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Assessment on
the Access and Utilization
of Civil Legal Aid (CLA) by Roma
in Bulgaria, Hungary and
the Czech Republic

ABOUT THE PROJECT

This study was commissioned by the the Roma Initiatives Office and the Justice Initiative, Open Society Foundations. It was conducted and recognized in partial fulfillment for the “Policy Labs” course within the Department of Public Policy at Central European University. Policy Labs are part of the MA curriculum. They give an opportunity for small teams to work for external clients producing and presenting policy relevant research that will be used for advocacy, assessment and development. Clients are civic organizations, donors, research centers and international organizations. The Policy Lab focusing on this project was mentored by Vera Messing, Research Fellow at Central European University’s Center for Policy Studies.

ABOUT THE PAPER SERIES

Policy Research Reports are occasional studies that provide support or background information for wider research projects. They include reviews of scientific literature, state of the art reports, and country studies. They are works in progress and offer practical combinations of academic and policy writing.

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The views in this report are the authors’ own and do not necessarily reflect those of the Center for Policy Studies, Central European University, Roma Initiatives Office, Justice Initiative or any its entities.

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Executive Summary

Across Bulgaria, Hungary and the Czech Republic Roma face widespread discrimination in areas including education, employment, housing and health care. This report focuses on assessing access to and utilization of civil legal aid (CLA) by Roma populations in the three countries. The report presents the legal aid in each country, giving an overview of the legal aid system, the availability of civil legal aid, and the experiences of Roma and service providers of civil legal aid.

In the three countries access to justice is enshrined in the National Constitution.

Bulgaria: Art. 56 of the Constitution states the right to legal assistance before any state body as a basic universal right of the individual.

Hungary: Act XX of 1949 on the Constitution of the Republic of Hungary establishes the legal framework which ensures Hungarian citizens to claim their fundamental rights. The Act LXXX of 2003 on Legal Aid and the Act XIX 1998 on the Code of Criminal Proceedings and Civil Procedure Code (CPC) Act III of 1952.

Czech Republic: Access to justice is enshrined in the Constitution in the Charter of Fundamental Rights and Freedoms. Article 90 of the constitution makes the protection of rights a fundamental task of the courts. In Charter of Fundamental Rights and Freedoms (Section V) establishes Right to judicial and other legal protection. Moreover, under the constitution, Art. 96 (paragraph 1) includes Equality of parties before the court and the Charter of Fundamental Rights and Freedoms Art. 37 (Paragraph 3) includes principle of equality in the proceedings. Right to legal representation- Article 37 (paragraph 2) of the charter guarantees the right to legal aid in all proceedings before courts, other state institutions or authorities of public administration, from the beginning of the proceeding.

In Bulgaria and Hungary specific legislation to regulate legal aid provision is available

Bulgaria: Legal Aid Act

Hungary: Act LXXX of 2003 on Legal Aid and the Act XIX 1998 on the Code of Criminal Proceedings

Czech Republic: no specific legislation has been passed.

The following table summarizes the types of proceedings that are covered by legal aid in the three countries.

Countries	civil	criminal	administrative
Bulgaria	✓	✓	✓
Hungary	✓	✓	✓
Czech R.	✓	✓	✓

Civil Legal Aid Provision by Country

Bulgaria The types of legal aid are consultations with the purpose to achieve a settlement before initiation of court proceedings or filing a case; preparation of documents for filing a case; litigation when the case is already filed in court; litigation in event of detainment by the bodies of the Ministry of Interior. According to the law, a person who receives legal aid does not have to pay fees cost to the attorney before and during the trial. However, if she/he is sentenced or she/he loses the case fully or partially, then she/he will have to pay back to the NLAB the expenses due to the lawyer who defended her/him.

Hungary: Clients receive general legal advice, draft legal briefs or other legal documents which fees are covered by the State. Legal aid is available to indigent applicants who are involved in settlement negotiations, mediation hearings, administrative procedures, or other pre and extrajudicial procedures. Financial support is pre-conditioned for full covers according to specific categories; especially in the case of indigent people, they qualify for automatically for free legal services. Clients submit an application to the regional legal aid office which screens the application. After the application is approved, the clients select the legal aid provider from the registered list. The court is not responsible for making a decision on eligibility or appointing process to select the protector attorney.

Czech Republic: Services cover by the attorney in the case of civil legal aid includes: Consultations prior to the hearings, representation during the hearings. It can also include exemption to pay a court fee, or appointment of a representative.

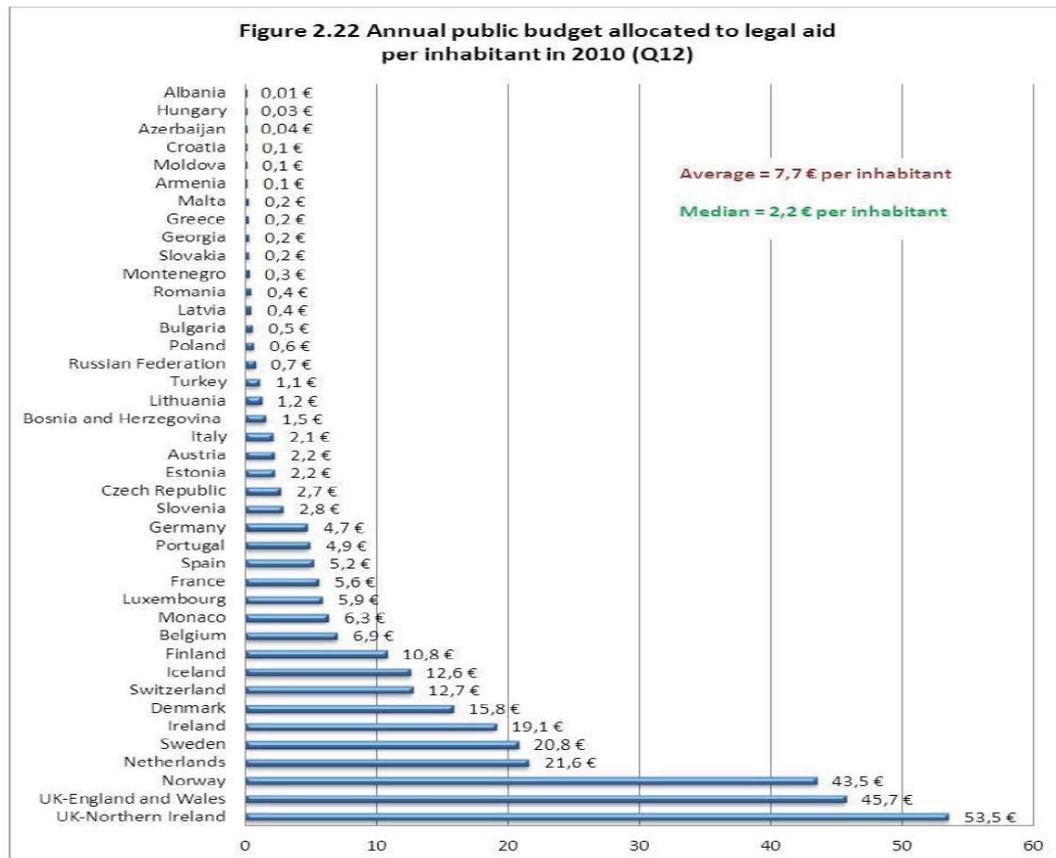
The conditions that need to be met in each country to gain access to legal aid are set in the relevant legislation except in the case of Czech Republic where the guidance is provided by jurisprudence.

Bulgaria: Legal aid is provided to: (1)- the persons under the conditions for receiving monthly social support under the Regulations of Application of the Law of Social Support; (2)- the persons lodged in specialized institutions of providing social support – houses for elderly people, Centres for rehabilitation and social integration of disabled people, Centres for temporary lodging of homeless people; (3)- adopting family or to family or relatives or close persons, where a child is lodged under the order of the Law for Protection of the Child. Legal aid is NOT provided to: sole proprietors; legal entities – trade companies, cooperative societies, etc

Hungary: The legal aid grant can vary depending on individual cases and it can cover the total or partial cost of the legal process. There are other criteria to follow based on clients need and income. In order to receive full exemption of the legal cost, clients must fall under the category of indigent. Indigents include those whose income does not exceed the minimum old-age pension (110 EUR), those with an income below 250 EUR and family consisting of two adults and two children (EUR 736). In case the State advanced the cost of legal services for indigent people, it can be up to a year, but if the State requires the client to repay the grant it can be repaid within a year.

Czech Republic: The provision of legal aid relies in case-load granting legal aid. The court is only responsible to grant legal aid. In case the court denies legal aid, the claimant can turn to the Czech Bar association. The bar grants legal aid based on financial, but before providing the legal aid, the claimants must show evidence that two lawyers have denied to take their case before. Not until then the Bar association will study the case and provide legal aid.

Public Budget allocated to Legal Aid per inhabitant in 2010



In the graph, it shows the public budget allocated to legal aid per inhabitant in 2010 by Bulgaria, Hungary and the Czech Republic. In Bulgaria, the state spends on average 0.05 EUR whereas in Hungary the average is 0.03 EUR and in the Czech Republic is 2.7 EUR. By comparing the public budget allocated to legal aid in the three countries, the country with the lowest public budget allocated to legal aid is Hungary follow by Bulgaria and the Czech Republic.

According to interviews conducted, Roma face common experiences accessing legal aid in the three countries.

Bulgaria	Czech Republic	Hungary
<ul style="list-style-type: none"> -Discriminatory practices -Lack of social recognition -Lack of knowledge about the legal system -Lack of confidence in the judicial institutions -Excessive delays in deciding cases 	<ul style="list-style-type: none"> -Lack of a single aid act -Lack of trust in the system -Delays in the system -Confusion about what legal aid entails, specially about the possibility that they might incur some charges even if they are granted legal aid 	<ul style="list-style-type: none"> -Roma live in segregated and poor neighborhoods -Lack of financial resources to cover expenses -Institutionalized discrimination -Lack of knowledge about their rights to access justice - Complex administrative procedures to follow such as submission of legal documents

As a result of membership to European Union (EU), the three countries are required to transpose into national legislation the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Directive).^{1 2}

Article 13 of the Race Directive requires the setting up at national level of bodies for the promotion of equal treatment. The competences of these bodies should include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination

The European Network of Equality Bodies (Equinet) defines ‘Equality Bodies’ as “public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to do so in relation to one, some, or all of the grounds of discrimination covered by European Union (EU) law – gender, race and ethnicity, age, sexual orientation, religion or belief, and disability” (Equinet 2012). In Bulgaria the equality body is the Commission for Protection against Discrimination (CPD) in Hungary it

¹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

² INSERT REFERENE TO THE LEGISLATION In Bulgaria the Protection against Discrimination Act 2004, in ...

is the Equality treatment Authority and in the Czech Republic it is called the Defender of Rights. In the three countries the equality bodies meet the criteria outlined in the article 13 of the Race directive. All three equality bodies have conducted investigations or undertaken cases to defend the rights of Roma. However, no specific information as to the number of Roma clients benefiting from assistance.

Legal aid provision by NGOs

In the three countries, NGOs are not constitutionally obliged to provide legal aid, but they provide limited legal aid. In selected cases, given they have limited resources, the organization profile, and the strategic value of the case.

Legal Aid provision by legal clinics

Bulgaria: The law faculties of many universities in Bulgaria have legal clinics where law students provide legal services on a *pro bono* basis. Some of the examples are the University of Sofia, the University of Rousse, the University of Plovdiv and the University of National and World Economy.

Hungary: In 2010/2011, two anti-discrimination clinic programs were set in two law faculties in two faculties at the University of Miskolc and the Pazmany Peter Catholic University in Hungary. The goal of the legal clinic program is to raise awareness and sensitize law students about cases on discrimination and equal access to justice.

Czech Republic: In the Czech Republic legal clinics exist, but they are not a common feature of the legal education system as it is based on the Austro-Hungarian legal system. The major universities which have legal clinics are The faculty of law at the Charles University in Prague, The faculty of Law of Palackeho University in Olomouc, the Faculty of Law, Masaryk University Brno.

