sad mostly cite the Social Welfare Center Novi Sad as a source of information on exercising their rights. Some participants of the focus group in Novi Sad stated that they had received legal advice at the Social Welfare Center Novi Sad regarding their problems, and potentially this is the reason why they are less informed – simply they do not need free legal aid provided under the Law on Free Legal Aid. One participant of the focus group from Novi Sad also stated that based on the suggestions of an expert worker at the Social Welfare Center Novi Sad, she contacted the NGO Praxis from Belgrade, which provided her with free legal aid.

The participants' view is that the information on the possibilities of exercising the right to free legal aid is non-transparent and available only to the "privileged circle", as well as that there are large differences in the level of information of citizens depending on which city they live in. In addition, participants assessed the work of local legal aid services as insufficiently accessible. Participants consider that the issue of information on who to address when it comes to free legal aid is neglected. Most of the respondents who participated in the focus groups think that the information on free legal aid is not transparent and clear, and that in situations when they need legal aid, they are forced to find their way exclusively through personal acquaintances and "connections".

**Most of the participants of focus groups see television as an outdated medium, through which people in need of free legal aid can become less and less informed. As it is stated: "We are giving up the classic media, we are asking for information on free legal aid from social welfare centers and associations for internally displaced persons". However, several participants believe that the so-called traditional media (television and radio) are still very important, and that national and regional stations (Radio Television of Serbia (RTS) and Radio Television of Vojvodina) are especially important, and point out that information on free legal aid should be more frequently published through these media.**

Participants believe that "it is inadmissible that RTS, as a public media service, does not pay attention to topics related to free legal aid". One participant also cited the example of the association of citizens for assistance to displaced persons from Kosovo, "Sveti Spas", which gathered displaced persons several years ago and which is still available to them when it comes to their property-related problem in Kosovo. Positive examples are also the activities of the NGO Praxis from Belgrade in providing free legal aid.

A good way to inform a large number of people who need free legal aid would be to place posters and flyers in the buildings of local self-government units, social welfare centers and in other places where internally displaced persons and other vulnerable categories of citizens gather. Participants of the focus groups also believe that websites with clear information on the possibilities of exercising the right to free legal aid, legal advice and representation would be also a useful means of information.

During the focus groups, it was also pointed out at the necessity of cooperation among associations of citizens, state institutions and local self-government units in order to adequately inform citizens about free legal aid.

Most participants pointed out that they need free legal aid the most when it comes to drafting lawsuits, complaints or filling out forms. In addition to explaining how to fill out the necessary forms, participants point out that they expect lawyers who provide free legal aid to "draw attention to some legalities" that they need to comply with in order to exercise a certain right. At the same time, participants of the focus groups expect to be given "good advice and an assessment of their chances" in the procedures they would initiate.

Younger participants from Belgrade and Nis explained that they came across the term "free legal aid" thanks to the activities of law faculties that in previous years had promoted the provision of free legal aid and provided it within legal clinics. Elder participants, regardless of which city they are from, have heard of the term "free legal aid" through certain associations of citizens, where they particularly refer to NGO

Praxis and the association “Sveti Spas”. At the same time, they stress out the activities of the Commissariat for Refugees and Migration and referrals by friends to free legal aid services in the municipalities where they live. About a third of the respondents have never heard that they can address someone for free legal aid, and they do not even know that they have the right to submit a request for exercising this right.

### **Experiences of respondents who did not know about the right to free legal aid or failed to exercise it**

Within the second thematic unit which referred to the experiences of those respondents who needed free legal aid, but failed to exercise the right or did not know how to exercise the right to free legal aid, the topics related to the ways in which respondents coped when they needed free legal aid and the consequences or problems they faced because they did not know how to exercise their right to free legal aid.

In situations where they could not or did not know how to get free legal aid, participants mostly managed thanks to friends or acquaintances who helped them draft lawsuits, complaints or petitions. Due to the lack of knowledge about who to address for free legal aid, some participants stated that they were forced to pay for legal aid themselves and thus endangered the existence of their families. The situation in terms of information on free legal aid and in terms of familiarity with the procedure of exercising the right to free legal aid is better among the participants of the focus groups in Belgrade.

