

Centre for Peace, Nonviolence and Human Rights - Osijek

Centre for Peace, Legal Advice and Psychosocial Assistance - Vukovar

Serbian Democratic Forum

MONITORING THE IMPLEMENTATION OF THE LEGAL AID ACT IN FIGHT AGAINST DISCRIMINATION

SUMMARY
OF THE 2011 REPORT

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SUMMARY¹

The right to 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-discriminatory Policy“, funded by the European Union from the IPA 2008 programme *Strengthening the Capacities and Roles 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 fight against 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, eight county state administration offices, ten civil society organizations which provide legal aid and 1,652 beneficiaries of legal aid. Likewise, it is based on the analysis of contents of applicable legislation and relevant reports, opinions and findings.

The relevance, efficiency, effectiveness and sustainability of the current LAA created four basis 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

¹ Note: This Report is a summary of the Report for 2011 titled “Monitoring the Implementation of the Legal Aid Act in Fight against Discrimination” which contains a total of 69 pages and which elaborates the subject issues in a more comprehensive and a more detailed manner.

and survey with 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 bases, 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 population with equal access to justice. The most convincing indicator can be seen in a graphic display according to which, during 2011, nine surveyed associations provided legal aid within the system financed by the Ministry of Justice in as few as **178** individual legal cases, while at the same time outside the system – the financing of which is to a large extent provided by international donors – aid was provided in a total of **15,265** individual legal cases.

Likewise, the findings contained in this Report indicate the fact that fulfillment of stipulated criteria of property status proved to be a key obstacle for acquiring legal aid in practice. The established property criteria for granting legal aid are still restrictive and lead to elimination of all those beneficiaries who could acquire legal aid because they do not have any income, some even do not own a real estate in which they live, but they do own land, in the majority of cases they co-own small pieces of land without any big value. The criteria set forth in such a manner represent a risk from discrimination on the basis of property status. Citizens with low income who are main beneficiaries of legal aid 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 acquire legal aid represents risk from discrimination on the basis of property status.

In our opinion, 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.

Apart from eleven specific recommendations, **the key message** of this Report is that it is necessary to perform a review of the existing Legal Aid Act so that the system of legal aid provision would be rendered less bureaucratic and would, to a significantly larger extent, correspond to citizens' needs. Amendments should be such as to contribute to better usage of funds intended for legal aid to citizens, smaller administrative costs and decreased administrative burden, and to benefit the increasing number of citizens who receive legal aid.

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 gathered from beneficiaries of legal aid because of whom the Act was adopted in the first place and state administration offices which grant legal aid.

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-discriminatory Policy“, funded by the European Union from IPA 2008 programme *Strengthening the Capacities and Roles 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 a workshop „Monitoring and Evaluation of Public Policies”². Having acquired specific knowledge and skills related to monitoring and evaluation of public policies, organizations – participants in this 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.

Upon 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 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 bases, legal area in which legal aid was provided, the type of legal service provided and data from a questionnaire for beneficiaries of legal aid.

The survey encompassed a total of 1,652 beneficiaries of whom 39.4% were men and 60.6% women. According to their status, the majority of them were socially vulnerable beneficiaries (25%), returnees (24.6%), unemployed persons (11.2%), retired persons with minimum pension (11.1%), refugees (2.4%), foreigners (1.7%), displaced persons (0.7%) and 21% 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 9 associations, the CBA and 8 state administration offices. A total of 8 surveys/interviews were conducted and analyzed, while three offices refused to take part in the survey.

² The following organizations participated at the workshop: B.a.B.e Zagreb, Centre for Civil Initiatives Poreč, Centre for Peace, Non-violence 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 Mobbing Victims 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.

