



HF II Supporting enhanced access to higher quality Free Legal Aid services in North Macedonia

NEEDS ASSESSMENT AND RECOMMENDATIONS WITH REGARD TO THE PROVISION OF LEGAL AID IN CRIMINAL PROCEEDINGS IN NORTH MACEDONIA

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Skopje, June 2020

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ACRONYMS:

ECHR - European Convention on Human Rights and Fundamental Freedoms

MoJ - Ministry of Justice of North Macedonia

LCP - Law of the Republic of North Macedonia on Criminal Procedure, 150/2010, 100/2012, 142/2016, 193/2016, 198/2018

LFLA - Law of the Republic of North Macedonia on Free Legal Aid, 2019, Official Gazette No. 101/2019

LJC - Law of the Republic of North Macedonia on Justice for Children, Official Gazette No. 148/2013, 152/2019

RNM - Republic of North Macedonia

ROs MoJ - Regional offices of the Ministry of Justice of North Macedonia

SUMMARY

Council of Europe Program office in Skopje requested to produce a paper with expert assessment and recommendations on delivery of legal aid in criminal proceedings in the RNM. The assessment was conducted under the framework of the joint EU/CoE project on Supporting Enhanced Access to Higher Quality Free Legal Aid Services in North Macedonia. The purpose of the paper is to provide the basis and guidance for addressing shortcomings and implementation of the subsequent activities.

The criteria of accessibility of legal aid in criminal proceedings are enshrined in the LCP. There are 3 categories of situations (cases and beneficiaries) when legal aid in criminal proceedings can be provided: cases of compulsory defense, defense of indigent persons and cases of representation of the interests of victims of crimes. The legislation is not sufficiently precise and its uncertainty leads to challenges of practical application. As a result, in a considerable number of cases, the defendants are not represented during criminal proceedings, while 21,8 % of the country population live below poverty rate.

To address the challenges, it is necessary to revise the legislative framework, mainly the criteria of accessibility of legal aid in criminal proceedings, the threshold for eligibility and the procedure of confirmation of the criteria “financial situation”, bringing legislative provisions and practices in line with CoE standards and guidance. As intermediary solution is the development of the relevant guidance of the Supreme Court of RNM related to legal aid in criminal proceedings.

More dialogue of the stakeholders concerning appointment of the ex-officio lawyers, calculation of the fees for lawyers and broad public awareness raising campaign is required. For good administration of the system of delivery of legal aid in criminal proceedings, collection of data and research are essential, including on met and unmet” legal aid needs, assessment of the quality of the legal aid services in criminal proceedings. The budget for legal aid in criminal proceedings shall reflect all categories of necessary costs, including for awareness raising, training and innovation in the system.

The role of the Bar Association is crucial. Establishment of the Lawyers’ Education Centre, development of professional standards for the activity of lawyers in the criminal proceedings, specialization of the ex-officio lawyers, development of a mechanism for monitoring the quality of legal aid can directly contribute to a better quality of legal aid. A software solution for appointment of ex-officio lawyers in criminal proceedings will solve the problem of transparency of appointment of ex-officio lawyers, enhancing their independence.

On long term, it is recommended to examine the feasibility of entrusting the management of the legal aid system in criminal proceedings (the entire spectrum of functions) to one distinct entity, with participation of all the relevant stakeholders. A roadmap to improve the system of delivery of legal aid in criminal proceedings in the RNM concerning mandatory defense, indigent persons and victims of crime, corroborating all the pertinent measures, would be appropriate.

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I. INTRODUCTORY REMARKS

The Council of Europe is currently implementing a Project on supporting enhanced access to higher quality Free Legal Aid (FLA) services in North Macedonia, which aims at supporting the main actors in enhancing the efficiency, quality, scope, accessibility, and awareness of free legal aid provision in the country and addressing identified shortcomings. It builds upon the results achieved in the implementation of the previous Action on this issue (HF-35 “Supporting Free Legal Aid Reforms”) and supports effective implementation of the new Law on free legal aid, adopted in May 2019.

The project is built along three main lines of action:

- (1) Harmonization of provisions, policies and practices related to free legal aid;
- (2) Targeted capacity building of main providers (Ministry of Justice, Bar Association and CSOs) including by supporting more structured and continuous coordination, and
- (3) Awareness raising among the country’s population to support increased access to free legal aid.

The Action “HF II 12 – Supporting enhanced access to higher quality Free Legal Aid (FLA) services in North Macedonia” envisages the Output 2.2.1: “A process is initiated to support key stakeholders including Judiciary and Bar Association to identify and address shortcomings in the provision of legal aid in criminal proceedings” under the Immediate Outcome: “Improved quality of legal aid provided under criminal proceedings through enhanced transparency and coordination”.

Activities planned towards such output include:

- a) Expert assessment and recommendations for addressing shortcomings in provision of legal aid in criminal proceedings;
- b) Round table for sharing of best practices on provision of legal aid in criminal proceedings;
- c) Coordination meetings (working groups) to tackle shortcomings on legal aid provision in criminal proceedings;
- d) Piloting of adopted measures in selected Courts.

Subsequently, the Council of Europe’s Program office in Skopje requested to produce a paper with expert assessment and recommendations on provision of legal aid in criminal proceedings in the RNM. The purpose of the paper is to provide the basis and guidance for addressing shortcomings and implementation of the subsequent activities.

The paper outlines:

- the current state of affairs (mechanism in place, main actors involved, roles, interaction, effectiveness) with reference to relevant international standards;
- existing shortcomings and challenges;
- possible solutions and approaches for improving coordination and effectiveness of legal aid provision in criminal proceedings;
- reference to international practices and experiences that might be of relevance as good practices or lessons learned in the Macedonian context.

The paper covers legal aid in criminal proceedings (investigation, court hearings and appeal stages), with reference to categories of persons entitled to legal aid (mandatory defense, indigent persons, victims of crimes), the mechanism of appointment of a lawyer, service providers and quality assurance mechanism, management and funding of the system.

The paper includes analysis of the relevant legislation (mainly LCP, LFLA, LJC), draft laws, good trends, shortcoming and challenges, formulating the recommendations based on the Council of Europe standards and best practices in the field and identifying potential strategies for mitigation that could be supported through the Council of Europe's project.

This paper does not cover the status of lawyer or procedural rights, duties and responsibilities of the defense lawyers in general (i.e. the role of defense counsel during investigation phase, hearings before the court, second instance court or appeal against the judgment of the second instance court; the role of the defense counsel during various procedural actions in an adversarial procedure; preparation of the defense case; evidence collection by the defense; role of the defense counsel during presentation of evidence; substitution of the defense counsel with an ex-officio lawyer; effects of violation of the rights of the defense etc.).

II. METHODOLOGY

The process of preparation of the paper followed a structured methodology in three phases: a. desk research, b. remote fact-finding mission, and c. drafting of the paper.

In view of the current restrictions to travel and meetings linked to the COVID-19 pandemic, the work was home-based with on-line interactions with relevant interlocutors, using alternative options for advancing the planned activities through remote and on-line approaches.

On the basis of desk research, a methodological plan was developed and there were elaborated 2 questionnaires with open ended questions for collection of opinions and experience of 5 judges and 10 lawyers about the current state of affairs. 9 on-line meetings with stakeholders were held, with due consideration of the gender aspect. The time-frame for the assessment (May 2020) and the allocated resources did not permit to use structured questioning of a representative sample of stakeholders.

The assessment has been conducted by Victor Zaharia¹ and Bojana Netkova² with the support of CoE project team. The consultants and the Council of Europe project team closely co-operated, shared information, provided relevant inputs and communicated via email and video conferences.

It is to mention a methodological limitation related to the availability of relevant statistical data, which was overpassed in the context of the scope of this paper by using the available data.

¹ CoE international consultant, former President of the National Council for State Guaranteed Legal Aid, Moldova (2008-2016).

