LEGAL AID, LAW


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Unofficial translation of the consolidated version containing the initial law and the following amending laws:

Amending law no 143/2013
Amending law no 77/2014

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LAW

No. 10039 date 22.12.2008

“ON LEGAL AID”

Pursuant to Articles 78 and 83, paragraph 1 of the Constitution, upon the proposal of the Council of Ministers, 

1 This law was approved on 02/05/2013, promulgated by Decree no 8175, dated 14/05/2013 of the President of the Republic, Bujar Nishani, and it contains the following temporary provision:
Article 9
Entry into effect
This law shall enter into effect 15 days after its publication in the Official Journal.

2 This law was approved on 10/07/2014, promulgated by Decree no 8653, dated 09/07/2014 of the President of the Republic, Bujar Nishani, and it contains the following temporary provision:
Article 13
Bylaw acts
The Council of Ministers shall be tasked to issue the bylaw acts in compliance with Article 6, point 4, of this law within 3 months of entry into effect of this law.
The Minister of Justice shall be tasked to issue the instruction provided for in Article 6, point 4, of this law, within three months of entry into effect of this law.

Article 14
Entry into effect
This law shall enter into effect 15 days after its publication in the Official Journal..
THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I
GENERAL PROVISIONS

Article 1
Scope of the Law
This Law defines the conditions, type, method and procedures for the provision of legal aid by the state, to the effect of protecting the fundamental rights and freedoms of the individual as well as his other legitimate interests.

Article 2
Basic Principles for providing legal aid
The provision of the legal aid by the state to individuals is based on the principles:

The effective assumption of the right to approach the public administration and/or justice system bodies, through the provision of the legal aid by the state for the individuals, relies on the following principles:

a) equality of rights for all individuals who benefit from the legal aid;
b) professionalism of persons who provide legal aid;
c) quality, efficiency and efficacy of the legal aid service;
d) inadmissibility of the conflict of interest.

CHAPTER II
ADMINISTRATION OF LEGAL AID SERVICE

Article 3
Administration
The legal aid service provided state for the individuals is a responsibility of the Ministry of Justice, National Bar Association and the State Commission for Legal Aid.

Article 4
Tasks of the Ministry of Justice
The Ministry of Justice, in the area of legal aid services for the individuals, performs the following duties:
a) develops the state policy;
b) assists in the preparation of the necessary legal and sub-legal acts in cooperation with the National Bar Association and the State Commission for Legal Aid;
c) takes care for the proper application of the legal and sub-legal provisions and assists in quality assessment of the provided legal aid;
č) prepares the draft-budget, in compliance with the legislation in force.

**Article 5**

**Duties of the National Bar Association**

The National Bar Association, in the area of legal aid service for individuals performs the following duties:
a) participates in the setting of criteria for the selection of lawyers who shall deliver such aid;
b) participates in the setting of criteria for the quality assessment of service provided by the lawyers;
c) takes disciplinary sanctions against lawyers who provide legal aid, in compliance with the Law no.9109 of 17 July 2003 “On the Profession of the Lawyer in the Republic of Albania”, amended;

**Article 6**

**State Commission for Legal Aid**

1. The State Commission for Legal Aid is a collegial state body and has the status of the public legal entity.
2. The Commission is composed of 5 members, where of one is selected by the Minister of Justice; one by the Minister of Finance; one by the National Bar Association; one by the High Council of Justice and one by the non-profit-organizations operating in the legal aid area. The member appointed by the non-profit-organizations is selected by the 4 members appointed as above, from a list of candidates proposed by these organisations.
3. The mandate of the Commission members is 4 years, with the right to immediate re-election only once.
4. The Commission is a part time collegial body, except for the Chairman who is appointed as a full time functionary of the Commission.
5. The technical, logistic and financial assistance is provided by the Commission's Secretariat.
6. The Commission is organized and functions based on the Internal Regulation, proposed by the Commission and approved by the Minister of Justice.
7. The salary of the Chairman of the Commission shall be equal to the salary of the deputy minister, while the remuneration of the Commission members, the structure of the commission, the organizational structure and the levels of salaries of the secretariat are determined by a decision of the Council of Ministers.

**Article 7**

**The criteria to be elected Commission member and Chairman**
1. Member of the Commission may be appointed any person who:
a) is of Albanian nationality;
b) has full capacity to act;
c) holds a degree in law, economics or public management;
c) has a proper moral integrity and is professionally highly competent.
d) has at least 5 years professional experience.