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 2009³ The purpose of this Act was to render it possible for citizens in poor financial situation access to professional legal aid 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 in Croatia. 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 2011.⁴ The Act on the Amendments to the Legal Aid Act (hereinafter: ZID LAA) was adopted by the Croatian Parliament at its session held on 8 July 2011 and that Act is still in force.⁵

2.1. Legal services encompassed by the legal aid system

Types of legal aid⁶ set forth by the Amendments to the Act are: primary legal aid, secondary legal aid, exemption from paying court fees and exemption from paying the expenses of court proceedings. Primary legal aid encompasses: legal advice, drafting submissions before public and legal bodies, representation in proceedings before public and legal bodies and legal aid in peaceful out-of-court dispute settlement. Amendments to the Act increased the number of legal services encompassed by secondary legal aid as they included legal service – provision of legal advice. The remaining two types of legal aid, exemption from paying court fees and exemption from paying the expenses of court proceedings will come into force as of 1 January 2013.⁷ However, Amendments to the Act did not encompass two types of legal aid, exemption from paying administrative fees and exemption from paying the expenses of administrative proceedings.

³ Official Gazette, No. 62/08.

⁴ Official Gazette, No. 44/11.

⁵ Official Gazette, No 81/11.

⁶ Article 4 of ZID LAA.

⁷ Article 56 of ZID LAA.

2.2. Legal aid beneficiaries

Pursuant to the provisions of the LAA, legal aid beneficiaries may be Croatian citizens and certain categories of foreigners.

2.3. Legal areas encompassed by legal aid system

Legal aid may be granted in proceedings before the court and public and legal bodies in cases when they decide about beneficiaries' rights stipulated by the law.⁸ Primary legal aid may be granted in cases of proceedings pertaining to citizens' status rights, determination of rights and obligations stemming from pension and/or health insurance, determination of rights and obligations stemming from social welfare system and, exceptionally, in other administrative proceedings when it ensues from specific life circumstances. Although protection of employees' rights before employers was encompassed by primary legal aid, pursuant to Amendments to the Act only attorneys and trade unions are authorized to provide the same. Secondary legal aid may be granted in proceedings related to actual rights (apart from land-registry rights) stemming from employment, family relations, certain distraint proceedings and insurance proceedings, peaceful dispute settlement and, exceptionally, in other court proceedings when it ensues from specific life circumstances.

2.4. Legal aid providers

Provider of legal aid may be a lawyer, authorized association or a university through legal clinic. Amendments to the Act extended the circle of possible legal aid providers to county state administration offices and the Office of the City of Zagreb.⁹ Legal aid providers provide legal aid for a fee. The amount of fee is stipulated by the Regulation on the Tariff for Determining the Amount of Compensation for Providing Primary and Secondary Legal Aid.¹⁰ Legal aid providers are explicitly prohibited from any type of promotion related to provision of legal aid. In case of unlawful promotion, legally stipulated measures for uncontentious provision of legal aid shall be applied.¹¹

2.5. Procedure for acquiring legal aid¹²

The procedure for granting legal aid is initiated by submitting a request with the competent office. The request shall be submitted on a stipulated form. The form shall contain personal data of a submitter and

⁸ Article 5 of ZID LAA.

⁹ Article 10, paragraph 1 of ZID LAA.

¹⁰ Official Gazette, No. 33/11.

¹¹ Article 10, paragraph 3 of ZID LAA.

¹² Article 15 of ZID LAA.

data on legal matter for which legal aid is sought. Apart from that, the submitter must state data on the type of legal aid and legal area in which he needs aid. In the request he should state only one type of legal aid. Likewise, the submitter must state complete and true data about his/her financial situation and of his/her household members of age. Along with the request, he/she needs to enclose different certificates about the status of submitter of the request issued by a competent body. The request shall be submitted with the competent state administration office according to submitter's place of permanent residence. The office shall decide on the request within 15 days and, in case of urgency, even sooner. If the request is rejected, the submitter may lodge an appeal with the Ministry of Justice within 15 days and he/she may also initiate administrative dispute. If the request is granted, a Decree on granting the use of legal aid is issued. The Decree stipulates the type and scope of legal aid which is granted. The Decree does not stipulate the provider of legal aid, which means that the beneficiary independently decides on the selection of provider taking into account provider's authorization to provide certain types of legal aid.¹³ This means in practice that the beneficiary must find a lawyer or another provider, whereby he/she does not possess basic knowledge about certain provider's authorizations. The beneficiary must use the granted legal aid within 90 days. Upon the expiry of that deadline, the Decree which granted legal aid is declared null and void.