² CoE national consultant, attorney and member of the WG for amending the LFLA, member of the commission for establishing the Educational Center for Lawyers.

III. THE CURRENT STATE OF AFFAIRS AND RECCOMENDATIONS

The Constitution of RNM guarantees that “a person has a right to an attorney in police and court procedure³”. The provisions of the Constitution are detailed in the LCP. Every defendant shall have the basic right to defend in person or with the assistance of a defense counsel of his or her own choice, and if the person is indigent, to get a defense counsel free of charge when that is required by the interest of justice⁴. Any person who has been suspected or accused of a criminal offense shall have the right to a defense counsel throughout the duration of the criminal procedure against him or her. Prior to the initial examination or any other action for which such an obligation is provided for in the LCP, the accused shall have to be advised of his or her right to a defense council of his or her choice. The defense counsel for the defendant may also be provided by his or her legal representative, marital i.e. legitimate spouse, blood relative of first degree, foster parent, an adopted child, brother, sister and bread winner, unless the accused is explicitly against it⁵.

In case the defendant has no lawyer of his/her own choice or provided by the relatives, s/he can benefit of legal aid of an appointed ex-officio lawyer. The criteria of accessibility of legal aid in criminal proceedings are enshrined in LCP. There are 3 categories of situations (cases and beneficiaries) when legal aid in criminal proceedings can be provided: cases of compulsory defense, defense of indigent persons and cases of representation of the interests of victims of crimes⁶.

1. BENEFICIARIES OF LEGAL AID IN CRIMINAL PROCEEDINGS

Due to the fact the accessibility criteria for legal aid from LCP were seldom mentioned as an issue, below are included slightly more details than to other compartments of the paper.

Compulsory defense

The LCP regulates the compulsory defense for the following situations⁷:

- If the accused is dumb, deaf or incapable to defend himself or herself successfully or if a criminal procedure is conducted against him or her for a crime, which, according to the law, entails a sentence of life imprisonment, then the person shall have a defense counsel as of his or her first questioning;
- The defendant shall have a counsel during the detention period, if detention has been imposed against him or her;
- After an indictment has been raised for a crime for which a prison sentence of ten years or a more severe sentence is proscribed in the law, the accused shall have a counsel at the time of the delivery of the indictment;

³ Constitution of RNM, art. 12 par.3.

⁴ LCP, art. 70.

⁵ LCP, art. 71.

⁶ Legal aid for children in conflict with the law is governed by a different piece of legislation. LJC requires mandatory defense for children at risk and children in conflict with the law in procedures before four state organs, centers for social protection, police, public prosecution and courts. The costs for procedures before centers for social welfare and police are covered by the legal aid budget pursuant to LFLA, before public prosecutor by the budget of institution while before courts by the court budget (art. 90 par. 2 from the LJC).

⁷ LCP, art. 74.

- The accused shall have a defense counsel during the procedure of negotiation and bargaining with the public prosecutor on the guilty plea;
- The defendant who is being tried in his or her absence shall have a defense counsel assigned immediately after the decision for a trial in absence has been brought.

If the accused, in the cases of compulsory defense as referred to in art. 74 LCP, does not provide a counsel himself/herself, s/he shall be assigned a defense counsel ex officio for the further duration of the criminal procedure until the final legally valid verdict.

To enlarge the scope of compulsory defense, actually, there is an initiative to change the provisions of the LCP, supplementing the categories of cases with following:

- if a procedure is being conducted against a defendant for a criminal offense that is prosecuted ex-officio, and s/he is serving a prison sentence for another crime, from the moment when the body conducting the procedure found out about it;
- when defendant is permanently removed from the courtroom in accordance with Article 361 paragraph (2) of LCP;
- upon submission of a proposal for imposing a safeguarding measure in accordance with Article 522 of LCP.

Even so, the compulsory defense is limited in its scope and the actual wording of the LCP might cause inconsistency in practice. In particular, the compulsory defense does not cover all the situations when an individual's liberty is at stake (*i.e.* defendant is not arrested but risks a custodial sentence), the defendant does not speak the language of the procedure; the syntagma "incapable to defend himself or herself successfully" is not sufficiently precise and might lead to difficulties of its uniform interpretation.

Arrested suspects

Due to increased vulnerability, arrested suspects deserve a particular attention. According to LCP, any person deprived of liberty may speak to an attorney in private at any time, day or night. If the arrested person does not have an attorney of his or her own or cannot establish contact, he or she may ask to see the list of available attorneys on call. The attorney may come and visit the arrested person at the police station at any time. During the period between 20.00 hours at night and 08.00 hours in the morning, the person shall have the right to get an attorney from the list of attorneys on call, composed by the Bar Chamber of the Republic of North Macedonia. Any expenses for the attorney on call as a defense counsel during the hold up at night shall be covered by the State Budget of the Republic of North Macedonia⁸. In the event of a mandatory defense (LCP, art. 74, paragraphs 1 and 2), while appearing before preliminary procedure judge, if the arrested person does not get a defense counsel within a period of 12 hours from the moment when he or she has been advised of that right or states that he or she does not want to get a counsel, one shall be assigned to him or her ex-officio⁹.

Strategy for reform of the judicial sector for the period 2017-2022 underlines that "...there are no detailed standardised written procedures and mechanisms to ensure or facilitate the exercise of the right of the suspect to a defense attorney when being summoned for interrogation by the police, especially if in detention, which is only

⁸ LCP, art. 161.

⁹ LCP, art. 168.

one of the reasons why the suspects in the Republic of North Macedonia almost never use a defense attorney in the police”¹⁰. Fact-finding mission suggests that little progress was made in the area, being mentioned that “right to lawyer before and during the first questioning as well as throughout the proceedings is dysfunctional”, “usually the first meeting of ex-officio lawyer with the beneficiary is in the pre-trial judge’s quarters before the person is subjected to remand custody or to another measure, almost never during questioning in a police station or by a public prosecutor”, “often the appointment of the ex-officio lawyer will happen after remand detention has already been imposed”.

Defense of the indigent persons

LCP regulates the access to legal aid for indigent persons. When the conditions for mandatory defense are not met, upon his or her motion, the defendant may be assigned counsel, if, taking his or her financial situation into consideration, it is deemed that the defendant cannot bear the expenses of the defense, when required for the purpose of the interest of justice and specifically due to the severity of the crime and complexity of the case. In the motion, the defendant can indicate the preferred attorney from the list of defense counsels of the appropriate legal community¹¹.

It is to mention in this case a potential of uncertainty and ununiformed application of the legislation.

The criteria “financial situation” is not clearly defined in the legislation and left to be interpreted in each case individually. The modality of determination of the financial situation of the defendant is a challenge. There are no precise rules establishing the threshold for eligibility. Defendant applying for legal aid in many cases automatically would fail to submit the relevant documentation, due to the administrative obstacles¹².

Concerning the criteria of “complexity of the case”, it can be associated in its meaning by some practitioners with “incapable to defend himself or herself successfully”¹³. Moreover, during fact-finding mission, some of the interlocutors mentioned “the financial and social standing of the person is also taken into consideration”, aluding to additional factors, while criteria of “financial situation” and “interest of justice”, in fact, are cumulative not alternative or complementary.

On top of that, according to the LCP, the expenses for the procedure and the “necessary costs” of the appointed defense counsel should be paid in advance by the body leading the criminal procedure, and later charged to the persons that under the law are obliged to cover these expenses¹⁴. The possibility of reimbursement of the costs, taking into consideration the procedural requirements, can in theory lead to a temptation to appoint ex-officio lawyers even for the situations passible of interpretation. Still, payment in advance is envisaged from the budget of the deciding authority (court), fact which in theory might lead to an opposite trend.

¹⁰ *Strategy for reform of the judicial sector for the period 2017-2022*, chapter 5 - Reform in Individual Areas, 5.1 – Penal matters. <https://rm.coe.int/strategy-for-reform-of-the-judicial-sector-for-the-period-2017-2022-wi/16808c4384>

¹¹ LCP, art. 75.

