

## Civil Legal Aid in the Western Balkans: Achievements, Opportunities and Risks

A great deal of effort and money has been invested in creating civil legal aid systems in the Western Balkans over the last fifteen-plus years. International donors—the United Nations High Commissioner for Refugees, the United Nations Development Programme, the European Commission, the Norwegian Refugee Council and Norwegian Ministry of Foreign Affairs, the Danish Refugee Council, the Civil Rights Defenders (formerly the Swedish Helsinki Committee) and many others—have either established or supported legal aid NGOs to address the myriad problems faced by refugees, internally displaced persons (IDPs), and others whose lives were devastated by the wars in the 1990s. These efforts led to the establishment of domestic NGOs in every country in the region and, more recently, to the start of state-funded legal aid organizations in almost every country.

This investment, both by people in the region and their international supporters, has paid off. Countless people have achieved some stability in their lives with the help of the legal aid organizations. They have been able to get proper documentation, qualify for social assistance and healthcare, attain an education, rebuild damaged homes, and fight discriminatory treatment. Legal aid alone did not solve their problems, but without legal aid many people's basic human rights would have gone unprotected.

These NGOs have acquired a great deal of experience and expertise by handling thousands of cases. They have reached out to the communities they serve, educated people about their rights, learned how to deal with government officials, and begun the long process of making the courts responsive to the needs of the most disadvantaged members of society. In doing their work, they helped create a means for civil society to hold governments accountable. The emerging state-funded legal aid systems provide an important complement to the work of the NGOs, enabling more individuals to get basic legal advice and representation.

Civil legal aid, as discussed in this report, covers a wide range of activities. But it is important to emphasize that this report is about civil legal aid, not criminal. While in many places civil and criminal legal aid are combined in one system, the two types of legal aid are distinctly different, both in goals and operation. Both are intended to make the justice system fair and accessible, but for the most part criminal legal aid has focused, correctly, on providing a proper defense in court. The civil legal aid system also provides representation in court but can, and in many cases does, go far beyond that. Civil legal aid has entailed community outreach and education, legal support for civil society organizations, brief advice and assistance to individuals, dispute resolution with government departments, representation of individuals in court, and many other forms of systemic advocacy.

Most of the legal aid NGOs were established explicitly to work with refugees, IDPs, and other direct victims of the wars, but they have largely moved beyond serving those groups to address the problems of other disadvantaged people. Much work has been done in Roma communities, beyond those who are included among the refugees and IDPs. Women,

children, elders, people with disabilities, and other disadvantaged or excluded people have been the focus of expanded legal aid services.

However, just as these organizations are starting to realize their potential, the risks to their continued viability grow greater. Support from the international community has dwindled and securing local funding has become more challenging. While most of the NGOs can expect support—perhaps at a reduced level—for the next few years, no one has a clear plan to maintain viability beyond that. Even if more state-funded legal aid programs are started, there is no guarantee they will come close to meeting the needs of the foreseeable future. Furthermore, independent NGOs are a vital part of any system for providing legal aid. State-funded programs can be effective by providing representation in court, but they tend not to be well suited to the wider range of activities just described. Independent NGOs generally have greater capacity to reach out to communities to provide brief advice or assistance, and they have the independence and expertise to do systemic advocacy. Yet, unless a long term support plan is developed soon, many of the very effective legal aid NGOs in the region will get much smaller or actually disappear in the next few years.

This report was prepared on behalf of a network of legal services NGOs in the Western Balkans, known as the Ohrid Initiative for Free Legal Aid.<sup>1</sup> The purpose of the report is to call attention to achievements of legal aid organizations, opportunities to create stable institutions promoting legal empowerment, and the risk that the investments already made will be lost. A review of the situation in the entire region would be an enormous undertaking, so instead the report focuses primarily on Kosovo as an example of what has and can be done.

Great progress has been made in the development of systems for providing civil legal aid to disadvantaged residents of Kosovo. This report is based on a brief review of the work of two organizations, the Civil Rights Program/Kosovo (CRP/K) and the Legal Aid Commission (LAC).<sup>2</sup>

## **Kosovo and the European Union**

In order to understand the accomplishments and potential of the Kosovo legal aid organizations, it is important to briefly review the status of European integration. On 27 March 2012, Stefan Fule, the European Commissioner for Enlargement and European

---

<sup>1</sup> The Ohrid Free Legal Aid Initiative, named after the Macedonian city where it was founded, is a regional forum of NGO legal aid organizations formed to promote free legal aid in the Western Balkans. The members of the Initiative include the Macedonian Young Lawyers Association (MYLA), the Civil Rights Program in Kosovo (CRP/K), the Tirana Legal Aid Society (TLAS) from Albania, the Young Lawyers of Serbia (YLS), Legalis from Croatia, the Association Vasa prava BiH (VP BiH) from Bosnia and Herzegovina, and the Youth Initiative for Human Rights from Montenegro.