¹³ Article 25 of ZID LAA

3. MONITORING THE IMPLEMENTATION OF THE LEGAL AID ACT

For the purposes 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 eight authorized associations¹⁴. The aforementioned monitoring encompasses the period of six months, from 15 October 2011 to 15 March 2012.

3.1. Relevance of the Act

The purpose of the Legal Aid Act is to facilitate the exercise of rights and access to courts and public bodies for citizens of poor financial situation 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 a 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 a request for granting legal aid. The consequences of global economic crisis have also reflected themselves

¹⁴ The following organizations participated in the monitoring: Centre for Civil Initiatives Poreč, Centre for Participation of Women in Social Life Rijeka, Centre for Peace, Non-violence 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.

on Croatia and its citizens. In 2010, Croatia had GDP per capita in the amount of EURO 10,394.¹⁵ Since 2008 there has been a GDP decline expressed per capita.

The at-risk-of-poverty rate¹⁶ in Croatia in 2010 was 20.6%. Pursuant to Eurostat assessment, the at-risk-of-poverty rate for EU-27 countries amounts to 16.4%. There are six EU countries in which the at-risk-of-poverty rate exceeds 20% (Greece, Lithuania, Bulgaria, Spain, Romania and Latvia). Croatia with its 20.6% rate is among the countries with the highest at-risk-of-poverty rates in the EU.¹⁷

At the end of January 2012, the Croatian Employment Institute recorded a total of 334,351 unemployed persons. Pursuant to statistical report of the Croatian Pension Insurance Institute¹⁸ for December 2011, total number of pension beneficiaries pursuant to the Pension Insurance Act were 1,123,389. Out of that number, 579,343 beneficiaries (51%) 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 2010 amounted to 25,200 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 19% of Croatian citizens live on the brink of or below the poverty threshold. When percentages are turned into live human beings, 900,000 Croatian citizens are living with high at-risk-of-poverty rate.¹⁹ 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, then the aforementioned social-economic indicators seriously raise the question whether the scope of population was adequate.

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

On the basis of the analysis of surveys with legal aid providers,²⁰ throughout 2011 associations provided legal aid in as few as **178** individual legal cases through legal aid system financed by the Ministry of

¹⁵ Source: the Central Bureau of Statistics, <http://www.dzs.hr/>.

¹⁶ 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. 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.

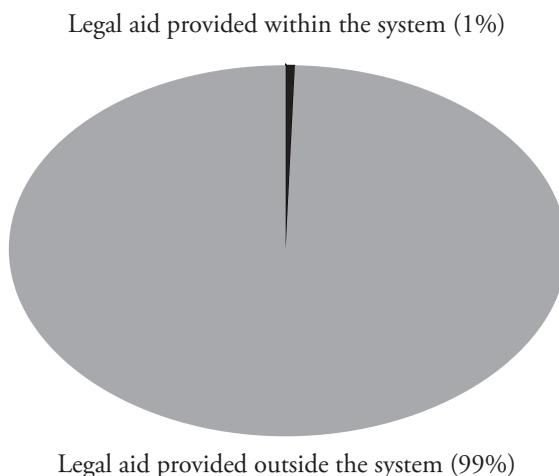
¹⁷ Author/source: SEEbiz/H, 30 November 2011.

¹⁸ Source: <http://www.mirovinsko.hr>

¹⁹ <http://www.vjesnik.hr/Article.aspx?ID=90F84D2E-841C-45C1-A>

²⁰ The following organizations participated in the survey: Centre for Participation of Women in Social Life Rijeka, Centre for Peace, Non-violence 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.

Justice. At the same time outside the system, the financing of which is to a large extent ensured by international donors, they provided legal aid in **15,265** individual legal cases.