Availability of pro-bono services in each country

Bulgaria: pro-bono services are available. The services are provided by NGOs, legal clinics at different higher academic institutions, private practitioners offering pro bono services as part of their general practice and practitioners offering free legal representation to friends and family. However, it must be noted that the most common approach to *pro bono* services in Bulgaria is provided by NGOs.

Hungary: Pro-Bono services are available in the country, but its practice is recently evolving among Hungarian Law firms. NGOs and public institutions such as legal clinics provide legal assistance through Pro-Bono attorneys who are registered as legal providers with the Ministry of Justice. Most attorneys offer their services under the Act on Legal Aid which legal aid is granted by the state. There is a small group of attorneys providing legal assistance as a *pro bono* service which is outside of the scope of the Act on legal aid. Since they are not under the scope, attorneys do not request any fee from their legal representation.

Czech Republic: Pro bono services are available, but it is recognized that pro bono culture is not entrenched (Latham and Watkins, 2012). One of the biggest associations which encourage pro bono services is Pro Bono Alliance. This organization advocates for pro bono provision in the Czech Republic. Some of the organizations that provide Pro Bono Services are: IQ Roma servis, Poradna pro obcanstvi, obcanska a lidska prava, Iuridicum Rmedium and the Pro Bono alliance. Although there are some organizations, there is room for improvement regarding Pro bono services in the Czech Republic.

General Introduction

1. Background

This report focuses on assessing access to and utilization of civil legal aid (CLA) by Roma populations in Bulgaria, the Czech Republic and Hungary. The report presents the legal aid in each country, giving an overview of the legal aid system, the availability of civil legal aid, and the experiences of Roma and service providers of civil legal aid.

As it has been documented by numerous organizations, such as the Fundamental Rights Agency, the United Nations Human Rights organization, the Helsinki Committee in Bulgaria, the Czech Republic and Hungary, the European Commission, the European Council and the government bodies in each one of the countries, anti-Romani racism and human rights abuse of Roma in Central and Eastern Europe (CEE) have continued to be serious challenges. The Council of Europe (2011) reports that when it comes to education, health, employment, housing and political participation, Roma are worse off than any other group in Europe. This makes their situation vulnerable to problems such as human trafficking or sexual exploitation. It is also important to note that the situation of Roma in CEE has been affected by the history and the present realities in the region. For example, the transition of Eastern European countries to market economies has affected Roma in terms of labor market integration and has also left a legacy of discrimination towards them (European Commission 2011).

As part of the tools that Roma have to access their rights to improve their situation is to enforce those rights by making use of the legal system and protections available to all citizens. Since Roma are overrepresented among the disadvantaged and poor, the legal aid system is particularly crucial for them to be able to utilize those rights. In this way instances of discrimination in employment, education or other important aspects of daily life would be less likely to go unpunished. This report, therefore, focuses on assessing the situation related to civil legal aid access and utilization by Roma in the above-mentioned countries.

2. Research Objectives and Questions

One mechanism to address the aforementioned challenges that Roma face is through the provision of legal aid. Therefore, this report aims at identifying and assessing the CLA services in Bulgaria, the Czech Republic and Hungary with a particular focus on the availability and access to Roma. The research questions used are:

- What are the legal aid services provided to the general population and specifically Roma by the states, academic institutions and NGOs in the selected countries?
- How accessible are those legal aid services?

We expect that this project serves to document major barriers that prevent the Roma from accessing and utilizing CLA in the selected countries and serve as the baseline reference point for OSF's and others interventions and further research.

According to the Washington State Office of Civil Legal Aid (2013), "Civil Legal Aid" refers to: legal and law related services designed to help low income individuals, families and communities solve civil (non-criminal) legal problems that they experience. Civil Legal Aid helps low income people defend and assert important legal rights that often involve the most fundamental aspects of life – personal and family safety, homeownership and shelter protection, economic security, health care and shelter.

3. Research Methodology

Research Plan and Design

Design

First Stage - desk research: Mapping the state legal aid system and identifying the potential organizations that provide the services to Roma population. Then gather data, review publications and relevant statistics from the potential NGOs and government departments about the legal aid services offered by those entities.

Second Stage: Reaching out to individuals who are experts and knowledgeable about the legal aid service and requesting specific information about the organizations' involvement on the provision of legal aid and Roma's access to justice and legal aid services. Based on interviewees'

preferences and accessibility, we conducted 7 interviews either by Skype (Bulgaria and the Czech Republic) or in person (Hungary). Each interview lasted approximately 30 to 40 minutes and it was confidential, anonymous and voluntary.

Country	Interviewee	Type of interview
Bulgaria	Bulgarian Institute for Legal Initiatives (BILI)	Skype
	Professor from Tilburg Law School	Skype
Czech Republic	IQ Roma Servis	Skype
Hungary	Hungarian Helsinki Committee	In person
Hungary	Hungarian Civil Liberties Union	In person
Hungary	Chance for Children Foundation	In Person
Hungary	Legal Defence Bureau for National and Ethnic Minorities	In person
Hungary	European Roma Rights Centre	In person

Third Stage: Transcribing, analyzing and editing the data collected. In addition, the data is stored in a safe location and confidentiality is ensured for all respondents.

Fourth Stage: Triangulating the findings from the documents analyzed with the information gathered from the interviewees. At the end of the study we provided a final report, with results, conclusions and possible recommendations.

4. Limitations

During the research project, we encountered some difficulties in terms of the magnitude of the project: first, becoming familiar with the topic, especially the legal aid system and background on law, second, the access to important documents (not written in English) and third, contacting interviewees abroad in the case of the Bulgaria and the Czech Republic.

Abbreviations for Bulgaria

BHC.....	Bulgarian Helsinki Committee
BILI.....	Bulgarian Institute for Legal Initiatives
Equinet.....	European Network of Equality Bodies
ERTF.....	European Roma and Travellers Forum
NGO	Non-governmental Organization
NLAB.....	National Legal Aid Bureau
UN.....	United Nations

Case Studies

1. Bulgaria

1.1. The country at a glance

Census data from the 2011 indicates that the population of Bulgaria is 7,364,570 persons with a sex ratio of 51.3% and 48.7% female and male respectively. According to the census data, the ethnic structure is: Bulgarian 84.8%, Turk 8.8%, Roma 4.9% and other 0.8% (2011 Census: 3). However, it is claimed that due to the stigma attached to Roma identity some deny their ethnic identity. Therefore, the actual figure of Roma is estimated to be roughly equal with Turk (9-10% of the population) (Public Interest Law Initiative/Columbia University Kht. 2003, 42).

Though the scope, implementation and quality were not adequate, Bulgarian legislation has already contained a number of provisions on the rights to legal assistance and to free legal aid, as significant constitutive elements intended to ensure access to justice. For example, Article 56 of the Constitution proclaims the right to legal assistance before any state body as a basic universal right of the individual. Moreover, Sections 35 and 36 of the Bar Act and Section 5 of Ordinance 1 create a general obligation for every attorney to give free legal assistance to indigent people, relatives, friends, and other lawyers and to people seeking to enforce alimony rights (A4ID 2009, 23-24). Yet certain pieces of the legislation and relevant practices were contrary to explicit international standards in the area of access to justice (Public Interest Law Initiative/Columbia University Kht. 2003, 41). For instance, there is inconsistency between the Protection against Discrimination Act and other laws governing particular fields that provide for directly or indirectly discriminatory norms, contradicting the Act's universal ban (Ilieva 2012, 3).

Situation of Roma

Roma in Bulgaria have reportedly faced many challenges. For example, a report from the field visit of the European Roma and Travellers Forum (ERTF) confirmed the persistent exclusion and discrimination of Roma in accessing education, employment, housing and health services (ERTF 2012, 8). Furthermore, data suggest that exclusion is on the increase. In 2011 over 75% of them lived in segregated communities, compared to 49% in 1980. Moreover, "de facto segregated

Roma schools remain a significant barrier to improving the educational outcomes of Roma children” (UN Human Rights Council 2011, 8). Moreover, unemployment rates in Roma communities are disproportionately high (UN Human Rights Council 2011, 10). In addition, quoting Open Society Institute’s report, the Bulgarian Helsinki Committee (BHC) underscores that “over the past years there has been a growing restriction of access to health for Roma citizens. The share of Roma without health insurance is estimated at 45% (2% did not know whether they had been insured). Uninsured Roma make up 14.6% of the overall population without health insurance” (BHC 2012, 11).

1.2. Overview of Legal Aid System

“Bulgaria is a unitary state where the Constitution and ratified international instruments are directly enforceable by the general courts, and the legal system is continental, with no *stare decisis*” (Ilieva 2012, 3). However, it is important to note that the legal aid system was thoroughly restructured in 2006 with the Legal Aid Act (in force from January, 1st 2006). Before the enactment of the Act there were different shortcomings. For example, “the right to state funded legal aid was scattered in several statutory laws. Most of the emphasis was placed on the provision of legal aid in criminal cases. Relatively less attention was given to civil matters and no legal aid was extended to administrative cases” (International Legal Aid Group 2009, 1). In addition, though sufficient resources to operate an effective legal aid system is very important, one of the main weaknesses until 2006 included the lack of reliable and trustworthy information about the financing of the legal aid. After the adoption of the Act, the National Legal Aid Bureau (NLAB) was established as an independent state body, a legal entity and a second grade disposer of budget credits (with a separate budget for the administration of the legal services on its own disposal) to the Minister of Justice. The establishment of the NLAB allows for evidence based analysis of the public funding of the legal aid system in the country.

1.3. Civil Legal Aid Provision

Legal aid is provided for all types of penal, civil and administrative cases, except for trade cases and tax cases under Tax and Social Insurance Procedure Code (International Legal Aid Group 2009, 2). In its reply to the Committee against Torture on the implementation of the Committee’s

concluding observations (CAT/C/BGR/CO/4-5), the Bulgarian government stated in December 2012 that NLAB “drafted a Bill amending the Legal Assistance Act and submitted it to the competent institutions for consideration. The proposed amendments aim at ensuring to *a wider circle of socially disadvantaged groups effective access to justice. The persons of the specified categories will receive free legal assistance on the grounds of their social and economic status*” (UN Committee against Torture 2013).

1.3.1. Service Available by the State

Mandate of the NLAB

The responsibilities of the NLAB are as follows:

- General and methodical supervision over the activities related to the rendering of legal aid;
- Payment of the rendered legal aid;
- Control over the rendering of legal aid;
- Organisation and keeping of the National Register of Legal Aid;
- Popularisation of the Legal Aid System; and
- Preparation of bills and other acts in legal aid filed, which shall be tabled to the Council of Ministers.

As stipulated in the *Judiciary Reform Strategy for the Period 2009-2013 in the ‘Equal Access to Justice’ Sector*, in the long term the trends for developing the legal aid system are the following:

1. Increasing the efficiency and effectiveness of the system for provision of legal aid;
2. Improvement of the legislative framework, regulating the system for provision of legal aid.

The leading principles, on which the development and the improvement of the legal aid system are based, are:

1. Guaranteeing equal access to justice to citizens through ensuring and provision of effective legal aid;
2. Guaranteeing publicity and transparency of the process of providing legal aid;
3. Upholding European standards in the legal aid system (NLAB, n.d.)