<sup>2</sup> This report is not an evaluation of the work of these organizations. Instead it is intended as a description of their major activities and a commentary on their potential to make a major and lasting contribution to justice in Kosovo. The report is based on a visit to both organizations by the author, Greater Boston Legal Services' Daniel Manning, and PILnet's Dmitry Shabelnikov during March 2012, as well as a review of numerous documents related to their work. See appendix for more information about the author and Mr. Shabelnikov.

Neighbourhood Policy, officially launched a feasibility study for a Stabilisation and Association Agreement with Kosovo.<sup>3</sup> According to Fule, the study “marks the beginning of a new stage in the European Union's relationship with Kosovo” and “will assess what Kosovo will need to do further to be in a position to negotiate and implement a Stabilisation and Association Agreement.”<sup>4</sup>

While the feasibility study will be somewhat different from the European Commission (EC) Annual Progress reports, the issues raised in the report issued on October 12, 2011, will clearly be included.<sup>5</sup> The report included the following observations and conclusions:

- Promotion and enforcement of **human rights** remain a major challenge. Training has been organised to build up the capacity of the human rights units. The enforceability of legal and administrative remedies for human rights infringements needs to be improved at all levels... *Overall*, this area remains a major challenge. The institutional set-up promoting and enforcing human rights needs to be simplified. Appropriate resources need to be allocated. Efforts to enhance monitoring and reporting mechanisms need to be stepped up and to focus on improving the enforcement of existing legislation and policies. Ensuring full respect for human rights is a key European Partnership priority.<sup>6</sup>
- In the case of **access to justice**, there has been limited progress... Further efforts are needed to ensure legal aid in Kosovo, including adopting the appropriate law. *Overall*, Kosovo has made limited progress in this area. A number of obstacles still limit access to justice. Kosovo is at an early stage of ensuring such an access.<sup>7</sup>
- The **social assistance** scheme is being revised based on necessary consultations and taking account of budgetary constraints. Child protection remains weak and the child poverty rate is over 48%. Children are at greater risk of poverty than the general population,<sup>8</sup> in particular among the Roma, Ashkali and Egyptian communities.
- The government has continued to carry out a few awareness-raising campaigns on the **antidiscrimination** law. The low level of confidence in the courts is discouraging for the victims of discrimination. More efforts are needed to combat all forms of discrimination, which is a major issue of concern. Enforcing the relevant legislation, in particular the anti-discrimination law, remains

---

<sup>3</sup> See

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/229&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>4</sup> Id.

<sup>5</sup> European Commission - Commission Staff Working Paper - Kosovo\* 2011 Progress Report covering the period from October 2010 to September 2011. Brussels, 12.10.2011 SEC(2011) 1207 final.

<sup>6</sup> Id at 14.

<sup>7</sup> Id at 15.

<sup>8</sup> Id at 17.

imperative. Monitoring the implementation of legislation in this area is still insufficient.<sup>9</sup>

- Regarding the **Roma, Ashkali and Egyptian (RAE)** communities, mixed progress has been achieved... The lack of civil status registration is a further serious obstacle to access to services. Reintegration of repatriated Roma, Ashkali and Egyptians is a concern. The authorities need to increase their commitment to address urgent issues affecting the lives of the Roma, Ashkali and Egyptian communities notably their access to education, healthcare, housing and social protection.<sup>10</sup>
- In the area of **refugees and internally displaced persons (IDPs)**, little progress can be reported... IDPs continue to face a number of risks, particularly lack of personal identity and property documentation, deplorable living conditions and lack of access to basic socio-economic rights. Moreover, the non-recognition of administrative documents between Kosovo and Serbian institutions further affects access to services and property restitution for IDPs... A clear strategy to tackle the caseload of IDPs is needed. In terms of the return process, the main challenges are the continued and heightened socio-economic problems, education and property ownership issues, lack of funding, inter-ethnic tensions in some of the areas and lack of commitment on the part of the institutions.<sup>11</sup>
- There has been limited progress in the area of **social inclusion including anti-discrimination...** The Roma, Ashkali and Egyptian minority communities continue to face the most serious challenges in terms of social inclusion...<sup>12</sup> Limited progress has been achieved on **socially vulnerable persons and/or persons with disabilities.**<sup>13</sup>
- In the area of **asylum**, progress has been achieved. Kosovo has faced an increase in asylum requests... There are shortcomings in the asylum procedure. Capacity and training is currently insufficient... There are also cases for which a negative decision was issued and no appeal has been submitted.<sup>14</sup>

While the primary responsibility for addressing these issues rests with the government, the European Commission has also recognized the significant role of civil society organizations.<sup>15</sup> The EC Annual Progress Report (2011) noted the challenges and need for civil society organizations in Kosovo:

---

<sup>9</sup> Id at 18.

<sup>10</sup> Id at 20–21.

<sup>11</sup> Id at 21.

<sup>12</sup> Id at 40.

<sup>13</sup> Id at 18.

<sup>14</sup> Id at 53.

<sup>15</sup> See, for example, the European Commission Civil Society Facility Partnership Programmes for Civil Society Organisations (CSOs). Open call for proposals 2012.