With the exception of some internally displaced persons, most participants stated that they had been giving up on further attempts to exercise their rights or solve their problems after encountering the first obstacles, such as verbal rejections by lawyers in legal aid services or lack of information on how to exercise the right to free legal aid.

One participant pointed out the following: “After they drafted me an incomplete lawsuit in the municipality administration without specifically stating everything I said, I simply gave up on it and did not even file a lawsuit”.

### **The level of information of participants about the Law on Free Legal Aid and access to free legal aid**

Within the third thematic unit in the focus groups, the following issues were highlighted as topics for discussion: the level of information among participants about free legal aid, the procedure for exercising the right to free legal aid and problems that participants of focus group face when seeking free legal aid.

Most participants of the focus groups have not heard of the Law on Free Legal Aid, although their impression is that the quality of free legal aid cannot be at a high level. However, those who have heard about this law, agree that it should be specially adapted to those for whom it is intended - the most vulnerable citizens.

According to almost all participants, the Law on Free Legal Aid is not applicable unless it is further adapted to the specifics of certain vulnerable categories. Single parents and victims of domestic violence who participated in the focus groups do not know what the procedure for exercising the right to free legal aid looks like and believe that they would not be properly represented if they asked for legal aid or they would even face discrimination by the authorities.

The participants of focus groups also stated that so far, they had most often received free legal aid from various organizations, associations and individuals who are lawyers, which they reach through personal acquaintances. Relevant information was most often provided to them by the Commissariat for Refugees and Migration, NGO Praxis, the association “Sveti Spas”, Indigo and social welfare centers.

Participants of the focus groups point out the impossibility of applying the law to more complex cases as the weakest point of the Law on Free Legal Aid. In this regard, internally displaced persons have also expressed some doubt that lawyers appointed by the state to represent them could deal with the long-standing disputes they have over the inability to access their property in Kosovo.

Unlike some internally displaced persons who participated in the focus groups, other participants believe that the Law on Free Legal Aid brings useful changes, and point out that insufficient information on the application of this law is a fundamental problem in the free legal aid system. Also, they state that they do not know what the procedure of exercising the right to free legal aid looks like, because they have not had positive experiences in previous attempts to exercise that right. Thus, one participant, a single mother and a victim of domestic violence cited her example as a negative experience she had in trying to exercise her right to free legal aid. Specifically, in 2017, before the adoption and enforcement of the Law on Free Legal Aid, she addressed for help free legal aid service in the local self-government unit in which she lives. On that occasion, the lawyer who was in charge of providing her with free legal aid, drafted a lawsuit for her, but when she realized that important facts on which she based her lawsuit were omitted, she consequently gave up from filing the lawsuit. Therefore, she has not yet regulated the issue of exercising parental right, which can put her in unpleasant situations in the future and create additional problems. On the other hand, one participant of the focus groups shared her positive experience in exercising the right to free legal aid. However, on another occasion, when she needed free legal aid, she failed to submit the request because she thought that she no longer had the right to free legal aid, since she had already “used” this right once. All participants of the focus groups particularly agreed that in order to assess the practical scope of application of the Law on Free Legal Aid, it is necessary that as many people as possible know about it and the opportunities provided by its application.

Also, while conducting the focus groups, there was a noticeable suspicion of almost all participants regarding

lawsuits that would relate to illegal work or actions of state bodies or bodies of local self-government units. In that regard, they asked how free legal aid would work in practice if citizens who are entitled to free legal aid also needed to sue the state. In that sense, the respondents believe that their requests for exercising the right to free legal aid would not be resolved positively.

Participants of the focus groups also pointed out that the procedure they are conducting does not end up with a written submission, but that it is necessary for the procedure to be “monitored” by lawyers who are narrowly specialized in their problems.

The main reasons why participants of the focus groups give up asking for free legal aid are the impoliteness of employees in decision-making bodies, the rejection of officials who explain the procedure to them or refer them to places where they could receive free legal aid.

Participants of the focus groups pointed out that in some situations they were forced to ask friends, acquaintances and relatives about writing submissions that they were not able to write on their own.