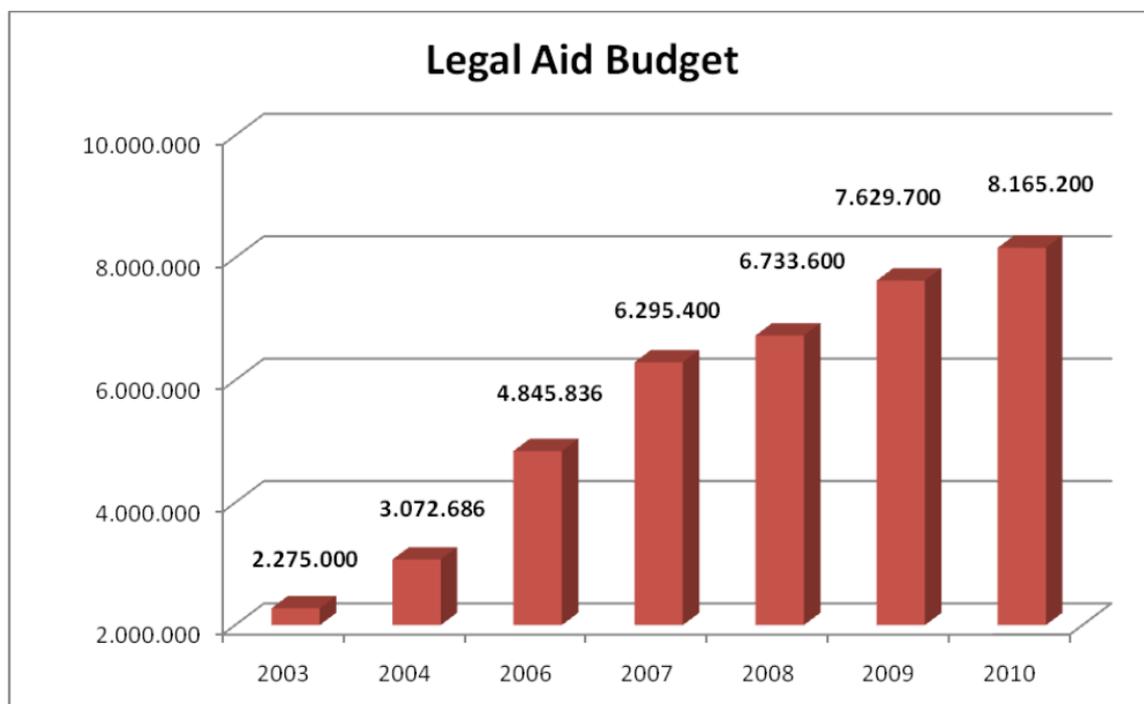
The eligible persons for obtaining legal aid are:

- the persons under the conditions for receiving monthly social support under the Regulations of Application of the Law of Social Support;

- the persons lodged in specialized institutions of providing social support – houses for elderly people, Centres for rehabilitation and social integration of disabled people, Centres for temporary lodging of homeless people;
- adopting family or to family or relatives or close persons, where a child is lodged under the order of the Law for Protection of the Child (NLBA, n.d.).

Funding

Unlike the previous system, NLAB has an integrated budget. In 2006 BGN 4,845,836 (US \$ 3,249,413) was spent on the legal aid system and there was an increase of 68% legal aid budget since then until 2010 (International Legal Aid Group 2009, 2). From 2010-2012, on average BGN 8 million (US \$ 5,364,463) was allocated each year and for 2013-2015 the projected amount is 10 million yearly. Nevertheless, discrepancies between the budget on paper and the resource actually allocated have been noted by various bar associations. Moreover, due to budgetary deficit faced by NLAB payments owed to practitioners were significantly delayed. For example, in 2010 they were delayed for over 10 months and hence the practitioners boycotted the legal aid system by ceasing to provide legal aid (Latham and Watkins LLP 2012, 28-29).



Source: International Legal Aid Group, 2009, 3

Equality Body: Commission for Protection against Discrimination

As stipulated in Protection against Discrimination, Article 40, the Commission for Protection against Discrimination, hereinafter referred to as "The Commission", was established as an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities. It was adopted on 16 September 2003 by the 39th National Assembly (Bulgarian Parliament) and in force since 1 January 2004 (Equinet 2012b). It exercises control over the implementation of, and compliance with, this or other Acts regulating equal treatment. As stated in Article 40 (3), the Commission's budget is approved directly by the Parliament.

The Commission has been active on some issues affecting Roma. In 2006-2007 conducted an independent study on the "special schools" and gave recommendation to the Minister of education for termination of practices considered by the Commission as discriminatory, e.g. enrolment procedures. Subsequently, the Supreme Administrative court repealed the decision of the Commission. Furthermore, in order to raise the awareness of general society, media, civil society associations and relevant institutions on the issues of hate speech and hate- and intolerance-motivated incidents and crimes, in 2009 the Commission launched the campaign "*In Support of Tolerance*" (Equinet 2012b).

Grounds and fields of discrimination covered					
Grounds	Fields				
	Employment	Education	Housing	Social protection	Goods and Services
Gender	♦	♦	♦	♦	♦
Race and ethnic origin	♦	♦	♦	♦	♦
Age	♦	♦	♦	♦	♦
Disability	♦	♦	♦	♦	♦
Sexual orientation	♦	♦	♦	♦	♦
Religion and belief	♦	♦	♦	♦	♦
Other*	♦	♦	♦	♦	♦

Source: Equinet 2012

With regards to its competence to provide independent assistance to victims, the *Report on Measures to Combat Discrimination* prepared by European Network of legal Experts in the Non-discrimination Field documents that:

There is no public or institutional perception of a clash between the body’s adjudicator functions and its victim’s assistance mandate, and no debate. In practice, the assistance mandate is depressed; the body gives victims no assistance other than to explain to them how the procedure works and what they are expected to do in order to participate. In the framework of a one-off awareness raising campaign, the body gave *ad hoc* public consultations in the major cities, advising individuals on their complaints. It has initiated no court action to date (Ilieva 2012, 79).

The Protection against Discrimination Commission is found to have increased the visibility of discrimination as a breach of law and anti-discrimination as a matter of rights: before anti-discrimination law and the work of the equality body there was no sense among the general public that discrimination was a challengeable breach of rights (Ammer et al 2010, 135).

1.3.2. Services Available by NGOs

Latham and Watkins LLP (2012, 29) categorized *pro bono* legal support provision in Bulgaria into four as follows:

NGOs offering pro bono services. This is the most common approach to *pro bono* services in Bulgaria, as many NGOs offer free legal consultations in the field in which they operate. The NGOs' activities may be primarily law-related, or they may cover a broader range of social services, with legal representation as only one aspect of them. For example, a "legal" NGO may engage in free legal representation of individuals in cases involving human rights (e.g., the Association for European Integration and Human Rights), or on free legal consultations for civic organizations (e.g., the Bulgarian Center for Not-for-Profit Law). Moreover, Human Rights Project and Romani Baht Foundation are the two NGOs that work on Roma rights. Founded in 1992 the Human Rights Project is pursuing the following goals: (1) prevention of inhuman and degrading treatment of Roma; (2) ensuring equal protection of Roma by law; and (3) abolition of discriminatory treatment of Roma and ensuring their equal participation in society. Similarly, Romani Baht Foundation has been founded in 1995 and legally registered in 1996. Since the very beginning the organization implements legal programs, focused on three main directions: (1) Legal education for the Roma community; (2) Legal consultation for the Roma community and securing legal representation in cases of human rights abuses and discrimination on ethnic base; (3) Advocacy programs aimed to facilitate the relationships between the Roma community and state and local administration as well as for establishing anti-discrimination provisions within the existing legal system and comprehensive anti-discrimination act (Human Rights Project and Romani Baht Foundation, no date).

On the other hand, a "social services" NGO, such as one focused on women's rights, may carry out a range of activities aimed at promoting women's rights: lobby the legislature, provide medical and psychological support to victims of domestic violence, and offer free legal services to these victims (e.g., the Gender Alternatives Foundation). Notably, however, these NGOs do not serve as referral organizations or clearing houses; rather, the *pro bono* services are provided by their own staff attorneys (Latham and Watkins LLP 2012, 29).

1.3.3. Services Available by Academic institutions

Pro bono law clinics at higher education institutions. The law faculties of many universities in Bulgaria have law clinics where law students provide legal services on a *pro bono* basis. Some of the examples are the University of Sofia, the University of Rousse, the University of Plovdiv and the University of National and World Economy. According to the efficiency evaluation of legal clinic projects supported by the Open Society Institute – Sofia, “the main risk for clinical education in Bulgaria are not the obstacles to legal representation or the lack of life experience among students, but rather the danger for clinical education to be formalized and used by legal clinic administrators as a means for raising funds” (Gramatikov, no date). The clinics are funded by such organizations as Open Society Institute – Sofia, COLPI, ABA CEELI and others. In the interview it was mentioned that the legal clinics work with NGOs and offer services to Roma.

Private practitioners offering pro bono services as part of their general practice. This is the least common approach. While it appears that some law firms have “*pro bono*” practice areas, these tend to be firms whose practitioners have either studied or worked abroad and have, in essence, imported the concept of organized *pro bono* services. In this respect, it is worth noting that because the *pro bono* culture in Bulgaria is generally underdeveloped, there is no pressure among private, commercial practitioners to demonstrate a commitment to *pro bono*, and, as a result, dedicating time and resources to *pro bono* in a systematic way is the exception rather than the rule (Latham and Watkins LLP 2012, 29).

Practitioners offering free legal representation to friends and family. Finally, while not “*pro bono*” in the traditional sense, in practice, most free legal representation is provided to friends or family by practicing attorneys. This option is specifically provided for in the Attorney’s Code of Ethics, which permits attorneys to provide their services free of charge to relatives or other attorneys (Latham and Watkins LLP 2012, 29).

1.3.4. Access to and Provision of legal Aid

According to International Legal Aid Group (2009, 6) the lack of noticeable impact of the Legal Aid Act on access to legal aid in civil and administrative disputes may be hypothesized as consequence of three factors:

- Lack of information among the citizens about their right to ask for appointment of a special representatives in case they are not able to pay the lawyer's fee, and
- The remuneration rates do not provide sufficient incentives for the attorneys, who specialize in civil and administrative matters;
- The existing mechanism for proving inability to pay the lawyer's fee impedes actions of the persons involved.

Experiences of Roma Accessing Legal Aid

Roma have poor access to legal aid. According to Gabriela Knaul, the UN Special Rapporteur mission to Bulgaria, the barriers for them to access justices are:

- discriminatory practices
- their lack of recognition (“they feel they have been left on the outskirts, without the real means to resort to the formal justice system”)
- a lack of knowledge about the legal system,
- a lack of confidence in the judicial institutions, and
- excessive delays in deciding cases (UN Human Rights Council 2012, 16-17).

Similarly, the Council of Europe's Commissioner for Human Rights notes several problems for Roma in the Bulgarian judiciary system, including: being subject to excessively lengthy criminal proceedings and detention on remand; and disparate sentencing because of their Roma ethnicity (Council of Europe 2012)

The Special Rapporteur has also reported challenges to adequate operation of NLAB such as:

- the Bureau appears understaffed and underresourced
- delays in the payment to lawyers who had provided legal aid and counsel
- lawyers' limited contact with defendants in cases requiring State-sponsored legal aid (UN Human Rights Council 2012, 17-18).

Experiences of Legal Providers Accessing Legal Aid

From the desk review and the interviews conducted with experts from an NGO and an academic institution, the following challenges for service providers have been identified:

- Lack of sufficient resources
- Due to their marginalized position Roma have different types of legal problems than the rest of the population
- Low number of legal experts in areas such as social security, etc
- Lack of coordination among the service providers
- State's remuneration rates do not provide sufficient incentives for attorneys, who specialize in civil and administrative matters.

1.4. Anti-discrimination legislation

Bulgaria has a law that promotes equality and combats all forms of discrimination. It is called Protection against Discrimination Act 2004. It was enacted in order to transpose the EC equality directives. According to Article 2 of the Act, its purpose is to ensure to everyone the right to: (1) equality before the act; (2) equal treatment and opportunities for participation in public life; and (3) effective protection against discrimination.

Although it is the main anti-discrimination legislation that should override general, or older, or secondary legislation that conflicts with it, there is no coherence between the Act and other, older, legislative bans on discrimination, with differences in protected grounds, exceptions, and definitions. In addition, there is inconsistency between the Act and other laws governing particular fields that provide for directly or indirectly discriminatory norms, contradicting the Act's universal ban (Ilieva 2012, 3). According to the Bulgarian Institute for Legal Initiatives (BILI), an NGO working for Roma protection and promotion, the factors underlying the persistence of discrimination and marginalization of Roma communities can be organised in four main groups:

1. A widespread lack of knowledge among Roma about the existing anti-discrimination measures and the lack of access to the legal services needed to utilize the enforcement mechanisms.
2. Administrative barriers to Roma access to social services due to the complicated nature of some of the governmental / municipal healthcare, housing, or documentation procedures.
3. A lack of trust and understanding between Roma and non-Roma communities, as well as lack of mechanisms for dialogue and building this trust.
4. The lack of regional communication among Roma as well as the internal social segregation within their communities are another specific problems of the group (BILI 2013).