<https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&nbPubliList=15&orderby=upd&orderbyad=Desc&searchtype=RS&>

With regard to the development of civil society organisations, little progress can be reported. The President of Kosovo has invited several representatives of civil society to advise her. The institutions need to find ways to ensure more structured cooperation with civil society. Public understanding of the role of civil society remains low. It is a concern that civil society is subject to undue political pressure and intimidation if its activities do not correspond to the views of authorities... The environment in which NGOs operate needs to be improved. The government, the assembly and municipalities need to cooperate more effectively with civil society.<sup>16</sup>

Kosovo needs both effective governmental institutions and civil society organizations to address the issues listed above. For these particular issues civil legal aid organizations play an especially important role, and Kosovo is fortunate to have both an NGO with proven effectiveness in the case of CRP/K, as well as a government program that has made good progress in building an institution to provide legal aid in the case of the LAC.

### **Civil Rights Program/Kosovo**

The Civil Rights Program in Kosovo was started by the Norwegian Refugee Council in 1999 to protect the civil rights of internally displaced persons and refugees. CRP/K became an independent local human rights NGO in 2004. The target groups for CRP/K services are vulnerable members of minority communities in Kosovo, with particular focus on Roma, Ashkali, Egyptian, Serbian, Gorani, and Bosnian communities. Through various projects, CRP/K assists Kosovo IDPs, DPs in the region, returnees, persons at risk of statelessness, asylum seekers, and refugees. The organization has five field offices and three sub-offices throughout the country. It currently staffs forty-six personnel, including twenty-six lawyers. CRP/K is funded by the United Nations High Commissioner for Refugees and the Norwegian Ministry of Foreign Affairs.<sup>17</sup> It also conducts projects funded by the European Commission and the Civil Rights Defenders (Sweden). According to a CRP/K Project Report, its purpose is as follows:

The purpose of CRP/K is to contribute to the creation of conditions, in which all Kosovo citizens, regardless of their political, ethnical or any other background will be given an opportunity to fulfill their basic civil rights, to have non-discriminatory and equal access to Kosovo institutions, and for all those who decide to return, to become fully integrated into the newly established Kosovo state and democratic society. Such endeavors will include application of principles of non-discrimination, gender

---

[aofr=132438](#). As part of the accession process, candidate countries go through an often complex transformation to bring them in line with basic values regarding democracy, human rights and the rule of law shared by existing Member States. New legislation and principles have to be agreed, implemented and monitored effectively in order to advance towards EU accession. The role of civil society in giving citizens a voice and holding governments to account in this process is crucial.

Call for Proposals, pg. 4.

<sup>16</sup> European Commission - Commission Staff Working Paper - Kosovo\* 2011 Progress Report covering the period from October 2010 to September 2011. Brussels, 12.10.2011 SEC(2011) 1207 final. pg.16.

<sup>17</sup> CRP/K Magazine, No. 01, April 2008

equality and Rule of Law, paying particular attention to the requirements of women and children.<sup>18</sup>

### **Civil Registration and Achieving Rights**

From the beginning, a substantial portion of CRP/K's work involves representing people before municipal authorities in order to enable them to register and be recognized as lawful residents. Such a seemingly bureaucratic procedure is actually the fulfillment of a fundamental human "right to recognition everywhere as a person before the law" and "right to a nationality."<sup>19</sup> Much of CRP/K's work regarding civil registration has been in the Roma, Ashkali, and Egyptian (RAE) communities. The European Commission has described the issues as follows:

The conflicts associated with the break-up of former Socialist Federal Republic of Yugoslavia have caused suffering and displacement for large numbers of people, including ethnic minorities. For the Roma, Ashkali, and Egyptian (RAE) communities, displacement has caused a further deterioration of their access to basic human rights, aggravating their already significant levels of poverty and social exclusion.

One of the fundamental disadvantages for the marginalized groups in the Western Balkans is their lack of personal documents and/or civil registration. These are essential for them to prove or acquire nationality and to enjoy equal access to citizenship rights. The lack of personal documents and/or civil registration represents an obstacle to their integration into existing communities. For example, children are denied school registration, and access to employment as well as to social services is blocked.

This leads to a parallel world of people outside the system without access to basic rights. The absence of one document frequently leads to a "chain reaction" where individuals are unable to secure further documents.<sup>20</sup>

From the beginning, CRP/K has devoted a substantial amount of time to addressing the problems faced by Roma, Ashkali, and Egyptian communities. The RAE Civil Registration Campaign was initiated by UNHCR in 2007 to promote the following: civil registration of RAE communities' members in Kosovo; cooperation with authorities to address the risk of statelessness and lack of documentation among RAE communities; and overall awareness and practice in RAE communities of procedures, obligations, and rights related to registration.

CRP/K conducts outreach in collaboration with other NGOs to identify community members in need of help with civil status and civil registration. It has established

---

<sup>18</sup> CRP/K Project Report – 2011. (On file with author and CRP/K)

<sup>19</sup> Articles 6 and 15, Universal Declaration of Human Rights.

