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Expert Witnesses and the Legal Aid

Comparative overview on the modalities for engagement and remuneration of expert witnesses within the national legal aid systems in Europe

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¹ *This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence.”

INTRODUCTION

This report provides a comparative overview of the models for engagement of expert witnesses including remuneration for their services in cases where legal aid was granted. Its purpose is to support the Ministry of Justice of Republic of North Macedonia (hereinafter MoJ) in identification and formulation of policies, laws, bylaws and non-legislative measures that will ensure unrestricted access to services of expert witnesses of beneficiaries of legal aid in civil and administrative matters. The report compares the existing national model with the modalities for engagement and remuneration of expert witnesses in the legal aid systems of 12 different European countries with the aim to identify best practices that may contribute in addressing the challenges that the national system currently encounters.

Ensuring equal access to justice for all implies removal of all barriers that indigent parties may face when bringing their lawful claims to a court of law including the financial burden of payment or laying advance for expert witnesses. Access to expert witness is of fundamental importance for success in a myriad of different civil procedures. Disputes about debts require accounting expertise, civil engineering is necessary in property disputes, personal injury cases need medical and or psychological expertise, DNA analysis is necessary in paternity disputes. Therefore, it is of fundamental importance to ensure that the legal aid beneficiaries have timely access to high quality expert witnesses.

In 2019 new Law on Free Legal Aid (LFLA)² was adopted that among other novelties introduce the right to a free of charge services of expert witnesses to the beneficiaries of secondary legal aid, when such services are necessary for the specific court or administrative procedure for which legal aid was granted. According to the new LFLA, the expertise for legal aid beneficiaries shall be provided by the Bureau for Court Expertise, a specialized public body within the Ministry of Justice, tasked among other things to provide expertise for public and private bodies. The costs for the expertise will be covered by the legal aid budget.

The report aims to address a practical problem that the MoJ is facing regarding the engagement and remuneration of expert witnesses in the context of two parallel pending reform processes, the planned abolition of the Bureau for Court Expertise as well as the process of drafting of new Civil Procedure Code. The still in force *Strategy for Reform of the Judicial Sector 2017 – 2022*³ plans abolishment of the Bureau with the justification that the state should retreat from providing expert witnesses, which should be solely within the private domain. Simultaneously, the draft proposal for a new Civil Procedure Code⁴ foresees significant reform in the rules regulating the status and role of expert witnesses in civil procedure.

Aside from this policy level challenges, the MoJ faces some practical problems. The Bureau for Court Expertise cannot provide expertise in all areas for which the legal aid beneficiaries require help (ex. Land surveying, DNA analysis, some specific medical expertise etc.). Also, the determination and remuneration of fees for the services remains an open issue.

² Law on Free Legal Aid (Закон за бесплатна правна помош), OG No. 101/2019.

³ Ministry of Justice, *Strategy for Reform of the Judicial Sector 2017 – 2022 with Action Plan*. 2017.

⁴ Draft proposal for Civil Procedure Code. 2020.

The document firstly describes the current national model for engagement of expert witnesses in legally aided cases and identifies key issues and challenges followed by 12 structured national reports describing the different modalities. The document concludes with a comparative analysis and identification of best practices that are applicable in the national context and may be replicated in policy and legislation.

METHODOLOGICAL APPROACH

The research was conducted through a desk review of legislation and other relevant documents for each specific country using a descriptive method. However, in order to determine and assess key challenges from the practice, the research shall also include field meeting with representative of the Bureau for Court Expertise. The objective of the research is to describe, not to evaluate, how each of the selected systems for legal aid, operationalize access to expert witness services for legal aid beneficiaries, and on the basis of the findings to formulate recommendations applicable for the local context. The legislation shall be described by using a unified evaluation framework that will guide the research process.

For the purpose of proper understanding of the term expert witness this research refers to the recommendations from Proceedings of the Symposium on Judicial Expertise (Brussels, 16 March 2012). According to this document judicial expertise is defined as an "investigative measure assigned to a technician by, or with the approval of, a court or a prosecuting or adjudicatory authority, in order to contribute to the judicial settlement of present or future litigation by adducing technical or factual evidence. Expert witness is defined as person certified or accredited by a court or another authority to provide their expertise to the judicial administration.

The selection of countries to be subject of assessment is done by attempting to strike a balance between ensuring presence of countries with shared legal history and similar level of legal and economic growth from one side, and best practices from the more developed European countries. On the basis of this the following countries were proposed to be subject to an assessment: Slovenia, Croatia, Serbia, Albania, Kosovo, Bulgaria, UK, Netherlands, France, Belgium, Germany and Poland. For each of the different countries the standardized description framework was used in order to ensure comparability.

Description framework

1.	Overview of the national legal aid system	How is the system regulated? (Special law, procedural laws et.) Who is governing the legal aid system? (Courts, Ministries, Independent bodies etc.) Is there means and merits test What does the legal aid encompass
2.	Description of rules regulating court expertise	When does this type of evidence is exhibited? What is the role of judge in deciding whether such evidence is necessary or not?

		At what point in the procedure expert witness may be proposed as a witness? Who is covering the costs for expert witnesses? Is there are requirement for advance payment?
3.	Access to free of charge expertise for indigent parties	Does the legislation (both on legal aid and on civil procedure) ensure access to free of charge services for court expertise for indigent parties? If yes, under what circumstances this may be allowed? Who can provide such services? Is there a separate registry for expert witnesses that can work on legal aid cases?
4.	Remuneration of expert witnesses in legally aided cases	How are expert witnesses who provided services in legal aid cases reimbursed? Is there any state adopted tariff or the fees are determined by professional bodies or by the market?
5.	Best practices	Are there any best practices from this legal aid system that may ensure adequate access to expert witness for legal aid beneficiaries if applied in the local context?

EXPERT WITNESSES IN THE NATIONAL LEGAL AID SYSTEM

1. The system for legal aid regulation and organization

a. Who is governing the legal aid system?

According to the LFLA the Ministry of Justice and the regional offices of the Ministry of Justice are the key parties governing the system for free legal aid. However aside from them, significant role in the whole system is also played by , Centres for Social Work, Ministry of Interior, Agency for Real Estate Cadastre, Employment Agency, Public Revenue Office and Pension and Disability Insurance Fund.⁵ To ensure efficient implementation of the law it is envisaged active involvement of all stakeholders in the implementation of the law, efficient and timely action of the competent institutions, appropriate responsibility for the manner of implementation, organization of trainings for providers of legal aid, strengthening the capacities of the Ministry of Justice - human and financial, raising public awareness and informing about the existence of the possibility to use the right to free legal aid, supervising the quality of the given previous and secondary legal aid, organizing days of free legal advice.

The role of the Ministry and its regional offices wide spreads through every provision of the law starting from receiving the demand for secondary legal aid, approving or rejecting the demand, deciding on its merits for approval or dismissal, making decisions regarding submitted objections etc.

⁵ Point 7.3,REGULATORY IMPACT ASSESSMENT REPORT/ November 2017;
https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=35186

b. What does the legal aid encompass

The Law on Free Legal Aid provides two forms of legal aid, primary and secondary, and sets out different criteria that applicants must meet. Primary legal aid can be requested by any person, and secondary legal aid can be used only by persons who meet certain conditions, regarding their income and financial situation, property, and living conditions ([Law on free legal aid 2019](#), Articles 17, 18, 19 and 21).

Concerning secondary legal aid, the law clearly defines it as aid granted to a person whose request is justified, who needs professional legal assistance from a lawyer for specific legal work, and who is unable to pay the costs of the procedure due to his financial situation. Secondary legal aid includes representation in court proceedings, a state body, the Pension and Disability Insurance Fund of the Republic of North Macedonia, the Health Insurance Fund of the Republic of North Macedonia, and persons exercising public authority. This includes representation before all levels in civil, administrative procedure and administrative disputes, representation before a notary public in a procedure for dispute resolution, compilation of submissions of a debtor before a competent enforcement agent, when enforcement is carried out by selling real estate, and exemption from costs in accordance provided in the Law on Free Legal Aid or some other law.⁶ A person who is granted secondary legal aid is exempt from legal fees, as well as court fees, expertise fees and administrative fees.⁷

c. Is there means and merits test

Free legal aid, with certain exceptions, will be provided in all legal areas, which increases the coverage of vulnerable people, and thus the possibility of greater protection of citizens' rights. What is important to note is that there are no other costs associated with the procedure (court fees, expert fees, etc.) to be already borne by the citizens, they will be covered by the free legal help.⁸

The individuals have the right to free legal aid in a manner and under conditions determined by the law and stipulated in the articles 18, 19 and 20 from the LFLA. In these articles the law foresees Applicant's income requirements, Conditions for the applicant's property and Approval of secondary legal aid without determining the financial situation.⁹

2. Key rules and principles regulating the court expertise as an evidence in civil procedures

a. When does this type of evidence is exhibited?

The rules and conditions for expertise and the experts regarding the civil procedures are regulated by the provisions of the [Law on Civil Procedure](#). The court will conduct an expert examination as evidence, if the party who submits the lawsuit or the response to the lawsuit attaches as evidence to

⁶ ACCESS TO JUSTICE IN THE TIME OF PANDEMIC: FUNCTIONING OF LEGAL AID FORMS IN NORTH MACEDONIA; Journal of Liberty and International Affairs | Vol. 7, No. 1, 2021 | eISSN 1857-9760

⁷Law on Free Legal Aid, published in Official Gazette of the Republic of North Macedonia no.101/2019, Article 13, point 5

⁸ Comparative analysis of the existing models of legal aid in and out of the EU and best practices, <http://florozon.org.mk/downloads/publications/COMPARATIVE-ANALYSIS-OF-THE-EXISTING-MODELS-OF-LEGAL-AID-IN-AND-OUT-OF-THE-EU-AND-BES-PRACTICES.pdf> ,pg.60

⁹ Ibis, art.20 par.1 line 1,2 and 3

the lawsuit or the response to the lawsuit the expert finding and opinion of the expert.¹⁰ If the party who is proposing the expert opinion as an evidence proves or successfully show a probability for existence of facts or circumstances regarding his/hers ability not to provide this expert opinion, than the court will determine expertise by written order. In the order the court will state in relation to which facts or circumstances the expertise is performed, and at the proposal of the party will determine to whom he is entrusted with the expertise.¹¹ The expertise is performed by experts registered in the register of experts,¹² maintained by the Ministry of Justice¹³. The court will not accept the expertise as evidence on the objection of the opposite party, if it has decided on the request for removal of an expert for the same reasons that a judge or lay judge may be excluded. ¹⁴

b. What is the role of judge in deciding whether such evidence is necessary or not?

According to the article 8 from the LCP which facts will be taken as proven is decided by the court on its own conviction based on conscientious and careful assessment of each piece of evidence separately and of all the evidence together as well as based on the results of the overall procedure. In correlation with this article and the provisions of the law, the judge has no authority to decide whether this evidence is necessary or not, given that Article 235 explicitly states the obligation to submit an expert finding and opinion at the same time with the law suit or the response to the law suit. The role of the court in determining the expertise is exclusively in the area of super expertise and on-site inspection with the presence of an expert as needed. That is the case when in the ongoing civil dispute both parties have presented contradictory expert opinions where the experts data on their findings do not substantially agree, or if the findings of one or more experts are unclear, incomplete or inconsistent with themselves or the circumstances examined, and those deficiencies cannot be remedied by re-examination by the experts, the court may order super expertise.¹⁵ The super expertise is determined by the president of the council or the individual judge electronically by applying the rule of random selection from the register of experts, in the presence of both parties, i.e. their attorneys.¹⁶ At the proposal of the parties, the president of the council may decide to conduct an out-of-court inspection if necessary. If the inspection is to be performed with the participation of an expert, the court will allow the participation of an expert upon the proposal of the party.¹⁷

It must be borne in mind that as a substantial violation and ground for appeal is considered if contrary to the provisions of Articles 235 and 276 of LCP, the court determines expertise and on-site inspection.¹⁸

c. At what point in the procedure expert witness may be proposed as a witness?

¹⁰ LCP,art.235 par.1

¹¹ Ibis,par.2

¹² Ibis,art.236

¹³ <https://www.pravda.gov.mk/veshtaci>

¹⁴ LCP, art.239 par.1

¹⁵ Ibis, art.246 par.2

¹⁶ Ibis,par.3

¹⁷ LCP,art.276 par.1,2

¹⁸ Ibis,art.343 par.1 and 2 line 13

The expert is obliged to appear at the summons of the court and present his expert finding and opinion.¹⁹ This rule is envisaged in the provisions of the LCP, but it is not common practice of the courts and the court do not apply this rule very often. In cases where the court or at the request of the parties need clarification regarding the expert finding and opinion, the court may call the expert in order to clarify the disputed issues which is a common practice of the court. The experts are summoned through a notice stating the name and surname, occupation of the called, time and place of the hearing, the and the subject matter of the case.²⁰ The court asks the expert questions and if necessary, seeks explanations regarding the given expert finding and opinion. With the approval of the court, the parties may also ask questions to the expert.²¹

d. Who is covering the costs for expert witnesses and is there requirement for advance payment?

Litigation costs comprise expenses incurred during or on the occasion of the procedure. The litigation costs also include the remuneration of the lawyer and the other persons to whom the law recognizes their right to a reward.²²

According to the Law on Civil Procedure, the expert has the right to compensation of travel expenses and food and accommodation expenses, compensation of lost earnings and expenses for expertise, as well as the right on the reward for the performed expertise in accordance with the provisions of article 234 par.2 and 3 from the LCP (reimbursement of expenses of witnesses).²³

Each party bears the costs incurred by its action beforehand. When the party proposes the presentation of evidence, it is obliged, by order of the court, to deposit in advance the amount necessary for the settlement of the costs that will incurred on the occasion of the presentation of evidence.²⁴

But having in mind the obligation stipulated in the provisions from article 235 where the parties submit the expert opinion at the same time with the law suit or the response of the law suit, they are obliged to pay their own expert before even the civil dispute begins.

The party that will completely lose the lawsuit is indebted to the opposing party to reimburse their costs. If the party partially succeeds in the lawsuit, the court may, given the achieved success to determine each party to bear its costs or one party to reimburse the other a proportionate share of the costs.²⁵

LCP foresees exemption from payment of costs of the procedure when the party that according to its general assets are not able to bear these costs without causing damage to his necessary support and the necessary support of his family. Exemption from payment of the costs of the procedure includes exemption from payment of fees and exemption from taking an advance for the costs of witnesses,

¹⁹ Ibis,art.238 par.1

²⁰ Ibis,art.242

²¹ Ibis, art.244 par.1,2

²² Ibis,art.145 par.1,2

²³ Ibis,art.241 par.1

²⁴ Ibis,art.146 par1 and art.147 par.1

²⁵ Ibis,art.148 par.1,2

experts, for inspection and court announcements.²⁶ When the party is completely exempted from paying the costs of the procedure (Article 163 paragraph (2)), an advance shall be paid from the court funds for the costs of the witnesses, experts, translators, interpreters, for inspection and issuance of court notice, as well as the costs of the appointed attorney.²⁷ Fees and costs paid from the court's funds, as well as the actual costs and the award of the appointed proxy, are part of the litigation costs.

3. Does the legislation (both on legal aid and on civil procedure) ensure access to free of charge services for court expertise for indigent parties

a. Under what circumstances this may be allowed?

As it's stipulated in article 13 par.5 from LFLA the confirmation for approving the secondary legal aid relieves the user of all costs and fees of the procedure including the costs of the expertise. The costs of providing secondary legal aid in accordance with the procedures provided by the LFLA are provided from the funds of the Budget of the Ministry. If the beneficiary of secondary legal aid succeeds in the dispute and the court obliges the opposing party to reimburse the costs of the proceedings in full or partly in accordance with the provisions of the law governing court proceedings, in that case the court in the pronouncement of the court decision will oblige the opposite party when pronouncing the court decision to pay the costs of the procedure at the expense of the Budget of the Republic of the North Macedonia.²⁸

Free legal aid under the LFLA does not cover the costs that the beneficiary of free legal aid is obliged to compensate if he fails in litigation.

Hence, having in mind the provisions of the Law on Civil Procedure in correlation with the provisions of the Law on Free Legal Aid, there is no absolute relief from the costs of the procedure, including the costs of expertise for vulnerable categories of persons / applicants and beneficiaries of free legal aid.

b. Who can provide expert witnesses and is there a separate registry for expert witnesses that can work on legal aid cases?