1.5. Key recommendations/reforms

Many suggestions can be made to improve Roma's access to and utilization of legal services, however interviewees stressed the following points as important reforms needed in the legal aid system:

- Reconsider the whole model of civil legal aid (e.g. financial disincentive for practitioners to provide *pro bono* due to VAT Act's requirement). Latham and Watkins LLP (2012, 29) observe that the Act "requires attorneys whose income in the last fiscal year exceeds BGN 50,000 (US \$ 31,800) to register to pay VAT. VAT is then owed to the state for any services provided by these attorneys, regardless of whether they were provided free of charge".
- Design different strategies to deliver the service effectively
- Use innovative and well designed awareness campaigns
- Consider the heterogeneity/diversity of Roma
- Apply a holistic approach to tackle Roma issues as their needs are many
- Conduct rigorous researches on the needs of the Roma

1.6. Conclusion

Despite the legal aid system was thoroughly restructured in 2006, Roma in Bulgaria still have a marginalized position. The purpose of this report was to assess access to and utilization of civil legal aid by Roma in the country. The following conclusions can be drawn from the present report. First, legal aid is provided mainly by the government and NGOs. Second, some of the barriers to access to justice notably specific to Roma and other minority groups in Bulgaria are discriminatory practices, a lack of confidence in the judicial institutions and their lack of lack of knowledge about the legal system. Third, from service providers' side lack of sufficient resources and lack of coordination among themselves were identified as some of the challenges they often face.

2. Hungary

2.1. The country at a glance

The total population is about 9.972 million from which 90 percent identifies themselves as Hungarians (Hungarian Census, 2011). In the country, minority groups represent approximately 10 percent of the total population and are composed by Slovaks, Romanians, and Serbs, Roma etc. However, according to the Central Statistic Office (2007), the largest minority group is Roma around 550,000 to 620,000 (Hungarian Census, 2011). Roma are considered to be the most marginalized and segregated group and face serious issues of discrimination and violence in the country (Kadar, 2013). As result of their disadvantage position, Roma continue facing difficulty accessing justice.

For a long time access to justice in the administrative, civil and criminal³field as a legal aid was denied by the Hungarian government (LARH, 2007). Before Hungary's accession to European Union, the State did not comply with domestic norms and international norms. For example, Act XX of 1949 on the Constitution of the Republic of Hungary establishes the legal framework which ensures Hungarian citizens to claim their fundamental rights. Base on the rule, the State is obliged to develop a legal aid system that provides legal aid assistance, legal advice and legal representation in court procedures. Moreover, under international norms, European Convention on Human Rights (Convention) establishes that it is State's responsibility "to provide free and effective legal assistance in both civil and criminal cases under certain conditions" (LARH, 2007). At the European level, Council Directive 2002/8EC states that the State has to provide legal aid services in cross-border issues, yet the legal aid framework in Hungary did not exist at all. At that point, the Hungarian legal framework was inconsistent and deficient. The coming accession to European Union and the political pressure obligated Hungarian government to reform the legal aid system. Therefore, it was not until 2003 that the Act LXXX on legal aid was introduced divided in three areas administrative, civil and criminal (2007).

³ In the administrative field and civil, legal aid did not exist at all. In regards to the criminal field, the State offered some advice which was set out by the Council Framework Decision in 2001. It states that the Hungarian legal framework should ensure access to justice for victims in criminal proceedings, yet no legal aid was available before the 2003 legal aid reform.

Current Situation for Roma

In Hungary, Roma are experiencing difficulties in their daily lives due to their living conditions. The lack of education, high unemployment rate, poor housing and inadequate health care obstructs the social integration of Roma. Regarding education, approximately 30 percent of Roma children deprived from equal education and are segregated in primary school (Lisko and Havas, 2004). Additionally, the Hungarian Institute for Education Research and Development indicates that Roma have lower level of education compared to other low income citizens (Human Right Report, 2012). For Roma, unemployment tends to be four to five times higher than the rest of the population. According to 2007 International Labor Organization report, the unemployment rate was about 40 percent. However, the rate is estimated to be up to 90 percent unemployment rate in poor marginalized and segregated regions of the country (Human Right Report, 2012). In 2003 a study indicates that employment of men Roma rate is below 32 percent and for women the rate was about 17 percent (Kertesi, G. and Kézdi, G. (2010). The situation has not improved and the employment rate declined in the last years. According to NEUJOBS report, in 2010 the employment rate for Roma was about 20 percent which shows an important fall in comparison to 29 percent employment rate recorded in 2000 (Kertesi 2005; Mod 2011; Brozovicova, Fabo, Kahanec and Messing, 2012). In relation to housing and health care, the situation is not much encouraging. For example, the State of Hungary does not enforce social housing provision and approximately 130 thousand people live in precarious and unhealthy conditions which the vast majority of them are Roma and about 6 thousand sleeping rough (UPR, 2010). In case of health care provision, Roma face a great disadvantage accessing adequate service, especially in rural areas of the country. In addition, coercive sterilization continues to be an issue for Roma women. In 2008, a Roma woman was coercively sterilized in a public hospital⁴. According to the report, Hungary fails to meet the international norms on the basis of medical indication and the reversibility of sterilization procedures, and the lack of monitoring of hospitals that perform sterilization (UPR, 2010). In 2006, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee made some recommendations regarding the issue, yet Hungary has not fully implemented (UPR, 2010). As a

⁴ The European Roma Rights Centre (ERRC) and its partner are providing legal representation for the client.

result, the concern and mistrust among Roma women negatively impact Roma and their desire to seek for public health care in the country.

2.2. Overview of the Legal Aid System

The Hungarian Legal Aid system consists of providing services from legal advice to drafting legal document and party representation in courts or legal disputes in civil cases. The objective is to provide legal access and services to disadvantaged people. In 2003, the legal aid system went through a series of reforms regarding legal aid in the administrative, civil and criminal area. Before the legal aid reform, legal assistance was established under the constitution as part of the fundamental right; yet, the legal aid framework was lacking, especially the financial support in administrative issues. In the following report, the civil legal aid system will be assessed in order to identify barriers that Roma face accessing and utilizing civil legal aid service (Legal Aid Reform, 2007).

2.3. Civil Legal Aid Provision

In regards to civil legal aid system, pre-litigation advice was absent and legal aid to indigents was not guaranteed their access in civil cases (2007). Before the reform, legal assistance was provided under the Civil Procedure Code (CPC) Act III of 1952. It establishes that individuals are granted to receive full cover cost if individuals request, but only if the court finds it necessary; and the court appoints a protect attorney to represent individuals during the trial.

Structure

After the reform of 2004, the civil legal aid system was modified in two phases. First, the pre- and extra-judicial legal aid was introduced and then in the second phase, the legal aid court procedures were included in the system until 2008 due to financial restrictions. Some changes include the scope expansion to indigent people⁵. The legal aid is pre-conditioned⁶ for full cover

⁵Homeless, refugees, recipients of welfare and free public health care and others

and need to meet specific categories in order to qualify for the legal aid. People who automatically qualify for free legal services are indigent people and the state is mandated to cover the full legal cost (Kadar, 2007).

Scope of the Civil Legal Aid

1. Hungarian
2. Foreign person (apply to holders of visa, residence permit, and naturalization)
3. Foreign citizens (base on an international legal aid treaty)
4. EU citizens and EFTA member states
5. Person holding a humanitarian residence's permit (Article 4, Legal Aid Act).

Pre- and extra-judicial legal aid criteria:

1. The party affected requests legal assistance to decide the type of legal procedure to follow, to which authority he/she needs to direct the issue and the party prepares for the legal procedures in case it is necessary.
2. Legal matters directly concerns his/her living conditions such as housing, job opportunities or other public services
3. The legal issues require administrative procedures and he/she is obliged to do the following; he/she is allowed to request legal assistance in order to become aware of his/her rights and responsibilities in case there is any further procedure
4. If the party needs to proceed with extrajudicial mediation that requires to set a resolution with legal debate out of the court, he/she will need to request further assistance before signing the agreement
5. If the party is a crime victim, he/she needs legal advice to submit a petition in order to demand compensation for the damage caused by the offender
6. If the party required legal assistance to prepare an application for extraordinary remedies in the civil procedure, he/she is entitled to request legal support to fill out the application (Article 21 of the Legal Aid Law).

⁶ There are three basic Pre-condition criteria: the income does not exceed the minimum pension rate, income that exceed the minimum amount of the pension, but is below the minimum wage, income that exceed the minimum amount but there are other condition or circumstances such as disability, illness, etc.

For the legal aid in civil court proceedings, a party follows the same criteria used in the administrative case mentioned above. In this case, the court is not responsible for making a decision on eligibility or appointing process to select the protector attorney. At this point, the client submits an application to the regional legal aid office which screens the application. After the application is approved, the client selects the legal aid provider from the registered list (Kadar, 2007).

2.3.1. Service available by the state

The legal support is offered by legal professionals such as lawyers, attorneys, notaries public, minorities' non-profit organizations and non-governmental organizations. Legal aider helps the party to be informed about the legal provisions, rights and liabilities before the grant is given. In order to receive the legal aid grant, the party has to submit an application and meet specific criteria. Once the application is received, the office of the county justice services screens and reviews each application in order to ensure their eligibility to provide the grant. The legal aid grant can vary depending on individual cases and it can cover the total or partial cost of the legal process. There are other criteria to follow based on their needs and income (Hungary National Legal Aid Act 2003, section 3 and 4). According to the Central Justice Records, in 2008 there were 575 legal aid providers registered in Hungary. Those included 397 private attorneys, 151 law firms, 5 notaries public, 22 non-governmental organizations (Pardavi, 2008). However, the low rate of attorneys related with bar associations continues to be an issue due to high demand of the legal aid provision. There are approximately 10,000 attorneys associated to 20 regional bar. In main cities such Budapest (5500 attorney registered), the ratio is 310 people for one attorney, Szeged (520 members) one attorney for 815 citizens, and in Debrecen (400 members) one attorney for 1360 citizens (Kadar, 2007).

To contact a legal aid provider, there are two methods: one is by submitting an application to the legal aid office. If the application is approved, the client is informed of the eligibility and the number of hours granted by the legal aid provider. However, if it is rejected, the client has the opportunity to appeal the decision. After the grant is accepted, the client is able to contact the registered list and select the attorney. The second mechanism includes a fast service access to a

legal provider where the client is able to contact the legal aid provider directly by phone in case of emergency (Pardavi, 2008).

Funding

The legal aid system is financed by the Ministry of Justice and Law Enforcement from the state budget. In 2007 and 2008, the total budget was 260,000 EUR (65,000,000 HUF) and 312.776 EUR (85,000,000 HUF) respectively (Paedavi, 2008). In 2010, the total budget allocated to legal aid was 304,823 EUR (90,212,528.85 HUF) which suggest that the annual average variation of the budget from 2008- 2010 was about -5.4 percent difference. Since 2008, the legal aid system budget had been cut as result of economic crisis. According to CEPEJ, the State spends on average 0.03 EUR to promote access to justice using legal aid system (CEPEJ Report, 2010). However, the budget allocated to legal aid system does not specify the exact amount designated to civil legal aid.

Equality Body: Equal Treatment Authority

In 2005 the Equal Treatment Authority was created by 2003 Act on Equal Treatment and the Promotion of Equal Opportunities (Act CXXV) and the Government Decree No. 362/2004 (XII.26) on the Equal Treatment Authority (Equinet 2012). ETA performs independently from the government; however, it supervised and receives requests from the government to some extent; and the President of the Equality Body is appointed by the Hungarian Government. ETA deals with unequal treatment issues under its scope. It receives complains regarding gender, racial origin, color, nationality, national or ethnic origin, language, disability, social health care, religious and other issues related to inequality (Council of Europe, 2012).