Pursuant to data forwarded to us by the CBA in the survey, in the period from the beginning of application of the LAA, 1 February 2009 until 5 April 2012, the Bar Association received a total of 3,299 cases for „*pro bono*“ representation, meaning outside the legal aid system.

Assessment of legal aid providers

According to the opinion of the aforementioned associations, the LAA does not correspond to the needs of Croatian society and its citizens because it fails to provide equal exercise of their rights in proceedings before administrative and judicial bodies. The reasons for this they find in reduced legal area of 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.

Participants of the Round Table „Reform of Legal Aid System – the Future of Legal Counseling?“ held in November 2011 in Zagreb reached the same conclusion. Their conclusion was that „*the legal aid system is inadequate and non functional from the perspective of its target groups for which it was intended. The system is in particular not corresponding to the needs of vulnerable social groups seeking legal advice (primary legal aid).*“

Groups that cannot acquire legal aid

Foreigners, citizens of the Republic of Serbia and partially of Bosnia and Herzegovina are not entitled to legal aid because there is no reciprocity condition.

Foreigners who return to Croatia in the procedure of approving temporary stay in Croatia and who are encompassed by the housing care programme, are not entitled to legal aid, either.

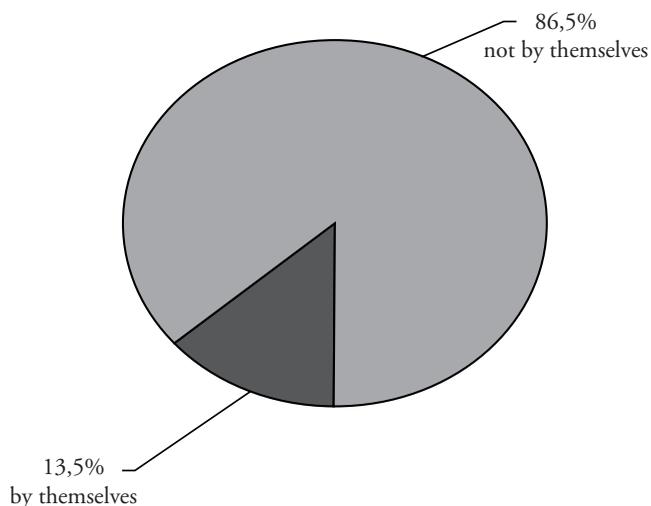
Legal areas excluded from legal aid system

Amendments to the LAA in their restrictive list (significantly narrower compared to legal areas for which secondary legal aid is provided), excluded a large number of cases and legal issues which deserve legal aid. Primary legal aid should include a broader circle of legal issues than secondary legal aid.

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 by the Ministry of Justice and we analyzed a Decision of the Constitutional Court of the Republic of Croatia.

In order to determine the *clarity of the procedure* we surveyed a total of 1,652 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, 36% of beneficiaries replied that they knew, 64% 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 **13.5%** surveyed beneficiaries can fill in the request by themselves, while the remaining **86.5%** cannot do that by themselves.



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 2/3 of beneficiaries do not know

where they can get request forms, while only 13.5% can fill in the request by themselves. (A specific recommendation was mentioned under Chapter 5, „Conclusion and Recommendations“)

As far as the **scope of provided legal aid** is concerned, 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 2010 states the following statistical data: „*In the period between 1 January 2010 and 31 December 2010, a total of 4,197 requests for legal aid were received on the entire territory of the Republic of Croatia, of which number 3,267 requests were approved, 617 were denied, 113 were dismissed, 158 were suspended while other requests are still in procedure.*“

The only statistical data for 2011 we had at our disposal were those from the presentation by the Ministry of Justice at the conference titled „Three Years of Application of the LAA – Former Experiences and Future Challenges“, held on 1 February 2011. In 2011, there was a total of 5,526 submitted requests, of which 4,604 were approved, 481 denied and 144 dismissed. 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 planned within the legal aid system. We are not familiar with the fact whether some national survey of needs for legal aid was initiated or used.