LFLA foresees that the expertise is provided solely through the Bureau of court expertise in accordance with the Law on Expertise.²⁹

The Bureau is a state administration body within the Ministry of Justice, with the capacity of a legal entity. The Bureau performs expert activities in the field of expertise and super expertise for the needs of the courts and public prosecutor's offices in the Republic of Macedonia, for the needs of state bodies, public enterprises, companies and funds established by the state, individuals and legal entities, as well as other entities for which expertise is required.³⁰

The Bureau conducts expert examinations at the request of any interested party, while the assessment report is performed exclusively for the needs of the state administration bodies. The Bureau has employed experts and external collaborators (exclusively natural persons) with whom it

²⁶ Ibis, art.163

²⁷ Ibis,art.166

²⁸ LFLA,art.13 par.5 line 8

²⁹ LFLA,art.13 par.6

³⁰ LAW ON EXPERTISE,art.43-a, <https://pravda.gov.mk/toc1/460>

concludes cooperation agreements in the areas of expertise for which there are no employees.³¹ The services offered by the bureau are the preparation of expertise from the economic - material field, construction, architecture, traffic and engineering, recently geodesy etc.³² The bureau also offers services for super-expertise, assessments, expert analysis, etc., but it must be borne in mind that the bureau does not have licensed appraisers to conduct external assessments at the request of interested parties. In performing the activities within its scope and for certain matters within the competence of the Bureau that require special expertise and for the performance of which appropriate experts are needed, the Bureau may conclude a cooperation agreement with another body of the state administration, state body, higher education institution, scientific institution or professional institution.³³ But the Bureau does not have this kind of agreements at the moment. The Bureau may hire external collaborators for particularly complex cases or if for the expertise or the assessment is required participation of other experts, ie assessors with the same or another specialty, at the request of the competent authorities and other reasons provided by the acts of the Bureau. The manner of distribution of cases is done by the bureau. Which expert will receive which case depends on the number of active cases that the experts have. The practice is to ensure proportionality in the number of cases.

"Expert "is a person who has a license for expertise in the relevant field and is registered in the register of experts. The "Register of experts" is a public book in which the persons to whom the expertise license is issued, revoked, extended or terminated in the respective field are registered. The form and content of the Register and the manner of its maintenance is prescribed by the Minister of Justice. The issued, revoked and extended licenses of the experts, as well as the licenses of the experts that have expired, are registered in the Register. The Register is published on the Ministry of justice's web site and distributed to the courts in RNM.³⁴

Every expert that has an active licence is enrolled at the Registry which means that is available for conducting expert assessments in the relevant filed of his expertise.

4. Remuneration of costs

a. How are expert witnesses who provided services in legal aid cases reimbursed?

The expert for the performed expertise or super expertise has the right to a reward and the right to compensation for the essential expenses. The amount of the reward for the performed expertise or super expertise is determined according to the amount of the monetary value of the subject of expertise, the complexity of the expertise, the time required for data collection and preparation of the expertise (finding and opinion). The amount of really needed expenses is determined based on the really needed travel and daily expenses and material expenses.³⁵

³¹ <http://bsv.gov.mk/sorabotka/nadvoresni-vesti-lica/>

³² <http://bsv.gov.mk/>

³³ LAW ON EXPERTISE, art.43-g

³⁴ <https://pravda.gov.mk/toc1/460>

³⁵ LAW ON EXPERTISE, art.29

The Bureau for performed expertise, super expertise and other services at the request of legal entities and individuals, is entitled to a fee and costs in accordance with the law governing the subject area.³⁶ The reward and costs for expertise and super expertise are covered by the service seekers.

In free legal aid cases the reimbursement of the reward and the necessary costs of the Bureau for the performed expertise or assessment is paid by the Ministry of Justice upon submission of an invoice for the performed service in full.

b. Is there any state adopted tariff or the fees are determined by professional bodies or by the market?

The remuneration and costs for the performed expertise, assessments and super expertise by the Bureau of Judicial Expertise are regulated by special decrees issued by the Government of the RNM.³⁷

[With the Decree on the method of calculating the amount of reimbursement of necessary costs for expert examinations](#) carried out by the Bureau for judicial expertise for the purposes of the state administration, public enterprises and joint state-owned companies is regulated the manner of calculating the amount of the fee for the really necessary costs for the expertise. The amount of the reimbursement of the really necessary costs for the expertise performed by the Bureau of Judicial Expertise for the needs of the state administration bodies, public enterprises and joint stock companies in state ownership is determined according to the complexity of the expertise; the time required for data collection; study of the submitted documentation and data; application of appropriate methodology for the area of expertise; preparation of the expertise (finding and opinion) and necessary travel and daily expenses and material costs. In case of expertise whose complexity and required expertise for its performance is of a larger scope, the reimbursement for the real costs can be increased up to 200% of the determined, depending on the size of the documentation that is the basis for the preparation of the expertise, the length of the analysed period that is longer than three years and the value of the dispute over 100,000,000 denars; In case of submission of new evidence on the basis of which additional expertise is prepared, for the preparation of the additional expertise, the Bureau of Judicial Expertise is entitled to a fee of 50% of the determined and calculated compensation for the really necessary costs for the same case, if such expertise is not performed due to an omission of the expert. With the [Decree on the remuneration and compensation of the external collaborators of the Bureau of Judicial Expertise](#) the remuneration and compensation of the external collaborators of the Bureau of Judicial Expertise are regulated. The remuneration of the external collaborator for the performed expertise is determined in an amount that cannot be more than 50% of the remuneration for the expertise that belongs to the Bureau of Judicial Expertise, in accordance with the law. In addition to the reward, the external collaborator is entitled to compensation for the actual costs of expertise. Real costs for expertise and assessment are costs incurred for transport from the place of residence, i.e. the seat of the expert to the seat of the court or the place where he performs the expertise, by means of public transport, as well as for return to the place of residence, i.e. the seat, the material costs for actions made during the preparation of the finding and the opinion, which are specific in nature and which are performed only by specialized institutions and legal entities, are calculated at valid prices etc. The remuneration and compensation

³⁶ Ibis,art.43-d

³⁷ Ibis,art.29-a

of the external collaborators is determined depending on the complexity, duration, scope and necessary resources for the performed expertise or assessment, in the area in which the external collaborator is hired by the Bureau of Judicial Expertise for a specific subject of expertise or assessment.³⁸

³⁸ Decree on the remuneration and compensation of the external collaborators of the Bureau of Judicial Expertise, Official Gazette of the Republic of North Macedonia No.: 131/2015 from 31.07.2015

COUNTRY REPORTS

1. France

a. Overview of the legal aid system

At each judicial court of first instance (*tribunal judiciaire*), legal aid offices (*bureau d'aide juridictionnelle*) grant legal aid except from cases before Supreme Court (*Cour de cassation*) and the Supreme administrative Court (*Conseil d'Etat*), which have each their own rules of application. The legal aid office consists of sections: one general and three specialized ones (for the courts of appeal, the administrative courts or administrative courts of appeal).

A judge of the mentioned courts assisted by other non-judicial members (two civil servants, two representatives from the legal profession, a judicial officer (*huissier de justice*) or a lawyer to the special bar for the Supreme Court and the Supreme administrative court and a representative for users)³⁹ presides each office. The legal aid office is run by the Registrar of the court - under the supervision of the office members- where the legal aid office is located⁴⁰. Civil legal aid is provided for all cases, i.e. administrative law, family law, labor law and immigration cases⁴¹. It covers legal assistance and the costs related to this representation such as the costs of bailiffs and experts⁴². Civil legal aid provides legal representation at all instances, first instance, appeal and cassation.

Legal aid shall be granted to a person whose action does not appear to be manifestly inadmissible, unfounded or abusive, in particular because of the number of applications or their repetitive or systematic nature⁴³ and who meets the financial requirements.⁴⁴ In case of partial legal aid, the State fully covers the other costs related to the proceedings or acts for which partial legal aid has been granted (costs of expertise, social investigation, etc.).

To apply for legal aid the applicant has to file a form including a series of documents and has to submit them at the first instance court competent with regard to the residency of the applicant. The legal aid office decides whether or not to grant legal aid (fully or partially). If legal aid has been rejected or only partly granted, the applicant may appeal the decision to the court of appeal, the Supreme Court,

39 Art. 16 Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique (Legal Aid Act- LAA) 10 July 1991; art. 12 and 14 Décret 19 December 1991,

40 Décret nr 91-1266, 19 December 1991 portant application de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique, art. 7 al. 3, adapted by Décret nr 2001-512, 14 June 2001, art. 3.

41 For cases to the national court on the right to asylum (*cour nationale du droit d'asile*), legal aid is granted automatically, with the exception of obviously non-admissible cases (art. 9-4 Loi 9 July 2010).

42 Art. 25 and following LAA 10 July 1991

43 This condition does not apply to the defendant, the person civilly liable, the witness, the person under investigation, the accused, the convicted person and the person subject to the procedure of appearance on prior recognition of guilt. In addition, in matters of cassation, legal aid shall be refused to the applicant if no serious grounds for cassation can be found. When, by virtue of the preceding, legal aid has not been granted and the judge has nevertheless upheld the action brought by the applicant, the latter shall be granted reimbursement of the costs, expenses and fees incurred or paid by him, up to the amount of legal aid he would have received in view of his resources. Art. 7 & 50 LAA 10 July 1991 (Conformément au IV de l'article 243 de la loi n° 2019-1479 du 29 décembre 2019, ces dispositions entrent en vigueur à une date fixée par décret, et au plus tard le 1er janvier 2021).

44 The granting of legal aid occurs as follows. If the applicant has an income of less than 1,031 euro/ month, he is eligible for a total civil legal aid. If the applicant has an income between 1,031 euro/month and 1,546 euro/month, he is eligible for a partial legal aid. These amounts are increased for each person depending on him (186 euro for the first two persons and 117 euro for the other ones). See for detailed information Jean-Marc Despaquis, Fasc. 500-10 : AIDE JURIDIQUE. – Aide juridictionnelle JurisClasseur Procédure civile, update 4 Janvier 2021, 75p.

the administrative court of appeal or the Administrative Supreme Court, depending on the case⁴⁵. No further appeal is permitted.⁴⁶

b. Summary of rules on expert witnesses in civil procedure

The provisions governing the intervention of the expert - *le technicien* - in the civil procedure can be found in the Code of Civil Procedure⁴⁷ (hereinafter: CPC), in particular articles 232 - 284-1 CPC. French law distinguishes three different forms of expert examination, i.e. *les constatations* (art. 249-255), *la consultation* (art. 256-262) and *l'expertise* (art. 263-284-1). The expertise can be compared to the Belgian expert examination or the Dutch examen opinion (*deskundigbericht*). The French judge only orders an expert report if he deems that *les constatations* or *la consultation* do not inform him sufficiently⁴⁸. The consultation is a simple, quick and cheap investigation measure whereby the expert is merely called upon to give an oral explanation. In the context of *les consultations* the judge expects the expert to make factual findings without formulating an opinion or advice.

The expert opinion will therefore only be ordered if the technical issue requires complex research or expert advice. The distinction was introduced in order to avoid waste of time and unnecessary costs. The expert report is limited to factual findings and not to legal questions⁴⁹. The expert may be assisted in the accomplishment of his examination by the person of his choice who intervenes under his control and responsibility.

The judge decides sovereignly whether or not to call in an expert. The parties have no right to claim the appointment of an expert. The French judge chooses independently of the parties the field of expertise and the person of the expert to be appointed. Unlike the Dutch courts, the French court is not obliged to consult the parties involved, although they are allowed to make some suggestions. The judge controls the procedure and determines the delays, the scope, the provisions and the remuneration of the expert.

The judge is not bound by the observations and conclusions of the expert, although in practice judges ground their decisions on the expert's report. Experts are "*auxiliaires des juges*" and judges do not delegate their jurisdictional authority to the experts. Judges are free to order a second expert examination or they can ground their decision on an unofficial expert examination ordered by one of the parties.

French law has two types of lists of court experts that can be used by both the criminal court and the civil court⁵⁰. A regional list drawn up and managed by each court of appeal (*cour d'appel*) for experts exercising their main profession in the jurisdictions of that court. In addition, there is an overarching national list drawn up and managed by the French Court of Cassation (*Cour de Cassation*). Both lists are drawn up according to a nomenclature determined by the Minister of Justice (*le garde des sceaux*). This nomenclature is in fact a schematic classification of the various disciplines in which the

45 Art. 23 al. 1st LAA 10 July 1991.

46 Art. 23 al. 1st last sentence LAA 10 July 1991.

47 [www.legifrance.gouv.fr 'codes'](http://www.legifrance.gouv.fr/codes).

48 art. 263 CPC

49 art. 238 CPC

50 Loi n° 71-498 du 29 June 1971 relative aux experts judiciaires; Loi n°2004-130 du 11 février 2004 réformant le statut de certaines professions judiciaires ou juridiques, des experts judiciaires, des conseils en propriété industrielle et des experts en ventes aux enchères publiques.

registered experts work. These lists have a purely informative function⁵¹. They are designed to direct judges to experts. The judge is therefore not obliged to appoint an expert who appears in one of the lists⁵².

Persons who wish to be included in a list of experts must first apply to the court of appeal of the legal district in which he/she carries out his/her main activity. Before an expert can be included on the national list of the *Cour de Cassation* the expert must have been registered on a regional list of a court for at least five years. The decree determines many quality measures (such as legal knowledge necessary to exercise the examinations, recording and reporting the exercised activities,...) that experts have to satisfy at every (re)registration, there are manuals that guide experts⁵³ and an independent disciplinary commission has been installed. Experts on the lists - certainly on the national list - carries a certain prestige and standing.

b. Availability of free of charge expert services for indigent parties

In civil litigation cases, the costs directly related to the proceedings (*dépens*) are listed in the CPC⁵⁴ including for example the remuneration of technicians (experts, consultants, etc.). The costs of experts appointed by the judges are determined by the judge according to the work undertaken, the time constraints and the quality of the work. The judge who orders the expert examination or the judge in charge of the control shall determine, at the time of the appointment of the expert or as soon as he is in a position to do so, the amount of an advance on the expert's remuneration as close as possible to his foreseeable final remuneration. He designates the party or parties who shall deposit the advance payment at the court registry within a period of time. If several parties are designated, he determines proportionally every parties deposit. He shall, if necessary, set out the deadlines for the deposit⁵⁵. The Registrar shall invite the parties to deposit the advance payment at the court clerk's office within the time limit and in the manner specified by the judge⁵⁶. The Registrar shall inform the expert of the deposit.

At the end of the procedure it is up to the judge to decide which party as to bear the costs⁵⁷ often the losing party. In all cases, the judge takes into account the fairness or economic situation of the losing party⁵⁸. The losing party is ordered to pay the costs, unless the judge, by reasoned decision, charges all or part of them to another party. Where the beneficiary of legal aid is ordered to pay the costs or loses the case, he shall bear exclusively the costs actually paid by his opponent. The judge may, however, even ex officio, decide that part of the costs should be borne by the State⁵⁹.

When the party is forced to pay costs or the losing party does not benefit from legal aid, he is obliged to reimburse the Treasury for the sums advanced by the State. In the same case, the judge may charge the beneficiary of partial legal aid, the plaintiff in the proceedings, with the reimbursement of a

51 Article 2 Loi n° 71-498 du 29 juin 1971

52 Art. 232 CPC

53 Vademecum de l'expert de justice or Le Livre blanc conducted by Conseil National des Compagnies d'experts de Justice (CNCEJ) <https://www.cncej.org/>

54 Articles 695-1° and 695-2°-12° Code Civile de Procédure (Civil Procedure Code)

55 Art. 269 CPC

56 Art. 270 CPC

57 Article 696 Civil Procedure Code.

58 Article 700 al. 4 Civil Procedure Code. See also Art. 75 Loi 10 July 1991.

59 Arti. 42 Loi 10 July 1991

fraction of the sums advanced by the State⁶⁰. In case of dispute an appeal to the head of the court in relation to which the problem arises or to the head of the judicial court can be lodged. In case of exemption this decision is final and will never be recovered, even if the recipient of the legal aid has to bear the costs of the proceedings⁶¹.

c. Remuneration of expert witnesses in legally aided cases

Especially in case of legal aid the beneficiary of legal aid is exempted from paying, advancing or depositing these costs⁶². These costs are advanced by the State⁶³. The costs covered by a legal protection insurance contract or other protection system are deducted from the sums owed by the State. There is no need for a deposit (obligation to pay in advance) by the State when this would have been incumbent on the beneficiary of legal aid. On the basis of a certificate from the Registrar, these costs, with the exception of amounts due to lawyers, will be paid by the Accounting Officer of the Directorate General of Public Finances (*la direction générale des finances publiques*). The same applies to expert examinations if the parties opt for *une procédure participative* (collaborative lawyering)⁶⁴.