¹² The defendant should submit the following documents: an asset certificate from the Public Revenue Office listing the person's movable and immovable property; an employment status certificate from the Employment Agency - if employed, a salary declaration from their employer stating their monthly income; if employed and if they have a family, an employment status certificate for the family members and a salary declaration from the employer of the family members, as well as a certificate from the Ministry of Labor and Social Affairs whether the person is a social assistance recipient. These documents should be of a newer date.

¹³ Please see LCP, art. 74 (1).

¹⁴ LCP, art. 102.

From the perspective of the defendant, there is a possibility of exemption of costs. According to LCP, if counsel has been assigned to the defendant, and if the payment of the recompense and the essential expenses would mean endangering of the defendant's subsistence or the subsistence of another person that he or she is obliged to support, then the recompense and the essential expenses of the counsel shall be paid from the State Budget of the Republic of North Macedonia¹⁵. Nevertheless, the syntagma "if the payment of the recompense and the essential expenses would mean endangering of the defendant's subsistence or the subsistence of another person" is passible of various interpretations. This uncertainty of interpretation might constitute for the defendants a reason to abstain from requesting the services of ex-officio lawyers. So, at the end of the day, all costs will be paid by the defendant. Moreover, in the case of defendant failure to pay the costs, under the law, these are collected through an enforcement agent, a procedure wich alledgedly is defficient in the aspect of protection of debtors' rights¹⁶.

In consequence, in a considerable number of cases, the defendants are not represented during criminal proceedings. According to some data, in the period between 2015 and 2017, 63.5% of the defendants in criminal proceedings hired the defense counsel by themselves, 9.6% of the defendants were assigned a defense counsel ex officio and 26.9% of the defendants did not have a defense counsel during the proceedings¹⁷. Other sources indicate slightly different, but comparable figures, as follows:

Number of appointed defense lawyers ex officio and defense for indigent people¹⁸

	2016	2017	2018
Defense lawyers appointed ex officio	1180	1045	1095
Defense lawyers for indigent persons	3	6	2
Criminal cases in total	15853	15040	15129
% of the cases in which defense lawyer was appointed	7.46%	6.99%	7.25%

The figures demonstrate an extremely low number of cases when persons benefited of legal aid based on the status of indigent (0,013 %), while 21,8 % of the country population live below poverty rate and the unemployment rate is 22,6 %¹⁹.

Representation of the interests of the victims of crimes

According to the LCP, any victim of a crime, which entails a prison sentence of at least four years, shall have the right to get a councilor paid by the state budget before giving a statement, i.e. declaration or filing the legal-property claim, if the victim has serious psycho-physical impairment or if there are serious consequences as a result of the crime²⁰. The victim of crimes against gender freedom and gender morality, humanity and international law, shall have the right, to speak before the interrogation to a counselor or a proxy free of charge,

¹⁵ LCP, art. 107.

¹⁶ Please see: *Ombudsman of RNC, annual report 2018*, <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2018/GI-2018-Ang.pdf> , p. 60

¹⁷ According to analysis of data obtained from observed court proceedings in 2015, 2016 and 2017, done in cooperation with the "All for a fair trials" Coalition of Citizens Associations.

¹⁸ *Access to Justice in North Macedonia*, comprehensive policy study on the access to justice in criminal, civil and administrative procedures. Macedonian Young Lawyers Association, Skopje, September 2019, p. 45

¹⁹ *UNDP, Republic of North Macedonia*, <https://www.mk.undp.org/content/north-macedonia/en/home.html> .

²⁰ LCP, art. 53.

if he or she participates in the procedure as an injured party²¹. The new LFLA makes explicit reference that defense and representation in a criminal procedure are provided in accordance with the provisions of the LCP²². In addition, the LFLA in its transitory provisions secures protection of victims from punishable crimes and the protection of victims of trafficking in human beings²³.

Procedurally speaking, in the usual court practice the status of victim is determined depending on the type and character of the crime. The court possesses material evidence, medical certificates and files, photographs, reports from social affairs centers, forensic assessments of injuries or psychiatric reports etc. In fact, the status of a victim is determined much earlier, even at the police station and at the public prosecutor's office, in order to observe all legal rights of the victim and prevent re-victimization. The procedure of establishing the cumulative criteria of "psycho-physical impairment or if there are serious consequences as a result of the crime" may vary.

In addition, confusion can be caused by the perception of being concurrent the provisions of the LCP and the LFLA (which in fact are not concurrent). During fact-finding mission, some practitioners pretended an ex-officio lawyer for the entitled victim should be appointed after the conviction of the offender (after all criminal proceedings). Others point to legal provisions of the LCP which reflect the victims' need for legal services of representation of interests during the criminal proceedings. The practice of relying only on civil remedy, so to get confirmation of guiltiness (conviction verdict) then asking for compensation of victim in civil proceedings would be in contradiction with the relevant standards on the status of victim in criminal proceedings.

It is to mention absence of a system to inform and advice in clear and comprehensible manner victims of crime on their right to legal services, including legal aid (but also on the right to psychological and social support and protection). There are no available statistical data on using legal aid in criminal proceedings by victims of crimes (while being confirmed that very few victims would have an ex-officio lawyer).

In general, concerning legal aid in criminal proceedings (regarding all categories of potential beneficiaries) there is little research and reliable statistical data (disaggregated, including by gender criteria).

²¹ LCP, art. 55.

²² LFLA, art. 38.

²³ LFLA, art. 49.

Taking into consideration the international standards and guidance²⁴, the CoE standards including the article 6 (3) (c) of the ECHR²⁵, the jurisprudence of the ECtHR²⁶, the CPT standards²⁷, and also the EU standards and guidance²⁸, it is recommended:

1. **To perform a complex research on “met and unmet” legal aid needs in criminal proceedings in RNM.** The research should allow identifying categories of people and cases when legal aid in criminal proceedings is deemed necessary and to design the responses to these needs based on the algorithms of compulsory defense, defense of the indigent persons or representation of the victims of crimes.
2. **To revise the LCP, mainly the criteria of accessibility of legal aid in criminal proceedings.** The changes shall bring the criteria for compulsory defense in line with the international and the CoE standards (e.g. defendant is not arrested but risks a custodial sentence), but also clarify the actual wording of the criteria of accessibility of legal aid.
3. **To develop** (in tandem with the revision of the LCP, and as a short term measure) **relevant guidance of the Supreme Court of RNM leading to unification of the practice of assessment of the criteria of accessibility of legal aid** such as “incapable to defend himself or herself successfully”, “financial situation”, “defendant cannot bear the expenses of the defense”, “complexity of the case”, “if the payment of the recompense and the essential expenses would mean endangering of the defendant’s

²⁴ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, A/RES/67/187, Principle 3 “States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process. Legal aid should also be provided, regardless of the person’s means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty”, Principle 10 “Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups”.

²⁵ Article 6 (3) (c) ECHR “Everyone charged with a criminal offence has the following minimum rights:.. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”.

²⁶ The right of access to a lawyer in criminal proceedings applies throughout the entire proceedings, from police questioning to the all higher appellate stages. Access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated under the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Legal aid is not a right guaranteed to everyone involved in a criminal procedure and the states are not obliged to provide legal aid to anyone, but to the persons that do not have the means to hire a lawyer and the interests of justice require that in the particular type of case or procedure, legal aid is provided. The state shall set the rules regarding the means test, including the financial threshold and the methods of checking the person’s eligibility. Determining whether the ‘interests of justice’ (merits) require the provision of legal aid involves taking three factors into account, namely: the seriousness of the offence and the severity of the potential sentence; the complexity of the case; the personal situation of the accused. Where an individual’s liberty is at stake, the interests of justice in principle call for legal representation. This obligation arises even if there is only a possibility of a custodial sentence. The national law can lay down more generous standards. The mere provision of legal assistance does not mean that it will be effective. A legal aid lawyer’s manifest failure to mount a practical and effective defense may violate Article 6. There is no absolute right to choose one’s own court-appointed legal aid lawyer. Please see: ECtHR, Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb). Available in Macedonian at https://www.echr.coe.int/Documents/Guide_Art_6_criminal_MKD.pdf

²⁷ Please see: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Access to a lawyer as a means of preventing ill-treatment. Extract from the 21st General Report of the CPT, published in 2011. Available in Macedonian at <https://rm.coe.int/16806ccd1d>.

