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ALIGNING THE LAW ON FREE LEGAL AID WITH THE NEW LAW ON COURT EXPERTISE FROM 2023

Assessment of the need for amending the Law on Free Legal Aid with recommendations

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I. Background and objective of the assessment

This assessment was prepared under the auspices of the EU and Council of Europe joint action HFIII: [HF 9 - Towards a Consolidated and More Efficient Free Legal Aid \(FLA\) System in North Macedonia](#), following a request from the Ministry of Justice (MoJ). The MoJ is currently in a process of establishing a working group tasked to amend the Law on Free Legal Aid (LFLA). The amending of the Law is planned in two separate phases. The first phase encompasses urgent and immediate interventions in the Law concerning its alignment with the new Law on Expertise adopted in 2023 to unblock the FLA cases stuck in courts. The second phase will include more comprehensive revisions of the entire Law on FLA to align with the new Strategy for Judicial Sector Reform.

This assessment outlines a set of recommendations for the first phase of amendments, necessary for harmonizing the LFLA with the newly adopted Law on Court Expertise, ensuring compliance with EU and Council of Europe standards.

II. Methodological approach

This assessment was prepared through a thorough review of the current national legislation in force relevant to the subject matter of this mission (*Law on Free Legal Aid, Law on Court Expertise, Law on Civil Procedure, Law on General Administrative Procedure*). The findings of the review compared against the relevant European standards related to access to justice (particularly the [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](#)) as well the different comparative approaches used in national legislation (See [Expert Witnesses and the Legal Aid - Comparative overview on the modalities for engagement and remuneration of expert witnesses within the national legal aid systems in Europe](#)). During the preparation of the document, the consultant met with Mr. Petar Mirkovikj, State Advisor at the Ministry of Justice and responsible for leading the process of the amendments. At the meeting, the consultant was informed that during the first phase of the amendments, for the sake of efficiency of the process and since the amendments will be minor, the working group will be convened and consulted after the recommendations are provided. The recommendations stated in this document shall be subject to consultations with the working group as well as with all relevant stakeholders.

III. Assessment of the need for amending the Law on Free Legal Aid

With the Law on Free Legal Aid ("Official Gazette of the Republic of North Macedonia" no. 101/19), in article 13 paragraph 5, the right of persons who have been granted secondary legal aid to be exempted from the costs of expert testimony, is regulated. The expert opinion, according to the Law, was entrusted to be performed by the Bureau of Judicial Expertise as a body within the Ministry of Justice and under the Law on Expertise ("Official Gazette of the Republic of Macedonia" No. 15/10, 12/14, 43/14, 148/15 and 64/18).

In 2023, the Assembly of the Republic of North Macedonia passed a new Law on Court Expertise (Official Gazette of the Republic of North Macedonia No. 154/2023). The new law transformed the

Bureau for Court Expertise into the Bureau of Assessment. As of July 29, 2023, the Bureau stopped conducting expert opinions. With this, one of the measures foreseen in the Justice Sector Reform Strategy for 2017-2022 was realised related to the need for de-etatisation of the court expert system. The transformation was made official with the latest amendments to the Law on the Organization and Work of State Administration Bodies ("Official Gazette of the Republic of North Macedonia " No. 121/2024).

Article 29 of the Law on Court Expertise of 2023, which regulates the award and compensation of experts, is relevant for free legal aid. According to this article, expert opinions performed in legal aid cases are charged by a reduced fee, 40% lower than the prescribed fee. Article 29 also requires that the Ministry of Justice reimburses these costs.

However, this provision is inapplicable without the prior intervention of the Law on Free Legal Aid. This is primarily because the LFLA itself refers to the Bureau as the provider of this service and does not foresee the possibility of physical and legal persons performing the expert examination. The provision of Article 13, paragraph 6 of the current Law on Free Legal Aid is exclusive. Expertise for the needs of persons who have been granted secondary legal aid is provided only through the Bureau of Court Expertise.

Considering that this authority no longer exists, users of secondary legal aid are left without access to the services of a court expert. In practice, this gap can and already has severe consequences concerning persons because expert reports are a particularly important means of evidence in civil proceedings, according to Art. 235 of the Law on Civil Procedure is usually filed with the lawsuit or with the response to the lawsuit. Though the judges, by evolving interpretation, can directly apply Art. 29 from Law on Court Expertise and oblige the Ministry of Justice to cover the costs, the reality has shown that this bears the risk of inconsistent application, which can have a negative impact on the legal aid System. Because of this, the Law on Free Legal Aid must be harmonised with the Law on Expertise.

IV. Scope and objectives of the alignment

The alignment of the Law on Free Legal Aid with the Law on Expertise is necessary for the provision of Article 29 of the Law on Expertise to be operationalised in practice. Particularly, the following issues need to be regulated with the upcoming amendments to the LFLA:

- The subjects who will be able to perform expert examination in cases for which free legal aid is approved;
- The method of selection/appointment of the subjects in an individual case, considering the rules of procedural laws;
- The procedure for making an expert finding and opinion as well as giving testimony before the court in the context of free legal aid and
- The procedure for payment of the award and costs of the expert witness.

V. Recommendations for amendments to the LFLA

Both laws can be aligned by making the following amendments to the LFLA:

On who can provide expert opinion:

- The court expert services under the LFLA should be provided by persons registered in the Register of Experts or legal entities registered in the Register of Legal Entities Performing Expertise, as stipulated in the Law on Court Expertise. The reference to the Bureau of Court Expertise in Art. 13 par. 6 of the LFLA should be deleted.
- The expert opinion on the SLA beneficiaries should be carried out by experts from the appropriate field, which is necessary for the legal issue for which the secondary legal aid is approved.

On the manner of selection/appointment of experts in legal aid cases:

- The selection or appointment of the expert who will perform the expert examination should follow the relevant procedural laws where this issue is already regulated. The Law on Civil Procedure contains provisions for when the parties can propose and hire an expert witness and when the court can appoint the expert. The LFLA should contain a reference to the procedural law for this specific issue to avoid different interpretations.

On the rights and duties of the experts in legal aid cases

- The expert should be obliged to cooperate with the beneficiary and the appointed lawyer. It should perform the expertise only for the legal matter specifically stated in the certificate for granting secondary legal aid. For this purpose, the expert witness should have access to the certificate.
- There should be a reference to the laws regulating the performance of the expertise and the procedures in which it is used as an evidential means, as well as the acts of the Chamber of Experts for all issues not regulated in LFLA such as deadlines for conducting the expertise, professional misconduct and liability, grounds for refusal to provide expert opinion etc.

On the procedure for remuneration of expert fees

- The experts who had performed an expert opinion in legal aid cases have the right to compensation in a percentage (40% deducted from its regular fee) of the award and the compensation of the actual costs established by law.
- The expert should submit their bill of costs to the Ministry of Justice on a form prescribed by the Ministry. The Ministry should, within a maximum of 30 days from the day of receipt of the bill of costs, review the bill of costs and issue a decision on the payment of a reward and reimbursement of expenses.
- In cases when additional information or supporting documents might be necessary or the criteria for payment are not met, the relevant provisions LFLA on payment of lawyers should be applied.

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