2. Belgium

a. Overview of the legal aid system

The Belgian legal profession does not have a monopoly on legal advice. As Belgium is a federal state, legal advice and minor legal assistance are also provided by welfare organisations that are subsidised by the regional governments. The 6th State reform of 2014 has transferred primary legal aid or frontline legal aid provided by the legal profession to the communities (Belgium has three communities that have their own jurisdictions: Flemish community, the Federation Wallonie-Brussels and a German-speaking community). Before it belonged to the federal authority of the Justice Department.

Secondary legal aid⁶⁵ is still the authority of the Justice Department. The 1998 Legal Aid Act particularly emphasises litigation services such as legal assistance and court representation by private lawyers. While first line legal aid provided by private lawyers is open to every citizen free of charge and is organised by Commissions for Legal Aid (*commissie voor juridische bijstand*) in every judicial district, eligibility for secondary legal aid depends on a means and merits test. Requests for free legal aid must be sent to the bureau for legal aid (*bureau voor juridische bijstand*), one of which is provided in every judicial district under the auspices of the local bar association. Each bureau is organised independently and is free to determine its own policy. There are three ways to apply for legal aid. One can ask a private lawyer to submit a request to a legal aid bureau on one's behalf, one may be referred by a first line organisation, or one can file a request by visiting a bureau in person.

60 Art. 43 Loi 10 July 1991.

61 H. Gerphagnon, « Aide juridique », Répertoire procédure civile, June 2015, updated 2019, para 92.

62 Cass. 2e civ., 26 févr. 1992, n° 90-20.821 : JurisData n° 1992-000590 ; Bull. civ. II, n° 66

63 Art. 40 LAA 10 July 1991

64 Art. 166 LAA 10 July 1991

65 The concept of secondary legal aid only relates to private lawyers' fees. The government does not intervene to help with the costs of a trade union or an interest group assisting an individual in legal proceedings.

A person may be entitled to secondary legal aid if he/she lacks sufficient means (including income, real estate, resources/benefits from movable and immovable assets, capital, all benefits in general, or other signs of solvency)⁶⁶

Secondary legal aid should not be confused with free court costs. Secondary legal aid ensures that a person seeking justice does not have to pay lawyers' fees (in full). It is up to the bureau for legal assistance (*bureau voor rechtsbijstand*) which is a court chamber to decide whether or not a person is entitled to free courts costs (for bailiffs, notaries, experts). Since 2006 the Legal Aid Act confirms that the decision of the bureau for legal aid counts as the proof of insolvency. No other steps have to be undertaken and the court will decide purely on merits grounds whether free courts costs can be granted or not.⁶⁷ In accordance to a list determined by the state private lawyers are paid once a year by the Orde van Vlaamse Balies and Ordre des Avocats des barreaux francophones et Germanophone who receive from the government a fixed yearly budget based on a point system. In case of free court costs, bailiffs, notaries or experts are also subsidized by the state paid out by district bureaus for legal costs (see infra).

b. Summary of rules on expert witnesses in civil procedure

The judicial expert examination takes place according to Articles 962 to 991a of the Judicial Code (*Gerechtig Wetboek*). Ordering an expert examination is a possibility but never an obligation. The usefulness of an expert examination must be thoroughly investigated by the judge and all advantages and disadvantages must be weighed against each other. An investigative measure must always be limited to what is strictly necessary, with preference for the simplest, cheapest and quickest measure⁶⁸. Essential to the 'judicial' expert examination is that it is ordered by a judge, in the exercise of his court proceedings. The expert is appointed by a court decision in which the judge entrusts him with an assignment and in which the judge defines his task and controls the course of the investigation. By the appointment order, the expert acts as an employee of the court⁶⁹ and not as a mandated agent of the party who requested his appointment or of the court which appointed him *ex officio*.

The judge decides freely and sovereignly on the expediency and necessity of the investigative measure⁷⁰. The assignment must be accurately described by the judge in the appointment decision⁷¹. The clearer the assignment in the judgment of appointment, the more accurately the expert will be able to conduct his investigation. The expert examination may only consist of factual findings or giving a purely technical opinion⁷². No legal appreciation may be left to the expert. When the expert has completed his examination, he shall set out his findings and conclusions in a report, which he

⁶⁶ Because he belongs to a specific category of people (such as a minor or a person of whom the government knows that he lacks sufficient means like refugees, people living from social benefits,...) or if the applicant lives alone and has an income of less than max. € 1.226,00 net/month or is married/living together/alone with depended children than max. € 1.517 net/month, s/he is eligible for full civil legal aid. If the applicant has an income between € 1.226 net/month and € 1.517 (alone) or € 1.517 and 1.807 net/month (married, living together, alone with depended children) , s/he is eligible for a partial legal aid. These amounts are increased for each dependant with € 259, 18 p. p.

⁶⁷ Art. 667 lid 2, 3 en 4 Judicial Code (Jud.C.).

⁶⁸ Art. 875bis Judicial Code

⁶⁹ Rb. Luik 14 februari 1994, TBBR 1996, 57 ("l'expert est un auxiliaire de justice"). Rb Antwerpen 3 februari 2020, T.B.O. 2020, 279.

⁷⁰ Art. 972 Jud.C.

⁷¹ Art. 972 par. 1 Jud.C.

⁷² Art. 962 Jud.C.

shall submit to the court for final approval. In the decision admitting the expert examination, the judge may decide to order an installation meeting if he considers it necessary or if all appearing parties have requested it⁷³. The court may hear the expert at the hearing. The expert, the parties and their lawyers shall be summoned to the hearing⁷⁴.

The court may determine the advance payment that each party must deposit at the registry or with the credit institution that the parties have jointly chosen. The court may not impose this obligation on a party who cannot be ordered to pay costs like people who are opposing to decisions of e.g. social security agencies⁷⁵ in labour courts. In the event that the appointed party fails to proceed with the execution, the most diligent party may consign the advance payment. The court may determine the reasonable part of the advance payment to be released in order to cover the expert's costs. If the expert considers that the advance payment or the released part of it is insufficient, he can ask the court for the consignment of an additional advance payment or further release. Further release is also possible to cover a reasonable part of the fee for the work already performed. The judge shall refuse the additional consignment or further release of the advance payment if he considers that it is not reasonably justified⁷⁶.

If one or more parties do not agree to the statement of costs and fees, the court shall order the parties to be summoned in order to assess the amount of the costs and fees.⁷⁷ Any balance shall be repaid to the parties by the Registrar of the Court of First Instance or by the credit institution. These amounts will be assessed as court costs in the final decision.

b. Availability of free of charge court expert services for indigent parties

In so far as the applicant fulfils the conditions⁷⁸ free courts costs may be granted:

- not only in the context of medical examinations, but also in the context of all other conceivable matters (building cases, traffic cases, etc.);
- within the framework of any assessment ordered by a judge but not within the framework of an amicable assessment

The free court cost for the assistance of a technical advisor is only possible if an expert examination is ordered; this implies that if the judge decides not to order a (new) expert examination, no legal assistance of a technical advisor can be granted. The costs and fees of experts as well as the costs and fees of the technical advisers who assist the parties in the expert examinations ordered by the court are advanced by the State⁷⁹. The appointed expert may refuse his appointment when he is informed that free courts costs are granted. He cannot be forced to accept the court order.

73 Artikel 972 §2 Jud. C.

74 Art. 985 par. 1 Jud. C.

75 The expert costs, mostly medical experts, are determined by the government <https://www.inami.fgov.be/nl/professionals/individuelezorgverleners/artsen/Paginas/erelonen-kosten-gerechtigde-deskundigen.aspx>

76 Art. 988 Jud.c.

77 Art. 991 Jud.c.

78 See art. 667 Jud. C. which are the same eligibility criteria as for obtaining a lawyer for free

79 Art. 692 and 692bis Jud.C.

Since 2014, there are two new Belgian national registers: a register for sworn translators and interpreters and a register for court experts⁸⁰.

Since this new legislation court experts and sworn translators, interpreters and translator-interpreters have been subject to an obligation of registration. Only persons listed in this register may use the title of court expert or sworn translator/interpreter and may be appointed by the judicial authorities (subject to statutory exceptions).

c. Remuneration of expert witnesses

These free court costs for the obtaining of an expert are paid by the state in the manner determined by a new Act⁸¹ and new Royal Decree on Tariffs in Criminal Cases⁸². After the approval of the expert's report by the judge who ordered the expert examination, the expert sends his statement of expenses to a bureau for court costs (*arrondissementeel bureau gerechtskosten*) that exists in every district and that is an administrative office of the Federal Justice department (outside the court) that will review the invoice and then issue an order to the settlement office (*vereffeningsbureau*) that will pay out based on an official list with fixed tariffs⁸³. In addition to the district bureau for court costs, there is a central bureau for court costs (*centraal bureau gerechtskosten*) that plays a leading role in the interpretation and application of the regulations in specific cases. The process to obtain payments is digitalized.

A court order that grants free court costs exempts the beneficiary to advance all or part of the costs of the proceedings. The exemption from paying court costs is not definitive. The granting of free court costs does not deprive the State of the repayment of the advances made and the payment of the duties levied in debit, provided of course that these are definitely due and only in the cases provided for by law:

- a. First of all, the enumerated costs can be recovered from the beneficiary himself, when his assets, income or expenses have changed since the decision granting him free court costs and that he is able to pay⁸⁴.
- b. Repayment may also be claimed from the opposing party, if the latter has been ordered to pay the costs.

⁸⁰ Wet 10 april 2014 tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken http://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=2014009214&la=N also changed by 5 MEI 2019. – Wet 5 mei 2019 houdende diverse bepalingen inzake informatisering van Justitie, modernisering van het statuut van rechters in ondernemingszaken en inzake de notariële aktebank http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019050519 These acts are incorporated in art. 555/6-555/16 Jud.C.

⁸¹ De wet van 23 maart 2019 betreffende de gerechtskosten in strafzaken en gelijkgestelde kosten en tot invoeging van een artikel 648 in het wetboek van strafvordering, BS 19/4/2019

⁸²KB 28 december 1950 houdende algemeen reglement op de gerechtskosten in strafzaken.

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1950122830 KB 15 december 2019 tot vaststelling van de organisatie van de arrondissementele bureaus gerechtskosten en de procedure volgens dewelke gerechtskosten in strafzaken en gelijkgestelde kosten worden toegekend, geverifieerd, betaald en teruggevorderd (Genoemd "gerechtskostenbesluit") http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2019121506

⁸³ Omzendbrief 131/7 over de indexerings van de bedragen die mogen worden aangerekend door de personen die door de gerechtelijke overheden worden gevorderd voor het uitvoeren van een opdracht in een dienstverlenende rol die gerechtskosten in strafzaken genereert (TARIEF 2020); 25 JANUARI 2021. - Omzendbrief 131/8 over de indexerings van de tarieven van de gerechtskosten in strafzaken en de gelijkgestelde kosten (TARIEF 2021)

⁸⁴ art. 693, para.1 Jud.C.

c. Joint and several recoveries from the wealthy beneficiary and the other party is also possible if a settlement has been reached in the course of the proceedings⁸⁵

There are recently some best practices: e.g. justices of the peace often order a site visit (in rental cases) where the parties, the judge himself and the expert come together. The cost is set in advance at, for example, €200 and for eligible parties by way of free legal costs. The expert gives his findings on the spot and the court clerk writes them down in the report of the hearing. This keeps costs down, is efficient and less time consuming. The practice has meanwhile also been adopted in construction cases at the first instance in Antwerp, although it will probably be a little more expensive and depending on the seriousness of the case.

3. The Netherlands

a. Overview of the legal aid system

The Netherlands operates a mixed model of legal aid, which covers both criminal, civil and administrative law. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act (in force since 1994 and since several times amended). The Netherlands has a relatively high legal aid budget⁸⁶. The *Raad voor Rechtsbijstand* (Legal Aid Board) is an independent governing body with a public task. It is instituted by the minister of Security and Justice (Lord High Chancellor). The ministry of Security and Justice is responsible for organizing subsidized legal aid and its supervision. *The Raad voor Rechtsbijstand* is assigned to execute this organization and supervision⁸⁷. The LAB is entrusted with all matters concerning administration, organization, supervision and expenditure as well as with the actual implementation of the Legal Aid System⁸⁸.

The eligibility for legal aid is based on both the client's annual income and his assets⁸⁹. In order to obtain a certificate, a lawyer, registered at the LAB needs to apply to the LAB on behalf of his client. In 2021 the contributions to be paid by clients varied from € 208 to € 875 per case according to their income. The client's contribution increased in recent years due to budget cuts. The same cuts have also led to higher client's contribution in case of certificates concerning divorce (between € 362 and €904) 'Have-nots' are also exempted from paying an individual contribution as well as victims of violent crime and sexual offenses. It is also possible to apply for a mediation certificate. To stimulate the use of mediation, the client's contribution towards the costs of mediation is generally less than that of regular legal aid by a lawyer (maximum €112). In case of relatively simple legal problems, called minor aid certificate, private lawyers can charge a standard three-hour legal advice fee, of which the client contributes € 83 or € 137, depending on his income.

⁸⁵ art. 693, para. 2 Jud. C.

⁸⁶ 'European Judicial Systems: efficiency and quality of justice' Figure 2.43, European Commission, 2018.

⁸⁷ <https://www.rvr.org/english>

⁸⁸ The system is threefold : 1) Online self-help, information and support is offered on the Rechtwijzer website (Rechtwijzer translates into Roadmap to Justice) The Legal Services Counters act as the 'front office' (first line) 3) Private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary line) in the form of certificates. The Legal Services Counters are free of any charge.

⁸⁹ Individuals whose household income exceeds € 40 000 (partner income included) or € 28 000 (single) are not entitled to legal aid.

The Board assesses each application, mostly submitted electronically both in terms of the client's income and assets and the (financial) significance of the legal problem in question. Since a few years the LAB introduced a High Trust method for dealing with the applications for certificates. The LAB and lawyers work together on the basis of transparency, trust and mutual understanding. The Board only pays the lawyers' fee, the cost for loss of time and cost for travelling.⁹⁰

The Legal aid Board does not cover the court costs. Court registry fees only can be reduced in civil case. For other court costs like cost for expert examinations an exception has been made for medical examination in order to predict to possible outcomes in liability cases (personal injury) and for providing a loan in expert examination (see *infra*).

b. Summary of rules on expert witnesses in civil procedure

The most important provisions on experts in civil cases can be found in the Code of Civil Procedure (hereinafter: Rv), in particular articles 194 to 200 (expert examination in proceedings on the merits) and 202 to 205 (provisional expert report)⁹¹. Under section 194, paragraph 1 Rv the judge may order *ex officio* or at the request of a party an oral hearing or a written report by experts. A party may request the intervention of an expert because he believes that the judge needs technical advice (expert examination), or he wants to know the feasibility of his position or the intervention enables a party to consider whether it is useful to institute proceedings or continue pending proceedings (provisional expert report). In many cases the parties will (try to) settle their dispute after a provisional expert report and won't bring the dispute before the court that issued the instruction to the expert. If the parties do bring their entire dispute before the court, the parties and the court may use the provisional expert report in the civil law proceedings and a new expert report may be omitted. In that case it is necessary that both parties have appeared in the proceedings that led to the provisional expert report and that the legal requirements in the preparation of a provisional expert report, as explained in a Practice Direction, have been observed⁹².