²⁸ Please see: European Union, Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (Text with EEA relevance) 2009/C 295/01; Directive 2013/48/EU (2013) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; European Commission, Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, OJ 013 C 378.68; Directive (EU) 2016/1919 on provisional legal aid for suspects or accused persons deprived of liberty and for legal aid in European arrest warrant proceedings (provisional legal aid to persons who are deprived of liberty – and before questioning; until a decision on eligibility for legal aid can be made); Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; Framework Decision 2001/220/JHA on the situation of victims in criminal proceedings, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; Directive 2012/29/EU on victims’ rights; Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

subsistence or the subsistence of another person”, “psycho-physical impairment or if there are serious consequences as a result of the crime”, ***specifying the modality of informing victims of crimes on their procedural rights and the moment of appointment of an ex-officio lawyer for representation of the interest of the victims of crime during criminal proceedings.***

4. ***To adopt the relevant legislation and establish the threshold for eligibility for legal aid*** (e.g. certain number of average salaries, average monthly income of the family or any other predictable formula), ***to specify and simplify the procedure of confirmation of the criteria “financial situation”***, including to abolish the practice that the defendant collects several certificates from various institutions, eventually ***shifting to the possibility to get such a confirmation from one institution (“one stop shop” or using electronic application)***. It is to remind that under the LFLA, the process of evaluation of the financial capacity is performed by the MoJ which for that purpose collects all the relevant information²⁹.
5. ***To develop a pilot project on access to legal aid at early stage of criminal proceedings***, aiming at development of an effective mechanism of access to lawyer (as applicable ex-officio lawyer) when persons are being summoned for interrogation by the police, especially if placed in detention. The criminal justice actors, in particular the police, prosecution, courts and the legal aid system should take concerted efforts to ensure that legal aid is provided to any suspect/defendant from the moment of detention, prior to the first questioning by police, as prescribed by ECtHR case law.

²⁹ Currently, MoJ is developing a software, which will allow connecting to all relevant databases of institutions.

2. APPOINTMENT OF EX-OFFICIO LAWYERS TO PROVIDE FREE LEGAL AID

According to the LCP, ex-officio lawyers shall be appointed by the court president³⁰. Courts use different practices for appointment of ex-officio lawyers, *i.e.* there is no unified system in this regard. Some courts follow the Bar Association's list of ex-officio lawyers, lawyers being chosen in a random manner. Nevertheless, some lawyers from the list might not be available when requested or not accessible at the contacts included in the list.

Judges want to have lawyers involved in proceedings as soon as possible, so they might be tempted to appoint those lawyers who are available to immediately respond to the judge's call, "in 90% of the cases, a lawyer needs to arrive at the court within 15 to 30 minutes³¹", "known to the court, who can prepare the defense quickly and with good quality", "already 'proven' lawyers who know the matter and can easily manage to engage in the defense of the defendant". These lawyers are called most often. In practical terms, the judge contacts a lawyer from the list (depending on the situation and urgency of the case) by telephone or in writing. As a result, the modality of appointment of ex-officio lawyers is perceived to be unclear and lacking transparency. This approach is in favor of the judges and the speed of the proceeding, it is disadvantageous for some lawyers from the list ("some lawyers are never called"; it leads also to an unfair competition between lawyers) but totally unacceptable from the perspective of preparation of the defense and interests of the defendant.

In addition, during the fact finding mission there were signals of other vicious practices: lawyers who are too diligent and "vocal" during the process will not be appointed as ex-officio lawyers next time; appointment according to lawyer's personal ties with those in charge of the proceedings (judges, prosecutors, police officers, etc.); police suggesting a particular lawyer.

It is to mention that breaking the dangerous links between police, criminal investigation bodies, courts, on the one hand, and lawyers, on the other hand significantly enhance the independence of the lawyers. For this purpose, the appointment of lawyers by specialized legal aid authorities/ bodies is a common practice for many European countries.

The defendant has in practice limited role in choosing an ex-officio lawyer. There have been cases when defendants who are parties in multiple proceedings ask for the same lawyer to be their defence attorney in the given proceeding or they ask for a lawyer that defended them in criminal proceedings in the past.

The defense attorneys, in general, are rarely dismissed due to improper or negligent performance of duties. Defendants with ex-officio lawyers are even less tempted to ask for replacement of their ex-officio lawyer with another ex-officio lawyer. But there are cases when defendants engage lawyers privately, doubting that the lawyer appointed ex-officio does not engage sufficiently (somebody they know or was recommended to them and thus trust more than the one appointed ex-officio and who they do not know). It is not to exclude situation when defendant or family choose a lawyer whom they think is influential or close to the judge in charge of proceedings, or to the ruling political authorities so s/he can influence the prosecutor or the judge).

³⁰ Art. 74, 75 LCP. Actually, there is an initiative to change the LCP and offer this competence also to the judge presiding the hearing. This solution might eliminate some administrative steps; nevertheless it might lead to less overall transparency in the procedure of appointment of ex-officio lawyers.

³¹ The defendant may also verbally accredit his or her counsel on record, before the body that conducts the procedure (LCP, art. 71 (6)), provision which "offers" the legal solution to appoint "lawyers from the room".

With the aim to contribute to adequate possibilities of preparing the defense and to enhance the independence of lawyers, but also to increase the transparency of the process of appointment of the ex-officio lawyers it is recommended:

1. ***To develop software solution for appointment of ex-officio lawyers in criminal proceedings.*** This long-term recommendation³² and sustainable solution is strongly supported by the legal professionals. A similar practice exists while appointing ex-officio lawyers by the 34 ROs MoJ based on provisions of LFLA (alphabetical order). The system can be managed by the Bar Association and should enable appointment of ex-officio lawyers based on clear criteria (eventually alphabetically or by another order of the lawyers registered in the system; taking into consideration availability for certain periods of time and the existing workload; eventual specialization by category of cases). Such a system can include many other functions³³ and contribute to prevention of vicious practices, such as manifestation of corruption.
2. Until the software solution is developed, ***to update regularly the list of ex-officio lawyers*** (not only in order to add new names, but also for the purpose of updating the phone numbers, addresses, e-mails). The Bar Association shall take all appropriate measures to ensure that in the lists are included only lawyers generally available for certain periods of time that, where possible, female lawyers are available to represent female defendants, accused and victims.
3. ***To renew the dialogue and agreements of the Judiciary and the Bar Association concerning appointment of the ex-officio lawyers*** in alphabetical order (with relevant exceptions, e.g. preference of the defendant) from the list of ex-officio lawyers, approved by the Bar Association, while ensuring adequate balance of the time for preparation of the defense and the promptness of involvement of the ex-officio lawyers in the proceedings. A starting point can be a round table with participation of all the relevant stakeholders (such as the presidents of the first instance courts, the appellate courts and the Supreme Court and the representatives from the BAR, MoJ, prosecutor's office, the representatives from the social centre of welfare) to discuss an eventual memorandum of collaboration on appointment of ex-officio lawyers, unification of the rules for appointment of the ex-officio attorneys in all courts, development and implementation of a software solution and adjusting the lawyers tariff.³⁴

3. PROVIDERS OF LEGAL AID IN CRIMINAL PROCEEDINGS

³² It implies legislative changes (LCP, LA) to reflect the new modality of appointment of the ex-officio lawyers.