When forwarding a Draft LAA into parliamentary procedure, in the accompanying text under Item III the proponent claimed: „*The annual number 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 campaign²¹. According to the results of the 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.

In the Progress Report of the European Commission for 2010, 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 the national legal aid system but, in spite of that, they have a decrease in income from donations.

The Progress Report of the European Commission for 2009 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, 33 associations and 2 legal clinics registered themselves with the Ministry of Justice

²¹ The pilot action research within the Campaign for defining the status of NGO's – providers of legal aid was conducted in May and June 2004 by the Organization for Citizen Initiatives from Osijek, a member of the Coalition.

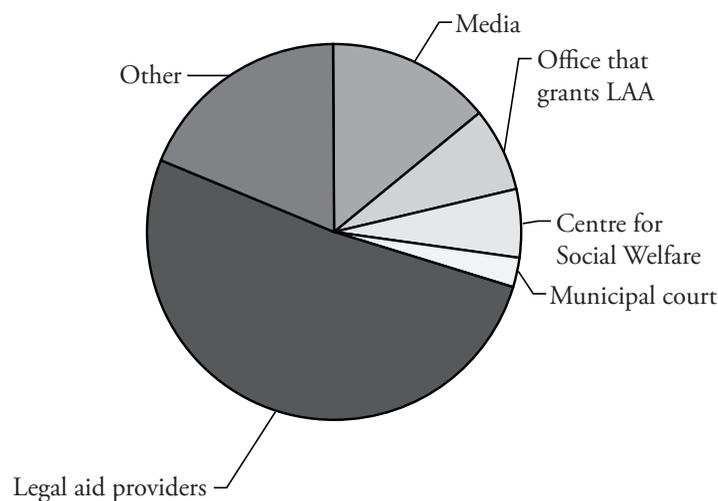
Monitoring the implementation of the Legal Aid Act

and received the status of authorized legal aid providers ²². 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 Osijek-Baranja and Vukovar-Syrmium counties each, 1 association and 1 legal clinic in Split-Dalmatia county, while one association is registered in the towns of Bjelovar, Drniš, Karlovac, Knin, Koprivnica, Poreč, Rijeka, Sisak and Slavonski Brod.

According to data from the CBA Attorney's Directory, there are no registered attorneys in three towns in Split-Dalmatia county (Komiža, Trilj and Vrlika), Karlovac county (Duga Resa, Ozalj and Slunj) and Požega-Slavonia county (Kutjevo, Lipik and Pleternica), as well as in two towns in Vukovar-Syrmium 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 1,652 surveyed beneficiaries, 38.2% stated that legal aid in their county is easily available, while 61.8% stated that it is quite difficult to get it.

Informing citizens about the Act and the possibilities it provides is of large significance for efficient application of the LAA. In order to obtain data on citizens' awareness about the existence of the LAA and about the sources of this information, we requested responses to these questions in survey questionnaire. According to survey results, 58.4% surveyed beneficiaries were not informed about the existence of the Act and the manner in which they could exercise their rights, while 41.6% 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, 27.2% stated legal aid providers as sources, 10.1% other sources, 7.6% media, 3.8% state administration offices which grant legal aid, 3% Centre for Social Welfare, 1.4% municipal courts.



²² Source: The Ministry of Justice, <http://www.mprh.hr/authorizedeassociations-i-klinike?dm=2>

In practice, **meeting the stipulated criteria of property status** proved to be the key obstacle for acquiring legal aid. This problem is also stated by the Ombudsman in his Discrimination Report for 2010²³ „ ... *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 often happens 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 run-down condition or cannot be sold.*“

The adequacy of criterion of property status was the subject of assessment of 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 than the one in 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, comprise 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 acquire 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. Therefore it is necessary to soften the stipulated criteria of property situation regarding ownership or co-ownership over other real estate in such a manner that their actual, market value is taken into consideration, particularly in cases when beneficiaries do not have any income or their income is on the brink of poverty.

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 non-biased 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 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 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.)