The judge decides freely whether or not to seek expert advice (*deskundigbericht*)⁹³. He will disregard a request from a party when he is convinced that an expert opinion will not contribute sufficiently to the assessment of the dispute regardless of the motive behind the request. If the judge decides to call in or to appoint one or more experts he shall first of all consult the parties. During this consultation, the parties may suggest the field of expertise and the person of the expert. The judge does not have to take these suggestions into account. In his decision he is obliged to mention that the consultation took place, but he does not have to give a reasoned justification if he disregards the proposals of the parties. Furthermore, the Rv does not stipulate much about the expert, except that he has to carry out his assignment impartially and on a best effort basis, taking into account the principle of fair hearing (*audi alteram partem*).

b. Access to free of charge services for court expertise for indigent parties

⁹⁰ Art. 37 Legal Aid Act and art. 2 & 4 Bvr (Besluit vergoedingen rechtsbijstand/order remuneration legal aid) <https://wetten.overheid.nl/BWBR0011018/2021-01-01>

⁹¹ See art. 194 - 207 Rv. The full Code of Civil Procedure can be consulted at https://wetten.overheid.nl/BWBR0001827/2021-04-01#BoekEerste_TiteldeelTweede_AfdelingNegende_Paragraaf6_Artikel194 see also the <https://www.rechtspraak.nl/SiteCollectionDocuments/practice-direction-for-experts-in-dutch-civil-law-cases.pdf> (page 43)

⁹² <https://www.rechtspraak.nl/SiteCollectionDocuments/practice-direction-for-experts-in-dutch-civil-law-cases.pdf> page 43

⁹³ <https://www.rechtspraak.nl/SiteCollectionDocuments/practice-direction-for-experts-in-dutch-civil-law-cases.pdf> page 43

⁹⁴ <https://www.rechtspraak.nl/SiteCollectionDocuments/model-expert-opinion.pdf>

The court may, ex officio or at the request of one or more parties, ask experts to estimate their costs. The judge shall determine the advance payment and any subsequent advance payment. The parties must pay these advances to the account of the registry where the case is heard. Parties benefiting from legal aid or falling under Article 16 of the Civil Cases Court Fees Act⁹⁴ that issued the levying of the court fee for indigent parties do not have to pay this advance payment. The Registrar can declare whether these parties are covered by the court registry fees for indigent persons. If he does not issue this declaration, the parties can submit a statement of opposition⁹⁵.

In case parties are exempted of the advance payment, the Registrar shall pay the amount to which the experts are entitled from the National Treasury. Pending the proceedings, the amount paid from the National Treasury shall be provisionally debited⁹⁶. The court will determine which of the parties will pay this debit amount once the investigation report has been received or after the minutes have been issued if it is an oral report. If one of the parties does not pay, the court clerk will issue a writ of execution. This does not apply if there are still proceedings pending concerning the claim that is the subject of the expert opinion⁹⁷.

In case someone cannot pay the costs, there is an advance payment facility provided by LAB to cover the costs of the required expert opinion in cases of personal injury. A maximum of € 3,000 can be borrowed for this purpose after a first preliminary examination on the feasibility has been executed. If the procedure turns out in favor of the plaintiff, the loan can be repaid by means of a compensation payment⁹⁸.

Although the findings of the expert play a decisive role in Dutch case law, there is no separate register for experts for indigent parties. For a long time, nothing was decided about the expert's capacity and skills. The consultation of the judge with the parties should lead to the appointment of a competent expert. Various initiatives were taken to guarantee a certain level of quality and competence. In order to give judges and parties something to hold on when choosing an expert, various lists and registers have been established. The National Register of Judicial Experts (NRGD⁹⁹) is to this day the only register in the Netherlands that has a legal basis (i.e. the Experts in Criminal Cases Act) and it only has significance in criminal law¹⁰⁰.

In civil cases there is still no legal arrangement to ensure that experts have the right qualifications. A private organization for Judicial experts (in civil, administrative and criminal cases) has been installed (LRGD¹⁰¹). The LRGD trains experts and certifies the expert (and the method used by the expert) when the training has been properly completed. But in practice many questions arise¹⁰². In addition to the judgment, the Guidebook for experts in civil cases is also sent to him. This guide was published by the Council for the Judiciary (*Raad voor de Rechtspraak*) and was conducted after extensive consultations with experts from a wide range of fields and all kinds of disciplines. It

94 Art. 16 The Registry Fees in Civil Matters Act (wet Griffierechten Burgerlijke Zaken)

95 Art. 29 The Registry Fees in Civil Matters Act)

96 Art. 199 par. 3 Rv; zie A.J. VAN, "De kosten van het (voorlopig)deskundigenbericht", TVV 2006, 33-38.

97 Art. 205 Rv

98 <https://kenniswijzer.rvr.org/werkinstructies-toevoegen/allerechtsterreinen/medisch-haalbaarheidsonderzoek---medisch-deskundigenbericht.html>

99 <https://www.nrgd.nl/>

100 And also here questions arise about quality measures <https://www.lrgd.nl/Portals/1/publicatieswebsite/EXPERT.Giard.2017.partijdeskundige.pdf>

101 <https://www.lrgd.nl/nl-nl/LRGD/Publicaties/Diverse-publicaties>

102 <https://www.advocatenblad.nl/2017/11/22/op-zoek-naar-juiste-deskundige/>

contains general practical and legal information on the rights and duties of experts. The Guide explains in a way that is understandable for non-lawyers what is expected of them. The Council of the Judiciary also in accordance with the presidents of the various courts conducted a Code of Conduct for experts¹⁰³.

c. Remuneration of expert witnesses

During his examination the expert may ask the judge in a motivated request for additional payment. The cost of the expert examination is borne by the unsuccessful party and the deposit paid by the other party will be restored to that party. After having seen the experts bill and heard the parties, the court rules on the amount to be paid. On his invoice, the expert must specify in detail his fees, expenses, and VAT. Costs must be specified for all the actions involved. The expert must specify his hourly rate as well as the number of hours needed for the investigation and for writing the report. As in most cases the estimate of the expert is known beforehand, contesting the fees is not regular. However, in known cases, where experts go beyond the estimate, total fees are successfully contested.

4. Germany

a. Description of the legal aid system

In Germany a general “legal aid act” does not exist. The provisions for legal aid are contained in the relevant codes of procedures. All courts in Germany those with general jurisdiction (civil and criminal branches), administrative, labour, social security and tax law have their own codes which contain provisions for legal aid, requiring a “court proceeding” for a legal aid grant.

A distinction can be made between *Beratungshilfe* and *Processkostenhilfe*. Advisory assistance (*Beratungshilfe*) means that you can receive expert legal advice at a very low cost. If advice alone is not enough and you need more help and support to assert or defend your rights against third parties, then advisory assistance can also include lawyer’s fees for representation. Advisory assistance is granted in all legal matters. The eligibility criteria are the same as those for obtaining *Processkostenhilfe*. Anyone who doesn’t have the money to pay the court costs, or can pay them only in part or in instalments, is eligible for legal aid.

Before granting legal aid, the applicant has to prove that he has no sufficient means and that his case has a reasonable chance of success and must not be frivolous. If legal aid for court proceedings is granted after submitting an application to the trial court stating the facts of the case and the relevant evidence, the court order has the following two main consequences:

- The court fees have to be paid in the course of the proceedings
- The lawyer assigned to the client cannot demand any payment from his client as all payments to her will be made out of state funds .

103 <https://www.rechtspraak.nl/SiteCollectionDocuments/Gedragcode-voor-gerechtelijk-deskundigen-in-civielrechtelijke-en-bestuursrechtelijke-zaken.pdf>

A starting point for obtaining legal aid is that the applicant can be required to fund her litigation making use of her “available assets” if this seems reasonable, which means e.g. personal savings, the use of an insurance.

The base for calculation is the monthly income (work, pensions, social welfare benefits,...). From this income a couple of deductions have to be made such as taxes, social security contributions, reasonable premiums, spendings, cost for lodging,... and also lump sums for the applicant, his/her wife/husband and for each child can be deducted (which is a percentage of the welfare benefits). The remainder after that is the income to be used, which is decisive for the granting of legal aid - with or without an obligation to pay in instalments. The allowances, which may vary from region to region, change according to the development of the standard rates for the granting of social assistance. The allowances are published in the Federal Law Gazette as soon as the relevant standard rates have changed.

Litigants with an available income of at least €20 have the right to pay their legal costs in monthly instalments amounting to half of their available income. A maximum of 48 monthly instalments must be paid, irrespective of the number of court instances. Any costs incurred over and above this will be waived. Legal aid covers - depending on the income - the full or partial contribution to the court costs (such as expert examination costs) and the costs of the own lawyer. However, legal aid has no influence on the costs to be reimbursed to the opposing lawyer.

b. Summary of rules on expert witnesses in civil procedure

The provisions applicable to the expert (Sachverständige) in German civil procedural law can be found in the Code of Civil Procedure (Zivilprozessordnung, hereinafter ZPO) under sections 402 to 414 ZPO. The German expert is called upon by the court, either ex officio or at the request of the parties if the decision of the case requires knowledge or experience that the court does not have at its disposal.

If the court can and may reach a decision without an expert examination, it should not accede to requests from parties to obtain an expert examination. If the judge decides on an aspect of the case that is related to a field other than the legal field, the judge must explain in his final decision that he has sufficient knowledge of this other field to reach a decision without an expert opinion.

The German Zivilprozessordnung applicable to civil proceedings does not define the term Sachverständige. Nor does this code contain any concrete quality requirements that experts have to meet before they are allowed to act in court. The judge is obliged to justify whether or not to call in an expert especially in cases where a certain technical knowledge or experience is required. The judge is not bound by the final report and determines himself to what extent the conclusions of the expert are followed. If the judge does not agree with the findings or conclusions of the expert, the judge can appoint a new expert.

Basically the judge is authorized to decide whether or not to appoint the expert. If the judge is insufficiently informed to determine the exact field of expertise of the expert to be appointed, he may require the parties to make proposals regarding the person of the expert to be appointed. If the parties agree on the identity of the expert, the judge must follow their proposal. This consultation with the parties is also intended to prevent the expert ultimately appointed from being challenged

by the same parties. The judge must give priority to experts who are publicly recognised or appointed for a particular field (see *infra* official lists). In practice, the judge will choose an expert from a list he has compiled himself. These unofficial lists have no legal basis and are purely indicative

There are no specialized training courses for experts, nor are there specific diplomas to be obtained that result in a professional career as a full-time court expert. As they have to take an oath and should be impartial, experts can be recused on the same grounds as judges if their neutrality is questioned. In addition, the German court is expected to exercise some degree of quality control over the work of the expert hired and must be critical towards the results of the expert examination e.g. methods used by the expert. The judge may therefore not adopt the expert's findings unquestioningly and must avoid miscarriages of justice caused by unsound expert opinions. The judge decides who pays the advance payment. In the final judgment, he will charge the costs to the losing party.

c. Availability of free of charge court expert services for indigent parties

There is free charge of services for court expertise for indigent parties. The rules of the *Zivilprozessordnung* related to the appointment of the experts combined with those related to *Prozesskostenhilfe* must be applied in legal aid cases. During the procedure of the *Prozesskostenhilfe* experts shall not be heard unless in specific situations. The applicant shall not be sworn in¹⁰⁴. The applicant is released from the obligation to provide consignment for the legal costs.

If legal aid is granted and the applicant loses the case, the court costs, the costs of any taking of evidence (e.g. costs of witnesses or experts) and the fees of the applicant's own appointed lawyer shall be borne by the public purse (*Bundes- oder Landeskasse*), but not the costs of the opposing lawyer¹⁰⁵. The applicant must reimburse them to the same extent as persons who are not indigent. Legal aid only covers court costs and the fees of the applicant's own lawyer, which are calculated according to reduced rates¹⁰⁶ from an amount in dispute in excess of EUR 5000. If the applicant wins the case, the other party must bear all the lawyer's fees and court costs - except in the case of employment tribunal proceedings at first instance.

There is no specific register for experts in legal aid cases. In addition to the informal lists mentioned above, there are also official lists that courts can use. These lists are in fact digital databases that can be consulted by the judge. The most important are undoubtedly the lists of publicly ordered experts, especially in the field of economics, which are drawn up at the level of the Federal states. Also Länder has the competence¹⁰⁷ to publicly register experts and organise the public appointment of experts (*öffentliche Bestellung*). When an expert, after going through a kind of application procedure is publicly appointed, he is automatically registered in the database managed by the public law body (*Kammern*) that is responsible for the appointment. The database classifies the appointed expert according to speciality and subspecialty¹⁰⁸. The expert who has successfully completed the procedure

104 § 118 ZPO

105 § 123 ZPO

106 § 49 RVG

107 § 36 Gewerbeordnung (hereinafter: GewO, German Commercial and Industrial Code) In this article, the Federal legislator provides for an official certification of experts. It is a quality label granted by the German government so that anyone who calls on an expert can be sure that he or she is highly competent.

108 J.J.H. LANGBEIN, "The German Advantage in Civil Procedure", *The University of Chicago Law Review* (vol. 52), 1985, 838.

receives a certificate *Rundstamp*¹⁰⁹ with which he can prove that he is an expert *öffentlich bestellt*. He is automatically included in the lists maintained by the respective *Kammern*. The appointment is valid for a period of, in principle, five years and can be renewed. If the supervisory Chamber establishes that an expert no longer meets the applicable competence requirements or if his reliability is called into question, the Chamber can withdraw the status of *öffentlich bestellte Sachverständige*. The Chambers themselves, as a public-law body, are under the supervision of the Ministry of Economic Affairs (*Wirtschaftsministerium*) of the Land governments.

It is these numerous *Kammern*¹¹⁰ that take on the appointment and issue *Sachverständigenordnungen* or further specify those of the Länder. Every enterprise registered in Germany is obliged by law to be a member of an IHK, with the exception of the liberal professions, farmers and craft enterprises, which have their own *Kammern*. For medical experts the court may ask the *Ärztchamber* for an expert – as there are strong differentiations between the medical professional fields. And other than other experts the medical experts have a binding guideline on the quality of reports.

The German Chamber of Industry and Commerce (abbreviated to DIHK)¹¹¹ is the umbrella body of the various IHKs. The DIHK has drawn up a *Muster- Sachverständigenordnung* that should serve as a model for the various *Sachverständigenordnungen*.

b. Remuneration of expert witnesses in legally aided cases

Experts called by the court receive a fee based on an hourly rate, that is fixed by law in the Judicial Remuneration and Compensation Act [Justizvergütungs- und -entschädigungsgesetz] (JVEG)¹¹² and is paid by the parties to the proceedings. § 8 (1) Experts, interpreters and translators shall receive as remuneration : a fee for their services (sections 9 to 11), reimbursement of travel expenses (section 5) compensation for expenses (section 6) and reimbursement of other and special expenses (sections 7 and 12). Insofar as the fee is to be assessed according to hourly rates, it shall be granted for each hour of the time required, including necessary travelling and waiting times. The last hour already started shall be counted in full if more than 30 minutes were required for the performance of the service; otherwise the fee shall be half of the amount resulting for a full hour¹¹³. The reimbursements are equal for normal and *Prozesskostenhilfe*-cases. Although the honoraries of experts are very moderate (either in normal or *Prozesskostenhilfe*-cases), it is no problem to find very qualified experts because it is thought to be an honour to become expert for the law courts.

¹⁰⁹ The Beef Stamp is a seal that the expert can use in his correspondence. It has to be applied for at Institut für Sachverständigenwesen (IFS, www.ifsforum.de).

¹¹⁰ Industrie- und Handelskammern (IHK) www.berlin.ihk24.de; Handwerkskammer www.hwk-berlin.de; Landwirtschaftskammern www.landwirtschaftskammern.de;

Architektenkammer www.bak.de; Ingenieurskammern www.bingk.de

¹¹¹ www.dihk.de

¹¹² *Gesetz über die Vergütung von Sachverständigen, Dolmetscherinnen, Dolmetschern, Übersetzerinnen und Übersetzern sowie die Entschädigung von ehrenamtlichen Richterinnen, ehrenamtlichen Richtern, Zeuginnen, Zeugen und Dritten (JVEG)* - <https://www.gesetze-im-internet.de/jveg/> -

¹¹³ § 8 (1) JVEG

The costs of an expert privately engaged by a party to prepare for litigation do not form part of the procedural costs for the reimbursement of which is fixed in the judgment. These costs must therefore be claimed separately. If the party has engaged an expert to provide advice during litigation, reimbursement depends on the necessity of this in the case in question. The costs of an expert engaged by the court to give evidence are paid by the losing party or, if the parties have been only partially successful, both parties must pay their share of the costs on the basis of the relative extent to which they have won and lost¹¹⁴.