³³ For example, the software of the Legal Aid Board of Moldova includes following modules: the database of all requests and appointments of legal aid lawyers; complex search system that facilitates management of requests for appointment of lawyers; individual lawyer's cabinet including on-line reporting system; automatic generation of decisions related to legal aid; automatic expedition of decisions to the addressees; generating duty lawyers' schedules; database of lawyers' reports, including financial ones; interconnection with databases of other authorities including for assessment of financial capacity of the beneficiaries, monitoring the involvement of lawyers in proceedings, automatic payment of lawyers' fees etc.; internal and external monitoring modules; record of training of lawyers; automatically generated statistical data and synthesis reports; statistics generated for the general public.

³⁴ The memorandum should reflect the commitment of all the stakeholders to respect the agreed rules, including on using the software; and until the software is functional, - to respect the manner of appointment of ex-officio lawyer based on the lists issued by the Bar, according to the LCP.

According to the LCP, only a licensed attorney may act as a counsel for the defense³⁵. It is to appreciate that involvement of the lawyers in the system of providing legal aid in criminal proceedings is on voluntary basis.

The Bar Association drafts the list of ex-officio lawyers³⁶ and the list of duty lawyers³⁷. The lawyers are included in the lists based on their request, without any admissibility criteria. At the moment, there are 2820 lawyers members of the Bar Association³⁸ of RNM, while only 119 persons are in the list of duty lawyers (number of persons per region vary, e.g. Skopje- 26, Bitola – 28, Kicevo – 2, Kavadarci - 1) and 139 lawyers are in the list of ex-officio lawyers (e.g. Skopje- 35, Bitola – 33, Kicevo – 1, Kavadarci – 1).

The number of ex-officio lawyers in some regions (e.g. Kicevo, Kavadarci, Ohrid) is quite low and might appear the issue of availability of ex-officio lawyers. Nevertheless, actually, the low number of legal aid lawyers in some regions is not perceived as being a big problem because the number of cases of ex-officio defense is quite low and in the eventuality of a problem, the cases can be assigned to the lawyers from neighboring regions (the distances between various cities are not so big).

The motivation to be included in the list of ex-officio lawyers vary. Some lawyers explain their motivation to provide ex-officio services based on the social role of the lawyers and adherence to the principle that everyone has a right to quality and effective defense, observing the principle of non-discrimination on any grounds. Some people accept to be involved in the system just because they do not have sufficient private clients, while for ex-officio services receive permanent and secure income.

There are various factors that can demotivate lawyers to activate in the system or be part of it. One of the main elements is the remuneration effectively paid for ex-officio services. Obviously, adequate fees will attract experienced and specialized lawyers, and leads to better professional diligence and performance. The Bar Association approved tariffs³⁹ for legal services. The level of remuneration of the ex-officio lawyers is established in every case by the court and in many cases is not predictable, being usually considerable lower than the Bar tariffs. Lawyers pretend that “the basic fee rate is set relatively low and a large part of the services provided remain for free”, “50 Euro for 10 hearings”, “inconsistency of the level of payment”, “depends on how much the judge thinks presence at hearings should be paid”, “participation in one hearing will be around 30 Euro regardless the type of the criminal offence, the gravity of the crime and the envisaged punishment”⁴⁰. In some cases, there are delays in payment of the fees. For certainty in the level of the fees for ex-officio legal services, some legal professionals plead for approval of reduced lawyers’ fees for the legal services paid from the state budget. Understandable, lawyers support the idea that the Bar tariffs should be fully respected and applied.

In various countries, the level of fees for legal aid services is established by various entities (e.g. Ministry of Justice – Italy; the Legal Aid Board – Moldova; Government - Ukraine, Austria, Finland), but in any case based on dialogue between Ministry of Justice, Judiciary, Bar Association, depending of the system of legal aid delivery and chosen formula of establishing the level of remuneration.

³⁵ LCP, art. 71 (4). There were declared unconstitutional the provisions of art. 71 (5) of the LCP that for crimes that entail a prison sentence of at least ten years, the defense counsel shall be an attorney with at least five years or working experience, following the passing of the bar exam. Indeed the practice shows that the working experience is not a sufficient guaranty of qualification and diligence.

³⁶ <http://www.mba.org.mk/index.php/mk/listi-advokati/lista-sluzbena-dolznost>

³⁷ <http://www.mba.org.mk/index.php/mk/listi-advokati/lista-dezurni>

³⁸ <http://www.mba.org.mk/index.php/mk/>

³⁹ <http://www.mba.org.mk/index.php/mk/akti/advokatska-tarifa>

⁴⁰ The Bar tariff is set according to the envisaged punishment, e.g.. for a criminal act for which is foreseen a imprisonment of up to 3 years, the basis tariff is 100 Euro, to this sum is added 30% hourly rate and 20 % hourly rate, or all in total will be 150 Euro, deducting the 18% tax for one representation (or one action of any kind).

Some lawyers are demotivated by the fact there are low expectations from ex-officio lawyers. The activity and performance of the ex-officio lawyers should be examined taking into consideration the role of lawyers in the justice system in general, their procedural status and capacity, granted, assumed and perceived independence of lawyers. During fact finding mission, there were underlined several issues, such as “rights and powers of lawyers vis-à-vis state authorities”, “inequality of arms”, “the inferiority of the defense vis-à-vis the superiority of the prosecutor”, “undeserved privileged status of the public prosecutor in court”, “insufficient time to study the case”, “evidence analysis, preparation and presentation of the defense case during the proceedings”, “overestimated justice system”, “limited courage of courts to reject indictments or acquit”, “legal actions, forensic reports, psychological advice or any other legal aid, should become free, fast and easily accessible to a party in need”, “violation of defendants’ rights at any stage of the proceedings”, “suspect questioning outside of police stations”, “limitations to meet the defendants in detention”, “the length of court proceedings”, “sometimes the inappropriate conditions in which hearings are held”, “incompetence and illiteracy of some judges, public prosecutors and law enforcement”, “corruption remains to be the biggest obstacle and key challenge in the practice of courts, police and institutions”, “ties of some lawyers with public prosecutors and judges”, “fees are split between the parties involved in the case”, “corruption, corruption, corruption”. Many of these perceived issues need additional documentation, determination of their incidence, implications and impact and developing subsequent systemic responses.

With the intention to increase the level of motivation of the lawyers to participate in the system of delivery of legal aid in criminal proceedings and to enhance their independence, it is recommended:

1. ***To create a WG⁴¹***, composed of representatives of the MoJ, the Bar Association and the Judiciary (the presidents of the courts) in order ***to determine the level and the modality of calculation of the fees for lawyers for the legal aid (ex-officio defense and representation of victims) in criminal proceedings***. The level of fees should be comparable with the Bar Tariffs and private practice, with due consideration of the amount of legal aid needs and the capacity of the RNM to respond to these needs. The modality of calculation of fees for lawyers should be predictable, based on clear criteria, with limited possibilities of discretionary interpretation (eventually a separate section in the lawyer’s tariff only for ex-officio representation).
2. Bar Association ***to take relevant measures including increasing awareness to motivate lawyers to participate in the system of delivery of legal aid in criminal proceedings***, especially in the regions where the number of lawyers in the system is considerably low.

4. QUALITY OF THE LEGAL AID DELIVERED BY EX-OFFICIO LAWYERS AND QUALITY ASSURANCE SYSTEM

⁴¹ In line with art. 109 LCP.

The legal aid in criminal proceedings in the RNM is delivered by licensed defense lawyers, fact which brings a presumption of quality. Nevertheless, this is not a sufficient guaranty of quality. The quality depends not only on the professional knowledge and skills of the lawyers, but also on their motivation and diligence.

The quality of the services of the ex-officio lawyers in criminal proceedings in RNM is brought into question in certain cases, by the parties and by other lawyers. In many cases, the quality of the services will not depend on the fact the lawyer provide services based on contract or on appointment. Obviously, persons involved as ex-officio lawyers in criminal proceedings are tempted to present their legal services as being of good quality, timely, effective and their efforts as being diligent. Some persons opine o contrary, that “in most of the cases ex-officio lawyers are just present at the trial without any effort or interest in the case or in the client”, “extremely poor quality”, “lack of trust between the defendant and ex-officio lawyer”.