Participants of the focus groups perceive various associations that provided free legal aid to them as much needed and as a significant resource for supporting vulnerable categories of citizens. What participants of the focus groups pointed out as objections to the associations that provide free legal aid is the fact that these associations did not sufficiently promote their activities. Therefore, most of those participants who needed legal aid heard for the activities of the association only when it was too late to provide them with effective free legal aid, because their procedures were at an advanced stage.

Participants of the focus groups were also asked to look at the application form for exercising the right to free legal aid and to try to fill it out. Participants with high school and lower education stated at the beginning of filling out the

application form that it was very difficult for them to even notice what parts of the document they needed to fill out.

Younger participants and those with a higher level of education quickly noticed that the form copied the criteria set by the Law on Free Legal Aid for exercising the right to free legal aid.

The most doubts among all participants were caused by the subtitle “Data on the evidence of fulfillment of conditions”, and especially the part in which “Data on the financial standing of the applicant” is mentioned. The internally displaced persons also wondered whether they should also fill in the data on their financial standing, despite the fact that the third part of the application form refers to them, in which they are listed as a special category of applicants for free legal aid.

There were some doubts among the participants regarding the terms used in the application form, which they state are not suitable for everyone. They are of the unanimous opinion that the terms used in the application form for exercising the right to free legal aid should be adjusted to the citizens and that there should be clearer guidelines for filling it out.

According to the participants of focus groups, in order to fill in the application form, they would need the help of an officer who would explain in detail the content and ways in which certain parts of the form are filled out.

## **Concluding remarks of the participants of the focus groups on free legal aid, the Law on Free Legal Aid and the free legal aid application form**

- The terminology of the application form is not adapted to the needs of vulnerable groups and it is necessary to “bring the Law closer” to them, in order for them to understand it as a “tool that helps them, and not as another stumbling block”;
- The Law on Free Legal Aid is considered by participants to be inapplicable to the complex legal problems faced by internally displaced persons;
- Participants emphasize the importance of promoting the Law on Free Legal Aid and clarifying the criteria for exercising the right to free legal aid, using terms understood by the majority of citizens;
- Participants also point out that they hope that the “Law on Free Legal Aid will not be a “dead letter” on paper and that the submission of requests will not be just a formality to be completed with the aim of rejecting, instead of obtaining the right”.

## Case studies

**Vanesa<sup>9</sup> –**

**Instead of legal aid to initiate a procedure before the court, she received a court address**

***Procedure in which legal aid is needed:  
determining the time and place of birth***

***Age at the time of application: 16 years***

***Additional information:  
a minor pregnant woman without health insurance***

Vanessa was born in 2003 and was not registered in the birth registry book. At the end of January 2020, she sent by post a free legal aid application related to conducting the procedure for determining the time and place of birth. The application was sent to the free legal aid service in Ruma, on whose territory Vanessa lives. Three days after submitting the application, she was verbally informed that she could not receive free legal aid because “she was not registered in Ruma”, and that “she had first to go to the social welfare center”. As no written decision was made on her application within the legally prescribed period of eight days, Vanessa filed a complaint with the Ministry of Justice.

On 21 February 2020, the Ministry of Justice sent a letter to Vanessa stating that they had received the complaint and that they had sent it to the first-instance body for a preliminary examination.

On 9 March 2020, Vanessa received a letter from the Municipality of Ruma stating: “on the occasion of your application for free legal aid submitted on 31 January 2020. (...), I would like to inform you about the possibility that the right to free legal aid, related to determining the facts of your birth

<sup>9</sup> Names of free legal aid beneficiaries have been changed.

(time and place) can be exercised in the Basic Court in Ruma, 10 Železnička Street, in a non-contentious procedure as you stated in your application”.

Only after filing an appeal and more than **a month after applying for free legal aid, Vanessa received an incomprehensible letter with the address of the competent court instead of free legal aid.** At the same time, Vanessa was a minor and in advanced pregnancy, and she urgently needed help to initiate the procedure of determining the time and place of birth.

Shortly afterwards, a state of emergency was declared in Serbia due to the epidemic of the COVID-19, and Vanessa could no longer even try to get free legal aid in initiating the procedure for determining the time and place of birth.