5. Croatia

a. Overview of the legal aid system

The purpose of the Law on Free Legal Aid¹¹⁵ is to achieve equality before the law, to ensure the citizens of the Republic of Croatia and other persons in accordance with the provisions of this Act effective legal protection and access to court and other public bodies under equal conditions. The system established is governed by a regional administrative bodies (upravna tijela) within the auspices of the Ministry of Justice and Administration. A legal aid providers can be the administrative body, authorized association, higher education institution (for primary legal aid) and lawyers who provide (secondary) legal aid.

Secondary legal aid includes legal advice, drawing up submissions in the procedure of protection of workers' rights before the employer, drafting submissions in court proceedings, representation in court proceedings and legal assistance in the peaceful settlement of the dispute, exemption from payment of court costs and exemption from court fees. Granting legal aid refers to fully or partially ensuring the payment of legal aid costs. Free legal aid should be granted in all the proceedings before courts, administrative bodies and other legal entities with public authorities, if they decide about the existential issues of the beneficiaries.¹¹⁶

Legal aid shall be granted in full if the applicant is a beneficiary of maintenance assistance in accordance with special regulations governing the exercise of rights from the social welfare system¹¹⁷, if the total income of the applicant and household members is 50% or less per household member of the monthly amount of the budget base. If legal aid is granted in a reduced scope, the difference up to the full amount of remuneration and reimbursement of attorney's fees shall be reimbursed by the beneficiary in the remaining amount according to the value of action taken determined by the Tariff on attorneys' remuneration and reimbursement.¹¹⁸

b. Summary of rules on expert witnesses in civil procedure

¹¹⁴ https://e-justice.europa.eu/content_costs_of_proceedings-37-de-maximizeMS-en.do?member=1

¹¹⁵ Zakon o besplatnoj pravnoj pomoći, NN 143/13, 98/19.

¹¹⁶ 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; Law on free legal aid NN 143/13, 98/19 in force from 01.01.2020

¹¹⁷ the right to benefits under the Act on the Rights of Croatian Homeland War Veterans and Their Families and the Protection of Military and Civilian Invalids Act war

¹¹⁸ Law on free legal aid NN 143/13, 98/19 in force from 01.01.2020

The provisions governing the intervention of the expert (vještak) in the civil procedure can be found in the Law of Civil Procedure (Zakon o parničnom postupku)¹¹⁹. If either party proposes that some of the disputed facts be established by an expert opinion, the court will appoint experts, decide on the requests for their exemption and invite one or both parties to pay the amount necessary for the expert's costs. The court will inform the appointed experts about the case to be examined and invite them to prepare their findings and opinion.¹²⁰

At the expert's request, new evidence may be presented in order to determine the circumstances that are important for the formation of the expert's opinion.¹²¹ The court will determine whether the expert witness will present his/her findings and opinion only orally at the hearing or submit them in writing before the hearing. The court shall set a deadline for the submission of findings and opinions, which may not exceed 60 days in writing. The expert must always explain his opinion. The court shall provide the parties with a written finding and opinion no later than 15 days before the hearing at which they will be discussed.¹²²

The party proposing the presentation of evidence by an expert witness may propose the person of an expert witness. The court will allow the opposing party to rule on the proposed expert witness. The court will appoint a proposed expert if the opposing party does not object to the proposed expert but if the opposing party objects to the proposed expert witness, the expert witness shall be appointed by the court.¹²³ As an exception the court may appoint another expert if it deems that the complexity of the expertise so requires, or if it deems it necessary to prevent the parties from disposing of claims they cannot dispose of. The court also may undertake an investigation when the immediate observation of a court is necessary to establish a fact or to clarify a circumstance. The investigation may also be performed with the participation of an expert witness.

If more than one expert is appointed, they may submit a joint finding and opinion when they agree on the finding and opinion. If they do not agree in the finding and opinion, each expert shall present his / her finding and opinion separately. If the expert's information on their finding differs significantly, or if the finding of one or more experts is unclear, incomplete or in conflict with itself or with the circumstances, and these deficiencies cannot be remedied by re-examining the expert, the expert examination shall be renewed by other experts. If there are contradictions or shortcomings in the opinion of one or more experts, or there is a reasonable doubt in the correctness of the given opinion, and these shortcomings or doubts cannot be eliminated by re-hearing the expert, the opinion of other experts will be sought.¹²⁴

b. Availability of free of charge court expert services for indigent parties

In its provisions the LPC foresees an exemption from payment of costs of proceedings referring to the LFLA. The right to exemption from payment of costs of proceedings and the right to professional

119 Law on Civil Procedure/consolidated text of the law/SL SFRJ 4/77, 36/77, 6/80, 36/80, 43/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91, OG 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, effective from 01.09.2019

120 Ibis, Article 290 (OG 117/03, 25/13)

121 Ibis, Article 259

122 Ibis, Article 260 (OG 25/13)

123 Ibis, article 251 (OG 25/13)

124 Ibis, article 261

legal assistance is exercised by the party in the manner and under the conditions prescribed by a special regulation governing free legal aid. When the party has exercised the right to exemption from paying the costs of the proceedings on the basis of a special regulation governing free legal aid, and the court in the proceedings determines that the party is able to pay the costs or fees, the court shall immediately notify the competent administrative body.¹²⁵

c. Remuneration of expert witnesses

LCP determines in article 256 that the expert witness is entitled to reimbursement of travel expenses and expenses for food and accommodation, to compensation for lost earnings and expertise expenses, and to the right to a reward for the expertise performed.

The costs of the procedure are previously paid by each party accordingly to the costs that caused by its actions.¹²⁶ When a party proposes the taking of evidence, it is ordered by the court to deposit as an advance, the amount necessary to cover the costs that will be incurred in connection with the taking of evidence. When the presentation of evidence is proposed by both parties, or when the court determines it *ex officio*, the court shall order that the amount necessary to cover the costs be deposited by both parties in equal parts. If the court has ordered the taking of evidence *ex officio*, it may order that the amount be deposited by only one party. The court shall waive the taking of evidence if the amount required to pay the costs is not paid within the time limit set by the court.¹²⁷

According to the LFLA, the amounts of compensation for the provision of secondary legal aid is determined for individual forms of legal aid. The value of the amount of remuneration for the work of lawyers, experts and interpreters is determined by a decree of the Government of the Republic of Croatia, at the proposal of the Ministry, within the funds provided in the state budget.¹²⁸ Funds from the budget will be paid to witnesses, experts and interpreters after the decision on the assessment of costs becomes final.¹²⁹ After the decision on measuring the costs of witnesses, experts and interpreters becomes final, the witness is obliged to submit the final decision to the administrative body, and the expert and the interpreter and the invoice and calculation of costs for performed actions. The fee for the performed expertise is determined in points. For 2020, the value of points is determined in the amount of HRK 1.25. If the fee is calculated in hours, the expert witness is obliged to submit an explanation of each item along with the invoice.¹³⁰ The fee for the expertise entrusted to a legal entity belongs to that legal entity, which is also valid when the expertise is entrusted to a state body, professional institution or other legal entity that does not perform that expertise as its registered activity.

125 Ibis, article 172 (OG 25/13)

126 LCP,art.152

127 Ibis, art.153 (OG 117/03)

128 LFLA, art. 37

129 Ibis, art.38(OG 98/19)par.2

130 [Uredbu o vrijednosti iznosa za utvrđivanje naknade za pružanje sekundarne pravne pomoći za 2020](#), NN 70/2020.

6. Serbia

a. Overview of the legal aid system

The Law on Free Legal Aid¹³¹ adopted in 2018 aims to provide citizens with lower income, equal access to justice. This law provides free legal support to everyone who have not exercised the right to free legal aid under other laws. The system of free legal aid is governed by the Ministry of Justice, which is also responsible for the [Register](#) of Free Legal Aid Providers as a single public electronic database. Free legal aid is provided through free legal aid in the narrow sense (*besplatne pravne pomoći u užem smislu*), free legal support (*besplatne pravne podrške*) and free legal aid in cross-border disputes. Free legal aid consists of providing legal advice, drafting submissions, representation and defence.

Free legal aid is provided by the bar and legal aid services in local self-government units. Free legal support consists of providing general legal information, filling out forms, compiling a notarized document and mediation in resolving disputes. Providers of free legal support are public notaries, intermediaries and law faculties. Providers of free legal support may not provide free legal aid. The provider of free legal aid independently organizes the work on providing free legal aid. He provides users with access to information on the organization of work on the provision of free legal aid. Free legal aid provided by lawyers, except for legal advice, as well as the compilation of notarial documents and mediation in resolving disputes are provided only to applicants who are granted free legal aid.¹³²

The request for approval of free legal aid is submitted to the body of the municipal administration or city administration or the administration of the city of Belgrade - the administrative body competent according to the place of residence or stay of the applicant or the place of providing free legal aid.¹³³ Only a person in the administrative body who has an authorisation, and whose work is supervised by the ministry, can decide on the request for approval of free legal aid. The authorisation is issued to a law graduate who has over three years of work experience in the legal profession and a certificate of successful completion of training for the application of the law for free legal aid.¹³⁴

Providing free legal aid is not allowed when it comes to economic disputes, procedure for registration of legal entities, procedure in which the value of the dispute would be manifestly and significantly disproportionate to the costs of the procedure, procedure in which it is obvious that the applicant for free legal aid has no prospect of success, especially if his expectations are not based on facts and evidence presented or are contrary to positive regulations, public order and good customs etc.¹³⁵

¹³¹ Zakon o besplatnoj pravnoj pomoći, SG 87/2018.

¹³² LFLA,art.14

¹³³ lbis,art.27 par.1

¹³⁴ lbis, art.29 par.1,2

¹³⁵ lbis,art.7

b. Summary of rules on expert witnesses in civil procedure

The Civil Procedure Code¹³⁶ states that the court will present evidence with an expert opinion if, in order to establish or clarify a fact, expert knowledge is required that the court does not have at its disposal. There are three ways of introducing this kind of evidence into to procedure. The parties are proposing the presentation of evidence by an expert witness indicating the subject of the expertise in the proposal, and they may also propose a certain person as an expert witness. The parties may also submit to the court a written finding and opinion of an expert of the appropriate profession and the court may order the presentation of evidence by expert examination ex officio, if it is prescribed by law.¹³⁷ Usually the expertise is performed by one expert but the court may appoint two or more experts if it finds that the expertise is complex. Experts are determined from the register of court experts for a certain area of expertise.

The court determines the expertise by a special decision which contains: the subject of the dispute, the subject of the expertise, the deadline for submitting findings and opinions in writing to the court, the personal name or the name of the person entrusted with the expertise and data from the expert register.¹³⁸ The decision on appointing an expert ex officio, in addition to the above referred data will also contain data on the amount of the advance for the expertise and the order to the parties to pay the advance within a certain period.¹³⁹

If the party has objections to the finding and opinion of the court expert, it shall submit them in writing, within the deadline set by the court for comment. The party may hire an expert or other expert registered in the register of court experts, who will make objections to the submitted finding and opinion or a new finding and opinion in writing. At the main hearing, the court may read them and allow that person to participate in the hearing, by asking questions and giving explanations. If the findings and expert opinions of the expert are not harmonized at the hearing, i.e. if the court considers that the important facts have not been sufficiently discussed, the court will order a new expert report to be entrusted to another expert and the parties shall bear the costs of the expertise in equal parts.

b. Access to free of charge services for court expertise for indigent parties

Exemption from payment of costs of proceedings is foreseen in [LCP](#). The court will exempt from payment of the costs of the proceedings a party who, according to his general financial situation, is not able to bear these costs. Exemption from payment of costs of proceedings includes exemption from payment of fees and exemption from advance payment for the costs of witnesses, experts, on-site inspections and court announcements. The court may also exempt a party from paying solely the fee, in accordance with a special law. When making a decision on exemption from paying the costs of the procedure, the court evaluates all the circumstances, and in particular takes into account the

¹³⁶ ZAKON O PARNIČNOM POSTUPKU, "Sl. glasnik RS", br. 72/2011, 49/2013 - odluka US, 74/2013 - odluka US, 55/2014, 87/2018 i 18/2020

¹³⁷ LCP,art.260,261,262

¹³⁸ lbis, art.269 par.1

¹³⁹ lbis, art.269 par.5

value of the subject matter of the dispute, the number of persons supported by the party and income and property owned by the party and its family members.¹⁴⁰

The decision on exemption from payment of the costs of the procedure is made by the first instance court on the proposal of the party. The party requesting exemption from costs is obliged to state the facts with the proposal and submit evidence by which the facts are confirmed. If necessary, the court itself can ex officio obtain the necessary data and information on the property status of the party requesting exemption of costs, and may also hear the party about it.¹⁴¹

During the entire procedure, the court will recognize the party's right to free legal aid when the party is completely exempt from paying the costs of the procedure if it is necessary to protect the party's rights, or if it is prescribed by a special law. The court is obliged to decide on the right to a free attorney within eight days from the day of submitting the proposal, i.e. within eight days from the submission of the appeal to the second instance court. In this case the deadline for taking action on which the protection of the party's rights depends runs from the day of delivery of the decision deciding on the party's request for free legal aid.¹⁴² If the party is completely exempt from paying the costs of the procedure, an advance will be paid from the court for the costs of witnesses, experts, on-site inspections and the issuance of court announcements, as well as the remuneration and actual expenses of the free attorney.¹⁴³

d. Remuneration of expert witnesses

The expert has the right to reimbursement of travel expenses and the costs of food and accommodation, in accordance with a special regulation (Pravilnik o naknadi troškova u sudskim postupcima), to lost earnings and costs of expertise, as well as the right to a reward for the performed expertise. The party that proposed the expertise or if the court ordered the party to bear the costs of the expertise determined ex officio, pays the fee and the expert's fee, and submits proof of payment to the court within eight days from the day of payment.¹⁴⁴

The Rulebook on Reimbursement of Costs in Court Proceedings prescribes the conditions for reimbursement and the amount of reimbursement of costs that in court proceedings belong to a witness, expert, expert advisor, translator, interpreter and expert; award to an expert, expert advisor, translator and interpreter, reimbursement of costs to a private prosecutor, injured party as a prosecutor, injured party and defendant in criminal proceedings; reimbursement of costs to the party and the intervener in the civil proceedings; reimbursement of costs and rewards to the defence counsel, attorney and legal representative in civil and criminal proceedings; reimbursement of court costs for performing activities outside the court building.¹⁴⁵ The costs are reimbursed at the request of the person who considers that he is entitled to reimbursement.

The court is obliged to instruct that person about the right to reimbursement of costs, especially about the possibility of losing the right if the request is not submitted within the prescribed period

140 LCP,art.168

141 Ibis,art.169

142 Ibis,art.170

143 Ibis,art.171

144 Ibis,art.268

145 Rulebook on Reimbursement of Costs in Court Proceedings, ("Official Gazette of RS", No. 9/2016, 62/2016 and 13/2020), art.1

or in the prescribed manner. The instruction and statement of the person about his right to reimbursement of expenses shall be entered in the minutes.¹⁴⁶

The expert's remuneration is determined by dividing the basis for calculating the remuneration by the number of working hours in the month preceding the expertise, so the amount thus obtained is multiplied by the number of hours necessary for the expertise. The basis for calculating the award is twice the amount of the average monthly salary per employee in the Republic of Serbia, without taxes and contributions, paid for the month preceding the expertise, according to the data of the body responsible for statistics. For expertise that needs to be done in difficult conditions (at night, in extremely unfavorable weather conditions, etc.) and for expertise that needs to be done on Sundays and holidays, the reward is increased to 100%. When the expertise is entrusted to a legal entity or a state body, the court decides on the amount of the award on the basis of a reasoned submitted request for a reward for the performed expertise.¹⁴⁷ A participant in a procedure who has performed actions in several cases, on the same day or for several consecutive days, shall be reimbursed for costs and rewards in proportion to the time spent on an individual case.¹⁴⁸

7. Kosovo

a. Overview of the legal aid system

The provision of free legal aid in Kosovo is regulated by the Law on Free Legal Aid and is governed by the Agency for Free Legal Aid.¹⁴⁹ The purpose of the LFLA is to establish a functional system for free legal aid in civil, administrative, minor offences and criminal procedure by which it shall be ensured effective approach in justice for the citizens that have no sufficient financial means. It regulates, among others, the types of legal aid, the eligibility criteria, the providers, and the financing of free legal aid. It covers: information and legal advice relating to legal procedures; drafting of the paper-work and other technical assistance that is related to the completion of the case; and representation in civil, administrative, minor offence and criminal procedures.

