

His Excellency Mr. Erwan FOUÉRE
Special representative of the European
Union and Head of the Delegation of the
European Commission
Str. Mito Hadzi-Vasilev Jasmin Nr. 52 v
1000 Skopje
Republic of Macedonia

Stockholm & Skopje, 26 November, 2009

Your Excellency,

The Macedonian Young Lawyers Association (MYLA), coordinator of 20 citizens' associations that provide free legal aid in the Republic of Macedonia, and Civil Rights Defenders, a human rights organization, based in Stockholm, Sweden, supporting MYLA in the process of shaping a Law on Free Legal Aid, want to ask your attention for the following:

In October 2007, MYLA brought together 20 citizens' associations that provide free legal aid, for a coordination meeting after having received news that the Ministry of Justice was in a process of preparation of a draft Law on Free Legal Aid. The citizens' associations, wanting to express their opinion with regard to the incentive of adopting a Law on Free Legal Aid, actively began to follow the process of preparation of the Law on Free Legal Aid, requesting to be included in the process, in order to shape a well-founded law. In the period between November and December 2007, the citizens' associations, through MYLA, were invited to three round tables organized by the Ministry of Justice and supported by the OSCE Spillover Monitoring Mission to Skopje. During these meetings, the prepared draft Law was discussed by several members of the legal profession (judges and attorneys). A promise was made by representatives of the Ministry of Justice that the citizens' associations would be included in the further process of drafting. However, notwithstanding this promise, the citizens' associations were not at all included in the future process.

In the period between December 2007 and July 2009, besides the numerous requests to have the law proposal submitted to us, so that we could give our comments based on our experience, we did not receive a positive response from the Ministry of Justice. The law proposal was finalized by the Ministry of Justice without further discussion with the legal profession or the wider public. The citizens' associations providing free legal aid officially received the text of the proposal in July 2009 in order to express their views, when they were invited, through MYLA, to the session of the National Council for European Integration, in order to discuss the proposal. During the Council session, the citizens' associations presented their views, suggestions and comments in front of the

Council members, MPs, as well as in front of the representatives of the diplomatic corps in the Republic of Macedonia.

In October 2009, the Government of the Republic of Macedonia, taking into consideration the recommendations by the European Commission in its Progress Report on the Republic of Macedonia, concerning the inclusion of a legal framework for providing equal access to justice, submitted the proposal of the Law on Free Legal Aid to the Parliament of the Republic of Macedonia. According to the explanation given concerning the adoption of this law, the Government aims to create a system of free legal aid which shall provide equal access for all citizens to the institutions of the system through encountering, realization and providing effective legal aid. The free legal aid system, in accordance with the proposed text of the law, should be based on the principles of equal access to justice, legality, professionalism and competence, respect of moral and ethical standards, responsibility and transparency.

Notwithstanding these principles, if the current version of the proposed law would become law, application of this law could lead to disadvantages for some groups and other problems that we want to highlight:

- the proposal of the Law on Free Legal Aid does not foresee in clear procedural criteria for granting the right to free legal aid;
- the maximum limits of assets allowed which can be possessed by the person seeking free legal aid are too low, which will make this law inapplicable in practice;
- unequal treatment of free legal aid providers;
- free legal aid does not cover all categories of persons;
- not all legal measures are included in the free legal aid;
- the proposal of the law is not in accordance with the existing laws regulating similar areas and the standings of the Constitutional Court.

We would kindly like to ask you to support our efforts to have an effective Law on Free Legal Aid adopted, which will provide a complete, equal and effective access to justice for all persons in the Republic of Macedonia by including the suggestions and comments by the citizens' associations in the existing text of the law, proposed as amendments. If required, the text should be withdrawn and rewritten and afterwards re-sent to the Parliament for adoption. In case the proposed amendments are not accepted, i.e. the proposal of the Law is not withdrawn for further preparation, the text of the law as it is proposed at present will not provide equal access to justice; on the contrary, it will become an obstacle towards access to justice.

Hoping that you will consider our requests and take them into account in your communication with the competent institutions in the field of free legal aid,

Yours sincerely,



Robert Hårdh
Executive Director
Civil Rights Defenders



Filip Janiceski
President
Macedonian Young Lawyers Association