Since ETA came into existence, the case-load has increased; yet some cases were dismissed for unfounded grounds, lack of discriminative evidence and out of ETA's jurisprudence and competence. ETA's litigation powers constitute court representation in court proceedings as a third party and it is legally binding. From 2005 to 2010, the number of complaints increased about three times and the number cases taken on discrimination basis increased about 5 times.

Caseload of the Equal Treatment Authority, 2005 – 2010

Year	Number of complaints	Number of decisions establishing discrimination
2005	491	9
2006	592	27
2007	756	29
2008	1153	37
2009	1087	48
2010	1373	40
2011	cca. 1000	42

Source: European Network of Legal Experts in the Non-discrimination Field 2011

Funding

The Operation budget allocated to ETA is about 340.000 EUR and it composed by 15 staff members including 7 lawyers. The European Social Fund supports ETA by financing equality training across the country. However, ETA is not well utilized due to budget cuts, lack of resources and low number of staff members who deal with high demand of services. Despite the limited budget, it is important to mention that ETA reaches to local areas and implement awareness raising practices in order to target disadvantaged population.

In April 2008, ETA received a complaint base on discrimination related to Roma origin. The case is about two women: one, who is Roma, claimed that she was overcharged in a bar due to her origin, and second women, whose ethnicity is unknown, claimed that she was overcharged after knowing that she shared a room with the Roma woman. However, the manager of the bar stated that the difference of the price was because of regular costumers' cards and not for discriminatory basis. In fact, he added that he had issued several card to Roma customers and the reason they did not have a card was because they were problematic customers. The case was taken by the National Consumer Protection Authority and conducted a test purchase at the bar. The tester individual was a non-Roma who paid only half of price indicated on the menu. The Authority carried out an investigation and found out that there was not any specific regulation regarding costumer's cards. The cards were given on *ad hoc* basis which suggested that the issuing procedure was arbitrary. Finally, the Authority indicated that there was direct discrimination on the grounds of ethnicity. The bar was fined of 3,450 EUR (1 million HUF) (case: 1003/2008, ETA)

2.3.2. Service available by the NGOs

In addition to the State legal aid services, there are several NGOs that provide legal support on issues such as school segregation, housing, employment opportunities and access to adequate health care service that targets specifically Roma.

Office of the Commissioner for Fundamental Rights

Before the OCFR, the Hungarian Ombudsman office (Parliamentary Commissioner for Future Generations) was composed of four ombudsmen: the Commissioner for civil rights, Privacy Commissioner, Commissioner for Minority Rights and Ombudsman for Future Generations until 2011. After taking power, the new government (center-right) introduced the new Fundamental Law. The Act CXI of 2011 incorporated the four offices into one general ombudsman system with one commissioner nominated by the Parliament. The commissioner has to act independent from the Parliament but base his/ her measures on the Fundamental Law and the Act. It is mainly funded by the state budget. As result of the recent integration, there is no current data about the integration of the ombudsman office. Thus, I provide reports and complaints from the previous Hungarian Ombudsman office (Parliamentary Commissioner for Future Generations). It received a wide variety of complains, but since there was a specific commissioner for Minority Rights (CMR), this entity was likely to deal with Roma complains; however, there is not specific data that highlights this issues. According to the report, most of the complaints were related to discrimination in labor market. However, the lack of ground evidences were some challenges that prevented people from proceeding and taking legal actions. Before proceeding legally, the commissioner conducted an investigation in order to explore the roots of the case, assessed the level of applicability and enforcement, and identified the legal instruments available. In 2011, the HIO received a total of 6596 case, 1248 case were handled by the Parliamentary Commissioner for the Rights of National and Ethnic minorities. The top three concerns regarding constitutional rights were about principal of legal certainty (146 cases) miscellaneous (59) cases and right to life and to human dignity (51) cases. In regard to subject matter the top five were: health and pension insurance (533), taxes, relating to financial institutes and insurance matters (491);

criminal and law-enforcement matters (455) public utility services (430) and guardianship issues, child protection and equal opportunities.

The Legal Defence Bureau for National and Ethnic Minorities (NEKI)

NEKI was established in 1994 and its mission is to provide legal defence for people whose rights are violated as a result of their ethnic origin. NEKI is funded by public and private donors such as Hungarian Soros Foundation, Open Society Institute, Norwegian NGO Fund, Syndicate Content, European Roma Rights Centre, Ministry of Labour and Social Affairs, National Development Agency, Trust for Civil Society in Central and Eastern Europe (CEE Trust), Social Capital Foundation, National Employment Foundation and Individuals. Since Roma is the largest minority, NEKI focuses on issues regarding discrimination and has initiated about 250–300 legal proceedings on education, employment, housing, social services, catering, police matters. Moreover, it has started processes with the administrative offices, consumer protection inspectorates, labor inspectorates to investigate cases. NEKI provides legal advice and legal protection and maintains strategic litigation in discrimination cases regarding Roma. Applicants can submit their complaints in person or by phone (NEKI website). The office reviews every single case. According to the interviewee, applicants need to prove that in fact, there is discrimination against applicants, which in many cases it is hard to prove that there is direct discrimination (NEKI). In some situations, the office conducts onsite investigation, contact locals and stakeholders regarding the issue in order to collect evidence (photos, videos and documents). This process allows the office to evaluate the case and use the legal instruments available to fight against discrimination on strategic areas such as hate crime, hate speech, and social services and public work (NEKI website).

Hungarian Helsinki Committee (HHC)

It is a non-profit organization that provides legal aid services, monitors enforcement of human rights, and ensures implementation of legislations that protect human rights. HHC offers legal support through various projects: Human Right Legal Counseling Office, Legal Assistance through Refugee Clinics, Model Legal aid Board Program and the Equal Treatment before the

Law for Roma and Non-Roma Suspects in the Criminal Justice System. In 2003, HHC's intervention in legal issues as a third party was accepted under the Legal Aid Act. In the last three years, HHC played the role as legal aid services provider in various cases such as immigration cases, asylum cases, force interrogation, legal advice and the vast majority of cases were on detention related to complaints from prisoners in jail. In 2008, HHC's lawyers were part of the State registry of attorney available to provide legal aid. Unfortunately, HHC stepped out of the program two years ago. HHC focuses on taking and representing strategic case based on HHC profile and expertise. HHC continues providing legal aid services, but it is limited due financial constraints. It provides legal aid by assisting on the application process to receive reimbursements, legal aid grants and sometimes carry out-court litigations with the lawyers. HHC addresses more issues regarding criminal legal aid service than the civil legal aid. It offers free legal aid counseling to victims of human right violations. Clients turn to HHC seeking for legal advice and HHC provides initial consultation. Once the case is screened based on their areas of expertise and strategic value, legal advisor decides whether he/she takes the case or it is referred to other institutions for additional assistance.

In 2011, HHC assisted 536 persons from the Legal Counseling Program

- 40 asylum cases
- 54 alien policing cases
- 90 cases relating to detention conditions
- 28 cases of complaints against police measures
- 24 inquiries regarding procedures before the European Court of Human Rights
- 8 cases concerning equal treatment
- 141 cases concerning pending or closed criminal procedures
- 11 cases of civil servants dismissed without reasoning
- 38 cases of persons remaining in the private pension funds
- 101 miscellaneous cases

Source: Hungarian Helsinki Committee Activities Report 2011

In addition to those services, HHC carried out consultative meetings in the four different sites of the country. The goal was to inform the public about general information on issues regarding

crime rate and conditions of police enforcement, how to report a crime, social security, racial profiling and other topics of interest. Two meetings took place in Budapest 6th and 8th Districts and the other two meetings were held in Ozd (poor town in eastern Hungary) and Sarospatak (similar to Ozd, but less poor) (HHC report, 2011). In the case of Ozd, it was selected because there is a continuing tension against Roma. After the meetings, people found them useful and they requested to be needed more often in their localities (HHC Report, 2011). Despite the limited resources, HHC continues providing legal assistance because there is a need to ensure protection of individuals' rights who seek for legal advice regardless of the complexity of the legal issue (HHC Interviewee). At times the burden is less when HHC collaborates and contacts other organizations as Amnesty International (AI) to solve issues regarding immigration, refugees and asylum which help to raise the issue at an international level seeking for other alternatives to address the case and guaranteeing peoples' rights (HHC report 2004). It can be reached through different ways in person, phone, email, and Facebook page. HHC is sponsored by different foundations such as Hungarian Soros Foundation, Open Society Institute –Budapest, European Youth Foundation and other organizations that collaborate with HHC to provide better services by promoting and enforcing human rights.

Hungarian Civil Liberties Union (HCLU)

It is a non-profit human rights watchdog organization that promotes fundamental rights. Although HCLU focuses on various issues, it pays close attention to Roma. The Roma program tries to tackle the current cases regarding housing, employment, education, marginalization, discrimination and other issues that affect this minority group. The goal of the program is to inform Roma about their legal tools to defend and demand their rights. In order to disseminate the information, HCLU set strategic "TASZPONT"s in counties such as Borsod-Abaúj-Zemplén and Heves where a growing number of Roma people live marginalized. The project took place in local stations where members of the community communicate with attorneys through Skype and some time face-to-face consultations. Attorneys traveled regularly to the regions and informed locals about their legal instruments and service available for them.

In some circumstances, attorneys were available to provide free representation and litigate to challenge the law in order to positively affect the judicial system and encourage positive legislation in future case. Unfortunately, the field work activities had to be suspended due to funding, but HCLU continues offering the service through Skype consultation. Pro-bono lawyers (two lawyers to Roma program and one lawyer to general issues) are available Monday to Thursday from 2pm to 4pm (HCLU interviewee). According to the interviewee, it is crucial to inform about their right in order to make an impact and utilize the legal services offered to disadvantaged people; however, in the case of Roma, the information is not always available onsite and they do not know how to handle the legal issues with authorities. Due to recent ethnic profiling on streets, Roma have been fined or in cases to sentence for minor offenses. For instance, lately Roma were charged for collecting firewood or minor traffic violations something that for non-Roma are totally ignored. Moreover, HCLU states that police enforcement and local authorities conduct unlawful procedures against Roma which contributes to segregation and restrict the freedom to move (Hungarian Human Rights Report, 2012). Even though there is service available to address those issues, Roma face difficulty reaching them because those services are located in the large cities. Access is limited, especially for “those Roma living in deep poverty in small villages” for whom it is almost impossible to access to justice (HCLU; Hungarian Human Rights Report, 2012: 35). HCLU is composed of volunteers, activist, attorneys, journalists and other professionals whose main goal is to promote human rights and empowered vulnerable people through legal venues to demand and enforce their rights (HCLU website). The program was funded by the Open Society Institute’s Emergency Fund and supported the program with 57.785.000 HUF for 13 months, until the end of December 2011. We have applied for further funding to the OSI. Certain activities connected to the Program were funded from other resources: Royal Netherlands Embassy and OSI’s Special Initiatives Program. Moreover, HCLU offers a membership and each member is responsible to pay an annual fee. Members receive a periodical report of HCLU activities, but members are not liable to cover its debt (HCLU website)

Chance for Children Foundation (CFCF)

CFCF was created in 2004 and it is an organization that promotes equal education opportunity for children and fight against segregation in schools. CFCF is committed to protect the rights of most vulnerable population such as children. In Hungary, school segregation has been an issue for minorities groups and disadvantaged children. Under the Hungarian national law, segregation is prohibited, but it occurs in Hungarian education system, especially in elementary education. Segregation can happen as result of housing segregation or deliberately by school authorities and parents' decision particularly middle income parents. Therefore, CFCF has taken the initiative to address school segregation by using legal instruments. CFCF's intervention starts once people contact the organization through the website where people can submit a complaint. Once, the organization reviews the case, it provides legal assistance under its mandate and organization profile (Interviewee). Additionally, it tends to take strategic cases in order to make an impact on the judicial system and guarantee the rights of not only Roma children but disadvantaged children. CFCF offers legal advice, but it also plays an important role in the community through outreach programs and summer camps (CFCF website).