After the end of the state of emergency, Vanessa again addressed the free legal aid service on several occasions. However, legal aid was not provided to her again, but she was instructed to address the social welfare center for help, despite the fact that the Law on Free Legal Aid singled out persons for whom it is necessary to initiate the procedure for determining the time and place of birth as persons entitled to free legal aid, and thus her request must have been accepted. Vanessa also addressed the Social Welfare Center in Ruma, but she did not receive assistance there either, although this body could also help her because according to the Law on Non-Contentious Procedure, it is authorized to initiate the procedure of determining the time and place of birth.

Almost ten months have passed since the first time she addressed the free legal aid service, and if she had been provided with free legal aid in a timely manner, the procedure for determining the time and place of birth would probably have already been completed.<sup>10</sup> However, due to the insufficiently

<sup>10</sup> For the sake of comparison, Ina from the previous case study requested free legal aid after Vanessa, and the procedure of determining the time and place of birth for her has already been successfully completed. Also, Article 71z, Para. 1 of the Law on Non-Contentious Procedure stipulates that the court is obliged to make a decision on the time and place of birth within 90 days from the day of sub-

efficient functioning of the free legal aid system and the illegal actions of the body responsible for approving free legal aid applications, no appropriate procedure has yet been initiated for Vanesa.

In the meantime, Vanesa gave birth. As she did not have an ID card, she could not assign a personal name to the child within the legally prescribed period, but had to carry out a special procedure for determining a personal name before the social welfare center. Only after that, Vanesa's child received a birth certificate. However, since Vanesa does not have a birth certificate, a citizenship certificate, or permanent residence, nor her child still has a citizenship certificate, permanent residence, or health insurance, and she could not even exercise the right to any kind of support intended for families with children.

Due to the illegal actions of the body responsible for approving free legal aid applications, Vanesa has not been able to initiate the procedure of determining the time and place of birth for **ten months**, and unless that procedure is completed, there is an illusory possibility of access to rights for her and her child. Prior to the enactment of the Law on Free Legal Aid, NGOs were recognized as primary providers of free legal aid among persons at risk of statelessness.<sup>11</sup> However, since the beginning of the application of this law, non-governmental organizations can no longer provide free legal aid in the procedures for determining the time and place of birth. In Vanesa's case, it turned out that even the authorities that were obliged or at least authorized to provide her with help did not want to do that. Thus, it turned out that, instead of facilitating the access to justice and providing effective free legal aid, the Law on Free Legal Aid actually left Vanesa without anyone's legal aid.

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mitting the motion, and that deadline can be extended by a maximum of 60 days only if a decision on suspension of the procedure is made because there were indications that the person whose decision is being proven had permanent residence in a foreign country.

<sup>11</sup> Roma at risk of statelessness largely recognize NGOs as providers of free legal aid in obtaining documents. See UNHCR and CESID, *Persons at Risk of Statelessness in Serbia: A Review of the Current Situation and Recommendations for the Future - Findings of Quantitative and Qualitative Research (Cycle III)*, 2020, in preparation, 33-35.

## **Ina – Vulnerable groups need free legal aid to obtain free legal aid**

***Procedure in which legal aid was needed:  
determining the time and place of birth***

***Age at the time of application: 17 years***

***Additional information:  
a pregnant woman without health insurance;  
a member of Roma national minority;  
a minor without parental care.***

Ina addressed the Initiative A 11 for the first time in November 2019 because she was in advanced pregnancy and could not obtain a birth certificate and a citizenship certificate, and consequently could not apply for health insurance. Ina was a legally invisible person - she was not registered in the birth registry book. Her parents passed away, and without their participation in the procedure, the administrative procedure of subsequent birth registration could not be carried out, so it was necessary to initiate a non-contentious procedure to determine the time and place of birth. Before addressing the Initiative A 11, she asked for help with registration in the registry office in the free legal aid service in the municipality in whose territory she lives. However, her free legal aid application was verbally rejected.

The Initiative A 11 explained to Ina that as a person for whom it is necessary to carry out the procedure of determining the time and place of birth, she was entitled to free legal aid and the articles of the Law on Free Legal Aid were copied for her to confirm that she should contact the free legal aid service again.