This law established the Agency of the Free Legal Aid or Free legal aid agency, which is responsible for organizing and providing free legal aid.¹⁵⁰ It is an independent public institution which exercises functions and responsibilities in compliance with the law for free legal aid.¹⁵¹ Aside from the Agency, Council for Free Legal Aid was also established as an oversight body. Its competences are on policy level, monitoring of the agency, and deciding upon appeals against decision of the Agency.

The secondary legal aid is available to all persons whose gross family incomes are lower than the average family incomes. The secondary legal aid includes drafting of paper-work and entire other technical aid that has to do with completion of the case and representation in civil, administrative

¹⁴⁶ Ibis, art.3

¹⁴⁷ Ibis, art. 18

¹⁴⁸ Ibis, art.20

¹⁴⁹ For legal aid in criminal cases relevant legislation is the Criminal Procedure Code (CPC) the Kosovo Specialist Chambers (KSC) as a body.

¹⁵⁰ LAW No. 04/L-017 ON FREE LEGAL AID, OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 03 / 22 FEBRUARY 2012, PRISTINA

¹⁵¹ Ibis, art.19 par.2,3

and minor offence procedure.¹⁵² According to the legal criteria, the legal aid will be provided by assessing validity of the case as real value of the request, argumentative power of the evidences presented by the applicant and probability for the success of the request.¹⁵³

The regional offices cover the delivering of free legal aid in all territory of the Republic of Kosovo and are obliged to provide free legal aid in the municipalities which are covered by that regional office, through the mobile offices.¹⁵⁴ Regional office are receiving the requests for free legal aid, provides free legal aid in compliance with determined authorizations by the law, keeping the evidences relating to the applicants, beneficiaries and legal services provided, coordinating with local institutions regarding offering of free legal aid and organizing campaigns for legal awareness.

The procedure for realization of free legal aid is initiated with the submission of the application in the nearest legal aid office accompanied with documentation required to prove the grounds of the application for free legal aid by the submitter. Officials of the office for legal aid are obliged to advise the submitter of the request for free legal aid application.¹⁵⁵

b. Summary of rules on expert witnesses in civil procedure

The expertise is regulated in the [Law on Contested Procedure](#). If the court decides to collect evidence by expertise, then it sets a deadline within which the expert has to present written conclusion and opinion. The court can do an expertise if interested parties propose so. This is done any time if there is a need to specify facts or circumstances that the judge does not have sufficient knowledge for. The party that proposes an expertise is obliged to submit the name of the proposed person/expert. If the involved parties cannot bring a decision regarding the person who will conduct the expertise, or regarding the object or volume, then the court will decide about it.¹⁵⁶

Experts are chosen from the lists of experts from a specific expertise court's possession. More complicated expertise is trusted to the professional institutions (hospitals, chemistry laboratories, faculties, etc.) and If there are specialized institutions for specific expertise such as forged money expertise, manuscripts, dactyloscopy, etc., then those will be trusted to those institutions.¹⁵⁷ The expert is always summoned for the main hearing session. If experts opinion is not clear or if the opinion is not submitted after the court order, the court will assign another expert after the declaration of both parties involved. If there are more experts involved, they can submit their opinion together if there are no contradictions. If there are contradictions then they submit their opinions separately. If their opinions differ substantially, or if they are unclear, if it contradicts with itself or with given circumstances, and those cannot be clearer in the experts hearing, then the court will do another expertise with the same experts or with different experts.

b. Access to free of charge services for court expertise for indigent parties

The AFLA (Agency) is in a permanent contact with the beneficiary of free legal aid and a lawyer hired and contracted by the Agency. The user of free legal aid is informed that the services provided by the

¹⁵² Ibis, art.8 par.3

¹⁵³ Ibis, art.9

¹⁵⁴ Ibis, art.22 par.1,2

¹⁵⁵ Ibis, art.31

¹⁵⁶ Law on contested procedure, LAW No. 03/L-006 , art.356,357

¹⁵⁷ Ibis, art.358

lawyer are paid by AFLA and also informed that he is exempt from paying court fees, while for the costs of the proceedings the judge decides whether or not to be paid on the basis of the submitted request.¹⁵⁸ Court expenses consist of taxes, factual costs and assigned representative cost. Court decides based on legal provisions on court expenses, if the case is lost, and if the opponent should carry out the expenses.¹⁵⁹

The court exempts a party from paying expenses if it is determined that it is beyond parties' financial capability, and when such a thing will harm him/her or their family. Exemption includes court taxes, depositing for witnesses, depositing for experts, as well from court acts. The court can only exempt a party from court taxes, if those will drastically affect persons close family in food.¹⁶⁰ Before the decision for exemption is made the court will weight all circumstances and conditions, the value of the subject that is in contentious procedure, the number of the family members and their income. Court issues an order on exemption within seven days of the request. The order on court expenses exemption is given by the first degree court with the request of the party. When the party is exempted from all court expenses, the first degree court can decide that the party will be represented by a lawyer.

If the party is exempt from all expenses, then the court will pay for all costs incurred witnesses, experts, direct examinations, publications of the court acts, as well as for the assigned representative expenses.¹⁶¹ The order on exemption from the court expenses can be annulled by the first instance court if it is proved that the party can carry out the procedural expenses. In case like this, the court will decide if the party will carry out all court expenses or just partially as well as the court taxes from which he was released and factual expenses and the award for representative appointed by the court.¹⁶²

c. Remuneration of expert witnesses

The expert will be paid for the done work and for the costs caused by the expertise. Expert expenses are prepaid by the party that requested them. The sum is specified by the court in an order. When the evidence collection is proposed by both parties then the court decides that both parties should pay the sum in the equal shares.¹⁶³ The party that losses the court process has to entirely cover all costs of the winning party, as well as intermediaries costs if he/she joined the process. If the plaintiff succeeds only partially in the process then the court can decide that each party should carry its own expenses, or that the expenses should be carried out by the other party, including the proportional intermediary costs, depending on the achieved result. ¹⁶⁴ While deciding on costs, the court will consider only necessary costs that occurred during the court process. The court decides which costs are necessary, the sum of expenses, while considering all facts and conditions. If there is a set fee for lawyers, or for other expenses, then these expenses will be set according to the fee.¹⁶⁵

158 <https://anjf.rks.gov.net/desk/inc/media/60CB2BDE-A5BB-4252-8995-6BC9189238B4.pdf>

159 Ibis, art.473

160 Ibis, art.468

161 Ibis, art.471

162 Ibis, art.472 par.1

163 Ibis, art.451 par.1,2

164 Ibis, art.452

165 Ibis, art.453

8. Albania

a. Overview of the legal aid system

The system established with the [Law on Legal Aid](#) is governed by the Ministry of Justice, National Bar Association and the State Commission for Legal Aid.¹⁶⁶ The Ministry of Justice develops policy, assists in the preparation of bylaws, takes care for the proper implementation of legislation, assists in quality assessment and prepares draft-budget.¹⁶⁷ The National Bar Association sets the criteria for selection of legal aid lawyers, participates in the setting of criteria for the quality assessment of service provided by the lawyers and takes disciplinary sanctions against lawyers who provide legal aid.¹⁶⁸ The State Commission for Legal Aid is a collective who implements the legal aid policy, manages the budget, approves rules for the assignment of lawyers, assess the costs and plans the expenses for the provision of state legal aid, concludes service agreements with lawyers, sets the remuneration amount etc.¹⁶⁹

Legal aid is delivered through provision of information, legal consultations, direct interviews and/or distance communication; drafting of the legal acts; continuous legal advising to the individuals who shall personally appear in court; representation before the administrative authorities; protection and representation of the interests of the suspects, accused and injured persons in criminal proceedings and representation and protection of interests of individuals in the civil or administrative cases.¹⁷⁰

The legal aid is delivered by authorized lawyers in the form of primary and secondary legal aid services and is funded by the state budget or other legitimate sources.¹⁷¹ Entitled to benefit legal aid are persons that need legal aid in civil or administrative cases but they do not have sufficient resources to pay for this legal aid or the cases are too complex in terms of contents and procedure; need to protect their rights, through the submission of a lawsuit, but they do not have the sufficient resources to pay for the tax on the acts, as well as for the necessary expenses for the notifications or other judicial services.

The submission for the provision of legal aid in the form of the representation before the court in a civil or administrative case should be submitted personally or by a representative authorized by power of attorney at the State Commission for Legal Aid. The person benefitting legal aid is obliged to cooperate with the State Commission for the Legal Aid, provide authentic information, whereof the aid has been requested, as well as to ensure if at any time information on the circumstances and conditions for providing legal aid have changed.

b. Summary of rules on expert witnesses in civil procedure

Should the assessment or clarification of facts pertaining to the case require specialist input in the fields of science, technology or art, the court may order the attendance of one or more experts.

¹⁶⁶ Law on legal aid, No. 10039 date 22.12.2008/ Amending law no 143/2013/ Amending law no 77/2014, art. 3

¹⁶⁷ Ibis, art.4

¹⁶⁸ Ibis, art.5

¹⁶⁹ Ibis, art.10

¹⁷⁰ Ibis, art.12

¹⁷¹ Ibis, art.22 par.2

Experts are required to provide opinions in writing, but they can also be heard at the hearing and be questioned by the court as well as involved parties. The opinion of the expert is not legally binding for the court and when the court has a view contrary to that of the expert, the court must then provide a detailed account of its opinion explaining the reasons for this in the final decision or in a decision issued during the trial.¹⁷² The expert or group of experts are appointed by the judge with the order that is setting the hearing. The decision on the appointment of the expert shall be served to him by the court secretary, the latter notifying also the date when he is going to attend the respective hearing.¹⁷³

The court, after receiving the opinion of the parties, will assign cases to the expert on which his opinion has to be taken. The decision on assigning the tasks to the expert includes tasks assigned to the expert, deadline for submission of the act of expertise to the secretary by the expert, the subject whom the prepayment of the expert's fee is charged to and the deadline for the execution of this liability etc. ¹⁷⁴ When under the court decision to perform the expertise, it is necessary for the expert to have access to things, evidence, accounts and other documents, the parties may be present and may submit to the expert written opinions and remarks of their specialists, who can be called as witnesses or requirements related to the fulfilment of the task, but always within the competences determined in the decision of the court.¹⁷⁵

When expertise is performed in the presence of the court or of the delegated judge, minutes are held, but the court may request from the expert to give the conclusions of the expertise in a written report. When the expertise is performed without the direct participation of the court, the expert must draft a written report on the expertise performed, in which must be reflected also the remarks and the requests of the parties. The possible statements of the parties mentioned in the report are estimated by the court.¹⁷⁶ The report must be deposited with the secretariat in the time-period determined by the court.

When it is observed that the expertise is with shortcomings or unclear as well as when there are differences of opinion between experts, the court, on its own or on the request of any of the parties, may request additional clarifications or may order the performance of a new expertise, by calling other experts.¹⁷⁷

The experts are chosen from an online register of licensed persons, which is administered and published by the Ministry of Justice.¹⁷⁸ Ministry of Justice shall establish, administer and make available to the public an online register for experts. This register shall be split up into various sections to group experts referring to their field of expertise and the place of their work. The judge shall appoint an expert off the online register, only when for the needs of the process, the expert is required to come from specific areas of expertise, for which the law does not provide for their licensing.¹⁷⁹

172 Ibis, art. 224/b

173 Code on civil procedure, art.225 par.1,2

174 Ibis, art.227 par.1,2 point a,b,c

175 Ibis, art.227 par.6

176 Ibis, art.228

177 Ibis, art.229

178 Ibis, art.224/a

179 Ibis, art. 224/d

b. Access to free of charge services for court expertise for indigent parties

The legal aid includes also the exemption of the individual from the payment of the tax on the acts in the course of the civil and administrative judicial proceedings, as well as from the expenses incurred in the course of notifications and other judicial services.¹⁸⁰ The request for the exemption from the payment of the tax on the acts as well as from the payment of the incurred expenses for the notifications and other judicial services shall be considered by the State Commission for Legal aid within 10 days since the reception of the request.

The detailed rules and criteria for examining and accepting of the request shall be determined upon the decision of the State Commission for Legal Aid. If the State Commission for Legal Aid does not make any statements within 10 days since the submission of the request or if it decides the rejection of the request for the payment of the tax on the acts, as well as from the expenses incurred for the notifications and other judicial services, the court will, as long as it deems that the conditions for benefiting the legal aid are met, decide during the preliminary arrangements to exempt the plaintiff from the payment of the tax on the acts. Where the State Commission for the Legal Aid finds out that the economic situation of the person is such that it makes it impossible to party the tax on the acts, although it does not meet the conditions for benefiting the legal aid may decide that the payment of the tax on the acts be done under the rules provided for in the decision of the Commission at a later stage or in instalments. The rules and criteria for extending the period for paying the tax on the acts shall be determined upon the decision of the State Commission for Legal Aid, after consulting the Ministry of Finance.

When the legal aid beneficiary, in the end of the trial, benefits reimbursement of pre-paid court expenses, he/she is obliged to reimburse the State Commission for Legal Aid for the expenses incurred by the latter for the provision of legal aid in the respective case.¹⁸¹ The persons, according to the provisions for the fee are exempt from payment of tax, shall also be exempt from payment of the other court costs. In these instances, the costs shall be covered by the relevant fund foreseen in the State Budget.¹⁸²

c. Remuneration of expert witnesses

Costs for witnesses, bailiffs, experts, translators and for inspection of items or inspection *in situ*, shall be prepaid by the party that requested them to the sum specified by the court. The court, taking in account the circumstances of the case and the wealth situation of the parties, by decision, imposes on one or both parties the costs, regardless of which of them requested the questioning of witnesses, the performance of expertise, the availability of translators or the inspection.¹⁸³ Witnesses, experts and translators are entitled to receive back the expenses they have made for their appearance in court as well as remuneration for taking a leave of absence from their workplace. Experts shall also be entitled

180 LLA art.11 par.3

181 LLA art.14 par.1

182 Code on civil procedure, art.105/b

183 Code on civil procedure, art.105

to remuneration for their service. The amount of expenses and remuneration of witnesses and experts is determined by the Council of Ministers.¹⁸⁴

9. Slovenia

a. Overview of the legal aid system

The legal aid system in Slovenia (for both, criminal and civil matters) is regulated by the Legal Aid Act (*Zakona o brezplačni pravni pomoči*)¹⁸⁵. Legal aid authority powers are vested in the judiciary. A president of a district court or a specialized court of first instance decides upon the legal aid applications. For the purpose of efficiency, they may authorize another judge holding the position of senior judge at a district court or specialized court to decide thereon. The administrative, technical and expert tasks related to the granting of legal aid are carried out by an expert legal aid service (Art. 2 par. 3 & 4). Though the decision-making body is the judge, the procedure for approval is an administrative.

The Act adopts a flexible approach by recognizing four different types of legal aid, each designed to respond to the different circumstances in which legal aid applicant may find themselves (Art. 2 par. 2). The most common one, the **regular legal aid** (*redna brezplačna pravna pomoč*) requires both, conducting means and merits test¹⁸⁶, while the **extraordinary legal aid** (*izredna brezplačna pravna pomoč*) omits the means test for the applicants eligible for cash social assistance under the assumption that their financial situation was already determined by a competent social welfare authority¹⁸⁷. The **exceptional legal aid** (*izjemna brezplačna pravna pomoč*) also omits the means test¹⁸⁸, however the rationale for it here lies in the need for equity and fairness regarding the specific circumstances of the applicant or his/her family¹⁸⁹. The last one, the **emergency legal aid** (*Nujna brezplačna pravna pomoč*) is prescribed for specified urgent circumstances where the means test is conducted after granting the legal aid¹⁹⁰.