In 2005, CFCF takes action on school segregation and initiated the first *action popularis* against Miskolc case. Miskolc is a town close to Budapest where school authorities had schools segregated in an all-Roma school and an all-white school. CFCF sued in order to end school segregation among Roma and others minorities. After four long years of litigation, the court decided that segregation existed and it was illegal and two schools should merge into one. However, in practice each group continued attending their own school until March, 2010 when the Municipality decided to close the segregated Jozsef Attila Primary School. In addition, the Supreme Court made a landmark decision on the same case by granting compensation in the sum of HUF 100,000 to five Roma children for tolerating school segregation. This court decision makes possible to a plaintiff to suggest a desegregation plan with the claim (CFCF sued with the support of Allen & Overy Law Firm, Pro Bono lawyers)

Funding

CFCF is funded by different private companies and organizations such as Open Society Institute, Hungarian Soros Foundation, The Sigrid Rausing Trust, Ministry of Education-Disadvantaged and Ministers Responsible for Integration of Roma Children Commissioner's Office, Bartha Consulting Bt, Rakosi and Kiss Bt, Peter Felcsuti, Andrew Ujlaky, Adam Eleod, HVB Bank, Hungarian Banking Association, Trust for Civil Society in Central & Eastern Europe, Polgar Foundation for Opportunities, Summa Artium Office, CIB Bank, Embassy of Kingdom of Netherlands, The British Embassy and HORN information Security and Data Recovery Inc.

JOGPONT Network

The JOGPONT Network was established to assist individuals and evaluate legal cases on issues regarding employment, social security, corporate and company law advice, family law and financial and tax advice. The main target groups include employed/unemployed, job seekers, school dropouts, and disadvantaged people. JOGPONT Network operates in seven regions of the country in 144 sites and collaborates with a group of partners such as National Association of Hungarian Trade Unions (Trade Unions), Hungarian Industrial Association (OKISZ), National Association of Industrial Corporations (IPOSZ), Of Consumer Societies of Commerce and the National Federation of Cooperatives (ÁFEOSZ), and Traders and Caterers National Federation (KISOSZ). The network promotes access to legal services and reduces the jurisdictional turmoil which contributes to develop an active and self-help on legal issues in local communities and increase consciousness about individual rights to legal assistance. Individuals can reach for services by a toll free number, an online/chat platform, email, by post or through one of the JOGPONT offices distributed across the country. JOGPONT is funded by European Union sources, the New Hungary Development Plan (NHDP) and the European Social Fund co-financed by the European Regional Development Fund (JOGPONT <http://jogpont.hu/>)



Source: Seven regions of the country and 144 sites providing free legal assistance JOGPONT <http://jogpont.hu/>

2.3.3. Service available by academic institutions

In Hungary, academic institutions play an important role among law students regarding social issues. In 2008, two anti-discrimination clinic programs were set in two law faculties in Hungary. The goal of the legal clinic program is to raise awareness and sensitize law students about cases on discrimination and equal access to justice. The program provides a theoretical background and its application in the professional field. In 2010/2011, the legal clinic program was held in two faculties at the University of Miskolc and the Pazmany Peter Catholic University. With the support of faculty members, attorneys, NGOs (HHC, NEKI and Kezenfogva Foundation) and private law firms (Oppenheim Law firm), students received first-hand experience from professionals and experts in discrimination legislation. Moreover, they gained experiences on how to deal with discrimination cases by applying effective methods and legal instruments. The funding of this program is not spelled out specifically, but it can be assumed that the organization participating in this program providing the service and the material to run the anti-discrimination legal clinic in academic institutions.

2.3.4. Access to and Provision of Legal Aid

Experiences of Roma accessing legal aid

In Hungary, Roma encounter difficulties reaching basic services which make harder for them to access to justice and some of those barriers are the following:

- Physical barriers (poor and segregated neighborhoods)
- Lack of financial resources (travel and accommodation)
- Lack of basic identification documents
- Poor knowledge about legal aid assistance in their local communities
- Institutionalized discrimination
- Mistrust on the authorities

Experiences of Service providers offering legal aid

As result of the desk review and information gathered from interviews with experts from NGOs, the following challenges for service providers have been identified:

- Lack of trained staff members and capacity building, especially in court proceedings.
- Shortage of legal aid providers to handle a large demand of civil legal cases

2.4. Anti-discrimination legislation

In Hungary, the national legislation addresses discrimination issues on various laws, acts and statutes especially from administrative, civil and criminal area. The following table includes key legislation that summarizes anti-discrimination legislation available, its competence and scope at different levels of governance.

Legislation	Adoption Date	Grounds Covered	Civil/ Administrative/ Criminal Law	Scope
Fundamental Law of Hungary (Article XV)	25/04/2011	All	Constitutional Law	All

Act CXXV of 2003	28/12/2003	All	Civil and Administrative	All with special focus on employment (public and private social protection and health care, housing education access to good and services
Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings	26/12/2004	All	Administrative	All
Act IV of 1957 on the Civil Code (Art's 75,76 and 84	11/08/1959	All	Civil	All (with certain exceptions, where sectoral provision are in place
Act CLV of 1997 in Consumer Protection	23/12/1997	All	Administrative	Access to good and services
Government Decree 218/199 on Petty Offences (Art 93, 96, 101 and 142)	28/12/1999	Varied (sex, age nationality race, origin, religion, political opinion. belonging to a trade union any ground not related employment financial status etc.)	Petty Offence Law	Employment, health care and education respectively
Act XXII of 1992 on the Labour code	04/05/1992	All	Labour Law	Employment
Act LXXIX of 1993 on Public Education	26/07/2011	All	Administrative Law	Education
Act CXI of 2011 on the Commissioner for Fundamental Rights	26/07/2011	All(primarily racial or ethnicity	Constitutional Law	Act of public entities and public services providers in all fields
Act XXVI of 1998 on the Rights of Persons with Disabilities and	01/04/1998	Disability	Civil Law	Numerous fields including education, employment, cultural activities, accessibility of public services, transportation

the Guaranteeing of their Equal Opportunities				
Act CXL of 2004 on the General Rules of the Proceedings and services of Public Administrative Authorities	28/12/2004	All	Administrative	All

Source: European Network of Legal Experts in the Non-discrimination Field 2011

2.5. Key Recommendations/Important Reforms

After reviewing reports and conducting interviews, there are some suggestions that were highlighted in order to improve Roma's access to and utilization of legal services. Interviewees emphasize some of the following points as important reforms needed in the legal aid system:

- Decentralize the legal aid service and increase outreach programs in rural areas or municipalities where low income or Roma are concentrated
- Improve collaboration between state, NGOs and academic institutions to provide a quality legal service
- Apply better dissemination practices to spread information and reach to those in need
- Create an independent unit to select a legal aid provider in order to avoid bias and discrimination
- Increase management efficiency to monitor and assess performance of the legal aid system (providers and authorities that conduct legal proceedings in court)

2.6. Conclusions

In conclusion, the Hungarian legal aid system guarantees legal aid provisions to Hungarian citizens and other specific categories, including indigent people. In the case of the civil legal aid service, the State provides legal advice, court representation and financial support for pre- and extra judicial service under certain criteria. After evaluating information from reports and interviewees, there are several issues to highlight and consider in order to evaluating civil legal aid service accessibility and utility by Roma.

At the level of individual, Roma face physical and bureaucratic barriers before even requesting for legal aid services. First, the legal service is not available in poor and segregated areas of the country, but if there are some services available such is the case of ETA offices, Roma and public in general are not aware of its existence in their local communities. In addition, the lack of basic documents (i.e. ID, birth certificate, residence permit) to start the application process sometimes are not in placed which prevent Roma even to seek for the services. Factors such as poor level of education and unemployment among Roma make the access to legal service more complicated. In order to start the application process, for example, applicants need to submit statement of their financial situation and certificate regarding taxable income. If this is the case, due to those factors Roma face huge difficulties acquiring those documents and this situation prevents fully implementation of the services.

At the level of the practice, service providers in specific the State face some challenges offering the legal assistance. First of all, the financial restrictions make the services limited and selective. As result of the economic crisis, the State budget has been reduced and consequently the budget allocated to civil legal aid service has been affected in the same way. This situation can be reflected in the attorneys' low remuneration and low number of attorneys available to provide legal services. There is a large demand of legal cases and the current wages do not motivate attorneys to take on cases regardless of applicant eligibility or not for legal aid support. Moreover, lack of capacity building, especially trained staff members to handle court proceedings, negatively impact not only Roma but public in general. Sometimes, specialized attorneys are not available and inexperienced attorneys have to provide legal assistance or litigate cases in areas that are not expertise. In regard to NGOs, the situation is different since they are not mandate to provide legal aid service, yet there are national and international organizations that provide to some services. In their case is a bit different because some NGOs provide legal assistance, but litigate cases base on their strategic value and organization profile such is the case of CFCF which main focus is to stop school segregation and provide equal education opportunity for disadvantages children. JOGPONT focus on issues regarding employment, social security, corporate and company law advice, family law and financial and tax advice; and NEKI, HHC and HCLU provide legal services on discrimination issues and litigate on cases that provide value to the judicial system in the long run.

3. The Czech Republic

3.1. The Country at a Glance

The Czech Republic was established as a state in 1993 after the peaceful dissolution of the Czech and Slovak Republic. The country is landlocked and it has a surface of 78,000 squared kilometres. The country became a member of the European Union in 2004 and the estimated population is 10,162,921 (Central Intelligence Agency, 2013) of which the number of Roma is approximately 70,000 according to the World Bank (2010). According to the Government of the Czech Republic (2005) most Roma population lives in the regions of Ostrava and in North Bohemia. Among the problems that the government reports emphasize the involuntary sterilization of women, the negligence of the police to investigate reported cases of discrimination against Roma, the mistreatment of Roma by the police, the segregation of Roma in mainstream education, the lack of representation of Roma in political institutions and problems of long term and inappropriate housing.

Due to the problematic situation of the Roma access to justice in the Czech Republic is of highly importance. One of the tools available for them to access justice is through legal aid.

3.2. Overview of the Civil Legal Aid System

The constitution of the Czech Republic establishes the right to legal aid as an individual right. According article 90 of the constitution the court has a fundamental task to protect the rights of every individual. Even more the V section of the Charter of Rights and Freedoms also guarantees the right to judicial and legal protection. Another provision of the right to legal representation can be found on Article 37, paragraph 2 of the Charter of Rights and Freedoms. In terms of the criminal procedures Article 33 of the Code of Criminal procedure outlines the right to legal representation in criminal cases (Access to justice in CEE reports, 2003). Even though there are articles that relate to the provision of legal aid, the Czech Republic lacks a single act that governs the provision of legal aid. The European Commission against Racism and Intolerance (2012) reports that even though it recommended the Czech government in 2009 to enact law on legal aid, the Czech government has failed to do so. The ECRI also notes that the Ministry of Justice

was drafting a law on legal aid provision in the Czech Republic, but that unfortunately the draft was withdrawn. This results in no single act that clearly outlines the procedure to grant legal aid in the Czech Republic and what this entails. So even though the state provides legal aid it is unsystematic and sometimes limited.

Another important player providing legal aid is the Czech Bar Association. It provides legal aid both in criminal and civil cases, even though the law does not require the bar to do so. (Access to Justice in CEE Reports, 2003) In addition to the state and the bar association, nongovernmental organizations and academic institutions also provide legal aid and advise.

The next sections of this report will focus primarily on the provision of civil (non-criminal) legal aid and most specifically it will study the major challenges of Roma populations in the Czech Republic to access civil legal aid.

3.3. Civil Legal Aid Provision

3.3.1. Services Provided by the State

According to a report by the European Commission for the Efficiency of Justice (2009), legal aid in the Czech Republic for civil cases can include both legal advice and representation in the court. Even more there can be an exoneration of court fees, based on personal circumstances. The report also notices that representation and fees exoneration is the most common form of legal aid provided by the state, although it is not provided very often, but that legal advice is not commonly provided by the state.