At the end of January 2020, Ina again addressed the Initiative A 11 after she was hospitalized for three days due to intrauterine growth restriction and threatened abortion. During her discharge from the hospital, she received a bill for the costs of treatment of 9,000 RSD, and her common-law

husband was told that “the bill would be collected through the court if they did not pay it within 15 days”. She was supposed to give birth soon, and she was afraid that she would face the problem of paying the costs of childbirth. In the meantime, Ina was again, on two occasions, **verbally rejected by the free legal aid service when she asked for help in obtaining documents**. Therefore, she submitted a free legal aid application by post. Shortly afterwards, they called her from the free legal aid service and informed her that she met the conditions for free legal aid. She was written a motion for determining the time and place of birth and told which court to hand it over to. However, the motion incorrectly stated Ina’s name and surname<sup>12</sup>, and it was also requested that the decision on determining the time and place of birth, for the purpose of registration, be sent to the incompetent registry office - according to the place of temporary residence, instead of according to the place of birth. Ina was not instructed on how to prepare for the hearing, nor what evidence to bring. She submitted the motion after she was informed on how to correct mistakes relating to the name and surname and the competent registry office. Ina had to go to the hearing alone with the witnesses in the procedure of determining the time and place of birth, even though she and the witnesses were ignorant.

Shortly after initiating the procedure for determining the time and place of birth, Ina gave birth and received an invoice for the costs of childbirth and other hospital expenses in the amount of almost 250,000 RSD, with the explanation that the invoice should be paid within two months or it would be initiated in court procedure against her. Since she had no income, Ina could not pay the bill at all. This was explained in the request for exemption from paying the costs of childbirth, which Ina, with the help of the Initiative A 11, sent to the hospital where she had given birth, noting that the procedure for determining the time and place of birth was underway for her. The social worker from the maternity hospital informed

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<sup>12</sup> The surname mentioned in the motion for determining the time and place of birth was completely different from the surname of Ina’s parents, which could later create significant difficulties in proving who Ina’s parents are, and thus acquiring citizenship.

the Initiative A 11 that no procedure would be initiated against Ina, but that the issue of bills would be resolved in cooperation with the Ministry of Health.

In mid-September, the competent court issued a decision determining Ina’s time and place of birth. The competent registry office received the decision at the beginning of November, and soon Ina could finally obtain birth and citizenship certificates.

Although a positive outcome is in sight, Ina’s case points out a number of shortcomings in the functioning of the free legal aid system. First of all, Ina needed help in order to realize the right to free legal aid - before that, she unsuccessfully applied to the free legal aid service on three occasions, and each time she was verbally rejected. That the rejection was unjustified is best confirmed by the fact that in the end she was granted free legal aid as soon as she submitted the application in writing. This also indicates that the persons who decide on free legal aid applications are **not adequately trained** or sensitized to work with vulnerable groups. Specifically, in addition to the fact that she did not have any documents and no income, Ina is also a member of the Roma national minority and was only 17 years old when she first asked for free legal aid. The fact that Ina did not know that there was a possibility to apply for free legal aid in writing, nor was she able to fill in the application form, indicates that the procedure for granting free legal aid is too complicated and unsuitable for vulnerable groups, and that members of vulnerable groups are not sufficiently informed about how to exercise the right to free legal aid.

## **Borka – Arbitrary decision-making on free legal aid applications**

***Procedure in which free legal aid was needed:  
filing a lawsuit for supporting and division of  
marital property***

***Age at the time of application for free legal aid: 60***

***Additional data:  
a member of Roma national minority;  
a victim of domestic violence;  
an unemployed person.***

Borka needed help to file a lawsuit for support and division of marital property in the procedure against her ex-husband because of whom she suffered domestic violence, and on that occasion, she addressed the free legal aid service of the municipality in whose territory she lives. On that occasion, she was told that she did not meet conditions for receiving free legal aid, **without any explanation** or further information and advice. In November 2019, she turned to the Initiative A 11 and explained how she had been verbally rejected in the municipal service, and that she did not know what steps she should take because she wanted to file the lawsuit, and she was denied any help in that regard. After that, Borka applied for free legal aid to the same service on the prescribed form. The competent administrative body did not make a decision on that application within eight, or three days, which according to Art. 32 Para. 4 of the Law on Free Legal Aid considers this request rejected.