<sup>20</sup> European Commission, Social Inclusion: Regional Support To The Marginalised Communities [http://ec.europa.eu/enlargement/pdf/financial\\_assistance/ipa/2008/pf\\_social\\_inclusion\\_final\\_en.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/ipa/2008/pf_social_inclusion_final_en.pdf) pgs. 2-3.

memoranda of understanding with the Municipal Civil Registration Offices and Municipal Civil Status Offices in twenty-six of the thirty-six municipalities to facilitate the procedure of registration, through prioritizing such requests and exempting RAE beneficiaries from fees. CRP/K has produced leaflets and posters to inform people about registration activities and has used newspapers, radio, and television to reach out to RAE communities. CRP/K was also involved in the production of two documentaries regarding the civil registration campaign, its challenges, and its achievements.

Direct registration activities include many responsibilities: facilitating Go and See Visits to collective centers, camps, and other formal and informal settlements; collecting lists of unregistered members of the RAE community; interviewing people who need civil status and civil registration as habitual residents of Kosovo; processing requests at municipal civil status registry offices and municipal centres of civil registration; escorting clients from their places of residence to the respective municipal offices; providing documents necessary for registration into civil registry books and civil registration as habitual residents; and completing registrations and delivering civil status certificates.

The Organization for Security and Co-operation in Europe (OSCE) has taken note of the important contribution CRP/K has made to the integration of RAE communities in Kosovo:

A number of positive initiatives promoting access to civil registration amongst Roma, Ashkali and Egyptian communities have also been developed and implemented by civil society organisations. The Civil Rights Program in Kosovo (CRPK) has been instrumental in supporting local level institutions in facilitating civil registration of the Roma, Ashkali and Egyptian communities. Furthermore, Roma, Ashkali and Egyptian communities have also been able to access civil registration for free in all municipalities through the support of CRPK, or by the municipality itself in cases where the person is exempt from paying a fee due to being a social case.<sup>21</sup>

## **Asylum Cases**

In recent years Kosovo has become a transit country for asylum seekers, from countries ranging from Afghanistan to Nigeria and beyond. Because the Kosovoian government was not prepared to deal with this issue, UNHCR chose CRP/K to be the implementing partner in a project to work with the government to draft a proper law on asylum and develop the institutional capacity to handle the cases properly. CRP/K convened a group to review a draft law and address practical issues. The group recommended a training program for judges regarding the practice of the European Court of Human Rights (ECtHR) related to asylum cases, improved techniques of interviewing the asylum-seekers, the development of a means of getting information about the asylum-seekers' countries of origin, and provisions for translations during interviews with asylum-seekers. CRP/K has now started a project to provide legal assistance, advice, and in-court representation to

---

<sup>21</sup> OSCE Mission in Kosovo – Implementation of the Action Plan on the Strategy for the Integration of the Roma, Ashkali and Egyptian Communities in Kosovo, May, 2011, pgs. 9-10.

asylum seekers. Two lawyers under the supervision of a senior lawyer now work full time on these cases.

## **Legislation**

CRP/K lawyers are active participants in the legislative process, having taken part in the formal process of reviewing and commenting on legislation on social assistance, asylum, foreign residents, ID cards, passports, residency, and civil status. Sometimes handling thousands of cases over an extended period of time, these attorneys bring an important, experienced perspective when crafting and reviewing legislation. Their work also helps alleviate the lack of a legislative legal office.

As a result of their experience working with the legislative committees, CRP/K lawyers have developed proposals to improve the drafting process, standardize the use of terminology within legislation, and compile and codify laws in a way that makes them accessible to lawyers, judges, and the public at large. In addition, they are seeking support to include legislative histories and economic analyses in the legislative process. The current system causes a great deal of legal insecurity, which results in more disputes and more delays at all levels of government and means that even more cases wind up before the already overburdened courts.<sup>22</sup> While CRP/K alone cannot solve these problems, it is in an excellent position to help develop remedies.

## **Human Rights Protection and Anti-Discrimination Advocacy**

As stated in the most recent European Commission Annual Report, “Promotion and enforcement of human rights remain a major challenge,” CRP/K’s mission is to protect human rights, which it does on a daily basis by providing legal advice and representation for individuals who come to them for help.<sup>23</sup> It also promotes human rights by informing communities about legal rights and educating judges through individual cases. But CRP/K also recognizes that more systemic action is needed. It has developed a proposal for a project that would focus on improving the capacity of municipal human rights bodies to do their jobs more effectively. With no funding yet available for this project, the need for support remains and CRP/K has the experience necessary to do the job.

In brief, the proposal addresses the shortcomings of two official bodies that exist in all Kosovo municipalities: the Committees for Communities (CCs) and the Human Rights Units (HRUs). The CCs are intended to promote and protect the ethnic, cultural, religious, and linguistic identities of the communities within the municipality. HRUs, on the other hand, support human rights at the municipal level in accordance with international standards of civil liberties. But while the need for CCs and HRUs is great, their actual functioning is weak.

