

Centre for Peace, Nonviolence and Human Rights – Osijek  
Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar  
Serbian Democratic Forum  
In cooperation with  
Centre for Peace Studies - Zagreb

# **HOW MUCH EQUALITY?**

## **MONITORING THE IMPLEMENTATION OF THE LEGAL AID ACT AND THE ANTI-DISCRIMINATION ACT**

REPORT FOR 2012

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## SUMMARY<sup>1</sup>

The right of access to justice is one of fundamental human rights. The exercise of that right depends to a large extent on the availability of legal aid for all citizens regardless of their financial and social status. Therefore, the existence of an efficient legal aid system in each country is one of the main guarantees of exercising human rights in everyday life and one of the key elements in fighting discrimination according to property status.

In the process of harmonizing domestic legislation with *acquis communautaire* of the European Union, in Chapter 23 „Judiciary and Fundamental Human Rights“, on 16 May 2008 the Croatian Parliament adopted the Legal Aid Act (hereinafter: the LAA) which, in its most important part, has been implemented since 1 February 2009. The purpose of adopting the LAA was to render possible access to professional legal aid to citizens in poor financial situation in order to exercise certain right as well as to ensure equal access to court and other state administration bodies. Civil society organizations, the Croatian Bar Association (hereinafter: the CBA), legal experts, international organizations and beneficiaries themselves have been regularly warning about the problems in the functioning of the newly established legal aid system in the Republic of Croatia.

As of May 2011, the Centre for Peace, Nonviolence and Human Rights-Osijek, together with its two partners, has been implementing the project „Civil Society Organizations' Initiative for Changes in Anti-discrimination Policy“, funded by the European Union from the IPA 2008 programme *Strengthening the Capacities and Role of Civil Society Organizations in Monitoring of the EU Acquis in the Area of Comprehensive Anti-discriminatory Strategy* and co-financed by the Office for Associations of the Government of the Republic of Croatia, for the purpose of monitoring the implementation of the LAA in combating discrimination and strengthening the capacities of civil society organizations for monitoring public policies, analysis of collected data and reporting.

The Report in your hands was compiled through the implementation of the aforementioned project. The assessment of implementation of the LAA was based on data collected from stakeholders involved in legal aid system: the CBA, nine county state administration offices, fifteen civil society organizations which provide legal aid and 4,120 beneficiaries of legal aid. Likewise, it is based on the analysis of contents of applicable legislation and relevant reports, opinions and findings.

Relevance, efficiency, effectiveness and sustainability of the current LAA created four basic criteria for the assessment of the Act. Of the methods necessary to monitor the Act, as well as to collect and analyze data, we applied analysis of relevant documents, survey with beneficiaries and registered associations – providers of legal aid, surveys with state administration offices which grant legal aid and survey with

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<sup>1</sup> Note: This Report is a summary of the Report for 2012 titled “How much Equality? Monitoring the Implementation of the Legal Aid Act and the Anti-discrimination Act” which contains a total of 128 pages and which elaborates the subject issues in a more comprehensive and a more detailed manner.

the CBA. Apart from that, we defined a unique table of LAA monitoring which, apart from data on age, sex and status of beneficiaries also contains data on recorded cases of possible discrimination pursuant to 11 discriminatory grounds, legal area in which legal aid was provided, the type of legal service provided and data from a questionnaire for beneficiaries of legal aid.

Pursuant to the aforementioned analyses and surveys, the Centre for Peace and its partners assessed the current legal aid system as insufficiently functional and insufficiently efficient because it does not provide the most vulnerable groups of citizens with equal access to justice. The most convincing indicator can be seen in graphic display (3.1.2) according to which, during 2012, ten surveyed associations provided legal aid within the system financed by the Ministry of Justice in as few as 372 individual legal cases, while at the same time outside the system – the financing of which is to a large extent provided by international donors – legal aid was provided in a total of 14,564 individual legal cases.

We assessed the entire 2012 as a lost year because the cycle of legal amendments, without which radical improvements of legal aid system are simply not possible, has not started. The last amendments to the Legal Aid Act from 2011 did not bring expected, necessary and objectively feasible qualitative step forward, nor did they contribute to efficiency and effectiveness of legal aid system. The most serious problems which occur year after year are non-functioning and inadequacy of the system, particularly in relation to socially vulnerable persons for whom the Act was intended, which is clearly evident by a comparatively small number of persons who acquired legal aid. Faced with the fact that legal aid system has not been functioning since the last quarter of 2012, particularly in the part pertaining to primary legal aid due to lack of funds in the State Budget, which has the consequence that citizens are not granted legal aid except in urgent cases, providing sufficient funds is imperative.

Each legal counseling outside court and administrative procedures and administrative disputes has been excluded from the system. Counseling citizens before initiating formal legal procedures often influences citizens' decision on initiation of the procedure and could significantly contribute to decreasing the number of unnecessary procedures and, subsequently, to lifting the burden from courts and administrative bodies. The established property criteria for granting legal aid are still restrictive and lead to the exclusion of a large number of citizens. The property criteria set forth in such a manner represent a risk from discrimination on the ground of property status. Citizens with low income, for whom legal aid was intended, do not have equal access to administrative and judicial bodies compared to other citizens of Croatia. Putting those persons in an unfavourable position because of their inability to exercise legal aid brings into question the effectiveness of the entire anti-discrimination protection system.

**The key message** of this Report is that the LAA should be amended in such a manner as to take into consideration opinions of legal aid providers and legal experts and to establish softer criteria and simplify the procedure of granting primary legal aid to a wide range of beneficiaries who necessarily need such aid. In order to improve the effectiveness and efficiency of the system, it is necessary to ensure significant increase of funds intended for legal aid from the State Budget and other alternative sources, particularly European funds, so that citizens of Croatia could enjoy the same rights and standards as

citizens of European countries that have a well-developed legal aid system and so that they would have equal access to justice.

In the end, it needs to be emphasized that this Report should not be regarded as a comprehensive, rounded text, but rather an attempt to increase the number and sources of information pertaining to implementation of the LAA in practice by including the experience and opinions of key stakeholders involved in the implementation of the Act. It is particularly necessary to appreciate information that we collected from legal aid beneficiaries because of whom the Act was adopted in the first place and state administration offices which grant legal aid.





# **I. REPORT ON MONITORING THE IMPLEMENTATION OF THE LEGAL AID ACT**



# 1. ABOUT THE PROJECT AND THE METHODOLOGY APPLIED

This Report was drafted through implementation of the project: „Civil Society Organizations’ Initiative for Changes in Anti-discrimination Policy“, funded by the European Union from IPA 2008 programme *Strengthening the Capacities and Role of Civil Society Organizations in Monitoring of the EU Acquis in the Area of Comprehensive Anti-discriminatory Strategy* and co-financed by the Office for Associations of the Government of the Republic of Croatia. In order to strengthen capacities of civil society organizations involved in the project, we organized two workshops: the first one titled „Monitoring and Evaluation of Public Policies”<sup>2</sup> and the second one titled „Improving the National Plan for Combating Discrimination: Creation and Communication of Policy Analysis”<sup>3</sup>. Having acquired specific knowledge and skills related to monitoring and evaluating public policies, organizations – participants in the first education enhanced their analytical capacities which will render it possible for them to create well-designed reports on which they will base their future advocating activities. During the second workshop, participants were introduced to the steps and elements of creation and strategic communication of analyses and proposals of public policies. While working on real, specific example – the National Plan for Combating Discrimination, participants from civil society organizations and Obudsperson’s offices acquired specific knowledge and skills that will be useful for them when drafting high-quality advocating and analytical texts of different formats (*policy analysis, summary-brief, press release*).

When selecting the appropriate *data collection methodology*, we opted for analysis of relevant documents, survey with beneficiaries and registered associations - providers of legal aid, interviews/surveys with state administration offices which grant legal aid, survey with the Croatian Bar Association (the CBA) and interview with competent Ministry. Likewise, we defined a unique table of LAA monitoring which, apart from data on age, sex and status of beneficiaries also contains data on recorded cases of possible discrimination pursuant to 11 discriminatory grounds, legal area in which legal aid was provided, the type of legal service provided and data from the questionnaire for legal aid beneficiaries.

The survey encompassed a total of 4,120 beneficiaries of whom 46.2% were men and 53.8%

were women. According to their status, the majority of them were returnees (28.8%), unemployed persons (18.3%), retired persons with minimum pension (12%), socially vulnerable beneficiaries (11.7%),

<sup>2</sup> The following organizations participated in the workshop: B.a.B.e Zagreb, Centre for Civil Initiatives Poreč, Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace Studies Zagreb, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar, Centre for Participation of Women in Social Life Rijeka, Information Legal Centre Slavonski Brod, Civil Rights Project Sisak, Serbian Democratic Forum Zagreb, Association Hoću kući (I Want To Go Home) Knin, Association for Assistance and Education of Victims of Mobbing Zagreb, Association for the Protection and Promotion of the Rights of Senior Citizens Zagreb, Women’s Association Vukovar and a public institution Centre for Human Rights Zagreb.

<sup>3</sup> The following organizations participated in the workshop: B.a.b.e. Zagreb, Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace Studies Zagreb, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar, Cenzura plus Split, Human Rights House Zagreb, Serb Democratic Forum Zagreb, SPUK, Association Sjjaj and representatives from the Ombudswoman’s Office and the Office of the Ombudswoman for Persons with Disabilities.

## 1. About the project and the methodology applied

refugees (3,5%), members of national minorities (3.3%), foreigners (3.1%), displaced persons (1.1%) and 21,7% of persons belonging to other vulnerable groups such as employees who do not receive salaries, victims of domestic violence, self-supporting parents etc. The survey included 10 associations, the CBA and state administration offices.

As the investigating method for the second workshop we used analysis of the National Plan for Combating Discrimination (the NP) and its Action Plan 2011-2012 (the AP) while consulting secondary literature, which is at the same time a methodological limitation. On the other hand, the fact that the analysis was carried out by a group of approximately twenty experts from civil society organizations and Ombudsman's institutions is added value because they act as engaged actors in terms of formulation and implementation of Croatian anti-discriminatory policy.

The main research question of the analysis was: What is the quality of design (objectives and instruments) of Croatian anti-discriminatory policy on the example of the aforementioned documents? More specifically, through the analysis of the NP and the AP we attempted to establish what are the objectives set forth, which instruments and what kind of management structure were anticipated for their realization (Appendix).

### 2. LEGISLATIVE FRAMEWORK OF THE LEGAL AID SYSTEM IN THE REPUBLIC OF CROATIA

Since the beginning of 90's, the Republic of Croatia did not have a comprehensive system of legal aid provision. In the process of harmonizing domestic legislation with *acquis communautaire* of the European Union, in Chapter 23 „Judiciary and Fundamental Human Rights“, on 16 May 2008 the Croatian Parliament adopted the LAA which, in its most important part, has been implemented since 1 February 2009<sup>4</sup>. The purpose of this Act was to render possible access to professional legal aid for citizens in poor financial situation in order to exercise certain right as well as to ensure their equal access to courts and other state administration bodies.

Civil society organizations, the CBA, legal experts, international organizations and beneficiaries themselves have been warning about the problems in the functioning of the newly established legal aid system. Constitutional Court decision No. U- I-722/2009 of 6 April 2011 initiated the procedure for the assessment of conformity of the LAA with the Constitution and it quashed several Articles from that Act, which went out of force by 15 July 2011<sup>5</sup>. The Act on the Amendments to the Legal Aid Act (hereinafter: the ZID LAA) was adopted by the Croatian Parliament at its session held on 8 July 2011 and that Act is still in force<sup>6</sup>.

The European Commission recognized this topic as one of the important topics to ensure fundamental rights and suppress discrimination in fulfilling the criteria set forth in Chapter 23 and, in its progress reports it regularly mentions the legal aid system, as well.

Thus, in the 2012 Progress Report<sup>7</sup> the following is stated: „*It is necessary to improve the legislative framework for legal aid in order to facilitate access to legal aid and promote the role of non-governmental organizations as legal aid providers.*“

However, it is important to emphasize that the Ministry of Justice at the beginning of 2013 initiated the procedure to amend and improve the legislative framework of legal aid, so that by the end of the current year it is expected that the new LAA will be adopted. You can find more information on the course of this procedure later in the Report.

<sup>4</sup> Official Gazette, No. 62/08.

<sup>5</sup> Official Gazette, No. 44/11.

<sup>6</sup> Official Gazette, No. 81/11.

<sup>7</sup> [http://www.mvcp.hr/files/file/2012/121108\\_izvjesceEK.pdf](http://www.mvcp.hr/files/file/2012/121108_izvjesceEK.pdf)

## 2. Legislative framework of the legal aid system in the Republic of Croatia

In relation to amendments to the LAA, in the latest *Report on Monitoring Preparations for Accession to the EU* of 26 March 2013,<sup>8</sup> the European Commission warns about the essential objectives of announced amendments to the LAA in 2013, such as facilitating access to legal aid to citizens on the one hand and fostering the role of non-governmental associations as legal aid providers on the other.

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<sup>8</sup> [http://www.mvep.hr/files/file/documenti/130326-MR-Izvjesce\\_RD\\_HRVF.pdf](http://www.mvep.hr/files/file/documenti/130326-MR-Izvjesce_RD_HRVF.pdf)

### 3. MONITORING THE IMPLEMENTATION OF THE LEGAL AID ACT

For the purpose of monitoring the implementation of the LAA, we defined a methodological procedure for evaluating and monitoring the Act. We set up the criteria for evaluating the Act's relevance, efficiency, effectiveness and sustainability. For each of the aforementioned criteria we prepared a list of key questiones to which we were looking for an answer, indicators for each individual question, sources of data and methods of collecting data.

Of the methods necessary to monitor the Act, as well as to collect and analyze data, we opted for the analysis of relevant documents, survey with beneficiaries and authorized associations, survey with state administration offices which grant legal aid and survey with the CBA. Our invitation for participation in monitoring the implementation of the LAA received response from seven authorized associations<sup>9</sup>. The aforementioned monitoring encompasses the period of twelve months, from 1 January 2012 to 31 December 2012.