As a principle legal aid may be granted in all judiciary proceedings, including the procedures before the Constitutional Court as well as before authorities competent to preside over out-of-court settlements with certain stipulated exceptions¹⁹¹. The administrative proceedings generally fall

¹⁸⁴ Ibis, art.105/a

¹⁸⁵ Legal Aid Act, acronym ZBPP, Official Gazette RS, No. 48/2001, 50/2004, 23/08, 15/14 and dec. CC 19/15.

¹⁸⁶ Art. 11, LAA.

¹⁸⁷ Art. 12, LAA.

¹⁸⁸ Note: In cases of exception legal aid, the legal aid authority does not conduct the means test for the regular legal aid, however the Law sets a maximum threshold of the income and the assets for a person to qualify for this type of legal aid. The personal income of the applicant or the applicant's family should not exceed four times the base amount of the minimum income laid down in the Act governing social assistance benefits and the value of the assets of the applicant and the applicant's family should not exceed 60 times the base amount of the minimum income.

¹⁸⁹ Art. 22, LAA (Ex. medical treatment of a family member, maintaining a family member with a physical or mental developmental impairment, the costs of the education and training of children with special needs and other issues caused by force majeure)

¹⁹⁰ Art. 36, LAA.

¹⁹¹ a. Criminal offences involving insult, libel, defamation or slander, unless the injured party plausibly proves that they have suffered legally recognised damage due to these offences; b. disputes involving a reduction in or the suspension of maintenance when the person obliged to pay maintenance has failed to settle the due liabilities arising from maintenance, unless such liabilities were not settled for reasons beyond their control; c. in damage disputes involving compensation for non-property and property damage caused by defamation or libel, unless the eligible person facing a loss plausibly proves that this has affected their material, financial or social position; d. if an applicant is a debtor in enforcement proceedings initiated on the basis of an enforceable instrument under the Act regulating the enforcement, unless the debtor plausibly proves the existence of reasons to lodge an

outside the scope of access to free legal aid. The legal aid, if granted, may encompass different forms of legal advice and representation as well as an exemption from payment of the costs of judicial proceedings. The applicant indicates in the application the specific form of legal assistance he/she requires and if fails to do so, the decision shall be taken by the competent legal aid authority based on its investigation of the matter and at its own discretion¹⁹².

b. Summary of rules on expert witnesses in civil procedure

According to the Civil Procedure Code the court examines an expert witness when expert knowledge is required for the purposes of determining or clarifying a certain fact in dispute. The party must propose taking evidence with an expert witness stating the evidentiary topic, however the decision whether evidence from an expert witness is necessary is determined by the court¹⁹³. Expert witnesses are appointed by the court. Prior to the appointment the court shall give the parties the opportunity to be heard thereon. The court may at all times decide to appoint a new expert in place of the one currently appointed. As a rule, expert testimony shall be taken by a single expert; if, however, the court assesses that expert examination is complex, two or more experts may be appointed to the case. Experts are mainly appointed among court experts in the concerned profession.¹⁹⁴

An expert witness must be proposed as evidence for the court to decide to take such evidence. The court decides on whether the expert is to give the findings and the opinion orally at the hearing, or in writing prior to the hearing. The court also determines a time period within which the expert findings and the expert opinion must be produced. The court must allow the parties to familiarize themselves with the expert findings and the opinion in writing before the hearing at which such findings and opinions are to be produced.

The experts produce written opinions. The result is grouped into findings and opinion. Oral hearings with expert witnesses are held only when the court evaluates that the hearing is necessary or when the parties demand such.¹⁹⁵ The court has an active role in deciding whether the expert will give its finding orally on a hearing. The parties have the right to give remarks on the opinion and to propose that the expert witness should be orally examined. They may even propose that the court appoint a different expert witness, but it is in the power of the judge to decide whether to grant such a proposal or not.

An expert witness has the right to be refunded for costs, loss of earnings, as well as to be paid effective costs incurred in the expert examination and award for the same. The party proposing the taking of evidence with an expert witness must pay in advance for all the expenses before the court appoints the expert witness by decree. If the party fails to do so, the court will drop the taking of such evidence¹⁹⁶.

objection against the resolution on execution, which under the Act regulating the enforcement prevents enforcement; and e. in administrative disputes in matters concerning the granting of legal aid.

¹⁹² Art. 26, LAA.

¹⁹³ Art. 252, CPC.

¹⁹⁴ Art. 245, CPC.

¹⁹⁵ Art. 246, CPC.

¹⁹⁶ Art. 153, CPC.

c. Access to free of charge expert witness for indigent parties

The Legal Aid Act explicitly states that the legal aid may include exemption of payment for the costs of experts as well as advance payments for the costs incurred by the realization of proceedings. The funds for covering these costs are provided by the state's budget¹⁹⁷. Whether or not this exemption will be provided depends from whether the applicant indicated in the application that requires such exemption. If fails to indicate, the legal aid authority based on its investigation of the matter and at its own discretion may include it. As a rule, legal aid is granted to the extent applied for by the applicant.

Expert witnesses can be only certified court experts. Only the court has the power to decide which expert (among court experts, expert institutions) will be granted the competence to prepare the opinion. The legislation uses the term court expert (Sodni izvedenec) because in Slovenia they are considered as assistants to the court. Until recently they were even regulated by the Judiciary Act¹⁹⁸. However, since 2018, their status is regulated by a special law (*Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*)¹⁹⁹ and its bylaws²⁰⁰. They are appointed by the Ministry of Justice for a specific professional field and meeting the prescribed criteria. The law establishes an *Expert Council* as a highest professional body with operating autonomy. There are no specific and separate registries for legal aid cases.

d. Remuneration for expert witness services

The fees for the court expert's services are set by a bylaw (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*) adopted by the Ministry of Justice. The bylaw determines specifically the amounts and sets them in a scale depending from the volume and complexity of the work to be done (Art. 37-41). However, the court has the power to determine the complexity of the report and opinion or assessment, especially in view of the volume of documentation (Art. 42). A court expert has the right to reimbursement of costs in accordance with the regulations governing the reimbursement of costs in court proceedings (*Pravilnik o povrnitvi stroškov v pravnem postopku*). There is no specific fee for legal aid cases.

10. Bulgaria

a. Overview of the legal aid system

Bulgaria has a unified legal aid system for criminal, civil and administrative matters regulated by the Law on Legal Aid (*Закон за правната помощ*)²⁰¹. The system is governed by a separate and independent body named National Bureau on Legal Aid (*Националното бюро за правна помощ*)

¹⁹⁷ Art. 44, LAA.

¹⁹⁸ Zakon o sodiščih (uradno prečiščeno besedilo) (ZS-UPB1), stran 1844

¹⁹⁹ Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih Uradni list RS, št. 84/18

²⁰⁰ Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih (Uradni list RS, št. 84/18)

²⁰¹ Law on Legal Aid (Закон за правната помощ), ДВ. бр.79/05.

with significant engagement of the regional bar councils²⁰². What is characteristic about this system is that the decision upon individual legal aid applications for legal representation is rendered by the organ (court or administrative body) before whom representation is sought²⁰³, and by a specialized institution.

The National Bureau on Legal Aid (The Bureau) is a collective body, composed of five members where two of them (president & vice president) are appointed by the Government, while the remained three by the Supreme Bar Council for a four-year term²⁰⁴. The Bureau is in charge for overall management of the system, its budgeting, oversight, management of IT systems as well as registration of the legal aid providers. The organization of the provision of legal aid, including the appointment of lawyers in individual case, supervision and certification of their lists of costs is vested in the regional bar chambers who, for the administration of the tasks, are entitled to budgetary funds.

The legal aid consists of: legal consultation, drafting legal documents, legal representation in procedures & representation for detained persons. For the first two types, the LLA lists an extensive list of eligible categories that may be beneficiaries (ex. Beneficiaries of social services, children in risk, victims of domestic violence etc.). For legal representation²⁰⁵ in civil and administrative matters the law requires means and merits test. However, the means test leaves significant discretion of the decision-making authority. It prescribes criteria that should be considered (income, assets, family situation, health status, employment, age etc.) without specifying threshold on the income or assets. The law does not foresee exemption from payment of procedural costs including costs for expert witnesses which is left for regulation in the procedural codes.²⁰⁶

The legal aid application for legal representation is filed directly to the organ before whom the procedure takes place (ex. Courts), while for legal advice and drafting of legal documents to the Bureau. The refused applicants may lodge an appeal to the competent appellate body for the specific procedure. The decision for approving legal aid is submitted to the Regional Bar Chamber for appointment of a lawyer. The lawyers for their services are entitled to fees set by the Government.

b. Summary of rules on expert witnesses in civil procedures

According to the Civil Procedure Code (*Граждански процесуален кодекс*) expert witness is appointed by the court, upon request from the party or ex-officio, when expert knowledge is required for the purposes of determining or clarifying a certain fact in dispute. Private expert reports are not listed as means of evidence. The court gives written order where it states the subject matter of the expertise, its tasks, the materials to be gathered and the deadline for completion of the expertise. The expert is selected from a list of registered experts however if there is no registered expert with the appropriate knowledge the court on its own motion or/and advised by the parties' researches for an expert not in the list. The experts produce written opinion however he/she might be summoned to the hearing. During the course of examinations, the court might freely intervene and question the expert. The costs for the expert's expenses are covered by the party who bears the burden of proof

²⁰² Art. 6 par. 2, LLA

²⁰³ Art. 25 par. 1, LLA

²⁰⁴ (Art. 11, LLA

²⁰⁵ Note: This is for non-mandatory representation. For mandatory representation (ex. Detention, Serious crimes etc.) the authority does not conduct means test.

²⁰⁶ Art. 21 – 23, LLA.

with an advancement of a deposit. The party may propose expert witnesses not later than the 1st hearing.

c. Access to free of charge expert witness's services for indigent parties

The exemption of court fees and other procedural costs is regulated by the CPC, not by the LLA. According to the CPC, indigent party (physical person) may be exempted from payment of fees and procedural costs upon request if they do not possess the means²⁰⁷. Identically as for legal aid, there is no specific income and assets threshold however the court's discretion is limited by a list of general criteria that should be taken into consideration when deciding. In case where certain litigant is exempted from payment of costs for expert witness, the costs will be paid by the court budget.

Expert witness services may be provided by a registered court expert. There is no separate registry for legal aid cases. According to the Law on Judicial Government (*Закон за съдебната власт*) each court creates lists of experts and as a rule, only those experts may be appointed. However, in duly justified causes the court may appoint expert outside of the list. The requests for enlisting are submitted to the president of the courts while the decision for listing is made by a committee. The lists are then sent to the Ministry of Justice and published in the official gazette. More specific regulation is provided in a bylaw²⁰⁸ adopted by the Minister of Justice.

d. Reimbursement of expert witnesses

The reimbursement for the services of expert witnesses is in detail regulated with the afore stated bylaw. The experts are entitled to an award and reimbursement of the costs. When determining the amount of the award, the organ requesting the expertise assess the complexity of the case, the qualifications of the expert, the time necessary for conducting the expertise, the scope of the tasks as well as other relevant factors (Art. 23 from the bylaw). The expert is paid directly from the state organ that requested his/her services. If the expertise is upon request by a party, it must pay an deposit for covering the costs to the court/organ. In the cases when expertise is requested by parties who are exempted from payment of court fees, the costs are paid by the court budget. In these cases, the experts may charge 2,3 % per working hour from the national minimal salary (Art. 28 par .2 & Art. 24 par. 1 from the bylaw). The number of working hours is calculated on the basis of submitted report that is subject to review by the presiding organ.

11. UK (England & Wales)

a. Overview of the legal aid system

The general framework for regulating civil and criminal legal aid is contained in the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO) while more specific provisions on legal aid in civil matters are provided in the civil legal aid regulations²⁰⁹. The legal aid system is governed by a special body, the Legal Aid Agency, which is an executive agency of the Ministry of Justice in the

²⁰⁷ Art. 83 par. 2, CPC

²⁰⁸ Наредба № 2 от 29 юни 2015 г. за вписването, квалификацията и възнагражденията на вещите лица.

²⁰⁹ Civil Legal Aid (Merits Criteria) Regulations 2013 SI 2013/104, which set out merits tests applicable; Civil Legal Aid (Procedure) Regulations 2012 SI 2012/3098, which set out how applications should be made and how cases are conducted; & Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 SI 2013/480, which sets out the rules and thresholds for financial eligibility

United Kingdom. It provides both civil and criminal legal aid and advice in England and Wales. It has offices in towns and cities across England and Wales. Its tasks are to make sure that legal aid services from solicitors, barristers and the not-for-profit sector are available to the general public; it funds the Civil Legal Advice service; it publishes statistical information and runs the Public Defender Service to give a range of services within the criminal defense market. Legal aid is different in Scotland and Northern Ireland.

Civil legal aid covers legal services for eligible people otherwise unable to meet the costs of legal advice and representation at court. The different civil legal services can range from basic legal advice or letter writing to full representation through the court system²¹⁰. Both, the LASPO and the regulations require means and merits test. Whether clients can receive civil legal aid depends primarily on: the type of legal problem they have; the disposable income and capital they have & whether it is reasonable for an individual to be provided with public funding having regard to any alternative source of funding and whether the costs are justified. What is specific is that each form of civil legal service has a specific merits test that the applicants should meet (eg. prospect of success, public interest, reasonable private paying individual, proportionality, likely damages, and likely costs as appropriate to each form of legal service).

To qualify for legal aid, an individual's capital and income must not exceed certain financial limits. Both the applicant's and their partner's resources are taken into consideration. This includes limits on gross monthly income (£2,657), disposable income (£733), and capital (£8,000). In certain cases, the LAA may waive the financial eligibility criteria at its discretion in cases relating to domestic violence and forced marriage. Whether the LAA considers it equitable to do so will depend on all the circumstances of a particular case. Applicants who satisfy the gross income, disposable income and disposable capital tests may be required to make contributions towards the cost of their legal aid. In respect of the types of civil legal aid, in some a contribution will be required from the applicant and in some no contribution may be required from the applicant.²¹¹ The Legal Aid Agency (LAA) will make a charge or claim – known as the 'statutory charge' – on any money or property won by the claimant.

b. Short description on expert witnesses

The use of expert evidence in court procedures is regulated by the *Civil Procedure Rules* Part 35, titled Expert and Witnesses. Expert evidence must be restricted to that which is reasonably required to resolve the proceedings. As a principle matters requiring expert evidence should be dealt with by only one expert (Single joint expert). This expert is instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings. It is the duty of experts to help the court on matters within their expertise which overrides any obligation to the person from whom experts have received instructions or by whom they are paid (35.3 from the CPR).

Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate. Court permission is required for calling an expert or putting expert report in evidence. If permission is granted it may specify the issues which the expert evidence should address (35.4 from the CPR). A general principle is that expert evidence is to be given in a written report unless the court directs otherwise (35.5 from the CPR). Where two

²¹⁰ (Art. 8 from LASPO).

²¹¹ Source: Ministry of Justice of UK Annex C - The Current Legal Aid Financial Eligibility Rules - Summary.

or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert. If the parties cannot agree who should be the single joint expert, the court may select the expert from a list prepared or identified by the relevant parties; or direct that the expert be selected in such other manner as the court may direct. The expert may take the role as an expert advisor however in that cases their reports and comments are not considered evidence.

Model forms of experts' reports are available from bodies such as the Academy of Experts and the Expert Witness Institute and a template for medical reports has been created by the Ministry of Justice. The mandatory statement of the substance of all material instructions

should not be incomplete or otherwise tend to mislead. The imperative is transparency. When addressing questions of fact and opinion, experts should keep the two separates. Experts must state those facts (whether assumed or otherwise) upon which their opinions are based; experts should have primary regard to their instructions (paragraphs 20-25 above). Experts must distinguish clearly between those facts that they know to be true and those facts which they assume.²¹²

In litigation conducted under the CPR claimants must submit a costs budget with the court very early in the litigation process. This budget "must provide an estimate of the costs of the proposed expert evidence" (CPR 35.4(2)). Each party cover the costs for the experts that proposed. In general, there are no prescribed charging rates for Expert Witnesses for either Criminal or Civil work with an exemption for legal aided cases.

c. Access to free of charge expert witnesses

The persons eligible for legal aid may seek and obtain access to total or partial exemption of payment of expert fees. The decision is subject to the merits tests as set in the the Civil Legal Aid (Merits Criteria) Regulations 2013.

d. Remuneration of expert witnesses

The major exception to the market forces process is for 'publicly funded' work often known as 'legal aid'. This is not when a public authority appoints an Expert but is to increase access to justice for those who cannot afford to pay for legal assistance. In this case State funds are intended to cover the costs. The Civil Legal Aid (Remuneration) Regulations 2013 contain a detailed tariff list on expert's fees and rates²¹³. The experts providing services must be paid at the fixed fees or at rates not exceeding the rates set out in the Table. The table lists the different specializations and sets the fee depending whether the services are provided in London or not. The fixed fees may be increased do so due to exceptional circumstances which mean that the expert's evidence is key to the client's case and either the complexity of the material is such that an expert with a high level of seniority is required; or the material is of such a specialized and unusual nature that only very few experts are available to provide the necessary evidence. The expert are also entitled to travel costs (£0.45 per mile) and travel time (£40 per hour). Other costs are not payable.