2. The Chairman of the Commission is appointed in his/her function by order of the Minister of Justice, after the prior opinion of the Steering Council of the National Bar Association. The commission Chairman shall have higher law education.

3. The Chairman of the Commission is dismissed from duty by order of the Minister of Justice, on the proposal of the Steering Council of the National Bar Association.

Article 8
Dismissal of the Commission members
The member of the State Commission for Legal Aid is dismissed by the body having appointed him, if:
a) he/she resigns;
b) he/she reaches the retirement age;
c) is convicted by a final court decision;
c) interrupts the employment relations with the institution that appoints him/her.
d) is not present, without a justifiable cause, in more than three consecutive meetings of the Commission.
dh) his/her term is expired.

Article 9
The binding effect of decisions
The Decisions taken by the State Commission for Legal Aid are binding for the lawyers delivering legal aid in compliance with this law. In case of failure to comply with them, the Commission has the right to request the imposition of disciplinary measures against the lawyers, in accordance with the Law no.9109 of 17 July 2003 “On the Profession of the Lawyer in the Republic of Albania”, amended.

Article 10
Duties of the Commission
The State Commission for Legal Aid assumes the following duties:
a) implements the state policy on the provision of the legal Aid to the individuals;
b) manages the budget allocated for the provision of legal aid by the state;
c) approves the rules for the assignment of lawyers, advocacy offices and NPOs that will provide the legal aid and take care for the implementation of such rules;
ç) assess the costs and plans the expenses for the provision of state legal aid and submits it to the Minister of Justice, to be included in the state budget;
d) concludes service agreements with lawyers, advocacy offices and NPO's that will provide legal aid services.
dh) sets the remuneration amount which shall be paid to the lawyers for the provision of legal aid, after the prior written opinion of the Minister of Finance and the Minister of Justice, but in any case, not less that the fees approved for the advocacy service;
e) submits, by the end of each year, the annual report to the Minister of Justice, Minister of Finance and National Bar Association and reports every time it is required to.
e) sets up and reviews the legal aid standards and takes care of the professional trainings for the legal aid lawyers.
f) cooperates with international organizations and not-for-profit organizations, Albanian or foreign, operating in the area of legal aid;
g) defines the criteria based on which the quality of the provided legal aid services will be assessed;
gj) records the data on the persons who benefit legal aid and publishes every year a statistical bulletin on them;
h) decides and orders the payment of remuneration to the lawyers for their provision of legal aid, after the submission of the documents, to be specified by a special decision;
i) determines the priorities for the cases over which legal aid shall be provided, considering the limitations imposed by the available financial means and sources;
j) coordinates the legal aid system, including its delivery in all its forms;
k) proposes to the National Bar Chamber, in the event of infringement of the provisions of this law, the initiation of the disciplinary proceedings for taking the measures of suspending or revoking the permit for practicing the profession of the lawyer, in compliance with the provisions of the respective law on the legal profession in the Republic of Albania.

CHAPTER III
LEGAL AID SERVICES AND THE BENEFICIARIES

Article 11
Legal aid and beneficiaries

Legal aid and its types
1. The state legal aid is delivered by authorized lawyers, according to this law, in compliance with the terms of this law and in the form of primary and secondary legal aid services. Primary legal aid means provision of information on the legal system in the Republic of Albania, normative acts in force; rights and obligations of the law entities; manner of exercising of rights of the individuals in judicial and extra-judicial proceedings and also provision of assistance in the drafting of legal documents or in other forms.
Secondary legal aid is the provision of legal consulting, representation or defense in criminal proceedings, civil and administrative proceedings as well as the representation before the state administrative bodies.

2. Legal aid is provided, also, through the legal education of the public, the assistance provided to the community by means of mobile legal services, publications, TV and written media campaigns as well as through other similar actions, by paying special attention to the problems of the vulnerable groups.

3. The legal aid includes also the exemption of the individual from the payment of the tax on the acts in the course of the civil and administrative judicial proceedings, as well as from the expenses incurred in the course of notifications and other judicial services.