#### 3.1. Relevance of the Act

The purpose of the Legal Aid Act is to facilitate citizens of poor financial situation the exercise of rights and access to courts and public bodies in such a manner so that the expenses would be fully or partially covered by the state. We checked the relevance of the Act by asking the following question: Does the Act correspond to the needs of Croatian society and its citizens, to which extent is the selection of beneficiary groups adequate and comprehensive and whether legal areas have been comprehensively defined?

#### Social and economic indicators and citizens' needs

From the standpoint of the needs of citizens for whom the Act was intended, it is important to point at the indicators which provide global picture of the living standard that we currently have in Croatia. From those indicators it is possible to draw a conclusion about possible number of submitters of requests for granting legal aid. The consequences of global economic crisis have also reflected themselves on Croatia and its citizens. In 2011, Croatia had GDP per capita in the amount of EURO 10,203<sup>10</sup>. Since 2008 there has been a GDP decline expressed per capita.

<sup>9</sup> The following organizations participated in the monitoring: Centre for Participation of Women in Social Life Rijeka, Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar, Information and Legal Assistance Centre Slavonski Brod, Civil Rights Project Sisak, Serbian Democratic Forum Zagreb, Association Hoću kući (I Want To Go Home) Knin.

<sup>10</sup> Source: the Central Bureau of Statistics, <http://www.dzs.hr/>.

### 3. Monitoring the implementation of the Legal Aid Act

The at-risk-of-poverty rate<sup>11</sup> in Croatia in 2011 was 21.1%. The at-risk-of-poverty rate for a single person household amounted to 24,240 kuna per year, while the at-risk-of-poverty rate for a household with two adults and two children younger than 14 amounted to 50,904 kuna per year. According to Eurostat data, the at-risk-of-poverty rate for EU-27 countries in 2011 amounted to 16.9%. There are four EU countries in which the at-risk-of-poverty rate exceeds 20% (Greece, Bulgaria, Spain and Romania). With its 21.1% rate, Croatia is among the countries with the highest at-risk-of-poverty rate in the EU.<sup>12</sup>

At the end of December 2012, the Croatian Employment Institute recorded a total of 358,214 unemployed persons. In relation to January of 2012, the number of unemployed persons increased by almost 7% or 23,863 persons. According to data provided by the Central Bureau of Statistics<sup>13</sup>, in 2011 a total of 402,338 beneficiaries of social welfare were recorded. According to the statistical report of the Croatian Pension Insurance Institute<sup>14</sup> for December 2012, a total number of beneficiaries who exercised the right to pension pursuant to the Pension Insurance Act were 1,127,821. Out of that number, 566,873 beneficiaries (50.2%) receive a pension below 2,000 kuna per month, which at the annual level amounts to maximum 24,000 kuna, i.e. less than the at-risk-of-poverty rate for a one person household which in 2011 amounted to 24,240 kuna per year. A large part of Croatia belongs to areas of special state concern. Although those are geographically different areas, the one characteristic they have in common is significant underdevelopment compared to other parts of Croatia.

The presented statistical data indicate that as many as 21.1% of Croatian citizens live on the brink of or below the poverty threshold. When percentages are turned into living human beings, approximately 904,000 Croatian citizens are living with high at-risk-of-poverty rate. If one takes into consideration the conditions for exercising the right to legal aid stipulated by the Act, as well as statistical data from the Ministry of Justice pertaining to the number of granted requests for legal aid, in 2009 there were 2,652 requests submitted at the entire territory of Croatia, in 2010 there were 3,297, in 2011 4,604, while in 2012 there were 5,877 requests submitted, then the aforementioned social-economic indicators seriously raise the question whether the scope of population was adequate.

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<sup>11</sup> The at-risk-of-poverty rate is the percentage of people with an equivalized disposable income below the at-risk-of-poverty threshold. The at-risk-of-poverty threshold is determined in such a manner that an equivalized disposable income per household member is calculated for all households. Then the median value of the national income distribution is determined and 60% of the calculated median value represents the at-risk-of-poverty threshold.

<sup>12</sup> Source: Eurostat 2013-02-26.

<sup>13</sup> Source: <http://www.dsz.hr>

<sup>14</sup> Source: <http://www.mirovinsko.hr>

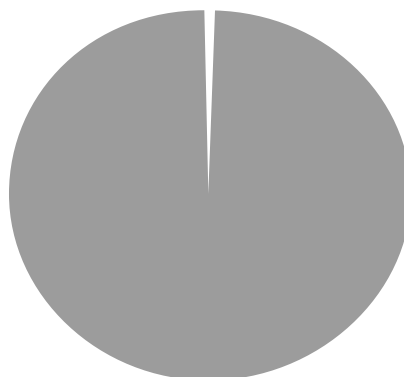


### 3. Monitoring the implementation of the Legal Aid Act

#### Comparison between legal aid provided through the system and outside the system

On the basis of the analysis of surveys conducted with legal aid providers<sup>15</sup>, throughout 2012 associations provided legal aid in as few as **372** individual legal cases through legal aid system financed by the Ministry of Justice. At the same time outside the system, the financing of which is to a large extent provided by international donors, they provided legal aid in **14,564** individual legal cases or, translated into percentages, 2.8% within the legal aid system and 97.2% outside the system.

Legal aid provided within the system 2,8%



Legal aid provided outside the system 97,2%

According to CBA data, in the period between 1994 and 2012 (2012 included), the Bar Association received and processed a total of 16,198 requests for „*pro bono*“ representation, meaning outside the legal aid system. The number of such requests and decisions issued by the Bar Association increases year after year and in 2012 that number exceeded one thousand<sup>16</sup>.

However, the CBA also emphasizes the problem of non-harmonization of regulations that regulate the issue of legal aid with tax regulations. The standpoint of tax bodies is that, although there is no income, the added-value tax must be paid even in cases of „*pro bono*“ work<sup>17</sup>.

<sup>15</sup> The following organizations participated in the survey: Centre for Civil Initiatives Poreč, Centre for Participation of Women in Social Life Rijeka, Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar, Dalmatian Solidarity Committee Split, Croatian Law Centre, Information and Legal Assistance Centre Slavonski Brod, Civil Rights Project Sisak, Serbian Democratic Forum Zagreb, Association Hoću kući (I Want To Go Home) Knin.

<sup>16</sup> Source: Jutarnji list dated 10 March 2013; interview with Robert Travaš, President of the CBA regarding the opening of manifestation titled 31<sup>st</sup> Days of Croatian Lawyers, 14 and 15 March 2013.

<sup>17</sup> Source: from the expose by Mladen Klasić, vice-President of the CBA at the 31<sup>st</sup> Days of Croatian Lawyers, 14 and 15 March 2013.

### 3. Monitoring the implementation of the Legal Aid Act

#### Assessment of legal aid providers

According to the opinion of associations, the LAA does not correspond to the needs of Croatian society and its citizens because it fails to provide, to a sufficient degree, equal exercise of their rights in proceedings before administrative and judicial bodies. The reasons for this they find in reduced legal area of the Act's application, limited possibilities for supporting all forms of legal counseling, restrictive conditions for granting legal aid to citizens, complicated procedure and insufficiently informed citizens.

At the recently held public discussion about the new draft ZID LAA<sup>18</sup>, 50 participants - representatives of different stakeholders included in legal aid system, reached the conclusion that „Croatian legal aid system is inadequate and non-functional and totally ill-suited for socially vulnerable groups of citizens“, because of which it needs to be amended. Such conclusion was also endorsed by representatives from the Ministry of Justice who participated in the public discussion.

#### Groups that cannot exercise legal aid

Foreigners, citizens of the Republic of Serbia and partially of Bosnia and Herzegovina – returnees - cannot exercise the right to legal aid in the procedure pertaining to granting temporary, i.e. permanent stay in Croatia, because of non-existence of reciprocity conditions. Out of 4,120 beneficiaries encompassed by the survey, 1,187 beneficiaries have returnee status, i.e. one quarter of them.

In her Working Reports for 2011<sup>19</sup> and 2012, the Ombudswoman for Gender Equality repeatedly pointed at the problem related to victims of domestic violence.

*„...The Legal Aid Act does not provide victims of domestic violence (1) legal aid in criminal and misdemeanour procedures, nor in land-registry affairs (which is important when it comes to division of property, prohibition of using property and similar) and (2) victims of domestic violence are not informed about the possibility to propose cautionary measures prior to initiating criminal or misdemeanour procedure, such as prohibition to approach the victim or removal of offender from the house, in case the police or state attorney have not already done so, which is something that victim's safety ultimately depends on.“*

Apart from that, the Ombudswoman for Gender Equality in her Working Report for 2012 comments on the available data on legal aid beneficiaries kept by the Ministry of Justice and states the following:

*„Data classified according to beneficiaries' sex are not available because this is not one of the criteria for managing data, which is contrary to the provision of Article 17, paragraph 1 of the Gender Equality Act.“*

<sup>18</sup> The public discussion was held on 3 April 2013 in the Human Rights House in Zagreb, organized by the Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar and Serbian Democratic Forum, in cooperation with the Legal Clinic of the Zagreb University's Faculty of Law, the Human Rights House and Platform 112.

<sup>19</sup> [http://www.prs.hr/attachments/article/97/Izvjesce\\_o\\_radu\\_za\\_2011\\_The\\_right\\_tobraniteljice\\_za\\_ravnolegalost\\_spolova.pdf](http://www.prs.hr/attachments/article/97/Izvjesce_o_radu_za_2011_The_right_tobraniteljice_za_ravnolegalost_spolova.pdf)

#### Legal areas excluded from legal aid system

Legal areas excluded from legal aid system include criminal and misdemeanour law, property law, certain foreclosure procedures in which public bodies vested with legal powers are authorized to collect taxes and public income. Status rights of citizens are not clearly defined.

Amendments to the LAA from 2011 annulled the right to legal aid for misdemeanour and criminal procedures, as well as land registry procedures for victims of domestic violence. Legal areas in which it is possible to grant primary legal aid and in which associations have the authority to provide legal aid have been narrowed down. As an example we state protection of rights of employees before their employers. A provision was stipulated that leaves a possibility of exceptional granting of legal aid in other administrative procedures when such need arises from specific living circumstances of the applicant and members of his/her household. The provision stipulated in such a manner provides a lot of room for discretionary decision-making and different interpretation of „specific living circumstances“, which subsequently leads to uneven application of this legal norm.<sup>20</sup>

One of the conclusions from the aforementioned public discussion was: *„Primary legal aid (legal informing and counseling) must provide citizens with access to the judiciary for as wide as possible range of legal problems. Since everyone is entitled to equal protection of all their rights, topical limitations for primary legal aid should be permissible only exceptionally.“*

#### 3.2. Efficiency of the Act

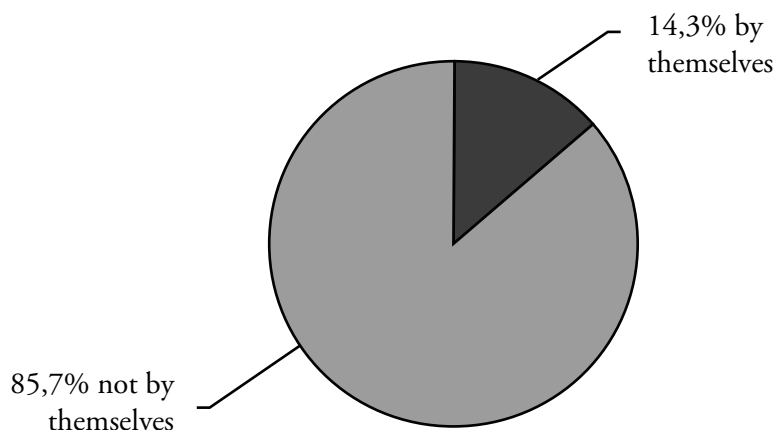
For the purpose of checking the Act's efficiency, we used data received from beneficiaries, legal aid providers, state administration offices and attorneys. We also used statistical data from the Report of the Ministry of Justice and we analyzed Decision of the Constitutional Court of the Republic of Croatia.

In order to determine the *clarity of the procedure* we surveyed a total of 4,120 beneficiaries. When asked if they knew where they could get a request for granting legal aid in their place of permanent residence and/or the closest place to their permanent residence, 31,5% of beneficiaries replied that they knew, while 68,5% replied that they did not know. Of a particular importance is the answer provided by beneficiaries when asked if they could fill in the request for granting legal aid by themselves. As few as 14,3% surveyed beneficiaries can fill in the request by themselves, while the remaining 85,7% cannot do that by themselves.

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<sup>20</sup> One state administration office grants legal aid when client needs to draft a request for the exclusion from the obligation of paying TV subscription fee, while another office refuses the request for the same legal matter.

### 3. Monitoring the implementation of the Legal Aid Act



The procedure for exercising legal aid is so complicated that citizens need legal aid in order to be able to exercise the right to legal aid in the first place.

On the basis of the established indicators and received results, we reached a conclusion that beneficiaries do not understand the procedure for exercising legal aid because 68,5% of beneficiaries do not know where they can get request forms, while only 14,3% can fill in the request by themselves.

As far as the **scope of provided legal aid** is concerned, according to the statistical data of the Ministry of Justice, in the period from the beginning of application of the LAA, i.e. 1 February 2009 until 31 December 2012, the number of submitted requests for granting legal aid has been increasing year after year. The report issued by the Ministry of Justice pertaining to exercise of the right to legal aid and expenditure of funds for 2011<sup>21</sup> contains the following statistical data:

*„In the period between 1 January 2011 and 31 December 2011, a total of 5,541 requests for legal aid were received at the entire territory of the Republic of Croatia, of which number 4,634 requests were approved, 492 were denied, 146 were dismissed, 215 were suspended while other requests were still awaiting decision on 31 December 2011.“*

The Report issued by the Ministry of Justice pertaining to the exercise of right to legal aid and expenditure of funds for 2012 contains the following statistical data:

*„In the period between 1 January 2012 and 31 December 2012, a total of 7,068 requests for legal aid were received at the entire territory of the Republic of Croatia, of which number 5,877 requests were approved, 621 were denied, 137 were dismissed, 245 were suspended while the remaining 190 requests were still awaiting decision on 31 December 2012.“*

In spite of continuous increase of the scope of beneficiaries, we noticed that strategic documents did not elaborate strategic determination from which it would be visible which scope of beneficiaries is

<sup>21</sup> <http://www.mprh.hr/lgs.axd?t=16&cid=3620>

### 3. Monitoring the implementation of the Legal Aid Act

planned within the legal aid system. We are not familiar with the fact that some survey of needs for legal aid was initiated or used at the national level.