²³ www.ombudsman.hr/hr/izvjesca-o-radu-pravobranitelja.html

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 earmarked 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. Therefore, the following conclusion reached by the participants of the aforementioned Round Table with regard to realization of project financing of associations comes as no surprise: *„Funds which are allocated to providers of primary legal aid from the LAA system should be determined and justified on the basis of project financing (...) Those funds have to cover a substantial part of the actual costs of providing legal advice. They have to replace gradually 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 and to the volunteer contribution of the providers themselves.“*

3.3. Effectiveness of the Act

Even before 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.²⁴ Pursuant to published Report „Assessment of the Croatian Legal Aid Act and its Implementation in Practice“,²⁵ effectiveness of the system of legal aid provision in everyday legal problems was not understood very well in 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 the 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.²⁶

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 the funds from the budgets of local and regional self-government units, donations and other legally permitted sources. Until 15 January of each

²⁴ See UZELAC, Alan, „Reference to the Final Draft Act on the Exercise of the Right to Legal Aid“, <http://www.humanrights.hr>

²⁵ 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).

²⁶ Case *Airey v Ireland*, 11 September 1979, Serie A, No. 32 (<http://www.echr.coe.int/echr>)

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 by civil society associations pertained to negative effect vouchers had on timely and effective exercise of citizens' right to legal aid and 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 considers 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 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. It ensues that these providers managed to valorize only 0.7% of their activities in the provision of legal aid through vouchers and earn a negligible fee compared to the expenses of their work which they covered from other sources, mostly from international organizations and other foreign donors in a total of 5 to 6 million kuna.

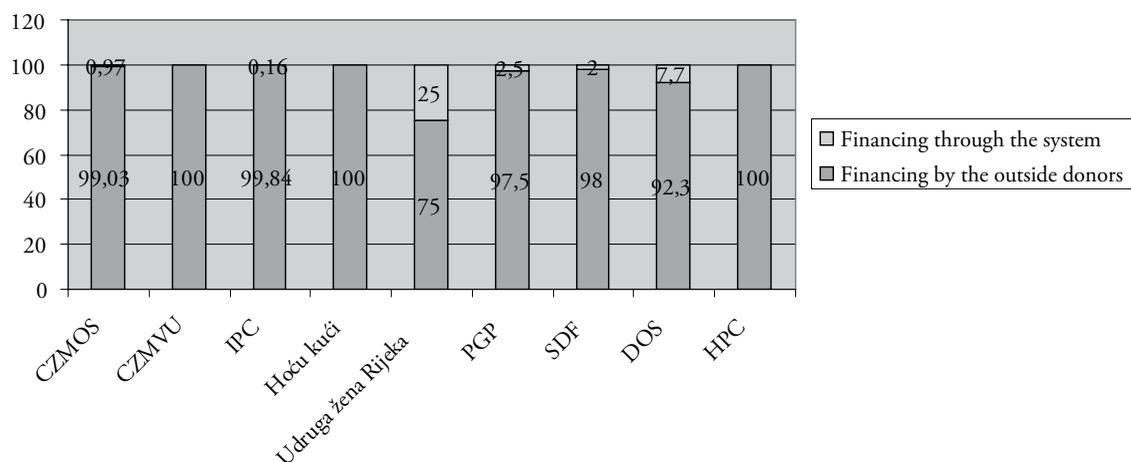
In the text of the Final LAA Bill from April 2008, the Government of the Republic of Croatia defined the available gross budget for legal aid in 2009 in the amount of 0.25 € per capita (while EU member states from the first round of enlargement provided 0.76 € per capita). For 2010, the budget amounted 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 nine associations, three were financed exclusively from international donors during 2011. The remaining five associations ensured financing of legal aid

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provision from the State Budget ranging from 0.16 % up to 25%, while from other domestic and international sources ranging from 75% up to 99.84%.