---

<sup>22</sup> Author’s interviews with CRP/K staff. Pristina, Kosovo, March, 2012

<sup>23</sup> See generally European Commission - Commission Staff Working Paper - Kosovo\* 2011 Progress Report covering the period from October 2010 to September 2011. Brussels, 12.10.2011 SEC(2011) 1207 final.

As a result of its work in municipalities throughout Kosovo, CRP/K is very familiar with the shortcomings of the CCs and HRUs. It has assembled substantial evidence that these entities do not receive the local support they need to function, that they fail to review adequately a considerable number of complaints, and that even when they make recommendations the municipal authorities often do not accept them. For example, in Gracanice/a, where there was recently a violent incident involving Albanians and Serbs,<sup>24</sup> an Office for Communities no longer exists and the Committee for Communities does not have offices in that particular municipality, which effectively prevents it from functioning there.

CRP/K has proposed a plan to address these problems throughout the country. Starting with a systematic assessment of the situation, the project would involve increasing awareness of the role of CCs and HRUs, training local officials, working with municipal governments and national ministries to enhance support for local operations, assisting local officials in developing work plans, helping create mechanisms for tracking complaints, and monitoring performance. The overall goal of the effort would be to improve access to basic human rights for all people in Kosovo, with particular emphasis on the issues faced by minorities.

In another human rights project, CRP/K has proposed a multi-faceted effort to combat discrimination. The project would address the problems of groups already served by CRP/K, which are vulnerable members of minority communities in Kosovo, with particular focus on the Roma, Ashkali, Egyptian, Serbian, Gorani, and Bosnian communities. Also, through various projects CRP/K assists Kosovo IDPs, returnees, persons at risk of statelessness, asylum seekers, and refugees. While many of the issues would likely involve discrimination based on ethnic origin and nationality, members of these groups also face discrimination based on sexual orientation, gender, age, marital status, language, mental or physical disability, religion or belief, race, and social origin, among other things.

The project would involve monitoring, documenting, and reporting problems and obstacles in the prevention of discrimination, with a view toward developing legislative solutions as well as changes in the practices of government officials. An awareness-raising campaign would be conducted to educate the public about discrimination through the media and to promote discussion through seminars, conferences, and similar events.

Another component of the project would educate judges about key decisions of the European Court of Human Rights. While Kosovo is not subject to the jurisdiction of the court, the Kosovo Constitution explicitly incorporates key human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.<sup>25</sup> However, the courts in Kosovo have no experience using case law precedents to interpret these binding

---

<sup>24</sup> See Balkan Insight 04 Apr 12 [Albanians and Serbs Brawl in Kosovo Enclave](http://www.balkaninsight.com/en/article/albanians-and-serbs-massive-brawl-in-gracanica) “Dozens of Kosovo Albanians and Serbs became involved in a fight in the Serb enclave of Gracanica on Wednesday after a bus of returning football fans halted in traffic in the town.”  
<http://www.balkaninsight.com/en/article/albanians-and-serbs-massive-brawl-in-gracanica>.

<sup>25</sup> Constitution of Kosovo, Chapter II, Fundamental Rights and Freedoms, Article 22.

instruments. The project would translate and summarize key ECtHR decisions to assist the courts in fulfilling their mandate to apply the laws properly. The case summaries would also be used to help educate the public at large.

In addition to educating judges, CRP/K would undertake strategic litigation. To date, there are no decisions from Kosovo courts finding discrimination. The plan is to undertake a series of cases on key discrimination issues both to address the specific needs of their clients and to start to develop a body of case law that can be used as precedent within the Kosovo court system. The goal is to create a new area of legal practice that can be used throughout the country, both by CRP/K lawyers and others.

While, as of the time of this report, CRP/K had not received funding for either of these projects, they are described here because they illustrate both the strength and potential of the organization. CRP/K works in municipalities throughout the country and knows the local situation. Through their work with thousands of individual clients, they have become aware of the problems people face and they have learned how people are treated by local authorities. Because CRP/K works at a national level with the courts, the legislature, and the government, it understands the strengths and shortcomings of the system. By thinking and acting strategically, CRP/K is in a position to advocate for systemic solutions to the failure to protect human rights. Regardless of whether these particular projects go forward, CRP/K is a significant force for justice in Kosovo.

### **The Kosovo Legal Aid Commission**

The constitution of the Republic of Kosovo states that “free legal aid will be provided to those who lack financial resources, if such aid is necessary to ensure effective access to justice.”<sup>26</sup> The current legal aid system was established under the United Nations Interim Administration Mission in Kosovo (UNMIK)<sup>27</sup> in Regulation no. 2006/36 on Legal Aid. The Legal Aid Commission (LAC) created by UNMIK was the first of its kind in the Western Balkans. The LAC “acts as an independent body, responsible to provide free legal aid in criminal, civil and administrative matters for all citizens of Kosovo, foreigners temporary residing in Kosovo from the jurisdiction that provide reciprocal legal aid to habitual residents of Kosovo and other persons determined by law or international agreements.”<sup>28</sup>

On February 2, 2012, the Assembly of the Republic of Kosovo adopted Law No. 04/L-17 on Free Legal Aid, replacing the UNMIK regulation with an independent Kosovoian institution with the same purposes and objectives.<sup>29</sup> The LAC has a three level structure: the governing board; the LAC Coordination Office, which manages operations; and the Legal Aid District Bureaus, which provide direct services. It currently has ten local district offices,

---

<sup>26</sup> Kosovo Constitution, Article 31.