When forwarding a Draft LAA into parliamentary procedure, in the accompanying text under Item III the proponent claimed: „*The annual amount of needs for legal aid provision is assessed at 60,242 requests.*“

Back in 2003, the Coalition for Promotion and Protection of Human Rights initiated a campaign for defining the status of non-governmental organizations which provide legal aid in Croatia. A pilot action research was conducted as part of the campaign<sup>22</sup>. According to the results of this research, non-governmental organizations provided a total of 164,081 free legal advice to citizens during 2002 and 2003, while at the same time the Croatian Bar Association provided 724 legal advice and the Ombudsman provided 5,657 legal advice.

Having conducted this project on the basis of analysis of surveys for legal aid providers, associations involved in monitoring during 2011 provided legal aid in 15,265 cases outside the system, and during 2012 in 14,564 individual legal cases, i.e. **in two years a total of 29,829** individual legal cases. For the sake of comparison, since the beginning of application of the LAA, 1 February 2009 until 31 December 2012, i.e. **in four years**, according to data from the Ministry of Justice, legal aid was granted for **16,960** requests.

In the Progress Report for 2010 of the European Commission<sup>23</sup>, when commenting on legal aid system, it was stated that the number of received requests was significantly lower than expected, that non-governmental organizations are still main providers of legal aid and that they have ten times more cases than the number of cases granted through national legal aid system, but, in spite of that, they have a decrease in income from donations.

The Progress Report for 2009<sup>24</sup> submitted by the European Commission warned about the **problem of unequal territorial availability of legal aid**: „...*Effective implementation of legal aid is also jeopardized by unequal territorial distribution of non-governmental organizations providing legal aid.*“

Since the adoption of the LAA in 2008, 34 associations and 2 legal clinics registered themselves with the Ministry of Justice and received the status of authorized legal aid providers<sup>25</sup>. When it comes to territorial distribution of associations and legal clinics, 15 associations and 1 legal clinic are registered in Zagreb, 4 associations are registered in Osječko-baranjska and Vukovarsko-srijemska Counties each, 2 associations and 1 legal clinic in Splitsko-dalmatinska County, while one association is registered in the towns of Bjelovar, Drniš, Karlovac, Knin, Koprivnica, Poreč, Rijeka, Sisak and Slavonski Brod.

<sup>22</sup> The pilot action research within the Campaign for defining the status of NGO's – providers of legal aid was conducted in May and June of 2004 by the Organization for Citizen Initiatives from Osijek, a member of the Coalition.

<sup>23</sup> [http://www.delhrv.ec.europa.eu/files/file/vijesti/Izvje%C5%A1%C4%87e%20o%20napretku%202010\\_hr.pdf](http://www.delhrv.ec.europa.eu/files/file/vijesti/Izvje%C5%A1%C4%87e%20o%20napretku%202010_hr.pdf)

<sup>24</sup> <http://www.delhrv.ec.europa.eu/files/file/progres%20report/CROATIA%202009%20PROGRESS%20REPORT.pdf>

<sup>25</sup> Source: The Ministry of Justice, [http://www.mprh.hr/authorizede\\_uother-i-klinike?dm=2](http://www.mprh.hr/authorizede_uother-i-klinike?dm=2)

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According to data from the CBA Attorney's Directory, there are no registered attorneys in three towns in Splitsko-dalmatinska County (Komiža, Trilj and Vrlika), Karlovačka County (Duga Resa, Ozalj and Slunj) and Požeško-slavonska County (Kutjevo, Lipik and Pleternica), as well as in two towns in Vukovarsko-srijemska County (Ilok and Otok). However, when an insight is made into the lists of attorneys who expressed interest for providing legal aid, the number of towns in which it is not possible to obtain legal aid is far larger.

We also asked the beneficiaries about the availability of offices and legal aid providers in counties in which they were living. Of a total number of 4,120 surveyed beneficiaries, 32% stated that legal aid in their county is easily available, while 68% stated that it is quite difficult to get it. As key reasons which render difficult the availability of offices and legal aid providers beneficiaries stated travelling expenses because of a lack of providers in their place of residence and problems related to obtaining documentation.

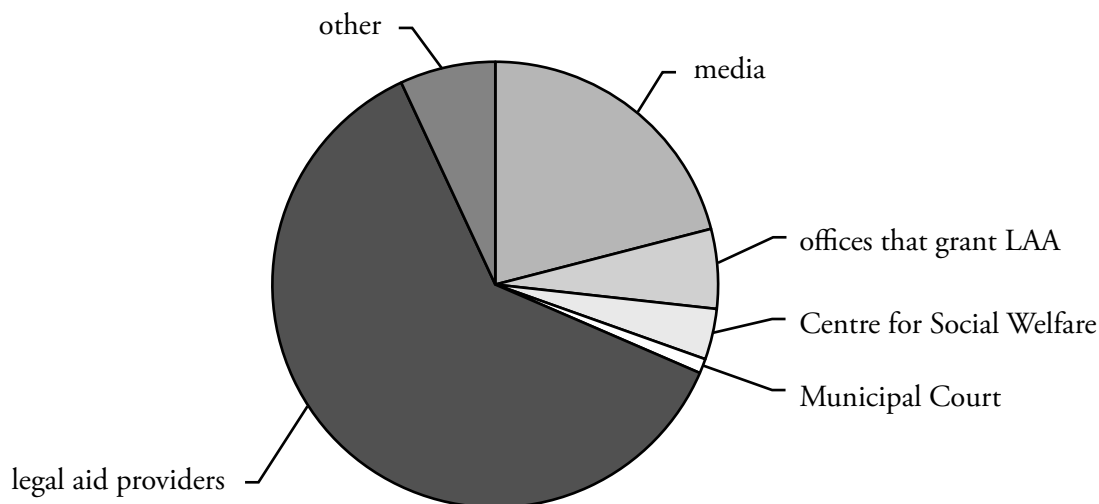
**Informing citizens about the Act** and the possibilities it provides is of great importance for efficient application of the LAA. Associations, providers of legal aid, repeatedly emphasized insufficient informing of citizens as one of identified obstacles in legal aid system. Since some associations provide legal aid in the field, in places where there are neither offices nor other institutions that are obliged to inform citizens, we dare to say that they are the key source of informing citizens about legal aid system in those areas. The provision of the LAA which prohibits legal aid providers any kind of promotion pertaining to provision of legal aid additionally rendered difficult informing citizens about the Act itself and possibilities it provides and, as a matter of fact, it had a counter-productive effect.

In order to obtain data on citizens' awareness about the existence of the LAA and about sources of this information, we requested responses to these questions in survey questionnaire.

According to survey results, 51.2% of surveyed beneficiaries were not informed about the existence of the Act and the manner in which they could exercise their rights, while 48.8% of surveyed beneficiaries stated that they were aware of the Act's existence.

When asked about the sources from which they learned about the existence of the LAA, 50.6% stated legal aid providers as sources, 17.3% media, 5.7% other sources, 4.7% state administration offices which grant legal aid, 3% Centre for Social Welfare, 0.9% municipal courts.

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In practice, **meeting the stipulated criteria of property status** proved to be the key obstacle for exercising legal aid. This problem is also stated by the Ombudsman in his Discrimination Report for 2010<sup>26</sup> „ ... *If the criterion pertaining to real estate was to be strictly applied, it would exclude from the right to legal aid all those living on the brink of poverty in their own home, which is often the case in rural areas of special state concern, as well as on islands and in towns. The absurd is even bigger if the real estate is in rundown condition or cannot be sold.*“

The adequacy of criterion of property status was the subject of assessment by the Constitutional Court of the Republic of Croatia. In the explanation of its Decision of 6 April 2011 which declared null and void the provision of Article 8 of the LAA, the Constitutional Court stressed: „... *Starting from the fact that there is a significantly lower standard and gross domestic product per capita in the Republic of Croatia compared to developed European countries and in spite of a lack of exact data, the Constitutional Court deems it evident that the criteria from the LAA, in a manner in which they were defined in Article 8 of the LAA and its interpretation provided by the Ministry of Justice, cover only a small part of the population and leave unprotected a part of socially vulnerable groups for whom legal aid is often necessary in order to exercise the right to social and other state aid or aid from local and regional self-government units.*“

Amendments to the LAA introduced somewhat softer criteria regarding real estate owned by beneficiaries. Associations proposed that legal aid is granted without determining property status in cases when beneficiaries are seeking legal advice only. We were guided by the practise existing in many countries that legal advice should be provided for certain issues and cases without any preliminary verifications of property status. Our line of thinking is also shared by the Constitutional Court of the Republic of Croatia and the Ombudsman

<sup>26</sup> [www.ombudsman.hr/hr/izvjesca-o-radu-the-right-tobraniteljja.html](http://www.ombudsman.hr/hr/izvjesca-o-radu-the-right-tobraniteljja.html)

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Regarding the statements on property owned by other family members in case when request for legal aid is submitted by a victim of family violence, the Ombudswoman for Gender Equality in her Working Report for 2012 recommends the following: „ *To leave out data on property owned by other family members from the application for requesting legal aid, because this is not property which victim of violence could manage and use on his/her own.* “

The property census criteria which must be fulfilled for granting primary legal aid should be softer than the conditions for granting secondary legal aid. It is necessary to soften the stipulated criteria of property status with regard to ownership or co-ownership of other real estate.

When it comes to selection and working efficiency of the **Legal Aid Commission**, we are of the opinion that its role and tasks are insufficiently used for the establishment of an efficient legal aid system. It is necessary to re-define its role and tasks in such a manner that the Commission becomes independent and impartial body with broader powers.

In our analysis of the Act's efficiency we also paid attention to the issue of **realization of project financing of associations**. Payment of a fee to legal aid providers is an important element of the entire legal aid system. Authorized associations are non-profit organizations, while service providers employed in associations work for regular salary. Activities of those associations are related to the implementation of projects/programmes which are mostly financed by international donors and approved funds are always allocated for strictly specified purposes. Apart from direct expenses, associations, as well as all other legal subjects, have indirect expenses (office rent, overhead expenses, expenses for office material etc.)

Upon associations' request, project financing of associations is in principle stipulated by law, but is annulled by the obligation that allocated funds are justified on the basis of granted decisions, the former vouchers. We have emphasized on several occasions that such system is inappropriate for the provision of primary legal aid because the percentage of granted vouchers/decisions is negligible compared to the number of cases in which associations provided legal aid services. The result of this is unused funds allocated for this purpose, marginal financing of legal aid from state funds and a decrease in funds earmarked in the State Budget for legal aid, which does not correspond to actual citizens' needs. If the current system of payment continues, it is likely that the majority of existing legal aid services provided by associations will cease when alternative financing stops. Unfortunately, amendments to the Act did not accept associations' proposals to establish project financing of associations.

Participants of the recently held public discussion also warned about this problem, which has not been resolved since the adoption of the LAA, in their conclusions:

*„It is necessary to introduce project financing of primary legal aid providers and increase budgetary allocations for legal aid at least to the initial 8,000,000.00 kuna. Funds from project financing have to cover a substantial part of the actual costs of providing legal advice. They have to gradually replace the funds that are being allocated for the same purpose by foreign and international organizations and have to be complementary to the funds collected from other sources and to volunteer contribution of the providers themselves. “*



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The Ombudswoman for Gender Equality also stressed similar recommendations within the public counseling project on the subject of amendments to the LAA in her letter addressed to the Ministry of Justice from April 2013:

*„With the objective of maximum availability of legal counseling for citizens and de-bureaucratization of the system, it would be good to introduce project financing of all providers of primary legal aid from the budget, on the basis of public tenders and with subsequent justification of allocated funds with performed legal services, the number of written submissions, legal advice provided etc.“* Likewise, she warned that funds from budgetary sources should be allocated equally: *„We propose that financing of primary and secondary legal aid from budgetary sources is provided in the same proportion due to exceptional preventive importance of primary legal aid and, by doing so, to avoid the current practise of unequal allocations to the detriment of primary legal aid.“*

For the provision of primary legal aid it is necessary to ensure full affirmation of the system of project financing of associations. Funds for legal aid should proportionally cover the actual expenses of legal aid provision (work force expenses, expenses related to use of premises and equipment, actual expenditures etc.).

It is necessary to ensure sufficient funds from the State Budget for the provision of legal aid, as well as to ensure the same proportion of financing primary and secondary legal aid within reasonable deadline.

#### 3.3. Effectiveness of the Act

Even prior to coming into effect of the Legal Aid Act there were objections that it is in certain important elements unfinished, confusing and that it contains contradictions that could disrupt its correct interpretation and application<sup>27</sup>. According to the published Report titled „Assessment of the Croatian Legal Aid Act and its Implementation in Practice“<sup>28</sup>, the effectiveness of system of legal aid provision in everyday legal problems was not understood very well by the Croatian policy of legal aid provision. The majority of legal aid services are provided by civil society organizations which are mostly financed outside the Legal Aid Act. This is an important indicator of the fact that current definition of problems encompassed by the legal aid system does not correspond to actual beneficiaries' needs. Pursuant to the aforementioned international expert opinion, it is necessary to develop a policy of free provision of legal aid outside the courts for all serious legal problems, while respecting the criteria compatible to the *Airey* principles<sup>29</sup>.

<sup>27</sup> See UZELAC, Alan, „Reference to the Final Draft Act on the Exercise of the Right to Legal Aid“, , <http://www.humanrights.hr>

<sup>28</sup> International expert opinion of the authors: Jon T. Johnsen, Georg Stawa and Alan Uzelac; Zagreb/Oslo/Vienna, October-December 2010 (Project conducted upon initiative by the Centre for Human Rights, Zagreb).

<sup>29</sup> Case *Airey vs. Ireland*, 11 September 1979, Serie A, No. 32 (<http://www.echr.coe.int/echr>)

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The issue of **financing legal aid provision** is regulated in such a manner that necessary funds are allocated from the State Budget. It is also possible to allocate funds from the budgets of local and regional self-government units, donations and other legally permitted sources. Until 15 January of each year associations and legal clinics must submit reports concerning expenditure of funds for the projects of legal aid provision, while unused funds have to be returned to the State Budget.

