

Policy Brief

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A single unitary body for free legal aid in North Macedonia

Reform of the governance of free legal aid in North Macedonia is imperative. This briefing sets out a recommendation for government to adopt the creation of a single unitary body – **Free Legal Aid Agency** – entrusted to manage the entire legal aid system and all its sectors.

It will **solve issues** (improving accessibility and promptness of processing legal aid requests); reduce the burden on the judges of appointment of lawyers; ensure transparency and clarity for lawyers), **bring innovation** (attention to the accessibility, functionality of the procedures and quality of delivered legal aid), target **compliance** of the legislation and practices with the international and European **standards**, aiming at an **efficient and effective legal aid system facilitating access to justice for people in need**.

Why it's needed

Creation of the single unitary body should be the **authorities' strategic response to:**

- the main **challenges** in the legal aid system, for example:
 - in the system for legal aid in criminal procedures **only a handful indigent defendants actually benefited from it in over a decade;**
 - **limited judicial budget** dissuades judges from working actively to increase the take-up of legal aid;
 - civil and administrative legal aid is limited by **restricted eligibility rules and insufficient administrative capacity;**
- **legal aid for children is affected by lack of interest among lawyers** and the entangled competencies of different institutions;
- the main **management issues**, for example:
 - **parallel legal aid schemes**, depending on the types of the procedure for which legal aid is requested. Legal aid schemes are administered by different institutions and based on different rules;
 - **institutions involved in management of the legal aid systems have other main responsibilities and legal aid is not the first priority of these institutions.**

A legal aid system should be efficient, effective and responsive to people in need.

How a single unitary body will answer these problems

- Potential **beneficiaries** will **navigate more easily** through the system via a **single gateway** (including when they are involved in various proceedings);
- Diligence and **promptness** in processing legal aid **requests** (for all proceedings);
- **Primary** legal aid and **legal awareness**-raising activities will become part of legal aid **agenda**;
- A functional system of **appointment** of lawyers (including for compulsory participation, **removing the burden on the prosecution and the courts**);
- **Transparency** in the appointment and **payment** of lawyers;
- Improved **communication** between stakeholders;
- **Democratic input** by all sectors into management of the body (shared **responsibility** and **ownership**);
- **Strategic** approach and **coordination between stakeholders**: data, planning, monitoring, adapting, referrals;
- A specialised and **dedicated** entity which as well as dealing with daily routine will also favour **innovation** and creative thinking (permanent evaluation of practices, proposals for improvements);

- **Administrative work** entrusted to persons trained for the task;
- **Quality** of delivered legal aid permanently on the agenda;
- Alignment with agreed **legal aid values** like quality, partnership, client-focus, accessibility, sustainability and equal treatment;
- **Independent** and **impartial** legal aid, free from conflict of interests;
- Legal aid oriented to **specific needs of vulnerable beneficiaries**;
- Encouragement of the authorities and MoJ (policies, drafting legislation) to bring **legislation and practices in line with international and European standards**.

Why a single unitary body is politically attractive

- A single unitary body is the expression of apolitical democratic governance which is not affected by the electoral cycles (independence of the single entity in the decision-making and budget planning process, making the FLA system more efficient, sustainable and effective).
- This enables cross-party support to flourish better. The experience has shown that cross-party consensus, though very rare, is common when related to problems affecting the most impoverished and marginalized groups. With the participation of all stakeholders in the decision-making body, i.e. the management board of the single entity, intersectional cooperation will grow and be continuous.
- The prospects for a single gateway into a welcoming system will be appreciated by the population, because until now the existing confusion about where to apply, for which issues, i.e. the areas of law (criminal, civil and administrative) has represented an insurmountable barrier for citizens to access free legal aid services.
- The Ministry of Justice will be unencumbered by the need to maintain both the FLA system and the network of regional offices, but without losing control since as a key Ministry in charge of the policies in the areas of judiciary and legal system it will be part of the decision-making process of the body as well as being in charge of preparation of all necessary legislation.

Positive impact of the reform on the North Macedonia human rights record

This reform will secure better **compliance with international norms and recommendations**, and will bring North Macedonia up to standard. Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. Legal aid is an essential aspect of an accessible, fair, humane, and efficient justice system. In line with **ECHR** and Jurisprudence of ECtHR on Article 6 (3) (c), legal aid must be effective.

A unified legal aid system governed by one single entity contributes to better access to justice. Guidelines of the Committee of Ministers of the **Council of Europe** on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 2021 stipulate that member States should have a mechanism in place that allocates cases to legal aid providers.

The **United Nations** Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recommend the establishment of a **single independent body**: “States should consider establishing a **legal aid body** or authority to provide, administer, coordinate and monitor legal aid services” (Guideline 11).

It is also worth recalling here the aspiration to align North Macedonia’s legislation and practices to **EU standards** and guidelines.

The consensus of support for this innovation

- **The level of support is fully researched.** During the expert mission in October 2022, all of the stakeholders and involved parties were consulted regarding the feasibility of creating a single entity that will take over the governance of the FLA system defragmenting the already existing system by unifying it into one system. **All of the participants expressed their full support emphasizing the long-lasting need for such an entity.**
- Who supports this – **there is support among the MoJ, lawyers, judges, prosecutors, associations and legal clinics.** The overall perception of the idea is positive though it was underlined that the process should be gradual, inclusive and transparent.