<sup>27</sup> UNMIK was established by the Security Council in Resolution 1244 (1999).

<sup>28</sup> Legal Aid Commission, Annual Report 2010, 11/5/11, pg. 4.

<sup>29</sup> This report will refer to legal aid provided by the Legal Aid Commission (LAC) because the transition to the new council has not been completed. While the new law changes the governing structure somewhat, the overall arrangements for legal aid remain largely the same as under the UNMIK regulation.

five of which are operated under a United Nations Development Programme “Access to Justice” project.

Currently, the LAC focuses almost exclusively on civil and administrative cases. While criminal cases are within their mandate, criminal cases are handled through an *ex officio* system under which the courts appoint lawyers for indigent defendants and payment is handled through funds allocated to the courts. The LAC anticipates that the criminal system will be brought within their operations in the near future.

Primary legal aid, which includes information, advice and assistance on administrative matters, and drafting some court papers, is provided by legal officers employed by the LAC. These legal officers also determine eligibility for services and assess the merits of cases in order to decide whether to refer the matter to a private lawyer for secondary legal aid, which is mainly representation in court. Each of the district offices has two legal officers.

Eligibility for legal aid is based on income. Primary legal aid is available to people receiving social aid or those in a comparable situation. Secondary legal aid is available to all persons with gross family incomes lower than the average family income. Cases are also screened for merit. The case must involve a matter of real value, there must be evidence to support the claim, and there must be a reasonable probability of success. Anyone denied legal aid can appeal the decision. Assistance has been provided in family matters, property matters, employment relations, claims with administrative bodies, financial disputes, and for legal defense.

In 2010 approximately 10% of the civil cases involved advice on matters that were not contested—primarily inheritance and property matters—and 90% involved contested matters. The contested cases concerned property ownership, damage compensation, and disputes concerning possession. About half of these cases were handled with legal advice, slightly more than 25% involved drafting papers, and the remaining cases were referred to advocates. The LAC has also handled administrative matters. In 2010 44% of the administrative cases were related to social welfare, another 41% involved other administrative matters, and the remainder concerned pensions. Altogether, in 2010 the LAC handled about 402 family cases, 432 property cases, 269 cases involving financial disputes, 1,159 administrative cases on social benefits, and 402 cases on pensions.<sup>30</sup>

The LAC has established a basic structure for handling civil cases. It has functioning offices and trained staff and now has several years of experience in handling cases directly and making referrals to private lawyers. The new law will provide greater institutional stability, although it requires a new governance structure, new operating regulations, a code of ethics, regulations for the operation of the governing council, job descriptions, procedures for advocates, and various forms. Despite the additional work, the new law will solidify legal aid as an essential service for access to justice. It has become a Kosovoian institution.

---

<sup>30</sup> Legal Aid Commission, Annual Report 2010, May 11, 2011 Submitted to the Kosovo Assembly

One of the biggest challenges going forward is getting a large enough appropriation to meet the need for legal aid. In the last fiscal year, the LAC had a budget of about €287,000. That fell short of the amount needed and many cases could not be referred to outside lawyers. The LAC has proposed an increase of 20% in each of the next three years, but even that will not meet the anticipated need for services.<sup>31</sup>

The LAC has received strong support from UNDP, which funds the operation of five of its ten district offices. UNDP has consistently recognized the importance of legal aid. In a July 2008 Assessment Report on Access to Justice in Kosovo, “support full operationalization of the legal aid system” was one of sixteen “solutions for ensuring access to justice for all” that “are feasible in the short-term and are most likely to deliver tangible results.”<sup>32</sup> The report went on to describe the budget for the Legal Aid Commission as “meagre.”<sup>33</sup> In 2010, in announcing the opening of an office,

UNDP Kosovo Director, Mr. Parviz Fartash stated that ‘one of the most critical conditions of justice is the ability for citizens to obtain satisfactory, affordable and expeditious legal aid to resolve disputes and achieve just outcomes in a peaceful manner. This is why UNDP strongly supports both the strengthening of legal literacy and legal aid provision in Kosovo’ and that Legal Aid Commission is one of the UNDP’s most important partners under the Access to Justice Project and the opening of the Gracanica Legal Aid Bureau is an important milestone in the partnership that they share.<sup>34</sup>

The partnership between UNDP and the LAC has continued and will continue at least through this year. Beyond that, the future is uncertain, but there is no doubt the need will continue.