Amendments to the LAA placed before the legislator also the task of amending the system of vouchers which was the subject of many objections coming from interested parties in the legal aid system. The main objection from civil society associations pertained to negative effect vouchers had on timely and effective exercise of citizens' right to legal aid as well as their negative role on the occasion of distributing state funds for the provision of primary legal aid. The consequences of such system are that authorized associations and legal clinics, in a large number of cases in which citizens requested the exercise of their right to primary legal aid, were unable to obtain vouchers/decisions in competent state administration offices, thus the funds they were allocated had to be returned to the State Budget as almost completely unused. In their proposals for Amendments to the Act, civil society associations requested that the Ministry of Justice seriously considered the possibility of abandoning the system of vouchers as a method of distributing funds for primary legal aid as well as to affirm the system of project financing along with introducing control of the manner in which allocated funds are spent that will be based on reports from legal aid providers.

*Analysis of the efficiency of direct implementation* pointed at the fact that, after four years of implementation of the LAA, it has become evident that total budget funds for implementation of the Act have significantly decreased in relation to initial plans. In a survey<sup>30</sup> conducted in 2010 it was established that providers managed to charge only 0.7% of the fee for provided legal aid through vouchers. They earned a negligible fee compared to the expenses of their work which they covered from other international sources (in a total of 5 to 6 million kuna).

According to the Report of the Ministry of Justice for 2011, a total of 4,000,000 kuna was planned in the State Budget for legal aid, but following a redistribution it was cut down to 1,671,300 kuna. Further decrease of funds followed in 2012 and, out of planned 2,278,000 kuna, available funds were cut down to 1,261,500 kuna. Pursuant to the aforementioned, since the end of 2012 the system has not been functioning due to lack of funds and citizens are not granted legal aid, except in urgent cases.

Thus, it comes as no surprise that stakeholders at the recently held public discussion reached a conclusion that the aforementioned lack of budgetary funds is the biggest problem in the legal aid system. The fact that the State currently allocates no more than 0.001% per capita is defeating. The State needs to allocate substantially larger funds.

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<sup>30</sup> In a survey conducted by the Centre for Human Rights in 2010, which encompassed 15 associations - registered legal aid providers, it was established that associations had a total of 138 cases/vouchers within the legal aid system and 19,690 cases outside the system.

### 3. Monitoring the implementation of the Legal Aid Act

During the discussion held on 24 May 2013 at the Croatian Parliament related to the adoption of the Report on Exercising the Right to Legal Aid and the Expenditure of Funds in 2012, many MPs mentioned drop in funds which the State allocates for legal aid, whereby the funds planned for 2013 were decreased by 78% in relation to the amount planned in 2009.

Vice-president of the CBA Mladen Klasić stated during the 31<sup>st</sup> Days of Croatian Lawyers that „...According to available data, in 2012 all authorized providers in the Republic of Croatia were paid a total of 1,278,446 kuna or approximately 169,330 euro for legal aid (...) while, for the sake of comparison, a part of the Federation of BiH, the entity of Republika Srpska with 1.4 million population, allocates approximately 600,000 euro annually.“

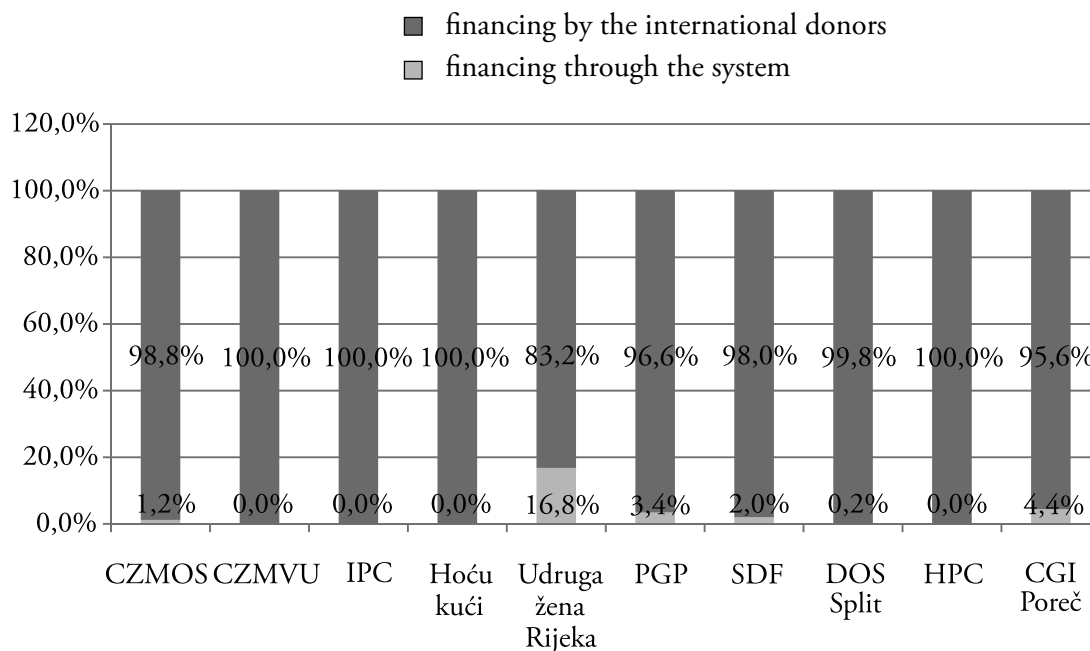
In the text of the Final LAA Bill from April 2008, the Government of the Republic of Croatia defined the available gross budget for legal aid in 2009 in the amount of 0.25 € per capita (while EU member states from the first round of enlargement provided 0.76 € per capita). For 2010, the budget amounted to 0.21 € per capita prior to budget revision, i.e. 0.11 € per capita after the revision of the State Budget. In 2009, legal aid providers were paid 0.007 € per capita, while in 2010 even less. From the aforementioned data it is evident that the system of legal aid financing in the Republic of Croatia is inappropriate.

#### 3.4. Sustainability of the system

Data obtained by associations concerning provided legal aid within and outside the system correspond with associations' data on the ratio of **legal aid financing from the State Budget and other domestic and international sources**. Of the surveyed ten associations, four were financed exclusively from international donors during 2012. The remaining six associations ensure office financing of legal aid provision from the State Budget ranging from 0.2 % up to 16.8%, while from other domestic and international sources ranging from 83.2% up to 99.8%.<sup>31</sup>

<sup>31</sup> During 2012, the Centre for Peace Osijek ensured 1,217,091 kuna from foreign donations and 16,470.44 kuna from the Ministry of Justice for financing legal aid. During that same period of time we provided legal aid outside the system in 4,595 individual legal cases, while within the system we were granted 56 decisions.

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Sustainability of associations is seriously brought into question because it is becoming more challenging and more difficult to ensure financing of legal aid from foreign sources. That problem is also stressed in the Progress Report of the European Commission for 2010: „*Non-governmental organizations are still main providers of legal aid, they have ten times more cases than the number of cases granted through the national legal aid system, but in spite of that, they have a decrease in income from donations.*“ Decreased support for civil society organizations on the part of international donors on the one hand is conditioned by the retreat of international community since Croatia has completed the negotiation process for accession to the EU and it is considered to be able to resolve its own problems. On the other hand, when it comes to financing legal aid, with the introduction of the LAA the obligation to finance those activities was assumed by the state. However, the number of cases processed in legal aid system encompasses only an insignificant share of finances.

According to the 2011 Report of the Ministry of Justice on Exercising the Right to Legal Aid and the Expenditure of Funds<sup>32</sup> a total of 151,252 kuna was allocated from the State Budget to 13 association for the projects related to provision of legal aid (on average per association 11,635 kuna). For primary legal aid, a total of 13,450 kuna was paid, while for secondary legal aid a total of 329,138.26 kuna was paid, i.e. a grand total of 342,588.26 kuna. Funds reserved for issued decisions for secondary legal aid amounted to 3,663,800 kuna, and the payment is expected in the next year or two, depending on duration of court proceedings.

<sup>32</sup> <http://www.mprh.hr/lgs.axd?t=16&cid=3620>

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According to the Report of the Ministry of Justice, in 2012 11 associations and 1 legal clinic received a grand total of 200,397.05 kuna for projects related to provision of legal aid from the State Budget, i.e. on average 16,700.00 kuna per provider. A total of 1,258,134.89 kuna was spent for legal aid, while reserved funds amount to 5,238,172.78 kuna, the payment of which is expected in the period between 2013 and 2015, depending on duration of court proceedings. Unlike the previous reports, this Report does not state which amount of funds was paid for primary, and which for secondary legal aid.

The aforementioned data on total amount of funds paid for primary legal aid are concrete evidence that even after the adoption of the LAA 99% cases of primary legal aid are still supported outside the system. Therefore, legal aid system cannot be considered efficient because it does not correspond to the needs of socially vulnerable persons for primary legal aid.

Primary legal aid has preventive function, contributes to legal certainty, reduces the number of unnecessary procedures and lifts the burden off the courts and administrative bodies, while eventually it may contribute to the purpose of expenditure of funds intended for direct financing of legal aid. The tendency of decreased funds in the State Budget earmarked for legal aid system further emphasizes the need for rational and appropriate expenditure.

Results of the analysis of the survey as far as *informing citizens about the Act* is concerned indicate that 50% of surveyed state administration offices which grant legal aid deem that citizens are insufficiently informed about the system and how it functions. This is also supported by the results of a survey which was conducted with beneficiaries, pursuant to which 51.2% of beneficiaries were not informed about the existence of the LAA. To which extent citizens of Croatia are informed about the LAA is indeed not easy to conclude because a systematic, scientific research on this issue was not conducted. Likewise, a research on the needs of citizens for legal aid was not conducted either.

Since the existing legal aid system has been organized in such a manner that beneficiaries submit a request for granting legal aid with state administration offices which then examine the request and decide whether it is well-founded or ill-founded and, eventually, grant or deny legal aid, it is clear that the effectiveness, efficiency and sustainability of the system depend on their personnel and technical preparedness for implementation of the Act. We included in the survey the question of *preparedness of the state administration to implement the Act* and all surveyed state administration offices deemed that they were prepared, both in terms of personnel and technical capacities, for the implementation of the Act. They emphasized non-harmonization of criteria when granting legal aid by office employees in individual counties as problems and obstacles which they face in their work, because of which they proposed organization of seminars. Furthermore, they emphasized the problem of a lack of IT network between state bodies and state administration bodies, because precisely that fact renders difficult the verification of stipulated conditions for granting legal aid which warrants the stalling of administrative proceedings. Likewise, they noted that parties have difficulties finding a lawyer following granted legal aid.

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At the end of 2012 and in the first quarter of 2013 there were insufficient funds from the State Budget for granting legal aid. Faced with this problem, offices did not have a possibility to resolve requests within legally stipulated deadlines, thus some of the offices informed the applicants about it. The consequence of such situation is that the number of beneficiaries to whom legal aid was granted is significantly lower.

As far as *preparedness of the Ministry of Justice for timely changes* is concerned it has, independently or in cooperation with others, organized several meetings, round tables and conferences. Representatives of the Ministry also participated at conferences, round tables and public discussions which were mostly organized by civil society organizations.

Since the beginning of drafting the LAA, associations actively engaged themselves in all initiatives and meetings initiated and organized by the Ministry of Justice. Associations recognized the necessity of structural dialogue with state administration. However, according to the experience gained thus far, including the entire 2012, associations are still not accepted as equal stakeholders, constructive dialogue is lacking and in particular respect for the opinions and proposals of associations which have many years of experience in provision of legal aid.

In order to encourage consultative process and dynamics of improving public policies and laws, a group of 60 civil society organizations that have been dealing with protection of human rights, democratization, peace building, fight against corruption and environmental protection for a number of years, got together in the initiative that we entitled **Platform 112 – for Croatia as a country of rule of law**. We identified five priority inter-connected areas in which we seek and expect actual and permanent improvements. Within each area we emphasized 112 individual requests for amending or adopting certain strategies, policies or laws. One of our 112 requests is the following one:

*Ensuring access to justice for most vulnerable groups of population which calls for a comprehensive review of the existing Legal Aid Act so that the system of legal aid provision would be de-bureaucrised and to a significantly larger degree responsive to citizens' needs.*

In their Report<sup>33</sup>, members of the Platform assessed the entire 2012 as a lost year because the cycle of legal amendments, without which radical improvements of legal aid system are simply not possible, has not started yet. Still, incorporating the amendments to the LAA into the *Programme of the Government of the RC for Take-over and Implementation of Acquis Communautaire of the EU for 2013*<sup>34</sup> which was adopted in December 2012 is a long-overdue positive step forward. The *Programme* states that amendments should move in the direction of simplifying the procedure of granting primary legal aid in such a manner that the Government would consider the possibility of not insisting too strictly on verification

<sup>33</sup> [http://www.centar-za-mir.hr/uploads/20130306\\_Izjestaj\\_Platforme\\_112\\_godina\\_dana\\_nove\\_vlasti.pdf](http://www.centar-za-mir.hr/uploads/20130306_Izjestaj_Platforme_112_godina_dana_nove_vlasti.pdf)

<sup>34</sup> <http://www.vlada.hr/hr/content/download/237325/3480574/file/68.%20-%201a.pdf>

### 3. Monitoring the implementation of the Legal Aid Act

of property census and re-define property conditions for granting legal aid. The announced guidelines for amendments to the Act are similar to a few recommendations that we presented in our first Report on monitoring the implementation of the LAA for 2011.

In order for this long-awaited process of amendments to the LAA to be fruitful, members of the Platform expect the Act to be passed in regular procedure along with comprehensive public discussion in which objections and proposals by expert public and legal aid providers will truly be taken into consideration, while final legal solution will be directed at the interests of beneficiaries.

In that sense, the Ministry of Justice made a positive step forward and, at the beginning of February 2013, published working draft of the ZID LAA on its web site and forwarded it to public discussion with the objective of receiving proposals, objections and comments. In such a manner the procedure of amending legislative framework of legal aid was initiated. We were actively involved and provided objections, proposals and comments on the proposed amendments to this Act.

The next step was a meeting between representatives of legal aid providers<sup>35</sup> which forwarded their objections and proposals with representatives of the Ministry of Justice. For the first time we were accepted as equal stakeholders. We discussed each individual proposal, had the opportunity to elaborate on concrete examples why some of the proposed decisions we deem to be inappropriate and what are we proposing in order to truly improve the system. We started the initiative to organize public discussion in which, apart from representatives of the Ministry, all other stakeholders involved in legal aid system would participate, as well.