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 side is conditioned by the retreat of the international community since Croatia has completed the negotiation process for accession to the EU and it is widely considered to be able to resolve its own problems. On the other side, 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. Pursuant to the Report for 2010 of the Ministry of Justice²⁷, 19 associations and 2 legal clinics received a total of 345,000 kuna from the State Budget for the projects related to provision of legal aid which represents a decline of more than 80% compared to 2009. A total of 69,170.95 kuna was paid, while a total of 2,040.675.50 kuna was calculated on the basis of vouchers and these funds will come due upon the completion of proceedings. Out of the total amount of paid funds 60,116.28 kuna was paid for secondary legal aid, while only 9,054.67 kuna was paid for primary legal aid.

The aforementioned data on total amount of funds paid for primary legal aid are actual evidence that even after the adoption of the LAA 99% cases of primary legal aid are still supported outside the

²⁷ <http://www.mprh.hr/izvjesce-2010>

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.

Results of the analysis of the survey as far as *informing citizens about the Act* is concerned indicate that half of the surveyed state administration offices which grant legal aid deem that citizens are insufficiently informed about how the system functions and that the public should be better informed about the system itself. This is also supported by the results of a survey which was conducted with the beneficiaries, pursuant to which 58.4% 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 established 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. Guided by desire to learn about the experiences and opinion of state administration offices, we included in the survey the question of *preparedness of state administration to implement the Act* and all eight surveyed state administration offices deemed that, after three years of work on the tasks of legal aid they were prepared, both in terms of personnel and technical capacities, for the implementation of the Act. Two offices stressed that there was always room for improvement, one office stressed that the level of equipment could be improved and that restrictions in the existing programme should be removed. Two offices proposed more frequent organization of seminars and workshops which would be attended by all stakeholders involved in legal aid system. They emphasized that one of key problems in legal aid system is a lack of IT network between state bodies and state administration bodies, because precisely that fact renders difficult the possibility of verifying stipulated conditions for granting legal aid and warrants the stalling of administrative proceedings.

As far as *preparedness of the Ministry of Justice for timely changes* is concerned, surveyed associations share the same opinion. In spite of their active involvement in all initiatives and meetings which the Ministry of Justice initiated and organized, associations deem that they 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 the provision of legal aid. As an example of this, we state data that all relevant stakeholders involved in the system - beneficiaries, authorized associations, the CBA and state administration offices were involved in monitoring and providing data for this Report except the Ministry of Justice. However, since another report is planned during the implementation of this project, we hope that we will be able to present the position of the Ministry of Justice in that report as well.

4. IMPORTANCE OF LEGAL AID SYSTEM IN FIGHT AGAINST DISCRIMINATION

One of 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 on cases of discrimination, 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.

Our unique table of monitoring also encompassed monitoring cases of possible discrimination upon 11 discriminatory bases (race or ethnic affiliation, sex, religion, political or other belief, property status, education, marital or family status, age, health situation, disability and sexual orientation). When selecting them, we were guided by those discriminatory bases on the grounds 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 basis of „property status“, but we also added several more discriminatory bases (political or other belief, education, marital or family status and health situation) which ensued from the experience we have accrued working directly with beneficiaries.

Of a total of 1,652 beneficiaries who were encompassed by our monitoring in the period of six months between 15 October 2011 – 15 March 2012, possible discrimination was recorded in cases of 272 beneficiaries or 16.5% of a total number of beneficiaries. Of recorded 272 cases, the largest percentage of cases of possible discrimination was recorded on the basis of racial or ethnic affiliation, 38.2%, then on the basis of property status, 37.9%, on the basis of marital or family status, 5.5%, on the basis of health situation and on the basis of disability 3.3% each, on the basis of education and on the basis of political or other belief 1.1% each, on the basis of age 0.7%, on the basis of sex 0.4% and on other bases 8.5%.

By way of comparison of statistical data from the Ombudsman's Report on cases of discrimination for 2010 with our monitoring results, data on the most frequent discriminatory basis are complemented and it is the case of racial or ethnic affiliation, colour of skin and ethnic origin. The next basis according to frequency of appearance is property status which we particularly monitored through implementation of the LAA.