The methodology of the needs assessment does not permit to evaluate the general level of the quality of the services provided by the ex-officio lawyers in the RNM⁴². Still, it permits to identify the factors than can influence the level of quality.

In addition to all negative factors that push for low quality of the legal services in general⁴³, there are particular elements leading to low quality of the legal aid services. It was already mentioned the level of payment of the services, but it is to underline that increase in the fees of the lawyers is not a mathematic equation to increase the quality of the services. Moreover, the context of low expectances from ex-officio lawyers does not constitute an incentive for diligence and the stereotypes⁴⁴ work against any effort of diligence, ex-officio lawyers are expected to be “present/ registered as present but silent, without creating unnecessary troubles to other participants in the process”. The appointed lawyers have no obligation to justify their engagement or actions taken or not taken to any institution for a specific case they have been engaged in.

There also objective reasons. The legal aid lawyers and their beneficiaries in many cases do not have at their disposal necessary resources to be able to build real and effective defence (e.g. for collecting evidence, incl. expert opinions, etc.). In cases when the main hearing is held in the absence of the defendant, the lawyer for objective reasons is not able to provide the best quality defense supported by evidence since they might not know what kind of evidence the absent or unreachable defendant has.

Usually, the legal aid systems adopt a combination of several methods of contributing to the quality of the legal aid services: selection of the lawyers for admitting to provide legal aid, professional guidance, training, specialization of the lawyers in particular areas of law, internal and external monitoring of the quality of the services⁴⁵, disciplinary procedures. Many of the mechanisms to contribute to the quality of the legal aid are and should be in the hands of the Bar Association.

⁴² Until now, no complex research on the assessment of the quality of the legal services and the legal aid services in criminal proceedings in RNM was performed.

⁴³ Please see above the perceived issues concerning the role of lawyers in the justice system.

⁴⁴ One of the stereotypes is that the quality of legal aid services can be in the best case at the same level of quality as the general legal services. There are examples when after implementation of a functional quality assurance mechanism, the quality of legal aid improved considerable and in some particular areas (e.g. representation of the victims of crimes, juveniles, persons with limited abilities) the level became even higher than the level of quality of general legal services.

⁴⁵ Please see various examples. United Nations, *Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes*. Practical Guidance and Promising Practices. May 2019.

During fact finding mission, some interlocutors were not mentioning any particular modality to ensure the quality of ex-officio services, stating that “it depends entirely on the lawyer”, “some are just ignorant in this sense”, while a part of the interlocutors underlined the training and checks in the context of disciplinary proceedings.

Attorneys shall provide legal assistance to the clients conscientiously and professionally, in accordance with the law, the Code of Ethics of the Legal Profession and other acts of the Bar Association⁴⁶. The role of the Bar Association is crucial. At the moment, the role of the Bar Association in management of the legal aid system is limited. Nevertheless, it can influence directly the quality of the legal services in general and the legal aid services in particular. The Bar Association of the RNM provides continuous training for lawyers in a multitude of areas (including with support of development partners, such as CoE, OSCE etc.), criminal proceedings being among them. The Bar Association is currently working intensively to set up a Lawyers’ Education Centre which will ensure an institutionalized, structured and systematic approach to this issue.

Aiming to improve the quality of the legal aid in criminal proceedings, it is recommended to the Bar:

1. ***To continue the efforts for establishment of the Lawyers’ Education Centre.*** Through this formula or other modalities, to ensure initial and continuous training of the lawyers, including the lawyers delivering legal aid in criminal proceedings. Specific training modules should be produced such as to representation of the victims of crimes, women in the criminal justice system such as VAW and DV, women who are in conflict with the law, sexist (gender based) hate speech, gender based discrimination, child friendly justice, enhanced/ better access to justice for indigent people (including women and children) etc. , with the objective of strengthening the capacity of the lawyers to respond to the specific situation, experience and identity of their beneficiaries and clients. A ToT program, for selected lawyers based on above training modules, can contribute to sustainability of the training programs for lawyers.
2. ***To examine the opportunity of development of professional standards for the activity of lawyers in the criminal proceedings*** (opposable implicit to the lawyers providing ex-officio defense in criminal proceedings; for activities in particular proceedings or for particular categories of vulnerable clients/beneficiaries). A starting point could be development of the professional standards of representation of victims of crimes (including reflecting adequate consideration of the victims’ needs and gender sensitive aspects).
3. ***To consider, for regions with a sufficient number of lawyers providing ex-officio services, the possibility of de-facto⁴⁷ specialization of the ex-officio lawyers*** with subsequent specification of the specialization in the list of ex-officio lawyers provided by the Bar. Specialized lawyers can benefit of additional training, provided with the support of the interested development partners.
4. ***To examine the opportunity of development of a mechanism for monitoring the quality of legal aid⁴⁸.*** In order to objectively assess the quality of legal aid services, a set of performance indicators could be developed (based on professional standards), subject to objective verification, which would allow quantifying (as far as possible) the effort made by the lawyer in the defense based on the client's interests.

⁴⁶ Art. 17, Attorney’s law of the Republic of North Macedonia, Official gazette No. 59/02.

⁴⁷ This option does not imply any legislative changes. The lawyers who apply for the list should specify the predetermined areas of specialization/ preferences (e.g. by categories of crimes, persons, etc.). Starting from this, the BAR can divide all the lawyers by their choice (e.g. for 1 year) and offer them additional guidance and training, based on this kind of specialization.

⁴⁸ MoJ also do not have yet any quality assurance mechanism for legal aid delivered based on LFLA.

These could include: indicators of general effort (e.g. continuous training, self-training); process indicators (e.g. the volume of the assistance provided in relation to the necessary, the quality of documents prepared by and with the participation of the lawyer, participation in procedural actions, number of applications, coherence of actions in a certain context, gender sensitive approach etc.) and result indicators (change in the client's situation as a result of the lawyer's intervention). The evaluation can also take into account the opinion of the beneficiary, determined through a survey. Results of the monitoring can be used for planning of the training activities, development of additional professional standards and guidance, while being a strong proactive measure to promote quality of the legal services.

In addition,

5. For ***objective assessment of the quality of legal services and legal aid services in criminal proceedings, a complex research is necessary***. Such a research might contribute to the informed decision on the reform of the legal aid system in criminal proceedings.

5. THE STAKEHOLDERS AND THE COOPERATION

Management of the system of delivery of legal aid in criminal proceedings

The actual system of delivery of legal aid in criminal proceedings in the RNM is not managed by a distinct entity. As described above, the appointment of the ex-officio lawyers and their payment is performed by the courts,

while the assurance of the quality is left with less attention, presumably with the Bar Association, based on its general competence. This model of management has its implications, including on the modality of awareness rising on the right to legal aid and development of the legal aid system in criminal proceedings.

In many European Countries, the legal aid system is managed by distinct entity, Legal Aid board⁴⁹.

It is recommended ***to examine the feasibility of entrusting the management of the legal aid system in criminal proceedings (the entire spectrum of functions) to one distinct entity, with participation of all relevant stakeholders.***

Awareness on the right to legal aid

The level of general public awareness on the right to legal aid in criminal proceedings has a particular importance and certainly is perceived as being quite low. Many persons do not know what to expect from lawyers in general, from the general legal services, while being far from good understanding of the procedures. In the case of mandatory defense, the issue of appointment of an ex-officio lawyer is to be solved ex-officio. Not the same for the cases of the indigent persons, when the defendant has to lodge a motion for appointment of an ex-officio lawyer.

A solution to overpass the situation would be to clearly and unambiguously advise defendants on their right to ask for a lawyer if they are financially unable to pay for it when questioning defendants in any phase of the proceedings. Victims should be promptly informed by the police and other front-line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such rights⁵⁰.