The public discussion<sup>36</sup> gathered 50 participants, representatives of state administration, Ombudsman's offices, international organizations and embassies, donors, civil society and expert public. Numerous participants took part in the discussion who, in a well-argued manner, pointed at the problems which they faced in practice and presented proposals for their resolution. Objections and proposals from legal aid providers and expert public were seriously taken into consideration. Surprised with the number of problems within the system which the participants presented in a well-argued manner, representatives of the Ministry of Justice assessed that this information would be useful for them to have a better understanding of different aspects of non-functioning of legal aid system.

This public discussion was special because it was the first time that all participants, including representatives of the Ministry of Justice, agreed that it was necessary to amend the Act. At the end of the discussion we adopted the following conclusions:

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<sup>35</sup> The following associations participated at the meeting: B.a.b.e. Zagreb, Centre for Peace, Nonviolence and Human Rights Osijek, Project Citizens' Rights Sisak and Legal Clinic of the Zagreb University's Faculty of Law.

<sup>36</sup> The public discussion was held on 3 April 2013 in Human Rights House in Zagreb organized by the Centre for Peace, Nonviolence and Human Rights Osijek, Centre for Peace, Legal Advice and Psychosocial Assistance Vukovar and Serbian Democratic Forum, in cooperation with the Legal Clinic of the Zagreb University's Faculty of Law, the Human Rights House and Platform 112.

### 3. Monitoring the implementation of the Legal Aid Act

- *the existing legal aid system is inadequate and non-functional from the point of view of target groups for whom it was intended;*
- *legal aid needs to be provided to a wide range of beneficiaries without insisting on strict verification of property census;*
- *primary legal aid must be provided for as broad as possible circle of legal problems;*
- *it is necessary to increase funds in the State Budget for legal aid;*
- *it is necessary to introduce the actual project-based financing of primary legal aid providers;*
- *it is necessary to re-define the role of the Legal Aid Commission so that it would become independent, impartial and expert body which monitors implementation of the Act and its effects and proposes changes;*
- *during further reforms of the system it is necessary to follow and use best practice of EU countries with best developed culture of encouraging legal aid.*

On the basis of the analysis of legal decisions, current situation in the provision of legal aid, collected comments and proposals, as well as financial data on funds spent on direct financing of legal aid, the Ministry of Justice approached drafting of new ZID LAA. Having realized that planned amendments to the LAA encompass a large number of articles, the Ministry decided to draft proposal of a new LAA.

Novelties in the proposal of the LAA:

- the range of primary legal aid was expanded to all legal areas;
- providers of primary and secondary legal aid were clearly separated;
- preconditions for exercising primary legal aid were softened,
- the procedure for using primary legal aid was simplified through direct contacts between beneficiaries and primary legal aid providers and without passing decisions;
- property criteria for granting secondary legal aid were softened;
- stating the name of a lawyer in the decision on granting secondary legal aid,
- prohibition of promotion was abandoned,
- project-based financing of associations along with recognition of material and other expenses related to provision of legal aid.

Faced with the fact that the existing legal aid system has not been functioning since the last quarter of 2012, particularly in the part pertaining to primary legal aid due to lack of funds in the State Budget, providing sufficient funds is imperative and a basic precondition that a system designed in such a manner would yield positive results.



### 4. IMPORTANCE OF LEGAL AID SYSTEM IN COMBATING DISCRIMINATION

One of the key elements in the implementation of a comprehensive anti-discrimination policy is efficient and effective legal aid system which would render it possible for citizens of poor financial situation to receive legal aid and equal access to administrative and judicial bodies, thereby preventing discrimination on the basis of financial situation. In his working reports, the Ombudsman stresses the problem of ineffectiveness of legal aid system and homelessness and, at the same time, points at the problems in application of the LAA, both in relation to proceedings in which this right can be exercised, as well as the manner of determining the circle of possible beneficiaries of this right.

The chapter on discrimination on the ground of property status in the Report on Occurrences of Discrimination for 2011<sup>37</sup> is particularly referring to the issue of access to the judiciary, i.e. legal aid system, and stresses the following:

*„... The possibility of exercising the right to equal treatment in all areas and upon all discriminatory grounds depends on access to the judiciary ... In case legal aid system does not render possible representation to all those who need legal aid, a number of citizens will not be able to acquire court protection from discrimination, which brings into question the effectiveness of the entire system of protection against discrimination.“*

Authorized associations that provide primary legal aid are recognised by general public as a reliable place where citizens may, without fear, come with complaints on discrimination and receive counseling about discrimination. We directed our activities particularly at citizens' informing about the Anti-discrimination Act and the possibilities to lodge complaints against discrimination or individual lawsuits seeking court protection from discrimination in case when we assess that such procedure is likely to succeed. Through everyday work with beneficiaries, we have witnessed that beneficiaries often have subjective feeling that they were discriminated against, but at the same time specific living situation cannot be subsumed under one of discriminatory grounds defined by the Anti-discrimination Act, but it is the issue of violation of human, citizen or social rights. This tells us that citizens need additional informing about basic terms in the area of protection against discrimination so that citizens could recognise it and request protection.

In cases when suspicion on discrimination is well-founded, victims of discrimination often have doubts whether to file a discrimination complaint or not. They particularly have doubts when reporting discrimination in the area of work and employment, because of fear of losing job or trouble with the employer. Because of that it is important to raise awareness among citizens about necessity to file complaints on discrimination and lawsuits for determining discrimination in order to gain as objective as possible insight into distribution and manifestations of discrimination according to prohibited discriminatory grounds and areas in which discrimination most often occurs but, at the same time, to create positive climate and practice for combating discrimination upon any of discriminatory grounds.

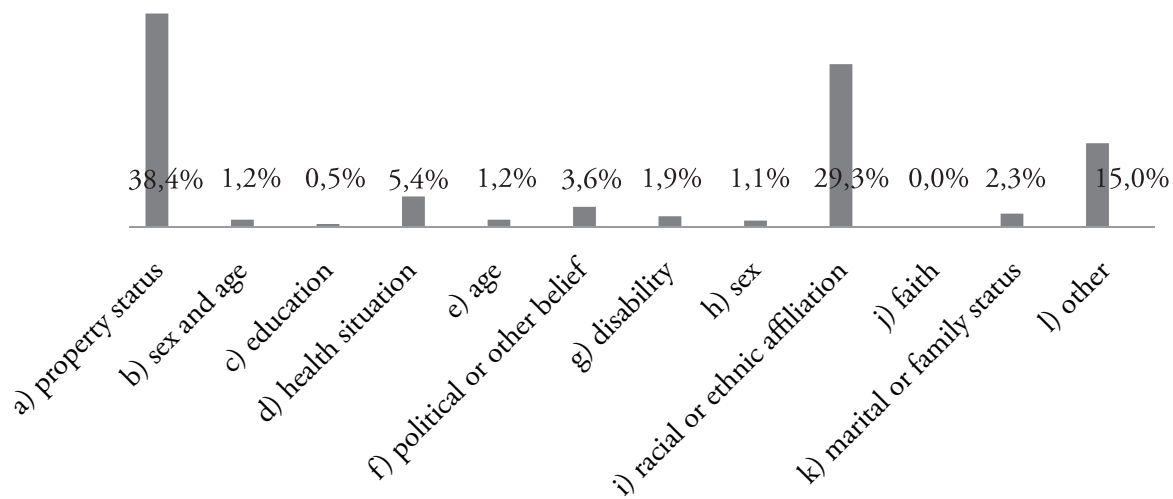
<sup>37</sup> <http://ombudsman.hr/dodaci/Izvjecje%20C5%A1%C4%87e%20o%20pojavama%20discriminatione%20za%202011.pdf>

## 4. Importance of legal aid system in combating discrimination

Our unique table of monitoring also encompassed monitoring cases of possible discrimination upon 11 discriminatory grounds (race or ethnic affiliation, sex, religion, political or other belief, property status, education, marital or family status, age, health condition, disability and sexual orientation). When selecting them, we were guided by those discriminatory grounds on the basis of which discrimination is prohibited in the legislation of the European Union and which are most important in the sense of international agreements which prohibit discrimination (sex, racial or ethnic origin, disability, age, religion and sexual orientation). In the context of implementation of this project we singled out discriminatory ground of „property status“, but we also added several more discriminatory grounds (political or other belief, education, marital or family status and health condition) which ensued from the experience we have accrued working directly with beneficiaries.

Of a total of 4,120 beneficiaries who were encompassed by our monitoring during 2012, possible discrimination was recorded in cases of 645 beneficiaries or 15.7% of a total number of beneficiaries.

Of recorded 645 cases, the largest percentage of cases of possible discrimination was recorded on the ground of property status, 38.4%, racial or ethnic affiliation, 29.3%, on the ground of health situation, 5.4%, political or other belief 3.6%, marital or family status, 2.3%, on the ground of disability 1.9%, on the grounds of sex and age 1.2% each, on the ground of education 0.5% and on other grounds 15%.



When we compare this data with statistical data from our Report for 2011, we notice that two most frequent discriminatory grounds switched places according to frequency of their occurrence. Thus, in 2012 property status reached number 1, while racial or ethnic affiliation, colour of skin and ethnic

## 4. Importance of legal aid system in combating discrimination

background reached number 2. The Office of the Ombudswoman also noted the trend of increased number of complaints upon discriminatory ground of property status, as reported at the recently held round table on combating discrimination.<sup>38</sup>

Efficient and effective legal aid system should ensure the possibility of exercising the right to equal treatment in all areas and upon all discriminatory grounds stipulated by the Anti-discrimination Act.

Limited and difficult access to the judiciary through the existing legal aid system is one of the problems which citizens of poor property situation have been facing for several years already. Property criteria pursuant to which legal aid is granted are restrictive and exclude a large number of citizens who need legal aid. The criteria set forth in such a manner represent risk from discrimination on the ground of property situation. Citizens of poor property situation, for whom legal aid was intended, do not have equal access to administrative and judicial bodies in relation to other citizens of Croatia. Placing those persons into less favourable position because of inability to exercise legal aid brings into question the effectiveness of the entire system of protection against discrimination.

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<sup>38</sup> Round Table “Effective Fight Against Discrimination at the Regional and Local Level through the Presence of the Ombudsman” was held on 4 June in Osijek as one of the activities of the project IPA TAIB 2009 “Establishment of a Comprehensive System for Protection Against Discrimination” which is conducted by the Office of the Ombudswoman in cooperation with twinning partner, Austrian Institute for Human Rights Ludwig Boltzmann.



## **II. REPORT ON MONITORING THE IMPLEMENTATION OF THE ANTI-DISCRIMINATION ACT**



## 5. INTRODUCTION

The Anti-discrimination Act has been in force since 2009 and it introduced strong mechanisms of combating discrimination in Croatian legislation. However, as is the case with other similar legal solutions, it was immediately clear that implementation of this Act will require good inter-connection with other anti-discriminatory policies and dedication on the part of different actors in society – including the institutions of executive and judicial authorities, as well as civil society organizations, so that such an Act and the entire anti-discrimination policy yield results.

The Centre for Peace Studies very early recognized the importance of work on the policy of combating discrimination and realized that monitoring its implementation is one of the key elements and preconditions for its implementation, particularly in the first years of implementation of the Anti-discrimination Act. In that sense, this Report represents only the third in a series of reports which provide summary of monitoring the implementation of the Act. Namely, in 2010 we published a publication titled *How to Combat Discrimination? Report on the Monitoring of Implementation of the Anti-discrimination Act in Croatia for 2009 and Practice of the European Court for Human Rights* in which we applied, for the first time, the methodology for monitoring, while in 2012 we applied the same methodology in a publication titled *Report on the Implementation of the Anti-discrimination Act in 2011*. In both publications the emphasis was placed on monitoring the implementation of the Anti-discrimination Act by civil society organizations which are truly an important stakeholder in the implementation of this policy and its monitoring. Monitoring the work of civil society organizations in this area is in that sense especially significant because data collected by other stakeholders (such as the Ombudsman's offices and courts) are available in other reports, while this text is actually the only one that collects data from civil society organizations.

Through this and through previous reports we actually attempted to map the activities of civil society organizations and other stakeholders in the area of combating discrimination and we also analyzed the structure of discrimination cases which institutions and organizations are facing. However, it is clear that, due to the sheer nature of discrimination occurrences, such research cannot encompass all forms of discrimination manifestations in Croatian society: citizens often do not recognize discriminatory treatment and rarely report it. Furthermore, data from all organizations dealing with this issue are not included in the research, which is yet another reason why it is difficult to study actual manifestations of discrimination in Croatia.

Therefore, this research does not pretend to quantitatively encompass all cases of discrimination, nor should it be read in such a manner. Instead, we view data that can be found here more as an overview of basic trends in the area of discrimination and as an illustration of basic problematic practices which civil society organizations meet when dealing with cases of discrimination.

In the end, we would like to express our gratitude to all those who participated in preparation of this research. First of all, we would like to thank Suzana Kunac who developed a research design for the first report which was published in 2010, and we used the same design both last year and this year.

## 5. Introduction

Likewise, we are very grateful to organizations which filled in the questionnaire and the protocol on discrimination cases. Finally, we would like to thank the Ministry of Justice which forwarded us records and statistical data on discrimination cases before Croatian courts.

We hope that this Report will be useful for implementors of anti-discrimination policy and that it will contribute to informed creation and implementation of this policy in the future. Likewise, we hope that data from this Report will encourage some new researches. Finally, we hope that it will also contribute to raising awareness among citizens about the damaging effects of discrimination as well as the manners in which they can protect themselves from discrimination.



## 6. RESEARCH METHODOLOGY

The methodology of this Report was initially created for the needs of research of discrimination combating policies within the framework of a research that the Centre for Peace Studies published in 2010 in a publication titled *How to Combat Discrimination? Report on the Monitoring of Implementation of the Anti-discrimination Act in Croatia for 2009 and Practice of the European Court for Human Rights*<sup>39</sup> and was to a small degree adapted to the needs of the *Report on the Implementation of the Anti-discrimination Act in 2011*<sup>40</sup> and it was also used in the research for this publication.