Also, it is important to mention that there is no level of income that would automatically grant legal aid in the Czech Republic. Individuals have to file an application and the court handling the case will decide on whether the request is justified or not. All of the cases are handled individually and no standards for granting legal aid are in place, but guidance can be taken from case law. In the case legal aid is not provided it is solely the decision of the court to refuse legal aid. (European Commission for the Efficiency of Justice, 2009)

In the case that legal aid is not granted by the court, then the participants can turn to the Czech Bar Association. The Czech Bar Association can either provide legal aid free of charge or it may do so at a reduced fee. Law No. 85/1996 Coll, on the legal profession, and regulation 255/2006 Coll, both define the methods to assess whether the Czech bar association would grant legal service free of charge or for a reduced fee.

The website from the “European Judicial Network in civil and commercial matters”, defines legal aid in the Czech Republic as:

the exemption of a party from the payment of a court fee,
the appointment of a representative – also possible before the start of proceedings for the provision of representation in bringing an action (petition to initiate proceedings) – the party to whom a representative is appointed does not pay the representative’s cash outlays or a fee for representation,
the appointment of a lawyer by the Czech Bar Chamber.

Legal aid may also be granted outside judicial proceedings in the form of the legal services in accordance with the Legal Practices Act. Those who cannot afford these services are entitled to approach the Czech Bar Chamber to be appointed a lawyer provided that they meet set conditions.

http://ec.europa.eu/civiljustice/legal_aid/legal_aid_cze_en.htm

The specific mechanisms through which a person can apply for legal aid in the Czech Bar Association are outlined below.

European Commission for the Efficiency of Justice 2009.

Basic conditions for appointing an attorney-at-law to provide legal services are:

Submit application in due time;

The applicant does not fulfill conditions for having granted legal aid by court decision(ex-offo) and at the same time the applicant was unsuccessfully claiming legal aid as defined in the law and at the same time the applicant was unsuccessfully claiming legal aid as defined in the law (statement of at least two attorneys-at-law who refused to grant legal aid);

One concrete legal service, where legal representation is obligatory, is concerned. (CBA does not appoint legal representation in cases where such representation is not obligatory and also does not appoint for general representation in different cases.)

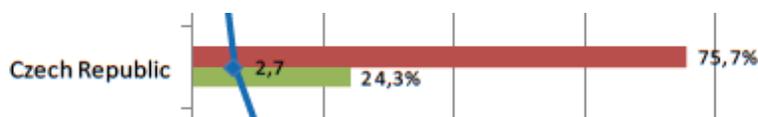
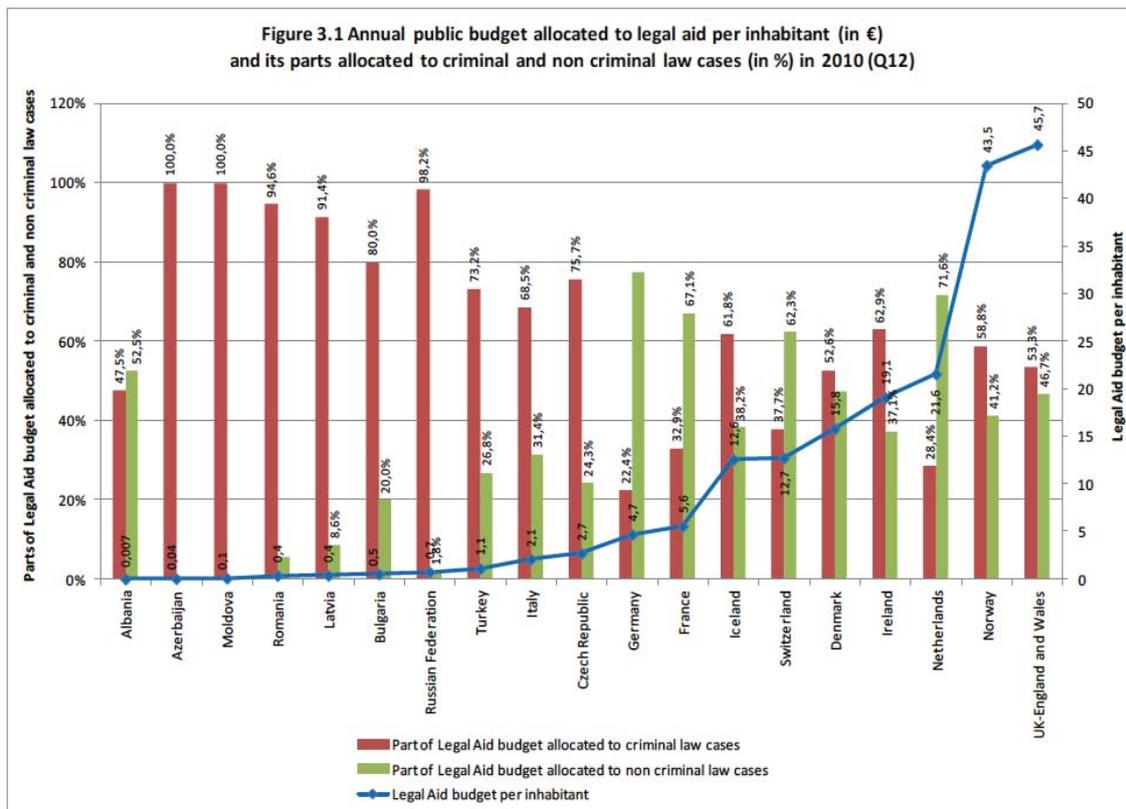
If the applicant proves given conditions, he is entitled to appointment of an attorney-at-law and to provision of legal service.

Conditions under which the appointed attorney-at-law provides his service to the applicant will be determined in a decision by the President of the CBA. Such decision of the President of the CBA does not substitute a letter of attorney.

If the application proves in line with the above mentioned legislation that his income, property and social situation give reason to grant legal service free of charge, eventually for a reduced fee, it may be decided that such legal service will be provided to the applicant free of charge or for a reduced fee. Property, income and social situation of the applicant is proved in accordance with the above cited regulation of the ministry of Justice, in concrete via statement of income and property situation of the applicant for appointment of an attorney-at-law providing legal service free of charge or for a reduced fee.

Funding

According to a report by the European Commission for the Efficiency of Justice, Published in 2009, in the Czech Republic the funding for legal aid comes mainly from the state and from the Czech Bar Association. According to the report, the allocated public budget to legal aid is 25,995,515 EUR in 2009, which was divided between criminal cases 20,960,161 and civil cases 5,045,354. This is the budget available for state provision of legal aid.



In the specific case of the Czech Republic we note that most of the budget dedicated to legal aid is dedicated to the criminal justice system, with around 75.7% of the budget being allocated to criminal cases. In this sense the European Commission for the Efficiency of Justice (CEPEJ) recommends that more money be spent on civil legal aid, in order to balance the expenditures between civil and criminal provision of legal aid.

Equality body: the public Defender of Rights

The public Defender of Rights is mandated to protect the rights of persons against faulty conduct by authorities and other state institutions.

In 2008 the Defender was given special powers in the area of state court administration – the right to propose commencement of disciplinary proceedings against presiding judges and deputy presiding judges of courts if they breach the obligations associated with the discharge of their office.

Upon approval of the Antidiscrimination Act in 2009 the Defender became a body assisting victims of discrimination.

The aforementioned legal definition of his mandate does not give the Defender the right to enter private-law relationships or disputes (including disputes between employees and employers, even if the employer is a state authority). Complaints about discriminatory conduct are the only exception – in these cases the Defender may intervene also in the private-law sphere.

The Defender also cannot intervene in the decision-making of courts, he is not a body of appeal against their decisions and he is not authorized to intervene in the activities of expressly specified institutions

<http://www.ochrance.cz/en/mandate-of-the-public-defender-of-rights/>

Specifically for example, the defender of rights can give legal advice, For example in the report of the third quarter of 2012, the defender of rights reports that he was asked by a nongovernmental organization to give his position on a case where a dentist was suspected of rejecting Roma clients. The NGO provided a testing that showed that Roma had not been given treatment while others from the majority of the population had been given treatment. The defender of rights wrote a report where he assessed the possibility of filing a court action given the evidence that was obtained during the testing. He concluded that the recording of the meeting and the telephone conversation could be used at court.

The Defender of rights also conducted research into the subject of school segregation. On the report the defender states that it is part of his competence “to provide methodical assistance to victims of discrimination, to draw up and publish recommendations and statements on matters relating to equality of treatment, to share these findings with the relevant European bodies and, last but not least, to carry out research on related questions” (Final Report, Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of former special schools)

It is also important to notice that the defender of rights has partnered with the organization, Pro bono alliance in order to provide free legal aid to victims of discrimination. In a recent newsletter, on May 27 2003, it is explained that the Defender of rights handed two cases to the

pro bono organization. They report that the handing of the cases was successful and the cases were solved by out of court settlements and they satisfied the discrimination victims.

3.3.2. Services Available by NGOS

Although NGOs provide legal counselling and in some cases legal representation at court, there are some factors hindering their availability to provide legal aid. In specific the law on Advocacy only allows attorneys to provide legal services. In addition according to the civil procedure code the court can refuse to accept as a representative a person who often provides legal representation. This represents a challenge for NGOs to provide legal representation at court. (Access to Justice in CEE Reports, 2003)

As it has been mentioned before the two major providers of legal aid in the Czech Republic are the state and the Czech Bar association but there are also other nongovernmental organizations which provide legal aid services. As well there are organizations such as the Pro Bono alliance that advocate for and provide legal aid services to those who need them.

In specific there are some organizations that offer services to the Roma community, for example the organization “In Iustitia” provides legal aid for Hate Crime Victims. And it is the first organizations of its kind who specializes in hate crimes in the Czech Republic.

Also the Organization Romea, an organization of people from the Roma community located in Prague, provides legal counseling and legal referrals. They do so both in person and through telephone counseling.

Also there is a project by the UN voluntary fund for Victims of Torture, in which the European Roma Rights center plays a role by providing legal assistance to Romani victims of torture in the Czech Republic, Slovakia, Hungary, Ukraine and the Russian Federation. Another example of an organization that provides legal counseling is the Ostrava based organization Vzájemne Souziti (Life together). This is a registered Roma-Czech organization that among other services provides legal counseling specific to the Roma population.

In addition, there is an umbrella organization, the Roma National Congress (RNC) which also operates in the Czech Republic and which unites more than 500 Roma organizations from 39 countries and has as one of its objectives to build and maintain a legal assistance network. Another international player is, the International Romani Union which also works in the Czech Republic and which is also concerned with representing the Romani community politically in the world.

Also as mentioned before the Pro bono alliance has cooperated with the Defender of Rights, the League of human rights, and academic institutions, such as the Olomouc University, in order to provide legal aid to marginalized and vulnerable population, including Roma. It also plays a major role in advocating for and advancing the provision of legal aid in the Czech Republic. More information about the activities of this association will be described on the section of this report dealing with the antidiscrimination law in the Czech Republic and more specifically with the activities of the defender of rights.

Funding

The European Union Agency for fundamental rights (2011) reports that in the Czech Republic, due to a lack of funding, many NGOs are unable to carry out direct assistance or legal representation in legal proceedings regarding victims of discrimination in racial and ethnic grounds. Even more they assert that “funding for legal aid representation in discrimination cases are mainly obtained from EU grants. State funding sources are available primarily in the field of social services in general.” (European Union Agency for fundamental rights, 2011) They also mention “currently legislation allows (in matters of protection against discrimination) individuals to be represented by legal persons (NGOs), which have the legitimate interest in contributing to the fight against discrimination listed in their statutes and who were established on the basis of special legislation.