**Article 11/1**

**Persons benefitting legal aid**

The entities benefitting legal aid shall be:

a) Albanian citizens residing in the territory of the Republic of Albania;
b) foreign citizens benefitting it based on the principle of reciprocity;
c) stateless persons, provided with permit of stay, in accordance with the effective legislation;
c) persons with foreign citizenship or stateless, seeking to be provided with permit of stay, applying for asylum or being in the course of complaining process against the administrative and/or judicial decisions concerning the rejection of the permit to stay or of the application for asylum.

**Article 12**

**Forms of Delivery of Legal aid**

Legal aid is delivered through:

a) provision of information, legal consultations and explanations of legal matters, direct interviews and/or distance communication;
b) drafting of the legal acts;
c) continuous legal advising to the individuals who shall personally appear in court;
c) representation before the administrative authorities;
d) protection and representation of the interests of the suspects, accused and injured persons in criminal proceedings;
dh) representation and protection of interests of individuals in the civil or administrative cases;
e) the exemption from the payment of the tax on the acts in the course of the civil and administrative judicial proceedings, as well as from the expenses incurred in the course of notifications and other judicial services.

**Article 12/1**

**Local legal clinics**
1. The provision of the information on the legal system in the Republic of Albania, on the effective normative acts, rights and obligations of the entities of the law, ways of assuming the rights of the individuals in the judicial and extra-judicial proceedings, as well as provision of the assistance for drafting the legal documents or other forms of advice to the vulnerable groups shall be done through the local legal clinics. The request for the provision of the primary legal assistance shall not be subject to any format. It may be provided even orally at the local legal clinics.

1. The purpose of the activity of local legal clinics shall be offering the primary legal assistance.

2. The local legal clinics shall provide assistance even for filling out the request for benefiting the secondary legal aid, as well as the documents which need to be attached to the model form of the request.

3. The legal legal clinics shall, at least, be organised at the same number as that of the appeal courts. The structure and organogram of the local legal clinics is part of the structure and organogram of the State Commission for the Legal Aid and its secretariat.

4. Detailed rules on the functioning of the local legal clinics, as well as for offering of the primary legal aid by them shall be determined upon the order of the Minister of Justice, upon the proposal of the State Commission for Legal Aid.

Article 13

Persons entitled to legal aid

1. The persons entitled to legal aid are those who:

a) request to be defended by a lawyer in the criminal process, in all its phases, and, who because of lack of financial means, could not choose a lawyer or who do not have a lawyer;

b) need legal aid in civil or administrative cases, but do not have the sufficient financial means to pay for such legal aid, or cases are extremely complex from the procedural or substantial approach. In such a case, in order for the person to benefit the legal aid he/she must prove that he/she is included in the social protection programs or satisfies the requirements to be included in such programs,

c) need to protect their rights through the submission of the lawsuit, but their do not have the sufficient means to pay for the tax on the acts, as well as the necessary expenses for the notifications and other judicial services. In order for the person to benefit the legal aid, he shall establish that:

i) he is included in the social protection programs or meets the conditions for being involved there; or

ii) is a victim of domestic violence or victim of the trafficking of human beings, for judicial cases connected to them.

2. Legal aid is provided even to the minors, whose defense in criminal proceedings and in trial is obligatory by law.

3. Legal aid may be requested before, during and after the holding of the judicial proceedings.

4. The person who benefits legal aid is obliged to cooperate with the State Commission for Legal Aid—the lawyer who provides legal aid, to provide true information over which legal aid is

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3 Amended initially by the amending law no 143/2013
requested, as well as to ensure in due time any information on circumstances and conditions that have changed the cause of the provision of the aid.

5. Failure to comply with paragraph 4 of this article by the person, who benefits legal aid on administrative or civil cases, constitutes a cause for immediate interruption of the benefit of such legal aid.