As was the case with previous researches, the objective of this research is monitoring the success of implementation of anti-discrimination policy in Croatia and mapping the activities of civil society organizations for the purpose of improving the existing and creating future anti-discrimination policies, as well as strengthening the capacities of civil society organizations for active participation in fight against discrimination.

This research has the following specific objectives:

- to determine the number and structure of complaints against discrimination received by civil society organizations with regard to discrimination grounds and areas of social life in which discrimination takes place,<sup>41</sup>
- to determine the structure and representation of activities performed by civil society organizations in the area of combating discrimination,
- to determine the structure and the number of cases processed pursuant to the Anti-discrimination Act before Croatian courts.

Unlike the two previously mentioned reports, this year we did not include data obtained from the Ombudsman's institutions into the research. However, taking into account high-quality reports on discrimination which the Ombudswoman's Office publishes every year, we deem that this is not necessary and recommend to consult reports on the occurrences of discrimination issued by the Ombudswoman's Office for data on complaints against discriminationu filed with Ombudsman's institutions.

Taking into account the aforementioned specific objectives, the research had two target groups: civil society organizations and the Ministry of Justice, which forwarded records on cases processed pursuant to the Anti-discrimination Act before Croatian courts in 2013.

<sup>39</sup> Novak, J. (editor), *How to Combat Discrimination? Report on the Monitoring of Implementation of the Anti-Discrimination Act in Croatia for 2009 and Practice of the European Court for Human Rights*, Centre for Peace Studies, Zagreb, 2010.

<sup>40</sup> Lalić, S. and Senta, C. (editors), *Report on the Implementation of the Anti-Discrimination Act in 2011*, Centre for Peace Studies, Zagreb, 2012.

<sup>41</sup> Discrimination grounds and areas of social life in this research were defined in the same manner as they were defined in the Anti-discrimination Act.

## 6. Research methodology

Instruments used for this research include the following:

- questionnaire on the activities performed by civil society organizations in the area of combating discrimination and reports of discrimination which those organizations received in 2012,
- protocol for description of individual cases of discrimination in 2012 with recommendations by civil society organizations with regard to better application of the Anti-discrimination Act and reactions by competent institutions and civil society organizations,
- records and statistics of the Ministry of Justice pertaining to court cases processed pursuant to the Anti-discrimination Act in 2012.

The questionnaire on the activities performed by civil society organizations in the area of combating discrimination and discrimination cases received by CSOs in 2012 is, as was the case in the previous Report, intended for a wider group of civil society organizations which were included into the sample of 64 organizations which received the questionnaire by e-mail. The organizations were selected according to one of the following four criteria:

1. Organizations which were mentioned as collaborators on the IPA project - *Stronger Civil Society for Efficient Application and Monitoring of Anti-discrimination Policies in Croatia* which is conducted by the Centre for Peace Studies (hereinafter: the CMS) in cooperation with the Faculty of Law of the Zagreb University and CROSEL;
2. Organizations which cooperated with the CMS or participated in the activities which the CMS organized in the area of combating discrimination, and which do not belong to the aforementioned category of organizations;
3. Organizations which participated in the research conducted in 2010 and other organizations recognized for their work in the area of combating discrimination and which do not belong to the aforementioned categories of organizations;
4. Organizations which are registered for providing legal aid and which do not belong to the aforementioned categories of organizations.

A total of 16 organizations filled in the questionnaire: Centre for Peace, Nonviolence and Human Rights – Osijek; Centre for Peace, Legal Advice and Psychosocial Assistance – Vukovar; Centre for Peace Studies; Centre for Women's Participation in Social Life; Centre for Women's Studies; Cenzura Plus, association for promotion of human rights and media freedoms; Dalmatian Committee of Solidarity – DOS; Association Hoću kući (I Want to go Home); Croatian Legal Centre; Women's Association „SOURCE“; House of Human Rights; Legal Clinic of the Faculty of Law in Zagreb; the Citizens' Rights Project Sisak; Sjaj – Association for Social Affirmation of People with Psychosocial Disabilities; Association for Promotion of Equal Opportunities (UPIM) and Zagreb Pride.

The protocol on individual cases of discrimination with recommendations by civil society organizations was sent via e-mail to seven civil society organizations which had previously filled in the questionnaire. Those organizations were selected according to the following two criteria: 1) according to the number of complaints they received in 2012 and 2) taking into account discrimination grounds and target groups with which they are dealing in the context of discrimination combating policies. The protocols were filled in by six organizations: Centre for Peace, Nonviolence and Human Rights – Osijek; Centre for Peace Studies; Cenzura Plus, association for promotion of human rights and media freedoms; Dalmatian Committee of Solidarity – DOS; Women’s Association „SOURCE“ and Zagreb Pride. The basic objective and purpose of publishing these protocols is that, apart from quantitative data on complaints against discrimination received by civil society organizations, this Report would also present concrete examples of discriminatory treatment and/or regulations. Finally, this Report presented a total of 17 cases, i.e. complaints against discrimination received by civil society organizations.<sup>42</sup>

Apart from the questionnaire and the protocol for civil society organizations, we also forwarded a letter to the Ministry of Justice seeking records and statistical data on court cases pertaining to discriminationu which the Ministry collects in compliance with Anti-discrimination Act.

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<sup>42</sup> The English version of this Report does not contain descriptions of individual cases of discrimination because we opted for condensed version of the text in English.

# 7. RESULTS OBTAINED FROM CIVIL SOCIETY ORGANIZATIONS

Back in the Chapter which describes the methodology, we stated that out of 64 organizations to which the questionnaire on the activities performed by civil society organizations in the area of combating discrimination and reports of discrimination which organizations received in 2012 was forwarded, 16 organizations responded by filling in the questionnaire. Thus, this is one quarter of the organizations, i.e. approximately 25% organizations from a total number of organizations to which the questionnaire was forwarded, which represents a decrease in the number of organizations that responded in relation to the Report for 2011 when 20 organizations, one institution and one coalition of associations responded by filling in the questionnaire. Therefore, the quantitative data that we are going to present later in this chapter pertain exclusively to these 16 organizations, not to all organizations dealing with combating discrimination. For the purpose of simplifying the presentation of results, later in the text we will use terms civil society organizations and associations and abbreviation CSO when we refer to these 16 organizations which forwarded us data.

Looking at regional distribution of organizations that approached this research, it is evident that half of the organizations, eight of them, are located in Zagreb, while others are located in other towns in Croatia. However, the majority of organizations act outside their narrow local context, i.e. the majority of them act at the regional and national level. Nine of these organizations act at the national level, that means on the territory of the entire Republic of Croatia. In terms of organizations that stated they were working at the regional level, the following counties were represented: Splitsko-dalmatinska County (2 organizations), Šibensko-kninska County (3 organizations), Dubrovačko-neretvanska County (1 organization), Zadarska County (1 organization), Ličko-senjska County (2 organizations), Karlovačka county (1 organizations), Požeško-slavonska county (1 organizations), Sisačko-moslavačka County (1 organization), Brodsko-posavska County (1 organization), Osječko-baranjska County (3 organizations) and Vukovarsko-srijemska County (2 organizations). Additionally, two organizations stated that their activities were directed at the local level, i.e. in Zagreb and in Rijeka.

### **7.1. Activities performed by civil society organizations in the area of combating discrimination**

Taking into account the fact that civil society organizations are an exceptionally important stakeholder in combating discrimination, we deem it important to check which types of activities were most, and which least represented in the work of civil society organizations in this area so that we could detect the needs of possible strengthening the capacities of associations for promotion, implementation and monitoring the implementation of the Anti-discrimination Act and anti-discrimination policy in Croatia. From the results of the research that we conducted it is evident that the situation has not dramatically changed in relation to 2011.

## 7. Results obtained from civil society organizations

The types of activities performed by civil society organizations in this area, the representation of which was examined in the questionnaire, were as follows:

1. receiving individual cases of discrimination and providing legal aid (regardless whether the association was registered for providing legal aid or not),
2. forwarding received cases to other relevant institutions,
3. involvement in anti-discrimination court proceedings in the role of intervener on the plaintiff's side,
4. filing joint lawsuits for protection against discrimination,
5. monitoring the implementation of anti-discrimination policy, including the work of the Ombudsman's institutions, courts, civil society organizations and other stakeholders,
6. the work on raising the level of citizens' informing about the existence of the Anti-discrimination Act and the bodies competent for implementation of anti-discrimination policy.

Additionally, organizations were provided with an opportunity to state that they were not doing anything in relation to implementation of anti-discrimination policy, as well as that they were performing some other activities which were not offered in the enclosed categorization.

As evident from Table 1, none of the organizations that responded to the questionnaire did not state that they were not doing anything in relation to implementation of anti-discrimination policy, which is not surprising taking into account the sample of organizations to which the questionnaire was forwarded to and which responded to the questionnaire. Furthermore, as was the case in previous years, the largest number of organizations (even 15 of them) forwarded received cases to other relevant institutions such as the Ombudswoman's Office and other ombudsmen/women. This data indicates that associations recognized the important role of ombudsman's institutions in combating discrimination and that they are confident that these institutions are dealing with discrimination cases in an appropriate manner.

Furthermore, of the organizations that responded to the questionnaire, a large number of organizations receive individual cases of discrimination and provide citizens with legal aid (12 out of 16 organizations that responded to the questionnaire), which is without a doubt an important activity.

Likewise, 12 organizations are working on increasing the level of citizens' informing about the existence of the Anti-discrimination Act and the bodies competent for implementation of anti-discrimination policy, while 11 organizations monitor the implementation of anti-discrimination policy (the work of the ombudsman's offices, courts, associations etc.). From this it is evident that associations are particularly directed at the promotion of anti-discrimination policy and at monitoring its implementation.

Of particular concern is, however, the fact that very few organizations use legal mechanisms for protection against discrimination that are available to them since the Anti-discrimination Act came into force. Namely, only three organizations are involved in the capacity of intervener in anti-discrimination disputes, while three organizations file joint lawsuits for protection against discrimination. These

## 7. Results obtained from civil society organizations

mechanisms are truly important and have a large potential to yield good results for individual victims when it comes to intervening into court procedures pursuant to Anti-discrimination Act, but they are useful for development of court practice, as well. However, this type of activities may be financially demanding which, eventually, discourages civil society organizations from performing these activities.

**TABLE 1: Activities of CSOs in the area of combating discrimination**

<b>Activity in the area of combating discrimination</b>	<b>The number of organizations</b>
Receiving individual cases of discrimination and providing citizens with legal aid	12
Forwarding received cases to other relevant institutions (the Ombudsman's institutions)	15
Getting involved into received cases as interveners on the plaintiff's side	3
Forwarding joint lawsuits for protection against discrimination	3
Monitoring the implementation of anti-discrimination policy (the work of the Ombudsman's institutions, courts, associations...)	11
The work on increasing the level of citizens' informing about the existence of the Anti-discrimination Act and the bodies competent for implementation of anti-discrimination policy	12
Do not do anything specific related to implementation of anti-discrimination policy	0
Something else	4

Along with the activities that were offered to civil society organizations in the questionnaire, several organizations also stated other activities for combating discrimination. Activities that the organizations additionally stated mostly pertain to organization and participation at trainings and educations for different stakeholders involved in implementation of anti-discrimination policy. Apart from that, several organizations stated that they encouraged employment and education of marginalized groups. For example, one organization stated that it employs and provides professional training for members of marginalized groups and encourages continuation of formal education of members of marginalized groups, particularly of Roma people.

From the results that we obtained, it is evident that civil society organizations which deal with combating discrimination perform different activities in this area. However, we deem that it is necessary to additionally encourage associations to use strategic litigation in its work and particularly to use the institute of interveners and joint lawsuits.

### **7.2. General results pertaining to the number of complaints against discrimination received by civil society organizations**

Of 16 organizations that responded to the questionnaire, 12 organizations received at least one complaint against discrimination in 2012. These twelve organizations received a total of 147 cases in which citizens invoked discrimination. The organization that received the most complaints had a total of 42 complaints, while it is followed by an organization with 20 complaints in 2012. Five associations have fewer complaints, i.e. less than ten. Therefore, certain disproportion is evident here between organizations taking into account how many complaints against discrimination they received from citizens. This disproportion is the result of activities which civil society organizations performed in this area: some organizations invest a lot in the provision of legal aid, while some are registered for providing legal aid. Likewise, some organizations are recognised in public as active in this area, therefore citizens file more complaints with them.

However, civil society organizations which received complaints against discrimination from citizens did not assess that all those 147 complaints for discrimination truly have elements of discrimination, i.e. that there is reasonable suspicion of discrimination. Out of 147 complaints against discrimination, organizations-respondents assess that there are 84 cases which have elements of discrimination pursuant to the Anti-discrimination Act, while the remaining 63 cases do not. The role of courts is to determine whether there was discrimination in specific cases or not, but experts and lawyers from civil society organizations very often have to assess whether there are elements of discrimination, i.e. is there reasonable suspicion of discrimination in specific complaints they receive so that they could advise their clients. Such disproportion between the number of complaints against discrimination and complaints which truly contain elements of discrimination lies in the fact that citizens are still not informed enough about legal definition of discrimination and about the fact that sometimes such cases truly constitute violations of human rights, but not discrimination.

### **7.3. Structure of complaints against discrimination taking into account areas of social life**

As in previous years, the area of work and working conditions proved to be the most problematic one, i.e., the majority of complaints against discrimination received by civil society organizations came precisely from this area. There was a total of 23 such complaints, which makes up for one quarter of all complaints which have elements of discrimination and which were received by civil society organizations.

Furthermore, discrimination in the area of judiciary and administration also proved to be frequent one because a total of 14 complaints by citizens to organizations came precisely from this area. Likewise, frequently received complaints of discrimination were those in the areas of health protection and access to goods and services and their providing, a total of 10. Somewhat fewer (eight) complaints came from the areas of housing and education, science and sports, while five complaints pertained to

## 7. Results obtained from civil society organizations

discrimination in the area of social security, including the area of social welfare, pension and health insurance and unemployment insurance. The fewest complaints of discrimination received by associations, i.e. two, came from the area of public informing and the media. In the area of membership and activities in trade unions, civil society organizations, political parties or any other organization and in the area of participation in cultural and artistic creation there were no complaints received by civil society organizations.