²¹² Source: Civil Justice Council (2014) Guidance for the instruction of experts in civil claims

²¹³ SCHEDULE 5 Experts' fees and rates

12. Poland

a. Overview of the legal aid system

The free legal aid (nieodpłatna pomoc prawna) in Poland is regulated by the relatively new Free Legal Aid and Education Act of 5 August 2015²¹⁴. Its main purpose is to improve access to legal services at a pre-litigation stage in most popular types of legal proceedings. The aid is available for the persons who are unable to pay for the services of professional lawyers, mainly because of a difficult financial situation. Eligible persons can ask a legal aid lawyer to draft an application for an exemption from legal costs or appoint a counsel in court proceedings or a counsel, tax advisor or patent attorney in administrative court proceedings. Free legal aid may be provided personally by an attorney (adwokat or radca prawny) working under a legal aid contract concluded with the local government unit, a district (powiat)²¹⁵.

The FLAEA instead of setting means test, it lists a categories of people who are eligible for legal aid. Such categories are: social support beneficiaries, holders of a valid “Large Family” card, holders of certificate for combatants and victims of war, veterans, as well as individuals who were exposed to a risk or suffered a loss as a result of natural disaster or technical failure. Irrespective of this, legal aid can be granted to persons who are either under 26 or over 65 years as well as pregnant woman in matters of pregnancy and childbirth, in particular those relating to parental and employment right²¹⁶. The law limits this scope by singling out the key legal areas in which help is given to the persons who need free legal aid the most.

During legal proceedings, legal aid may consist in exemption from court costs in whole or in part and in the establishment of a legal counsel or attorney - an attorney or legal advisor from office. Anyone who is unable to incur legal costs or the costs of defense or remuneration of a lawyer or legal adviser without prejudice to the maintenance necessary for himself and his family is entitled to exemption from such costs or the establishment of a lawyer or attorney. The application must be substantiated and substantiated by appropriate documents.

b. Summary of rules on expert witnesses in civil procedure

The Code for Civil Procedure states that in cases requiring special knowledge the court, after hearing the requests made by the parties as to the number of experts and their choice, may call one or more experts to obtain their opinion. The court shall identify whether the opinion is to be presented orally or in writing. A party may also indicate what specialty expert should give an opinion. The parties position regarding selection of the number of experts, and an indication of the specific names of experts, is not binding on the court²¹⁷.

The court appoints experts (only the natural persons) from the list of court experts in a certain field, which is conducted by the President of the District Court. The experts are appointed at district court

²¹⁴ Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej i edukacji prawnej, uniform text in J.L. 2015 item 1255.

²¹⁵ Art. 5, FLAEA

²¹⁶ Art. 4, LFAEA

²¹⁷ Art. 278, CCP

level for a period of 5 years, a period of the establishment expires. In specific circumstances, the court may appoint ad hoc expert ad hoc (ad causam). The court may require an oral explanation of the opinion submitted in writing, and can, if necessary, request a second opinion from the same or other experts²¹⁸.

The Court is therefore not obliged to admit the evidence of another expert witness, when the opinion is unfavorable to party requesting it, the party does not agree with the conclusions of opinion and also does not consider the arguments of experts as to the allegations raised by the party, which was fully shared by the court. The experts are usually paid during the trial, after presenting their opinion. The court issues a decision about it. The parties have right to appeal against this decision. According to the jurisprudence, the opinion of an expert (including the permanent (from the court list) expert) made at the behest of the party, without court order, and submitted to the court records cannot be treated as evidence in case. The expert is entitled to demand compensation for the court appearance and the work done and the judge-chairman may grant an advance on the expert expenditure.

c. Access to free of charge expert witnesses for indigent parties

Pursuant to Article 117 of CCP, a party which is exempted from court costs may apply court appointed counsel. This institution is called ex officio legal aid. A counsel is appointed if the court deems it necessary for a lawyer to participate in the proceedings. In fact, the court decides only on the necessity of legal aid and a lawyer is appointed by a relevant lawyers (bar) association (advocates or legal advisors) at the request of the court. A court appointed lawyer is entitled to collect his/her fee and expenses from the amount adjudged from the counterparty. The unpaid costs of ex officio legal aid are borne by the State Treasury.

People seeking exemption from litigation costs must present an official application. An exemption may be granted if they can prove that they are unable to cover the costs without hardship to themselves or their families. Also, applicants must present a written statement providing the following data: marital status, income, sources of revenue and assets. If the above conditions are fulfilled, the court will grant the exemption and, in addition, will assign free professional legal aid (a legal representative is paid by the State Treasury at the beginning of the trial; at the end of proceedings, the losing party is obliged, at the request of the winning party, to refund the expenses). Expenses related with the participation of experts and witnesses in the case are basically not covered by legal aid.

d. Remuneration of expert witnesses

The fees are the same for both criminal and civil matters. The Expert's fee is accounted on the basis of hours worked, calculating the rates as follows:

- Basic rate = 1.28% - 1.81% x the base amount determined each year in the Budget Act;
- Rate for the Doctorate = 2.55% x the base amount;
- Rate for Doctor habilitatus = 3.08 x the base amount;
- Rate for the Professor = 3.93 x the base amount.

²¹⁸ (Art. 286 CCP).

The exception is the expert opinion in medical disciplines for which the rate is calculated for specific actions, without specifying the hours worked (eg. “to determine the invalidity, disability or inability to work and their degree” = 3.72 - 14.43 x the base amount, “examination of corpses and human remains in the place of finding them” = 4.67 -16.02 x the base amount, etc.). Similarly, in the case of geodesy and cartography. In 2016 the base amount is the same as in 2015 - 1766,46 PLN.

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

- The overwhelming majority of the countries subject to the comparative review have special laws regulating the legal aid in civil matters, its scope, eligibility criteria as well as administration and oversight of the system. However, the procedural codes still play a significant role either as sole legal source for legal aid (Germany and to lesser extent Poland), or as an auxiliary law complementing the laws on legal aid (Belgium and Bulgaria). There are also considerable similarities between the legal aid systems of the countries of ex-Yugoslavia and Albania.
- Regarding the institutions governing the legal aid systems there is much greater diversity. In some countries it is directly part of the executive, most commonly Ministries of Justice (Croatia, Serbia, Albania) or part of the judiciary (Slovenia, Germany, France). Independent governing bodies are present in Netherlands, UK (England & Wales), Kosovo and Bulgaria. Also, there are systems where the administration is shared by different bodies and institutions (Albania, Poland, Bulgaria, Serbia and Belgium). In North Macedonia the sole institution vested with authority to govern the legal aid system is the Ministry of Justice.
- All countries assessed have some form of exemption of payment of costs for expert witnesses however the modalities and the legislation regulating them are quite different. In some of them the exemption is envisioned in the legal aid laws (France, Croatia, Slovenia, Albania and England) while in other is set in the procedural laws (Belgium, Germany, Serbia, Bulgaria and Poland). North Macedonia falls with the former group.
- A much greater consensus among the countries exists regarding the role of the court in determining whether expert witness will be necessary in the procedure. In general, the rule is that the specific expert witness must be assigned by a judge in a specific case either ex-officio or upon proposal from the parties. Here the current model in North Macedonia significantly differs by passive role of the judge and the possibility for using expert report as evidence without previous permission by a judge.
- As a rule, the selection of the expert is left to the judge however especially in the countries of the region there is possibility that the party proposes specific expert and if there is no objection by the opposing site to be assigned to conduct the expertise.
- Public body like the Bureau for Court Expertise vested with the authority to conduct expertise in legally aided cases or other analogues institution was not encounter in neither of the 12 reviewed countries. The expert witnesses are working as individuals with certain requirement for registration upon meeting criteria.
- The remuneration of the expert fees in legally aided cases or in cases where the indigent party is exempted from payment of procedural codes is generally regulated with the procedural codes however there are cases where that is regulated with the law on legal aid (Slovenia &

Croatia). In these cases, the fees that may be charged are set by a bylaw, adopted by the Government or other authority. If there is need for advance payment the costs for that are paid from the court budget, or the budget for legal aid.

2. Recommendations

The comparative review provides a significant resource for the policy makers (Ministry of Justice) in the process of designing and implementing policies and legislation in order to improve the access to free of charge expert witnesses for the beneficiaries of secondary legal aid. On the basis of thorough assessment of the problems and challenges as well as taking into consideration the identified comparative practices we are proposing two layers recommendations, a short term one, and long term.

We consider that implementation of both layers of recommendation is quintessential in order to secure a long-term and sustainable solution to the existing problems and challenges, described in the first section of this report. The recommendations are based upon the best practices identified by the comparative assessment. The best practices are selected on the basis of their applicability to the local context, legal tradition as well as their suitability to address the specific challenges.

The short-term recommendations are targeting the period until the start of the implementation of the new Civil Procedure Code and are based on the current function of expert witnesses in the litigation procedures. The long-term recommendations are drafted to ensure that the legal aid system is reformed to integrate the new approach in regulating the role and function of expert witnesses. The specific recommendations are presented in a chronological order. The subsequent recommendations are conditioned by implementation of the former.

a. Short-term recommendations (To be concluded in the period from July – October 2021)

1. Organizing a set of meetings and one roundtable between the Ministry of Justice, the Bureau for Court Expertise, specific professional bodies of experts (ex. Geodesy & Surveying) and scientific institutions. The objectives of the meetings will be to reach an agreement for ensuring access to expert witnesses in specific areas and types (ex. DNA analysis) as well as to inform the MoJ Department of Legal Aid about the competences and specific of each of the aforementioned subjects;
2. Concluding a memorandum between the Bureau for Court Expertise and the Ministry of Justice that will regulate in greater detail the mutual rights and obligations, the process for referring the case to the bureau, the time frame, the means of communication between the beneficiaries of legal aid, their lawyers and the Bureau and remuneration processes;
3. Concluding a contract between the Bureau from one side and a national scientific institutions that provides DNA analysis and a relevant professional organizations of expert s(surveyors etc.). Such an agreement will close the current gap of lack of availability for such expertise for the legal aid beneficiaries. Both sides should strive to agree upon a fee tariff that will take into account the work done, however analogues to the deduction of the amount for the lawyers, it should be discounted for max. 30% from its market value;

4. Drafting a specific-guidelines for the employees of MoJ, for the lawyers and for the expert-witnesses that will include overview of each of the parties' duties and responsibilities, deadlines for taking actions, the tariff of experts in different areas, quality control and method of payment;

b. Long-term recommendations (To be concluded in the period from November 2021 till the end of 2022)

1. Organization of expert roundtable with practitioners (lawyers, judges), representatives of expert witnesses' professional organizations, the Bureau, the MoJ and the NGO sector. The objective of the roundtable will be to identify areas of LFLA that needs to be amended in order to be harmonized with the new Civil Procedure Code that is intended to be adopted in 2021 and to begin with implementation in 2022;
2. Creation of working group for drafting amendments to the LFLA based upon the conclusion from the organized expert roundtable. The working group should be composed of each of the stakeholders stated above;
3. Alignment of the LFLA with the Civil Procedure Code. This requires review of the current model where the expertise is done solely through the Bureau. Because of the more active role of the judge in assigning expertise it will be necessary that the LFLA should be able to ensure that all licensed experts, when assigned by a judge in a legally aided case, are able to be remunerated for their services from the legal aid budget. This is inline with the identified best practices where in general there are no specific registers for legal aid experts;
4. The amendments of the LFLA should delegate authority to the Minister of Justice upon agreement from the Chamber of Expert Witnesses to adopt a bylaw that will regulate the remuneration of fees and reimbursement of costs. The bylaw should set the minimal and maximal fees that may be claimed by the expert and should be discounted from their market value analogues with the 30% discount for the legal aid lawyers.
5. In case the beneficiary of legal aid succeeds in the case and obtains certain monetary amount or assets above defined threshold, the Ministry should be able to initiate a procedure for reimbursement of the costs paid for among other things, expert witnesses.
6. Organization of set of trainings for the authorized officials from the regional offices of the Ministry of Justice. The training will cover the novelties within the LFLA concerning expert witnesses in legal aid procedures. The trainings should preferably be organized with the Bureau as well as the Chamber of Expert Witnesses if this body became functional in the meantime.

Annex: Comparison table

Country	How is legal aid regulated?	Who decides upon legal aid applications?	Is there a mechanism for exemption of costs for expert witnesses for indigent parties?	Is a court order required for expert witness?	Is there prescribed fee lists for expert witnesses generally as well as for legally aided cases?
North Macedonia	Special legislative act on legal aid	Regional offices of Ministry of Justice	Yes, within the Law on Free Legal Aid	Court order/assignment is not required	Yes, with a decree by the Government
France	Special legislative act on legal aid	Legal aid offices within the courts	Yes, within in act on legal aid. The costs for experts are covered by the budget without need of deposit.	Only upon court order.	No. The fee is determined by the judge.
Belgium	Special legislative act on legal aid and legislation on judiciary	Bureaus for legal aid under the auspices of the local bar association for legal aid & Bureaus for legal assistance in courts for exemption of court fees.	Yes, within the act regulating judiciary. The costs are advanced by the State	The expert is appointed by a court decision in which the judge entrusts him with an assignment and in which the judge defines his task and controls the course of the investigation	No data
Netherlands	Special legislative act on legal aid	Legal Aid Board, an independent governing body instituted by the Minister of Security and Justice	Yes. Court registry fees can be reduced in civil case. The Legal aid Board does not cover the experts costs though in specific circumstances may issue a loan.	Only upon court appointment	No data
Germany	Provisions for legal aid are contained in the relevant codes of procedures	Courts	The relevant civil procedure code foresees free charge services for court expertise for indigent parties	Upon appointment by the court, ex officio or at the request of the parties	Fee based on an hourly rate, that is fixed by law
Croatia	Special legislative act on legal aid	Administrative bodies within the	Yes, within the law regulating legal aid.	Court appointment at request by parties	Special fee set in a special by-law

		Ministry of Justice		and as an exemption ex-office	for costs related to legal aid
Serbia	Special legislative act on legal aid	Ministry of Justice and local government units.	Yes, within the law regulating civil procedure.	Court appointment by request of the parties, ex-officio or direct submission of report by the parties.	General fee set in a by-law on costs in judicial procedures
Kosovo	Special legislative act on legal aid	Agency of the Free Legal Aid	Yes, upon exemption from the court	Court appointment by request of the parties, ex-officio	No data
Albania	Special legislative act on legal aid	Ministry of Justice, National Bar Association and the State Commission for Legal Aid	Yes, in accordance with the Legal Aid Act	Court appointment by proposal of the parties or ex-officio	The fee are set with a by-law
Slovenia	Special legislative act on legal aid	Courts	Yes, in accordance with the Legal Aid Act	Court appointment by proposal of the parties or ex-officio	The fees are set with a by-law
Bulgaria	Special legislative act on legal aid	Bureau on Legal Aid, local bar and courts	Yes, in accordance with the procedural law	Court appointment by proposal of the parties or ex-officio	Special fee set with a by-law in the cases of exemption
England & Wales	Special legislative act on legal aid	Legal Aid Board	Yes, in accordance with the legislative act on legal aid	Court assignment upon proposal by parties	Special bylaw setting fees in legally aided cases
Poland	Special legislative act on legal aid for pre-trial legal aid, procedural laws for trial legal aid.	Local Government Units	Yes, in accordance with the procedural law	Court appointment by proposal of the parties or ex-officio	The fees are set with a by-law



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