A broader public awareness raising campaign is needed about this possibility, targetting women and men from isolated and marginalized groups. ***Information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, should be made available to the general public through the media, including the Internet, or other appropriate means***⁵¹. Taking into consideration the perceived level of trust in the system of legal aid by ex-officio lawyers, good practices of defense, examples of diligence should be part of the awareness raising campaign.

Statistical data and research on legal aid in criminal proceedings

For good administration of the system of delivery of legal aid in criminal proceedings, it is necessary data on various items, including number of cases, lawyers, type of procedures, as well as demographic data for the recipients of the legal aid, sex disaggregated data per age, ethnic dissent and the legal basis for protection that will allow for cross-sectional analysis that includes gender perspective. Actually, such data is not available.

⁴⁹ E.g. Slovenia (Legal Aid Authority), the Netherlands (Legal Aid Board), UK (Legal Services Commission).

⁵⁰ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, A/RES/67/187, Guideline 7.

⁵¹ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, A/RES/67/187, Guideline 2.

There is limited research on the topic in the RNM. In the recommendations of this paper, there are already included some areas for research that can contribute to the development of the system of delivery of legal aid in criminal proceedings in the RNM⁵².

The Judiciary should revise its items of collection of statistical data and insert the relevant items concerning request and delivery of legal aid in criminal proceedings.

Funding of the system of delivery of legal aid in criminal proceedings (by ex-officio lawyers)

The number of people, who can use legal aid, as well as its quality, can largely depend on the funds allocated from the state budget. Legal aid in criminal proceedings is budgeted from the judicial budget.

Costs for legal aid from the judicial budget⁵³

	2016	2017	2018
Used budget for legal services (EUR)	196,183 EUR	290,354 EUR	445,925 EUR
% of the total judicial budget	0.64%	0.94%	1.42%

A positive trend is the increase in the share of the costs for legal aid in the total judicial budget.

The legal services provided by the LFLA are budgeted and paid from the budget of the Ministry of Justice.

Costs for free legal aid from the budget of the Ministry of Justice⁵⁴

	2016	2017	2018
Planned budget	3,000,000 MKD	3,000,000 MKD	3,000,000 MKD
Realized budget	829,753 MKD	1,386,297 MKD	1,378,904 MKD
% of realized budget	27.66%	46.21%	45.96%

The data shows that there is still potential to increase the use of funds and absorb the allocated funds.

It is to mention that the actual funding formula do not envisage some categories of costs, strictly necessary for development of the system of legal aid delivery in criminal proceedings, such as costs for training and for innovation in the legal aid system. In the experience of many legal aid systems from the developing countries, the costs for training, awareness raising and innovation in the legal aid system were shared with the development partners.

It is recommended to include in the budget for legal aid in criminal proceedings relevant budgetary items for awareness raising, training and innovation in the system of delivery of legal aid in criminal proceedings.

⁵² *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, A/RES/67/187, Guideline 17 "... states should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid".

⁵³ *Access to Justice in North Macedonia*, comprehensive policy study on the access to justice in criminal, civil and administrative procedures. Macedonian Young Lawyers Association, Skopje, September 2019, p. 59.

⁵⁴ *Access to Justice in North Macedonia*, comprehensive policy study on the access to justice in criminal, civil and administrative procedures. Macedonian Young Lawyers Association, Skopje, September 2019, p. 60.

Sinergy and cooperation of the stakeholders

Communication, coordination and cooperation between all justice and other agencies, especially at the local level, to identify local problems and to agree on solutions to improve the provision of legal aid are important. Many professionals, working in the area, are not aware of any recent initiative of reform of the system of delivery of legal aid in criminal proceeding in RNM or about on-going stakeholders' dialogue to solve routine issues. Nevertheless, few interlocutors are even part of such initiatives and perceive a need to improve cooperation between stakeholders. It seems there are little discussion and mutual understanding between stakeholders. The different perception of the judiciary and lawyers about the legal aid in criminal proceedings requires it-self more dialogue for finding functional solutions.

For the actual format of management of the system of delivery of legal aid in criminal proceedings, it is recommended *to perform an annual conference on legal aid in criminal proceedings in the RNM, supplemented by other formats of dialogue at central and local levels between stakeholders.*

6. GENERAL PERCEPTION OF THE SYSTEM OF LEGAL AID DELIVERY IN CRIMINAL PROCEEDINGS IN THE REPUBLIC OF NORTH MACEDONIA

During the fact-finding mission, there were expressed various views on the system of legal aid by ex-officio lawyers in criminal proceedings in the RNM. The appreciation vary from very positive, such as “to a certain extent, our justice system is successful in the practicing of mandatory defense in individual proceedings, has a positive attitude towards indigent persons, at the same time making great efforts to improve the legal treatment of victims of crime”, whenever mandatory defense is required, it appoints an ex-officio lawyer, including for indigent persons and victims of crime”, “ a positive novelty in the fight against discrimination on various grounds, and primarily against discrimination based on the social-economic and property status”, “legislation is well designed for provision of ex-officio lawyers”, “the court pays attention to have an ex-officio lawyer appointed at all stages of the proceedings”, “there are no lawyers in the RNM who would fail to represent and protect the legal interests of their beneficiaries”, “lawyers provide good quality legal aid and efficient defense to defendants”. Such views are coming mainly from people accommodated with the system.

Still, many interlocutors pointed to various issues, such as challenges of accessibility, quality and effectiveness of the legal aid in criminal proceedings described in this paper, underlining the need for a reform, including “there are no positive practices, good trends or key achievements in this area of the criminal proceedings in the RNM”.

Prospective for the reform

During the fact-finding mission, many interlocutors expressed the view that any of the political, legal, economic, socio-cultural or technologic factors can constitute impediments in development of the system of delivery of legal aid in criminal proceedings in the RNM. Still, it was underlined the need for political agreement on that.

Reform of the legal aid system is included in the list of declared priorities for the Reform in the RNM, mainly in the Strategy for reform of the judicial sector for the period 2017-2022⁵⁵. For effective, efficient, and sustainable free legal aid system, it was planned to adopt LFLA (aiming *inter alia* to extend the scope of free legal aid beneficiaries, to strengthen the capacities of the RO of MoJ, to increase the scope of free legal aid providers, to optimise the legal fees for free legal aid, to extend the related costs, to monitor the quality of the work of the providers), to increase the funding of the legal aid system by bringing it closer to the CEPEJ average value in terms of the GDP in the country, to improve cooperation among all stakeholders and awareness on free legal aid⁵⁶. The Assembly of the RNM adopted a new Law on Free Legal Aid, which entered into force on 22 May 2019 and implemented as of October 2019, replacing the 2009 Law on Free Legal Aid. The general opinion is that the LFLA has a positive impact on the situation.

Legal aid in criminal proceedings is not only not specified but expressly excluded from the list of priorities and strategic actions related to free legal aid⁵⁷. Nevertheless, some scarce mentions connected to legal aid in criminal proceedings can be found under other chapters of the Strategy and the action plan. *Inter alia*, it is included a

⁵⁵ Strategy for reform of the judicial sector for the period 2017-2022 with an action plan, <https://rm.coe.int/strategy-for-reform-of-the-judicial-sector-for-the-period-2017-2022-wi/16808c4384>

⁵⁶ Strategy for reform of the judicial sector for the period 2017-2022 with an action plan, 2.6.1 Free Legal Aid, Strategic guidelines.

⁵⁷ Strategy for reform of the judicial sector for the period 2017-2022 with an action plan, 2.6.1 Free Legal Aid, Strategic guidelines.

preoccupation for the access to legal services during police detention and interrogation⁵⁸, quality of legal aid⁵⁹, fees for the ex-officio defense attorneys⁶⁰, strengthening the rights of defense and protection of human rights in the criminal proceedings⁶¹.

A roadmap to improve the system of delivery of legal aid in criminal proceedings in the RNM concerning mandatory defense, indigent persons and victims of crime would be appropriate.