**TABLE 2: Structure of complaints of discrimination which CSOs received with regard to areas**

The area	The number of complaints which have elements of discrimination
Work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining	23
Education, science and sports	8
Social security, including social welfare, pension and health insurance and unemployment insurance	5
Health protection	10
Judiciary and administration	14
Housing	8
Public informing and the media	2
Access to goods and services and their providing	10
Membership and activities in trade unions, civil society organizations, political parties or any other organization	0
Participation in cultural and artistic creation	0

### 7.4. Structure of complaints of discrimination with regard to discrimination grounds

According to data forwarded by civil society organizations, in 2012 the majority of discrimination cases came from the grounds of race, ethnic affiliation or colour of skin, i.e. 21 of them. The next two grounds according to the number of complaints are discrimination on the ground of sexual orientation with 13 complaints and discrimination on the ground of disability with nine complaints. Furthermore, there were seven complaints to civil society organizations of discrimination on the ground of national or social origin, while five complaints were on the ground of native identity and expression. There were four complaints on the grounds of sex and education each, while the grounds of marital or family status and age were represented with three complaints each. The fewest complaints pertained to discrimination accord-



## 7. Results obtained from civil society organizations

ing to the following grounds: political or other affiliation (1), property status (2), social position (2), and there were also very few complaints on multiple discrimination, i.e. discrimination on several grounds (2). There were no complaints at all to civil society organizations upon discrimination on several grounds in 2012. Those are: language, religion, trade union membership and genetic heritage.

Looking at these results, we must notice that they are quite different from those last year. Namely, as we mentioned in the section of this Chapter which explains the methodology of collecting data, it is clear that the number of complaints to a large extent depends on the organizations that responded to the questionnaire, i.e. on the manner in which they deal with combating discrimination. That particularly pertains to discrimination grounds because one part of organizations is directed at protection of human rights of certain vulnerable groups. Likewise, some organizations are recognised among certain social groups by their work in the area of combating discrimination and provision of legal aid, thus victims of discrimination which belong to certain vulnerable social groups are more inclined to file complaints on discrimination precisely with those associations.

**TABLE 3: Structure of complaints on discrimination which CSO's received with regard to discrimination grounds**

<b>Discrimination grounds</b>	<b>Number of complaints which have elements of discrimination</b>
Race, ethnic affiliation or colour of skin	21
Sex	4
Language	0
Religion	0
Political or other affiliation	1
National or social origin	7
Property status	2
Trade union membership	0
Education	4
Social position	2
Marital or family status	3
Age	3
Disability	9
Genetic heritage	0
Native identity and expression	5
Sexual orientation	13
Discrimination on several grounds (multiple discrimination)	2

# 8. DATA OBTAINED FROM RECORDS AND STATISTICAL DATA OF THE MINISTRY OF JUSTICE ON COURT CASES RELATED TO DISCRIMINATION

In compliance with Article 14 of the Anti-discrimination Act „all judicial bodies shall be obliged to keep records on court cases related to discrimination and discrimination grounds upon which these procedures are conducted and forward them to the Ministry competent for judicial affairs.“<sup>43</sup> Therefore, the Ministry of Justice has been collecting this data since 2009, i.e. from coming into force of the Anti-discrimination Act. In 2010 case monitoring forms were changed so that now these records are kept in a manner much more adequate than the previous one, i.e. on all discrimination grounds separately which was not the case until then. Now we can follow discrimination upon twenty grounds in those records, which is different from the grounds defined in the Anti-discrimination Act because some grounds from the Act were separated into several grounds. However, there is one problematic issue, something we already detected in last year's Report on the Implementation of the Anti-discrimination Act, and that is the fact that in the records we have the aforementioned ground *expression (upon all grounds)* which, according to some interpretations, actually does not exist, but *expression* is an integral part of the ground *native identity and expression*. Thus, this interpretation renders it impossible for us to follow the actual situation regarding the number of cases upon specific grounds.

Statistical monitoring of cases pertaining to discrimination is kept according to the type of case and, subsequently, the court before which the procedures take place, therefore there are forms for civil, misdemeanour and criminal cases. Thus, later in the text we will specifically look back at those three different types of procedures.

### 8.1. Civil cases

According to data from municipal and county courts for 2012 (Form No. 1), there is a total of 52 unresolved cases from the previous time period, according to the following grounds: expression upon all grounds (10), national origin (8), sexual orientation (7), trade union membership (6), disability and sex (4 cases each), education (3), social position and health condition (2 cases each) and race or skin colour, religion, political or other belief, marital or family status and age (one case each).

There was a total of 64 newly-received cases during the reporting period, while at the end of the reporting period there remained a total of 100 unresolved cases. In 2012, a total of 16 cases were resolved by final court rulings, of which number one case was resolved in such a manner that the claim was adopted (discrimination on the ground of trade union membership), three in such a manner that the claim was dismissed, while 12 cases were resolved in another manner. Of those cases resolved by a final court verdict, it was determined that one woman and three men were discriminated against. As far as

<sup>43</sup> The Anti-discrimination Act (Official Gazette 85/08), Article 14, paragraph 1.

## 8. Data obtained from records and statistical data of the ministry of justice...

duration of proceedings is concerned, eight proceedings were resolved in less than 12 months, while eight proceedings were resolved in more than 12 months.

As far as 64 cases that were received in 2012 are concerned, their structure according to discrimination grounds is as follows: expression upon all grounds (30 cases), national origin (7 cases), social position (6 cases), sex (5 cases), trade union membership (4 cases), sexual orientation, political or other affiliation, age (2 cases each) and race or skin colour, religion, marital or family status, education, disability and native identity (one case per each base).

### 8.2. Misdemeanour cases

According to the statistic of misdemeanour courts, in 2012 (Form No. 2) there remained a total of 32 unresolved cases from the previous time period. Those cases pertain to the following grounds: sex (9 cases), national origin (7 cases), ethnic affiliation (6 cases), sexual orientation (4 cases), property status (3 cases), social position (2 cases) and age (1 case). Furthermore, during the reporting period 63 cases were received upon the following grounds: sex (23 cases), national origin (13 cases), race or skin colour (11 cases), social position (6 cases), ethnic affiliation (5 cases), while the grounds of sexual orientation, religion, trade union membership, age and expression upon all grounds were represented with one case each.

As far as dynamics of resolving cases is concerned, during the reporting period, i.e. in 2012, 37 cases were resolved by final court rulings, of which number 26 cases were concluded with convictions, seven with acquittals, while four were concluded in another manner. A total of 34 cases were resolved in less than 12 months, while three cases were resolved in more than 12 months. At the end of 2012, a total of 58 cases remained unresolved.

### 8.3. Criminal cases

When we look at the statistics of criminal cases (Form No. 3), it is evident that we are talking about significantly smaller number of cases in relation to the statistics of misdemeanour and civil cases. First of all, the number of unresolved cases from the previous time period was 11, pursuant to the following discrimination grounds: race or skin colour (3 cases), ethnic affiliation (3 cases), sex (1 case), sexual orientation (1 case), national origin (1 case), social position (1 case) and marital or family status (1 case). During the reporting period only 5 cases were received: of that number three cases pertain to national origin, while one case pertained to discrimination grounds of ethnic affiliation and sex each. In 2012, a total of 4 cases were resolved by final court rulings, of which number one case resulted in acquittal while three cases were resolved in another manner. Thus, in 2012 there were no convictions in criminal cases for discrimination.

## 8. Data obtained from records and statistical data of the ministry of justice...

Form No. 1

### MINISTRY OF JUSTICE

### MONITORING OF CASES RELATED TO DISCRIMINATION AND DISCRIMINATION GROUNDS

REPORTING PERIOD FROM 1 January 2012 to 31 December 2012

DISCRIMINATION GROUNDS referred to in Article 1 of the Anti-discrimination Act	CIVIL CASES							
	UNRESOLVED FROM THE PREVIOUS PERIOD	RECEIVED during the reporting period	TYPE OF LEGAL ACTION				RESOLVED BY A FINAL COURT RULING	
			DETERMINATION OF DISCRIMINATION (Article 17 par. 1 item 1 of the Anti-discrimination Act)	PROHIBITION OR ELIMINATION OF DISCRIMINATION (Article 17, par. 1, Item 2 of the Anti-discrimination Act)	COMPENSATION OF DAMAGES (Article 17 par. 1 Item 3 of the Anti-discrimination Act)	OTHER	CLAIMS ADOPTED	
Race or skin colour	1	1	1	0	0	0	0	
Ethnic affiliation	0	0	0	0	0	0	0	
Sex	4	5	3	0	1	1	0	
Sexual orientation	7	2	2	1	2	0	0	
Language	0	0	0	0	0	0	0	
Religion	1	1	1	0	0	0	0	
Political or other belief	1	2	1	0	1	0	0	
National origin	8	7	5	0	4	0	0	
Social origin	0	0	0	0	0	0	0	
Property situation	1	0	0	0	0	0	0	
Membership in trade union	6	4	3	1	0	0	1	
Social position	2	6	4	1	2	0	0	
Marital or family status	1	1	1	0	0	0	0	
Age	1	2	1	0	1	0	0	
Education	3	1	1	0	0	0	0	
Health condition	2	0	0	0	0	0	0	
Disability	4	1	1	0	0	0	0	
Genetic heritage	0	0	0	0	0	0	0	
Native identity	0	1	0	0	1	0	0	
Expression (upon all discrimination grounds)	10	30	14	5	6	5	0	
TOTAL	52	64	38	8	18	6	1	

## 8. Data obtained from records and statistical data of the ministry of justice...

			TOTAL RESOLVED BY A COURT RULING	NUMBER OF DISCRIMINATED WOMEN	NUMBER OF DISCRIMINATED MEN	DURATION OF PROCEEDINGS		REMAINED UNSOLVED at the end of the reporting period
	CLAIMS DISMISSED	IN AN-OTHER MANNER				LESS THAN 12 MONTHS	MORE THAN 12 MONTHS	
	0	0	0	0	0	0	0	2
	0	0	0	0	0	0	0	0
	0	1	1	0	0	0	1	8
	0	1	1	1	0	1	0	8
	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	2
	0	0	0	0	0	0	0	3
	2	2	4	0	1	0	4	11
	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	1
	1	0	2	0	1	2	0	8
	0	1	1	0	0	0	1	7
	0	0	0	0	0	0	0	2
	0	0	0	0	0	0	0	3
	0	0	0	0	0	0	0	4
	0	0	0	0	0	0	0	2
	0	1	1	0	0	0	1	4
	0	0	0	0	0	0	0	0
	0	1	1	0	0	1	0	0
	0	5	5	0	1	4	1	35
	3	12	16	1	3	8	8	100

## 8. Data obtained from records and statistical data of the ministry of justice...

Form No. 2

### MINISTRY OF JUSTICE

### FORM FOR STATISTICAL MONITORING OF CASES RELATED TO DISCRIMINATION AND DISCRIMINATION GROUNDS

REPORTING PERIOD FROM 1 January 2012 to 31 December 2012

DISCRIMINATION GROUNDS referred to in Article 1 of the Anti-discrimination Act	MISDEMEANOUR CASES					
	UNRESOLVED FROM THE PREVIOUS PERIOD	RECEIVED during the reporting period	RESOLVED BY FINAL COURT RULING			
			CONVICTION	ACQUITTAL	IN ANOTHER MANNER	
Race or skin colour	0	11	2	1	0	
Ethnic affiliation	6	5	3	1	1	
Sex	9	23	8	4	0	
Sexual orientation	4	1	0	0	0	
Language	0	0	0	0	0	
Religion	0	1	0	0	1	
Political or other belief	0	0	0	0	0	
National origin	7	13	9	0	1	
Social origin	0	0	0	0	0	
Property status	3	0	0	0	0	
Membership in trade union	0	1	0	0	0	
Social position	2	6	3	0	1	
Marital or family status	0	0	0	0	0	
Age	1	1	1	0	0	
Education	0	0	0	0	0	
Health condition	0	0	0	0	0	
Disability	0	0	0	0	0	
Genetic heritage	0	0	0	0	0	
Native identity	0	0	0	0	0	
Expression (upon all discrimination grounds)	0	1	0	1	0	
TOTAL	32	63	26	7	4	

## 8. Data obtained from records and statistical data of the ministry of justice...

	TOTAL RESOLVED BY FINAL COURT RULINGS	NUMBER OF DISCRIMINATED WOMEN	NUMBER OF DISCRIMINATED MEN	NUMBER OF SENTENCED PERSONS	DURATION OF PROCEEDINGS		REMAINED UNRESOLVED at the end of the reporting period
					LESS THAN 12 MONTHS	MORE THAN 12 MONTHS	
	3	0	0	0	2	1	8
	5	1	3	4	4	1	6
	12	8	0	8	11	1	20
	0	0	0	0	0	0	5
	0	0	0	0	0	0	0
	1	0	1	0	1	0	0
	0	0	0	0	0	0	0
	10	2	6	9	10	0	10
	0	0	0	0	0	0	0
	0	0	0	0	0	0	3
	0	0	0	0	0	0	1
	4	0	1	1	4	0	4
	0	0	0	0	0	0	0
	1	1	0	1	1	0	1
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	1	0	0	0	1	0	0
	37	12	11	23	34	3	58

## 8. Data obtained from records and statistical data of the ministry of justice...

Form No 3

### MINISTRY OF JUSTICE

### FORM FOR STATISTICAL MONITORING OF CASES RELATED TO DISCRIMINATION AND DISCRIMINATION GROUNDS

REPORTING PERIOD FROM 1 January 2012 to 31 December 2012

DISCRIMINATION GROUNDS referred to in Article 1 of the Anti-discrimination Act	CRIMINAL CASES					
	UNRESOLVED FROM THE PREVIOUS PERIOD	RECEIVED during the reporting period	RESOLVED BY FINAL COURT RULINGS			
			CONVICTION	ACQUITTAL	IN ANOTHER MANNER	
Race or skin colour	3	0	0	0	1	
Ethnic affiliation	3	1	0	0	0	
Sex	1	1	0	1	0	
Sexual orientation	1	0	0	0	0	
Language	0	0	0	0	0	
Religion	0	0	0	0	0	
Political or other belief	0	0	0	0	0	
National origin	1	3	0	0	2	
Social origin	0	0	0	0	0	
Property status	0	0	0	0	0	
Membership in trade union	0	0	0	0	0	
Social position	1	0	0	0	0	
Marital or family status	1	0	0	0	0	
Age	0	0	0	0	0	
Education	0	0	0	0	0	
Health condition	0	0	0	0	0	
Disability	0	0	0	0	0	
Genetic heritage	0	0	0	0	0	
Native identity	0	0	0	0	0	
Expression (upon all discrimination grounds)	0	0	0	0	0	
<b>TOTAL</b>	<b>11</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>3</b>	



## 8. Data obtained from records and statistical data of the ministry of justice...

	TOTAL RESOLVED BY FINAL COURT RULINGS	NUMBER OF DISCRIMINATED WOMEN	NUMBER OF DISCRIMINATED MEN	NUMBER OF CONVICTS	DURATION OF PROCEEDINGS		REMAINED UNRESOLVED at the end of the reporting period
					LESS THAN 12 MONTHS	MORE THAN 12 MONTHS	
	1	0	1	0	0	1	2
	0	0	0	0	0	0	4
	1	1	0	1	0	1	1
	0	0	0	0	0	0	1
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	2	0	0	0	2	0	2
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	1
	0	0	0	0	0	0	1
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	0	0	0	0	0	0	0
	4	1	1	1	2	2	12

# 9. CONCLUSIONS AND RECOMMENDATIONS

Our assessment of the LAA was created on the basis of data collected from stakeholders involved in legal aid system and the analysis of contents of applicable legislation, relevant reports, opinions and findings. Relevancy, efficiency, effectiveness and sustainability of the Act were our main criteria for evaluating and assessing current functioning of the LAA.