- **The support is cross sectoral** – All of the interlocutors stated that the establishment of a single entity that will unify all three systems (civil, criminal and administrative) and govern the unified system for FLA, covering all issues that up until now where forgotten will contribute to a very efficient FLA system. At the same time it will unburden every involved institution from governing a partial system of FLA that was almost never fully functional.

How the proposal will work

The new single unitary body will take over all the functions of running the free legal aid service and delivering free legal aid to the people of North Macedonia. It will be an **autonomous and independent state organ (самостоен и независен државен орган)**, a model already recognised by law.



It will be managed and overseen by a new, powerful independent management board which will oversee the director and seven new system-wide sectors, plus the regional offices network.

That means it will be separate from government and freed from the confines of being just a section within the Ministry of Justice, yet with necessary safeguards to keep it within the public domain. It will be fully accountable to government, stakeholders in the legal and CSO sectors, and most importantly to the people of North Macedonia. Service to clients will be its top priority. Its independence will allow for better management, a more innovative and creative approach, improved responsiveness to a changing society, and strong equality- and service-focused values. And free legal aid in criminal, civil and administrative areas will work coherently as a single joined-up system.

The **director, overseen by the management board**, will have all the necessary powers to develop new policy, manage the free legal aid system efficiently and effectively, prepare new laws and normative acts, control a budget and make bids for funding. They will work alongside national and international organisations without the constraints of being part of a Ministry. Being a single body will allow more freedom to innovate. The single unitary body will be responsible for collaborating with and co-ordinating the network of free legal aid partners and providers in all sectors, providing training, promoting the service, appointing and paying lawyer providers, and efficiently managing decision-making on all legal aid applications. It will handle first-instance complaints in a client-focused manner, and impose stringent quality assurance.

Governance of the unitary body

The **Management Board** will have between 8 and 15 members. They will be drawn from the **Ministry of Justice**, the **Bar**, **NGOs**, **university law clinics**, **judiciary**, and **Ministries of Finance and Labour & Social Policy**. Members of the Board will have a fixed term of service of 3 to 4 years, renewable once. Between them, Board members will thus have an eclectic spread of backgrounds, expertise, values and skills. Free legal aid will benefit hugely from this diversity at the heart of its management. All relevant voices will be heard, and this will produce better strategic governance for free legal aid in North Macedonia.

The Board of Management will be the ultimate seat of governance within the single unitary body. It won't make day-to-day operational decisions. Because it will have full powers over its executive staff, the majority of everyday operational activities and responsibilities will be delegated to them via the director. The Board will supervise the general affairs of the single unitary body, overseeing the operational work of the single body and giving strategic guidance. It will make sure the free legal aid scheme stays on track as to its strategic targets, and will keep it aligned with core values like quality, partnership, client-focus, sustainability, accessibility and equal treatment.

Relationship between the single unitary Free Legal Aid body and the Ministry of Justice

Though the body is envisioned as an autonomous and independent state organ, it will be managed and supervised by a **Management Board** where the **Ministry of Justice** will have the authority to nominate members with full voting rights.

The Ministry of Justice as a key state organ in charge of policy-making as well as drafting proposals for laws in the areas of the judiciary, court procedures as well as legal aid, will have an active role in **developing the legislative and institutional framework** for the operation of the single unitary FLA body.

The single FLA body will utilize and **integrate the existing network of regional offices of the Ministry of Justice** (subject to decisions made in the next steps of the process). This will ensure full regional coverage of the country's territory, secure meaningful tasks for the employees of the ROs and particularly increase their cost-effectiveness.

Where to find out more...

Feasibility Study on Establishment of a Single Body for the management of the free legal aid system in North Macedonia, December 2022.

Needs Assessment and Recommendations with regard to the provision of legal aid in criminal proceedings in North Macedonia, 2020.

FAQs

● Does the establishment of this body require recruitment of new staff?

With adequate reorganization and training, the body can be established and be operational with current staff employed by the Ministry of Justice as well as by transfer of other administrative servants from other bodies if necessary.

● Does it mean job cuts?

No. The single body will utilize the existing human resources of the Ministry of Justice and the public administration in general in accordance with the legislation on administrative servants.

● Does it require changes to the law?

Yes. The laws regulating the criminal and civil procedure, legal aid and justice for children should be amended accordingly (and other pertinent pieces of legislation).

● Won't it mean that the Ministry of Justice loses control of free legal aid?

No, as explained above, the Ministry of Justice will take an active role in contributing to the management of the body as well as in setting up the policy and legislative framework for its operation. It will ensure that the Ministry is not overburdened with routine administrative tasks but with policy development and oversights.

● Will the regional offices close?

No. They will be integrated into the single body – subject to the decision of the Ministry of Justice and the Government.

● Will legal aid applications be dealt with more efficiently?

Yes, a specialized body with sole responsibility for processing legal aid applications will be able to process them speedily.

● Will it make legal aid harder to get for citizens?

No, the sole fact that this body will have offices in all major urban centres of the country will ensure that the legal aid is closer to the potential applicants.

● Is this plan fully researched and justified?

Yes. You can read the full assessment report at the link on the left.

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