Given that Borka is an ignorant party, which does not know the deadlines in the procedure for approving free legal aid, nor was it explained to her in the municipality, she **waited unsuccessfully for several months for a decision on her application**, only to file an appeal to the Ministry of Justice in early March 2020, as the second instance body, for the failure to reach a decision. To date, the Ministry of Justice has

not decided on the appeal, nor has it issued a decision rejecting it due to untimeliness. If the decision on the appeal was made, Borka would at least know that it is not worth waiting for the approval of free legal aid and that it is necessary to submit a new application.

Numerous shortcomings in the procedure of deciding on the free legal aid application can also be seen in this case. Borka first went to the free legal aid service, where she was verbally rejected without any explanation. So, not only did she fail to exercise her right, but she was not explained the reasons why she was rejected. The officials simply stated that she did not meet the conditions for free legal aid to be granted to her. This turned out to be not true, because Borka, according to the legal provisions, fulfills the conditions to receive free legal aid. Although she is not a beneficiary of financial social assistance, the competent authority did not take into account the fact that she is an unemployed person, does not own immovable property, as well as movable property whose alienation, without endangering basic living needs, could provide funds in the amount of six times the amount of financial social assistance that would be determined by the Law on Social Protection, by which the conditions for exercising the right to free legal aid were actually met, in accordance with Art. 4 Para. 2 and 3 of the Law on Free Legal Aid.

Also, in this procedure, the competent body did not take into account the fact that Borka was a victim of domestic violence, which indicates her special vulnerability, as well as the fact that the subject of the free legal aid application was directly related to the domestic violence she had suffered.

As in previous cases, the fact that she needed assistance in drafting the request indicates that the free legal aid system is overly formalized, and that its providers are not willing to inform the parties about the procedure, deadlines or possible alternative solutions. Moreover, this case indicates that the persons responsible for deciding on free legal aid applications can arbitrarily determine who to reject and who to grant the application, without any basis in positive regulations.

In working with vulnerable categories, it is necessary to show additional sensibility, which is not only missing here, but the circumstance that the party is uninformed was used to reject its application. The passivity of the second instance body and the absence of any reaction indicate that, at least in some cases, there is still no effective appeal mechanism in case of failure to reach a decision on the free legal aid application that the parties could count on.

When we take into account that the procedures in which free legal aid is needed are sometimes urgent and that the rights and interests of particularly vulnerable citizens depend on them, such actions of the competent authorities can cause irreparable damage.

## Conclusion

The short time of the application of the Law on Free Legal Aid, interrupted by the state of emergency and the coronavirus pandemic, is not enough at the moment to draw complete conclusions about the functioning, effects and weaknesses of the free legal aid system.

However, regarding the position of the most vulnerable citizens who need free legal aid, the situation is different, even with such limited access to data and research. Specifically, the problems pointed out in the process of preparation of the legal text, which refer to the insufficient inclusiveness of the Law on Free Legal Aid and the failure to put the model of the most vulnerable citizen in the center, in order to “adjust” the system according to it, were confirmed both through interviews with internally displaced persons and other vulnerable persons, and through case studies presented in this publication.

As a result, it is necessary to start improving the work of administrative bodies that work on deciding on free legal aid applications as soon as possible. The improvement of work should be based on raising the capacity of decision-makers, reminding them of legal norms and omissions that can be classified as acts contrary to the principles of good governance, as well as obligations to meet deadlines, make written decisions and teach ignorant parties about their rights in the procedure for the exercise of rights. In this sense, sensitization and additional training for decision-makers are proved to be necessary.

On the other hand, the experiences gathered through the research conducted by the focus groups showed that citizens are insufficiently informed about the rights they have in the free legal aid system, and even about the existence of the Law on Free Legal Aid. As a result, procedure conducted

for the exercise of a right or law-based interest suffer, and the free legal aid system in terms of exercising this right has turned into its opposite for the most vulnerable citizens – it does not allow equal access to legal aid without discrimination, does not provide sufficiently conscientious and the professional acting of providers and decision-makers, and in some cases does not even provide free legal aid to the most vulnerable beneficiaries.

As a result, it is necessary to work further on raising the capacity of the free legal aid system, increasing the level of legal information and general information of citizens on the existence of the Law on Free Legal Aid and consider possibilities of a wider involvement of associations of citizens in the free legal aid system in cases when associations provide free legal aid to the most vulnerable citizens.