⁵⁸ *Strategy for reform of the judicial sector for the period 2017-2022 with an action plan*, chapter 5 - Reform in Individual Areas, 5.1 – Penal matters. “Particular concern lies with the dysfunctionality of access to a defense attorney in the criminal proceedings”

⁵⁹ *Strategy for reform of the judicial sector for the period 2017-2022 with an action plan*, chapter 5 - Reform in Individual Areas, 5.1 – Penal matters. “In order to monitor the quality of the legal aid provided by defense attorneys appointed ex officio as well as that provided by defense attorneys appointed by the courts for the poor, and to prevent favoring attorneys at the expense of effective defense, it is necessary to establish an independent mechanism within the Bar of RM for evaluation of the quality of the defense provided”.

⁶⁰ *Action plan for implementation of the Strategy for Reform of the Judicial Sector 2017-2022*, 2.6.2.2-1.4, “Determination of special provisions in the fee for ex officio defense attorney”, <https://rm.coe.int/action-plan-for-implementation-of-the-judicial-sector-for-the-period-2/16808c4382>

⁶¹ *Action plan for implementation of the Strategy for Reform of the Judicial Sector 2017-2022*, 5.1.2-1. “Fair treatment by strengthening the rights of defense and protection of human rights in the criminal proceedings”.

IV. LIST OF RECOMMENDATIONS

1. *To perform a complex research on “met and unmet” legal aid needs in criminal proceedings in the RNM.*
2. *To revise the LCP, mainly the criteria of accessibility of legal aid in criminal proceedings.*
3. *To develop (in tandem with the revision of the LCP, and as a short term measure) relevant guidance of the Supreme Court of RNM leading to unification of the practice of assessment of the criteria of accessibility of legal aid, specifying the modality of informing victims of crimes on their procedural rights and the moment of appointment of an ex-officio lawyer for representation of the interest of the victims of crime during criminal proceedings.*
4. *To adopt the relevant legislation and establish the threshold for eligibility for legal aid, to specify and simplify the procedure of confirmation of the criteria “financial situation”, shifting to the possibility to get such a confirmation from one institution (“one stop shop” or using electronic application).*
5. *To develop a pilot project on access to legal aid at early stage of criminal proceedings.*
6. *To develop software solution for appointment of ex-officio lawyers in criminal proceedings.*
7. *To update regularly the list of ex-officio lawyers.*
8. *To renew the dialogue and agreements of the Judiciary and the Bar Association concerning appointment of the ex-officio lawyers.*
9. *To create a WG to determine the level and the modality of calculation of the fees for lawyers for the legal aid (ex-officio defense and representation of victims) in criminal proceedings.*
10. *To take relevant measures including increasing awareness to motivate lawyers to participate in the system of delivery of legal aid in criminal proceedings.*
11. *To continue the efforts for establishment of the Lawyers’ Education Centre by development of specific training modules and consolidate the capacity to deliver the training through a ToT program.*
12. *To examine the opportunity of development of professional standards for the activity of lawyers in the criminal proceedings.*
13. *To consider, for regions with a sufficient number of lawyers providing ex-officio services, the possibility of specialization of the ex-officio lawyers.*
14. *To examine the opportunity of development of a mechanism for monitoring the quality of legal aid.*
15. *To perform a complex research for objective assessment of the quality of legal services and legal aid services in criminal proceedings.*
16. *To examine the feasibility of entrusting the management of the legal aid system in criminal proceedings (the entire spectrum of functions) to one distinct entity, with participation of all relevant stakeholders.*
17. *To perform a broad public awareness raising campaign on the right to legal aid.*
18. *To revise the items of collection of statistical data by courts and insert the relevant items concerning request and delivery of legal aid in criminal proceedings.*
19. *To include in the budget for legal aid in criminal proceedings relevant budgetary items for awareness raising, training and innovation in the system of delivery of legal aid in criminal proceedings.*
20. *To perform an annual conference on legal aid in criminal proceedings in the RNM, supplemented by other formats of dialogue at central and local levels between stakeholders.*

A roadmap to improve the system of delivery of legal aid in criminal proceedings in the RNM concerning mandatory defense, indigent persons and victims of crime would be appropriate.

V. TENTATIVE FRAMEWORK FOR IMPLEMENTATION OF THE RECOMMENDATIONS

V.I SHORT-TERM RECOMMENDATIONS (1-2 years)

RECOMMENDATIONS	RESPONSIBLE INSTITUTION	TIME FRAME
<i>1. To perform a complex research on “met and unmet” legal aid needs in criminal proceedings in the RNM</i>	MoJ	2021
<i>2. To develop relevant guidance of the Supreme Court of RNM leading to unification of the practice of assessment of the criteria of accessibility of legal aid, specifying the modality of informing victims of crimes on their procedural rights and the moment of appointment of an ex-officio lawyer for representation of the interest of the victims of crime during criminal proceedings.</i>	SC Judiciary	2020
<i>3. To develop a pilot project on access to legal aid at early stage of criminal proceedings</i>	MBA	2021
<i>4. To develop software solution for appointment of ex-officio lawyers in criminal proceedings</i>	MoJ MBA Judiciary	2020 –2021
<i>5. To update regularly the list of ex-officio lawyers</i>	MBA	permanent
<i>6. To renew the dialogue and agreements of the Judiciary and the Bar Association concerning appointment of the ex-officio lawyers</i>	MBA Judiciary	September 2020
<i>7. To create a WG to determine the level and the modality of calculation of the fees for lawyers for the legal aid (ex-officio defense and representation of victims) in criminal proceedings</i>	Judiciary MBA MoJ	September 2020
<i>8. To take relevant measures including increasing awareness to motivate lawyers to participate in the system of delivery of legal aid in criminal proceedings.</i>	MBA	permanent
<i>9. To continue the efforts for establishment of the Lawyers’ Education Centre (development of specific training modules and ToT program)</i>	MBA	2020-2021
<i>10. To examine the opportunity of development of professional standards for the activity of lawyers in the criminal proceedings.</i>	MBA	2021
<i>11. To examine the opportunity of development of a mechanism for monitoring the quality of legal aid</i>	MBA	2021
<i>12. To perform a complex research for objective assessment of the quality of legal services and legal aid services in criminal proceedings</i>	MoJ	2021
<i>13. To examine the feasibility of entrusting the management of the legal aid system in criminal proceedings (the entire spectrum of functions) to one distinct entity, with participation of all relevant stakeholders.</i>	MoJ Judiciary MBA	2021
<i>14. To perform a broad public awareness raising campaign on the right to legal aid</i>	MoJ Judiciary	2020

	MBA	
<i>15. To revise the items of collection of statistical data by courts and insert the relevant items concerning request and delivery of legal aid in criminal proceedings</i>	Judiciary	end 2020
<i>16. To include in the budget for legal aid in criminal proceedings relevant budgetary items for awareness raising, training and innovation in the system of delivery of legal aid in criminal proceedings</i>	MoJ	end 2020
<i>17. To perform an annual conference on legal aid in criminal proceedings in the RNM, supplemented by other formats of dialogue at central and local levels between stakeholders</i>	MoJ Judiciary MBA	annually

V.II LONG-TERM RECOMMENDATIONS (3-5 years)

RECOMMENDATIONS	RESPONSIBLE INSTITUTION	TIME FRAME
<i>18. To revise the LCP, mainly the criteria of accessibility of legal aid in criminal proceedings.</i>	MoJ	2022
<i>19. To adopt the relevant legislation and establish the treshold for eligibility for legal aid, to specify and simlify the procedure of confirmation of the criteria “financial situation”, shifting to the possibility to get such a confirmation from one institution (“one stop shop” or using electronic application).</i>	MoJ	2022
<i>20. To consider, for regions with a sufficient number of lawyers providing ex-officio services, the possibility of specialization of the ex-officio lawyers.</i>	MBA MoJ	2022

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**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.*

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www.coe.int

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This study was produced with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party.

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