The established legislative and institutional framework in the area of legal aid does not contain solutions which would facilitate availability of legal aid for citizens in poor financial situation. The property criteria for granting legal aid are still restrictive and exclude certain beneficiaries who should acquire

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legal aid because they do not have any income, but they own or co-own land, in the majority of cases small pieces of land without any big value. Citizens with low income who are the beneficiaries of legal aid 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 acquire legal aid represents risk from discrimination on the basis of property status.

5. RECOMMENDATIONS AND CONCLUSION

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 evaluation and assessment of current functioning of the LAA. Pursuant to the aforementioned, we designed the following recommendations:

Recommendations

- We assess that it is necessary to review the existing Legal Aid Act so that the system of legal aid provision would be rendered less bureaucratic and would, to a significantly larger extent, correspond to citizens' needs. Amendments should be such as to contribute to better usage of funds intended for legal aid to citizens, smaller administrative costs and decreased administrative burden, and to benefit the increasing number of citizens who receive legal aid.
- For the purpose of efficiency and sustainability of the system, it would be important to conduct surveys and/or researches that would establish the needs of citizens for legal aid and determine to which extent citizens are informed about the existence of the Act.
- It is necessary to continuously inform the public about the system of legal aid and the manner of its exercise. While doing so, it would be important that the information campaign encompasses rural areas in which there are no state institutions or legal aid providers who have legally stipulated obligation to inform citizens.
- In order to establish efficient legal aid system, it is of particular importance to support legal counseling and informing citizens outside and before court, administrative and other proceedings for all types of legal problems. Primary legal aid should encompass a larger circle of legal problems than secondary legal aid.
- Criteria of property census, which must be met for granting primary legal aid, should be softer than the criteria for granting secondary legal aid.
- It is necessary to soften the stipulated criteria of property situation regarding ownership or co-ownership over real estate in such a manner that their actual, market value is taken into consideration, particularly in cases when beneficiaries do not have any income or their income is on the brink of poverty.
- Legal aid should be granted in all cases when beneficiaries are seeking legal advice only, without conducting the complicated procedure and determining property situation of beneficiaries. It is also necessary to discuss the idea of introducing social cards, because a beneficiary with such document could approach a legal aid provider without any previous procedure.
- 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.

- For the provision of primary legal aid it is necessary to fully affirm the system of project financing of associations. Funds for legal aid should proportionally cover the actual expenses of providing this aid (personnel expenses, expenses for using offices and equipment, actual expenses etc.) We assess that it is necessary to reform the existing system of legal aid provision in such a manner that financing primary legal aid from State Budget would ensure continuity of provision of legal aid services after the departure of foreign donors.
- 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 non-biased body with broader powers.
- All interested stakeholders should be actively involved in forthcoming reforms of legal aid system. Likewise, we should use and respect proposals by civil society organizations, other relevant institutions and domestic and international experts, as well as practise of European Union countries which have a well developed legal aid system.

Conclusion

In our opinion, 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-functionality and inadequacy of the system, particularly with regard to socially vulnerable persons for whom the Act was intended, which is clearly demonstrated by a proportionally small number of persons who acquired legal aid. The possibility of supporting all forms of legal counseling was narrowed because any legal counseling outside court and administrative proceedings and administrative disputes was excluded from the system. Advising citizens before the initiation of formal legal procedures often influences citizens' decision on initiation of proceedings, can significantly contribute to decreased number of unnecessary legal proceedings and, subsequently, relieves the burden from courts and administrative bodies.

The established property criteria for granting legal aid are still restrictive and lead to elimination of all those beneficiaries who could acquire legal aid because they do not have any income, some even do not own a real estate in which they live, but they do own land, in the majority of cases they co-own small pieces of land without any big value. The criteria set forth in such a manner represent a risk from discrimination on the basis of property status.

Pursuant to the aforementioned, 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. Therefore, putting those persons in an unfavourable position because of their inability to acquire legal aid represents risk from discrimination on the basis of property status.

The European Union is made up of 27 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders”.



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