In terms of the funding of individual organizations, as a specific example, the website of the organization IQ Roma services provides a list of the funders from 2003-2008. It is possible to see from that information that the organization is funded by many different sources. Some of them

are from the state, such as Ministry of Labour and Social Affairs, The inter-ministerial commission for Roma Community Affairs, Homes of needy benefit fund of Brno City, The Town of Bucovice, The South Moravian Region District I, The South Moravian Region District II, Brno City Municipality, Ministry of Education Youth and Sports. They also cite funding from other sources such as the European Year of Equal opportunities, the Committee of Good will the Embassy of the Kingdom of the Netherlands, EHP Norway, and others such as the British Embassy or the European Social fund through the EQUAL program. In 2008, the biggest donor was the EQUAL program with 380,910 Euros followed by the Ministry of Labor and Social Affairs, 156,807. As it can be seen the funds from the European commission are significant for this NGO in particular, but they have also a diverse number of funders.

According to the latest Annual Report (2011) from the Defender of Rights, the organization functioned with a budget of CZK 95,264 thousand in 2011. The budget was mainly from the state and it is important to note that the budget from the state determined that the maximum number of employees of the office had to be 111. (Defender of Rights, Annual Report) According to a report of the Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights (2010) the Defender of Rights does not enjoy financial independence as it depends mostly on funds from the state and as mentioned above they have a degree of conditionality on their allocated budget, such as the maximum number of employees that the office can hire

3.3.3. Services available by Academic Institutions

According to a report by Latham and Watkins (2012) the following institutions provide legal aid to disadvantaged groups. The faculty of law at the Charles University in Prague, The faculty of Law of Palackeho University in Olomouc, the Faculty of Law, Masaryk University Brno.

According to an article by Masaryk University (2012), the faculty of law provides legal clinics that allow students to gain real life experience and handle real life cases. It is focused on instilling in the students the values of social justice and responsibility. The students handle cases related to human rights, asylum and environmental protection.

In a report written by the University of Olomouc, they state that the cases are chosen specifically for people who lack the financial ability to cover their legal expenses. As well they claim that they have contacts with NGOs and that sometimes they refer the cases that are too difficult for the students to handle to the NGOs but that sometimes the NGOs also refer some clients to them, due to the high demand for free legal aid.

Information regarding the legal clinic at Charles University is not available.

3.3.4. Access to and Provision of Legal Aid

Experiences of Roma accessing legal aid

In an article by David Strupek (2004), published in the European Roma Rights Center website, the author argues that the legal aid system in the Czech republic is inadequate and that it does not respond to the needs of the Romani population. In specific he argues that the procedures for obtaining free legal aid are flawed and that it is not easy for socially disadvantaged groups to obtain legal aid. He concludes his article by stating that:

“The procedural provisions in respective branches of law (especially criminal and civil) formally comply with the requirements set by the ECHR case-law. However, practice is different. Judges appoint representatives only in the explicitly enumerated cases involving mandatory representation or criminal defense. There is no conceptual law setting mechanisms for access to free legal aid. Lacunae in the field of free legal assistance are partially compensated by the work of the Bar Association, but this cannot be considered satisfactory. In this situation, the Romani population is at a disadvantage as a result of its generally disadvantaged position in Czech society, a generally low level of education, and high levels of racial prejudice among the majority population.” (Strupek, 2004)

In an article about Roma in Vsetin in the Czech Republic there is mentioning of Roma population being provided legal aid by the Romea Association. In this specific case there were attacks towards the Romani population and the NGO Romea provided them with legal aid.

It is clear that there are different views regarding legal aid in the Czech republic, while the system does seem to be in place, there seem to be major criticism about the effectiveness of the system and the accessibility to legal aid from the part of disadvantaged groups, including Romani minorities.

Experience of service providers offering legal aid

In a report by the European Union Agency for Fundamental Rights (2011), it is noted that since in the Czech Republic legal aid is not granted automatically and that in some instances legal aid may not cover all the costs associated with the right to a fair proceeding, there are still problems accessing justice for some sectors of the population.

They also argue that the even though legal regulations in the Czech legislative system do exist; it is not systematic and therefore is not responsive to the needs of certain persons in need of legal aid.

There are plans to draft a law legal aid that will ensure that those who need legal aid for financial reasons are able to benefit from legal aid. More specifically they argue that according to the Code of Civil Procedure, Administrative procedure code, and the law on the protection of consumers an association founded under the Law on Association of Citizens must only include the protection against discrimination in their statutes if it wants to represent a person in court. Even though the NGOs have used the resources at hand to combat discrimination, there are sometimes factors that hinder the use of legal aid, for example the fear of the victims to initiate proceedings, lack of evidence, or the length and expense of the court proceedings. The result is that many discriminatory cases are not being dealt with legally. As the reports notes, and also as noted in the previous section, one of the major barriers of provision of legal aid by NGOs is the lack of funding.

However in the Czech Republic the so-called *actio popularis* (action in the public interest) is not established. In this sense a person who is not directly affected cannot lodge legal action. The

report argues that this is hindering towards NGOs since they cannot bring the action popularis to the court.

In conclusion the two major problems they find for the victims of discrimination to access legal aid are that: organizations cannot bring an action for the benefit of victims and that there is little funding. This, in their view results in very little access from victims to the direct assistance provided by NGOs, especially when legal representation is concerned. Although there are many organizations dealing with discrimination in the Czech Republic, not all of them provide legal assistance. And even if they do sometimes the victims of discrimination are afraid to initiate litigation because of the disputes are sometimes complex and they cannot bear the costs if the dispute is not successful. The report argues that since the funding from the state is scarce most NGOs rely on European Union grants and foreign funds. One important consideration mentioned in the report is that even disadvantaged parties which have been granted legal aid and have been exempted from paying court fees will be obliged to cover the costs of the legal representative and the loss of income of the other party if they are not successful at the court.

3.4. Anti discrimination legislation

Article three of the Charter of Rights and Freedoms ensures the equal access to fundamental rights regardless of considerations such as sex, race, color, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property and birth or other status. It does not include any remarks on terms of sexual orientation, age, or disability. After the accession of the Czech Republic to the European Union, the anti-discrimination law came into effect in 2009. This antidiscrimination law also regulates the equality body of the Czech Republic, the Defender of Rights. According to the EU directives states must ensure protection for victims of direct and indirect discrimination, harassment and victimization. The anti-discrimination law provides protection in the fields of access to housing, employment, health, social protection and social advantages.

However legal aid is not guaranteed in the antidiscrimination law act, so in cases of discrimination access to a fair trial might be limited (report from the European Union Agency for fundamental rights: Czech Republic)

3.5. Key Reforms/Recommendations

In general terms, the most important recommendation is for the Czech Republic to create a single piece of legislation that clearly delineates the procedure to grant legal aid. At the moment no specific legislation exists so there is no clear act that outlines a procedure to be followed. This leaves the granting of legal aid to the discretion of the court handling each case. This can make it sometimes confusing for applicants, and thus discourage them from starting a procedure if they are unsure of their probability to be granted legal aid.

Another recommendation is that not only legal aid is provided during the court proceedings, but also before and after. At the present time no legal aid is guaranteed before or after the procedures. As a report by the European Agency for Fundamental Rights states the period of legal counseling before starting the procedures have been found to be of highly importance for the success of the case. In this sense then, it would be important for the Czech Republic to also include as part of the legal aid the period of counseling before the starting procedures.

The most important recommendation to increase justice for Roma is to rebuild the trust in the system. In the Czech republic there have been instances where in court proceedings Roma have been successful, for example the famous Ostrava case about the segregation of children, yet in practice there have not been any changes in the actual practice. This in turn, creates, mistrust from the part of the Roma population to the justice system that in turns discourages them to try to access the legal aid system.

Also there is a systemic barrier in the sense that the court proceedings usually take a long time to process. In this sense then the applicants are then discouraged from going through the long process to access justice. A recommendation therefore is to make efforts to make the system more effective in order to reduce the time that it takes to go through the justice system.

3.6. Conclusion

In the Czech Republic there are barriers to access the legal aid system. The marginalized populations of the Czech Republic also face barriers to access the legal aid system. In this report,

the major barriers of access to legal aid have been identified and an overview of the legal aid system has been given. It has been shown that legal aid provision in the Czech Republic is problematic and the major findings are that there is not a single act that governs the procedure and the conditions for granting legal aid. In turn this creates a barrier for those wanting to access legal aid. As they are not sure if they will be granted legal aid or not, before the proceedings. All of the granting of legal aid occurs in a case-by-case basis by the court. Another barrier to legal aid is the amount of time that it takes to process the claims, as this is sometimes also a hindering factor for those applying. Another major identified factor is the lack of trust from the Roma population in the Justice system. This lack of trust derives from the fact that in some cases the Roma population have gone through the legal system and won the cases but in practice the discriminatory practices towards them do not change. For example in the famous Ostrava case, regarding school segregation, the case was won by the claimants, yet in practice it has been reported that the situation has not changed and that school segregation is still a practice in the Czech Republic. These barriers to legal aid are detrimental towards the population in the sense that they are not able to access justice and claim their civil rights.

Some of the recommendations then, are to create a single act governing legal aid, also to increase the trust in the system by the Roma population and finally to try to reduce the amount of time that it takes to go through the proceedings, this in turn will also create more trust in the system and increase the willingness of the claimants to go through the system.

4. General Conclusions

To sum up, some of the important challenges encountered by Roma in Bulgaria, Hungary and the Czech Republic are the following: disadvantaged position in which they live which results in their unfavorable conditions in terms of health, education, shelter and employment.

Roma in Bulgaria have a marginalized position. Despite the legal aid system was thoroughly restructured in 2006 they are still facing barriers to access legal aid. From the report the following conclusions can be drawn. First, that mainly the government and NGOs provide legal aid. Second, barriers to access justice specific to Roma in Bulgaria are discriminatory practices, a lack of confidence in the judicial institutions and lack of knowledge about the legal system. Third, service providers lack of resources and coordination among themselves represent challenges for legal aid provision.

Some of the specific situations that Roma face in Hungary for example are difficult to access and costly to travel to the large cities where the services are provided. In this case, Roma people are most likely concentrated in rural areas and live in poverty. In regard to application procedures, sometimes Roma do not have access to basic documents the required document to request legal aid. This makes the procedure harder to follow. Some interviewees shared that in some instances during the application process if Roma do not have, for example, a birth certificate or personal identification, they are fined for not having them. This situation creates mistrust on authorities that reinforced their unwillingness to approach legal aid services. Also some interviewees shared that there are more pressing difficulties which Roma face which in turn creates a greater need for them in ensuring legal aid services. Some of the identified challenges that Roma face are the lack of education that ultimately has an effect on employment, and consequently has a negative impact on housing and health. Those are main the factors and eventually barriers that prevent Roma from accessing adequate legal aid services. Therefore, a holistic approach is needed in order to target and address the origin of the problem simultaneously. Awareness rising among mainstream society and promoting anti-Gypsyism are important aspects to improve access to justice for Roma. Moreover, outreach programs in rural areas need to be implemented by the state in order to increase mutual trust between Roma and state authorities.

In the case of the Czech Republic, some of the major barriers that were identified are the lack of trust in the justice system. As it has been mentioned in the Czech Republic there is a lack of trust from the part of the Roma. As it has been the case in many instances even if they win cases in court the final practices of discrimination or segregation that they won on court do not end. Also, another major barrier is the lack of clarity from the part of the state regarding the procedure to grant legal aid. In this case the claimants feel discouraged to go with their cases since they will not be sure if they will be granted legal aid and they will have to incur some charges. Given the disadvantaged financial situation which most Roma face, this presents a barrier for them to access legal aid. As it was argued in the report the lack of financial and educational opportunities for Roma also creates barrier to access legal aid as they are sometimes not aware of their rights as citizens of the Czech Republic, or they are not aware of the legal services provisions available either from the state or from other organizations.

As it has been detailed by the report, Roma in Bulgaria, Hungary and Czech Republic face many challenges when trying to access the legal aid system. Some of those challenges are share while others are specific to each country. In general terms, the lack of trust in the system was a barrier recurrent in the three countries, as well as the general disadvantaged situation of the Roma is present in the three countries. Some of the most important recommendations then that can be drawn from the report are the lack of trust in the system must be ensured and that holistic approaches must be taken in terms of the lack of education, health and shelter for the Roma population.

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