## **Regional Legal Aid Networks**

In the last several years, there has been a great deal of activity promoting legal aid in Southeastern Europe. In 2009 a group of legal aid NGOs formed the Ohrid Free Legal Aid Initiative. The Initiative is a regional forum of NGO legal aid organizations formed to promote free legal aid in the Western Balkans. The members of the Initiative include the Macedonian Young Lawyers Association (MYLA), the Civil Rights Program in Kosovo, the Tirana Legal Aid Society from Albania, the Young Lawyers of Serbia, Legalis from Croatia, the Association Vasa prava BiH from Bosnia and Herzegovina, and the Youth Initiative for Human Rights from Montenegro.

The goal of the Ohrid Initiative is to establish “sustainable and efficient systems of free legal aid to provide access to justice to the most vulnerable groups”<sup>35</sup> as a means of protecting human rights. Members of the network are actively advocating for government-supported

---

<sup>31</sup> Author’s interview with the Legal Aid Coordinator of the Legal Aid Commission, Pristina, Kosovo, March 2012.

<sup>32</sup> UNDP Assessment Report on Access to Justice in Kosovo, July 2, 2008, pg.

<http://www.kosovo.undp.org/?cid=2,26,479>.

<sup>33</sup> Id at 9.

<sup>34</sup> <http://www.kosovo.undp.org/?cid=2,26,923>

<sup>35</sup> “Becici Declaration,” adopted at a meeting of the Initiative in Becici, Montenegro, October 3, 2010.

legal aid in their respective countries and urging the governments to work with civil society organizations as partners in the provision of legal aid. They are also seeking government support for cross-border cooperation in providing legal aid for the many displaced people throughout the region.

It is beyond the scope of this report to describe all the legal aid activities going on in the Western Balkans, but a few examples illustrate the role being played by members of the Ohrid Initiative and other legal aid NGOs. The Tirana Legal Aid Society played a leading role in getting a legal aid law adopted in Albania, but implementation of the law has faltered:

The State Commission for Legal Aid was set up, by-laws have been adopted, but the law remains to be fully implemented. Adequate mechanisms for the objective assignment of lawyers to cases have still to be developed. Access to justice for vulnerable persons and victims of domestic violence is hampered by the lack of implementation of the Law on Free Legal Assistance.<sup>36</sup>

Continued advocacy by TLAS is absolutely necessary to realize the promise of the Albanian legal aid law.

A similar situation exists in Macedonia. The Macedonian Young Lawyers Association also played an active role in getting a legal aid law adopted. In 2007 it brought together twenty citizens' organizations involved with legal aid to seek participation in the process for drafting the law. But the Ministry of Justice refused to open the process and went ahead on its own. While it was significant that a legal aid law was adopted, the final version had many shortcomings. In March 2011 MYLA issued a report which criticized the law because it fails to provide aid to many vulnerable people, it does not provide sufficient protection for victims of domestic violence, it has no procedures for urgent help, and its procedures for establishing eligibility are unnecessarily burdensome, among other things.<sup>37</sup> In March 2012 MYLA issued a second, much more comprehensive report which included a critique of the implementation of the law as well as detailed recommendations for improving the operation of the state-funded system.<sup>38</sup>

Through the Ohrid Initiative, members share experiences such as those in Albania and Macedonia to develop strategies for promoting legal aid in each country. Currently, the Initiative has promoted efforts to establish state-funded legal aid systems throughout the Western Balkans. In each case the kind of external monitoring and advocacy being done by legal aid NGOs is necessary in order to fulfill the vision of a comprehensive system of access to justice. Although the team was led by outside experts, a 2010 comprehensive evaluation

---

<sup>36</sup> European Commission, Albania 2011 Progress Report, Brussels, 12.10.2011 SEC(2011) 1205 final, pg. 16.

<sup>37</sup> Macedonian Young Lawyers Association, "Report on the Implementation of the Law on Free Legal Aid", March 2011.

<sup>38</sup> Macedonian Young Lawyers Association, "Fairy Tale or Reality!? Free Legal Aid in the Republic of Macedonia." March 2012.

of the Croatian Legal Aid Act was done with the active involvement of Croatian NGOs.<sup>39</sup> As with the MYLA report, the Croatian evaluation included a detailed set of recommendations for improvement. Again, it will take advocacy by legal aid NGOs, among others, to turn the recommendations into reality.

In addition to promoting state-funded legal aid, NGOs in the region work together on a daily basis to provide services to clients. These cooperative efforts, which have gone on for several years, recently achieved an important milestone with the formation of the Western Balkans Legal Aid Network (WeBlan), made up of many of the same organizations which comprise the Ohrid Initiative: Praxis (Serbia), Civil Rights Programme (Kosovo), Association “Vasa Prava BiH” (Bosnia and Herzegovina), Legal Centre (Montenegro), Macedonian Young Lawyers Association (Macedonia), and Information Legal Centre (Croatia).