The majority of recommendations that we provided in the *Report for 2011*, for example softening the criteria of property status, simplification of procedure of granting primary legal aid, expanding the range of primary legal aid to all legal areas, legal counseling and informing outside and before court, administrative and other procedures for all types of legal problems, project-based financing of associations which would proportionally cover the actual expenses of legal aid provision, are incorporated in draft proposal of the new LAA. We deem that recommendations that we provide later in the text should also find their place in the new LAA for the purpose of its further improvement and opportunity for full affirmation of an efficient and effective legal aid system for which preconditions must be ensured.

On the other hand, looking at data on implementation of the Anti-discrimination Act, it is also clear that many things still need to be done in this area. First of all, this research needs to be viewed in the light of data that demonstrate which discrimination grounds are particularly present and which areas are particularly problematic so that special measures would be conducted in order to reduce or remove discrimination on those grounds and areas. Likewise, the results should be viewed in the context of the entire anti-discrimination policy, not only implementation of the Anti-discrimination Act. Taking into account the fact that not much has changed in this area, recommendations do not differ much from those that we provided along with the *Report on Implementation of the Anti-discrimination Act in 2011.*

### *Recommendations*

#### **Recommendations pertaining to implementation of the Legal Aid Act:**

- To ensure significant increase of funds for legal aid from the State Budget and other alternative sources, particularly European funds, so that citizens of Croatia would enjoy same rights and standards as citizens of European countries which have well-developed legal aid system as well as have equal access to justice.
- To ensure financing of primary and secondary legal aid from budget sources in the approximately same amount, because of extreme preventive importance of primary legal aid and, by doing so, to avoid previous practice of non-equal allocation to the detriment of primary legal aid.
- It would be necessary to expand the circle of legal aid beneficiaries to foreigners – returnees to the Republic of Croatia who return to Croatia within the programmes of return, reconstruction or housing accommodation and cancel the condition of reciprocity for this category of beneficiaries. To re-introduce the possibility of obtaining legal aid for criminal, misdemeanour and land-registry procedures for victims of family violence, as well.

- Statistical records of beneficiaries of legal aid kept by the Ministry of Justice should be supplemented with data, for example on age, sex, status, ethnic affiliation etc. For the purpose of more systematic and comprehensive monitoring and reporting.
- For the purpose of increasing the efficiency of legal aid system, it is necessary to ensure better IT links between offices for granting legal aid and state bodies to ensure facilitated and accelerated verification of stipulated conditions for granting legal aid.
- It would be necessary to re-define the role and tasks of the Legal Aid Commission in such a manner that the Commission becomes independent and impartial body with broader powers.
- In the procedure of adopting new LAA to continue counseling with legal aid providers and with interested public.
- Recommendations pertaining to the Anti-discrimination Act:
- To continue with education and raising awareness among citizens about discrimination and the Anti-discrimination Act, mechanisms which the Act provides as well as other anti-discrimination acts and policies that are in force in the Republic of Croatia.
- Strengthening social groups that are particularly exposed to discrimination to recognize and report discrimination and use the mechanisms of the Anti-discrimination Act in order to protect themselves from discriminatory treatment. According to the results of this research, we are primarily talking about discrimination grounds of race, ethnic affiliation or skin colour, national or social origin, disability, sexual orientation and sex.
- To pay special attention to the area of work and working conditions, including employment, as well. To work on education of employers on harmful consequences of discrimination and on their legal obligations stemming from the Anti-discrimination Act, the Gender Equality Act and the Labour Act.
- To work on better coordination between bodies competent for combating discrimination.
- To continue work on increasing the capacities of police officials, state attorneys and judges for work on combating hate speech and hate crime.
- To increase financial and expert capacities of civil society organizations for providing legal aid.
- The Ministry of Justice should publish records and statistical data on discrimination cases on its official internet sites.

### ***Conclusions***

As far as the Legal Aid Act is concerned, we assessed the entire 2012 as a lost year because the cycle of legal amendments, without which radical improvements of legal aid system are simply not possible, has not started. The last amendments to the Legal Aid Act from 2011 did not bring expected, necessary and objectively feasible qualitative step forward, nor did they contribute to efficiency and effectiveness of legal aid system. The most serious problems, which occur year after year, are still non-functioning and inadequacy of the system, particularly in relation to socially vulnerable persons for whom the Act was intended, which is clearly evident by a comparatively small number of persons who exercised legal aid.

## 9. Conclusions and recommendations

The possibility to support all forms of legal counseling was narrowed down because each form of legal counseling outside court and administrative procedures and administrative disputes has been excluded from the system. Counseling citizens before initiating formal legal procedures often influences citizens' decision on initiation of proceedings and could significantly contribute to decreasing the number of unnecessary procedures and, subsequently, to lifting the burden from the courts and administrative bodies. The established property criteria for granting legal aid are still restrictive and lead to the exclusion of a large number of citizens. The property criteria set forth in such a manner represent a risk from discrimination on the ground of property status. Citizens with low income, for whom legal aid is intended, do not have equal access to administrative and judicial bodies compared to other citizens of Croatia. Putting those persons in an unfavourable position because of their inability to exercise legal aid brings into question the effectiveness of the entire anti-discrimination protection system.

The key message of this Report is that the LAA should be amended in such a manner as to take into consideration opinions of legal aid providers and legal experts and to set forth softer criteria and simplify the procedure of granting primary legal aid for a wide range of beneficiaries who necessarily need such aid. In order to improve the effectiveness and efficiency of the system, it is necessary to ensure significant funds from the State Budget

In case of implementation of the Anti-discrimination Act, it is an act which is much more adequate than the Legal Aid Act, but we see that its implementation is still not functioning as it should. Furthermore, the situation has not significantly changed in relation to previous years, thus when compiling this Report we could have simply repeated recommendations which we forwarded in the Report on the Implementation of the Anti-discrimination Act in 2011. However, we hope that executive authority bodies will work on creation of a comprehensive anti-discrimination policy with which the Anti-discrimination Act could gain new swing and sense.

## **III. APPENDIX**



# UMBRELLA AGAINST DISCRIMINATION

## ANALYSIS OF DESIGN OF THE NATIONAL PLAN FOR COMBATING DISCRIMINATION AND RECOMMENDATIONS FOR IMPROVEMENT



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## FOREWORD

This analysis is the result of a process of strengthening civil society organizations to act on the development of anti-discrimination policy in Croatia initiated in 2012 when, through synergy of two projects, a group of approximately 20 experts from civil society organizations and the Ombudsman's offices was formed. The projects were financed with European Community funds from IPA 2008 programme *Strengthening the Capacities and Role of Civil Society Organizations for Monitoring the Implementation of EU Acquis in the Area of Comprehensive Anti-discrimination Strategy*.

Through two workshops within the project of the Centre for Peace Studies „Strengthening Civil Society Organizations for Effective Implementation and Monitoring of Anti-discrimination Policy in Croatia“ the group was introduced to key terms and analytical procedures in the development and implementation of public policies and, with support from mentors, they performed the analysis of design of the National Plan for Combating Discrimination between 2008 and 2013.

On the third workshop, within the project „Civil Society Organizations' Initiative for Changes in Anti-discrimination Policy“ conducted by Centre for Peace, Nonviolence and Human Rights – Osijek in partnership with Centre for Peace, Legal Advice and Psychosocial Assistance - Vukovar and Serb Democratic Forum, the group summarized and structured results of the conducted analysis, which resulted in creation of this document – Umbrella against Discrimination (*The analysis of design of the National Plan for Combating Discrimination in Croatia between 2008 and 2013 and Proposals for Improvement*).

The focus was placed on the National Plan because stakeholders did not perceive it as an efficient and relevant framework for development and implementation of the anti-discrimination policy, although it represents an important *policy* document. The analytical work conducted within the second five-day seminar resulted in comprehensive and relevant assessments of design (objectives and instruments) and implementation of the existing National Plan for Combating Discrimination and draft recommendations for its improvement in the new cycle of implementation.

## SUMMARY

The National Plan for Combating Discrimination between 2008 and 2013 did not reach desired results and represents poor foundation for drafting a new strategic document. Definition of problem of discrimination, objectives and measures for elimination of discrimination in society were not worked out well in the National Plan, the National Plan was not harmonized with other documents related to combating discrimination nor was its role in national anti-discrimination policy clear.

Bearing in mind a lack of efficient combination of instruments and non-functional implementing structure, it is difficult to expect that the National Plan will significantly and for a longer period of time influence positive changes in society.

Taking into account that this year marks the end of a cycle of Plan's implementation, adoption of a new strategic document based on the existing one would result in further accumulation of administrative expenses, continuation of non-harmonized activities on the part of public authority bodies, as well as loss of human rights perspective in access to anti-discrimination.

Because of poor design, as well as evident lack of political will for creating a feasible document, harmonized with other parts of anti-discrimination policy in Croatia, it is necessary to find a different approach to drafting a new strategic document.

While assessing findings of the analysis of the National Plan and its Action Plan for Implementation of the National Plan for Combating Discrimination for the period between 2011 and 2013, we developed three concurrent options for a new cycle of implementation of the National Plan:

1. Adoption of a new five-year National Plan for Combating Discrimination which will still have non-defined position in anti-discrimination policy.
2. Non-adoption of a new National Plan, encouragement and increased monitoring of the Anti-discrimination Act and anti-discriminatory dimensions of a new National Programme of Protection and Promotion of Human Rights and strengthening anti-discrimination elements in sectorial policies and policies towards sensitive target groups.
3. Adoption of a new five-year National Plan for Combating Discrimination which will have an umbrella role in anti-discrimination policy. Such document would expand, link and direct implementation of the existing programmes, strategies, plans and laws from different areas of social life.

Bearing in mind that accepting the first option would lead to accumulation of administrative expenses and continuation of non-coordinated work of public authority bodies, we deem that this option should be avoided. Non-adoption of the National Plan would keep one of the key problems unresolved – coordination of activities among implementors of anti-discrimination policy.

Because of poor links between implementors of anti-discrimination policy, fragmented implementing structures and insufficient measuring of implementation and results of public policies, we advocate the third *umbrella* option, which would in one document link and supplement anti-discrimination measures and instruments from the current programmes and strategies. For successful realization of the umbrella option on the basis of implementing analysis of design of the National Plan, we prepared some proposals for policy makers.

**Recommendation 1:** *To structure the new National Plan according to areas in which discrimination is prohibited and, within each area, to work on those grounds which make discrimination wide-spread.*

**Recommendation 2:** *To establish working groups for each area which will perform the analysis of manifestations, forms, causes and consequences of discrimination, taking into account different discrimination grounds.*

**Recommendation 3:** *To perform analysis of the existing programmes, strategies and plans for each area and identify successes and problems in implementation of parts pertaining to combating discrimination.*

**Recommendation 4:** *To determine specific objectives for each area of the National Plan on the basis of these analyses. Activities, i.e. instruments that lead to realization of these specific objectives will be elaborated in action plans. In the new NP it is necessary to separately structure the objectives for end beneficiaries - citizens and secondary target group – policy implementors.*

**Recommendation 5:** *To take over activities which are feasible and have potential effect from other strategies and incorporate into the Action Plan. In order to facilitate reporting in the future, it is important to take over activities while invoking original policy documents.*

**Recommendation 6:** *To develop new instruments as an expansion of the instruments taken over from other strategies and programmes. It is important to take into account combination of different types in the development of instruments.*

**Recommendation 7:** *To make instruments, i.e. activities operational, in a clear manner and to a great detail. There has to be a map of involved implementors, tasks need to be clearly assigned while deadlines and amounts of necessary and provided funds must be specified.*

**Recommendation 8:** *To set up indicators of implementation and effect in the Action Plan and to develop a framework, questionnaires and procedures for monitoring and reporting on implementation. The reporting should encompass all implementors, including civil society organizations which perform activities from the Plan in partnership arrangements. To report each year and to publish reports.*

**Recommendation 9:** *To determine a body that will coordinate implementation of the Plan and provide this body with necessary coordination resources and powers. The body that coordinates implementation may have collecting and compiling the annual report on implementation as one of its tasks.*

**Recommendation 10:** *To set up an inter-sectorial body that will monitor implementation and evaluate annual report on implementation. This body should include representatives from TDU, representatives from CSOs who deal with combating discrimination and experts. This body must be provided with a clear scope of work and resources for quality functioning.*

**Recommendation 11:** *To ensure mechanisms of horizontal coordination: identification of persons tasked with monitoring the implementation of the NP, to determine measure implementors in each body, anticipate working meetings, suggest effective communication channels.*

**Recommendation 12:** *The coordination body should monitor the activities of NP implementors in the course of implementation and provide them with guidelines, instructions and other mechanisms of vertical coordination.*

**Recommendation 13:** *To design effective approach for stronger involvement of regional and local authorities in the implementation of the National Plan.*



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