The WeBlan members all serve refugees and IDPs under UNHCR projects. A key meeting of the group occurred in 2010 as part of an OSCE Review Conference in Warsaw. The conference report contained several key observations about NGOs and legal aid:

The right to have access to justice is one of the fundamental human rights. The key in establishment of a good system of free legal aid requires proper understanding what is the role that state should have in it and acceptance of the obligation to respect, protect and fulfill human rights.

During the past 15 years, only nongovernmental organisations have been providing independent, impartial and professional legal aid to refugees and displaced population. This has enabled them to have access to justice without discrimination. In many communities the trust that has been earned through the work staff of these organizations, appeared to be a good concept for promotion and realization of the idea of justice for all, peace, and tolerance in the region.

Although the state should play the leading role, in organizing and providing free legal aid, governments of the countries in the region failed to do enough to enable thousands of refugees and displaced persons to have adequate access to justice.<sup>40</sup>

WeBlan members continue to provide independent, impartial, and professional legal aid. The aims of the organization are to prevent statelessness, reduce the risk of statelessness among vulnerable and displaced communities, enhance social inclusion, ensure adherence to

---

<sup>39</sup> Jon T. Johnsen, Georg Stawa and Alan Uzelac, “Evaluation of the Croatian Legal Aid Act and its implementation”, October-December 2010. Project commissioned by the Centre for Human Rights, Zagreb

<sup>40</sup> OSCE, Review Conference 2010, Warsaw, 30 September - 08 October 2010, Free Legal Aid for Refugees and Displaced Persons in the Territory of Bosnia and Herzegovina, Montenegro, Croatia and Serbia, October 2010 [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/2184E6369AAB0F8BC12577BB00400E27/\\$file/OSCE+Review+Conference+2010+Warsaw+Side+Event+Free+Legal+Aid+for+Refugees+and+IDPs+in+Western+Balkan+Region+Free+Legal+Aid+for+Refugees+and+Displaced+Persons+in+the+Territory.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/2184E6369AAB0F8BC12577BB00400E27/$file/OSCE+Review+Conference+2010+Warsaw+Side+Event+Free+Legal+Aid+for+Refugees+and+IDPs+in+Western+Balkan+Region+Free+Legal+Aid+for+Refugees+and+Displaced+Persons+in+the+Territory.pdf)

human rights standards, improve access to public services and justice, prevent discrimination, and strengthen regional ties and cross-border cooperation. The need for this critical work will certainly exist for a long time.

## **Moving Forward**

Legal aid NGOs and state-funded legal aid organizations can be key components of strategies to promote European integration in the Western Balkans, but they need long term support to fulfill their potential. Through the hard work of civil society and governments in the region and with substantial investments by the international community, the basic elements of an effective legal aid system are being put in place. Now is the time to formulate a comprehensive plan for the next phase of development for this system. The legal aid networks—the Ohrid Initiative, WeBlan, and a looser network of state-funded legal aid commissions—are in a strong position to work with governments and the international community to develop such a plan.

The international community continues to support the development of legal aid, as shown by a recent example from Montenegro. There, in January 2012, the first legal aid office in the country began its operations. This came about through a UNDP access to justice project that, over a several year period, supported the drafting and enacting of a legal aid law and its implementation. The primary donors for the project were the government of Norway and the government of the Netherlands. One of the partners in the project was the Youth Initiative for Human Rights, one of the NGOs in the Ohrid Initiative. At the opening of the office, the UNDP representative said, "By implementing the law on legal aid and establishing legal aid offices, we are taking the first steps to achieve one of the United Nations commitments—legal empowerment of the poor."<sup>41</sup>

The immediate issue facing NGOs and state legal aid commissions is how to raise enough money to continue current operations. The reality is that primary donors will be forced to cut back on support due to commitments in other regions. The major risk is that the legal aid NGOs will not survive and the state commissions will function at a bare minimum level, if at all. As of now, there is no medium or long term plan that will ensure that the major investment in legal aid will realize its potential, let alone survive. Right now, each NGO and each state organization must operate on its own to find a means of continuing operation. And the major donors seem to operate on a country-by-country basis in terms of financial support.

One way forward would be to expand the discussion about the future to a regional level. This could be done by convening a regional conference of NGOs, legal aid commissions, justice ministries, and current donors to assess the situation and develop a plan. Many donors discuss exit strategies in the project documents, but often the exit strategies are

---

<sup>41</sup> UNDP, Human Rights and Justice in Europe, <http://europeandcis.undp.org/governance/hrj/show/9017C5CE-F203-1EE9-BECFF20471AB0BB5> See also, UNDP Project Document, <http://www.undp.org/me/dg/projects/Rule%20of%20Law%20and%20Human%20Rights%20Programme/Rform%20of%20Legal%20Aid%20System%20in%20Montenegro/ProDoc.pdf>

either vague or assume local support that is not likely to materialize. A regional meeting could turn exit strategies into “bridge” strategies to enable legal aid organizations to play a significant role during the European accession phase over the next decade and build toward creating institutions that will become an enduring feature of justice systems in the Western Balkans.