Criteria for benefiting legal aid
1. Entitled to benefit legal aid shall be the person who:
   a) intend to be represented by a defence lawyer in criminal proceedings during its entire phases and, due to the financial inconveniences, they did not manage to appoint a lawyer or they have remained without representation;
   b) need legal aid in civil or administrative cases, but they do not have sufficient resources to pay for this legal aid or the cases are too complex in terms of contents and procedure;
   c) need to protect their rights, through the submission of a lawsuit, but they do not have the sufficient resources to pay for the tax on the acts, as well as for the necessary expenses for the notifications or other judicial services. In order for a person to benefit the legal aid, he must establish that:
      i) he is included in the social protection programs or meets the conditions to be included therein; or
      ii) he is a victim of the domestic violence or victim of the trafficking of human beings, concerning the judicial cases connected to them.
2. The minors, whose defence in criminal proceedings and adjudication is obligatory by law, as well as the minors harmed due to the criminal offence shall be entitled to benefit legal aid during the entire phases of proceedings, provided for in the Criminal Procedure Code.
3. The State Commission of Legal Aid shall consider the meeting of criteria for benefiting legal aid, such as the insufficient financial income of the person and persons being his/her dependants, family composition, social status, involvement in social protection programs and meeting of conditions to be included therein, as well as any other circumstance placing the person under the circumstances of impossibility of ensuring the legal aid privately.
4. The Minister of Justice shall, upon the proposal of the State Commission for Legal Aid, issue a separate instruction for detailing the criteria set out in point 1 of this Article. The table for categorising the percentages for benefitting the legal aid in accordance with the number of the members that the person has in his/her family composition and average monthly income of his family, shall be approved upon the decision of the Council of Ministers.

Article 14
The reimbursement of expenses for the provided legal aid
1. When the legal aid beneficiary, in the end of the trial, benefits reimbursement of pre-paid court expenses, he/she is obliged to reimburse the State Commission for Legal Aid for the expenses incurred by the latter for the provision of legal aid in the respective case.

\[4\] The phrase ‘State Commission for Legal Aid’ were added up by the amending law 143/2013
2. The beneficiary who has received legal aid by submitting false or untrue information, including information on his/her financial situation, is obliged to reimburse the expenses incurred for the provision of such aid.

2/1. The persons who, under this law, are subject to the obligation but they cannot establish their financial insufficiency as a criterion for benefiting the legal aid, shall be obliged to repay the entire expenses incurred for providing this aid within a deadline set out by the State Commission for the Legal Aid.

3. The reimbursement of the expenses, according to paragraph 2 of this article, is effected through the issuance of an order by the Chairman of the State Commission for Legal Aid. The order of the chairman of the commission constitutes an executive title and the judicial enforcement service is tasked with its execution.

Article 15

Provision of legal aid

1. Legal aid in civil and administrative cases shall be provided considering:
   a) the relative value of the claim or the property involved;
   b) the law based legal arguments and claims, made on behalf of the applicant or beneficiary;
   c) the probability of success in the claim or defense;
   d) the complexity of the case; and
   e) the ability of the applicant or recipient to be self-represented.

1/1. The request for the provision of legal assistance in the form of exemption from the payment of the tax on the acts, as well as from the expenses necessary for the notifications and other judicial services, shall be submitted personally or by the representative, being authorised with a power of attorney. The format of the request and the associating documents shall be determined upon the decision of the State Commission for Legal Aid.

2. The provision of legal aid may not be rejected in criminal cases provided for in Article 13, paragraph 1, letter “a”, of this law.

CHAPTER IV

PROCEDURE FOR PROVISION OF LEGAL AID

Article 16

Submission of the request

1. The request for delivery of legal aid, in the form of Court representation for civil or administrative cases, shall be submitted in person by the applicant or his/her authorized representative. The application form and the supporting documentation shall be determined by a decision of the State Commission for Legal Aid.

5 The amending law no 77/2014 contains also another amendment as follows:
In Article 15, points 1, letter “dh” shall be amended as follows:
“dh) meeting the criteria provided for in Article 13;”.
However, this reference seems inappropriate; this Articles does not contain any letter ‘dh’.
2. The request for delivery of legal aid in the other forms provided in the Article 12 of this law is not subject to any particular form. The request may be presented, also verbally, to the authorized individual for delivery of legal aid, or for the assignment of the provider of such aid.

3. The detailed rules in implementing points 1 and 2 of this article, on the submission of requests shall be determined by the State Commission for Legal Aid.

Submission of the request and documentation for benefiting the legal aid

1. The submission for the provision of legal aid in the form of the representation before the court in a civil or administrative case shall be submitted personally or representative, authorised by power of attorney, at the State Commission for Legal Aid.

2. The persons seeking to benefit legal aid under point 1 of this Article shall establish that they meet one or some of the criteria set out by law, attaching the respective documentation to the request for the provision of the legal aid.

3. The persons declaring that they are included in the social protection programs and the minors shall be excluded from the obligation to submit the associating documentation, under the provisions made in point 2 of this Article. In such a case, the State Commission for Legal Aid shall cooperate with the respective institutions to ensure the necessary documentation.

4. The request for the provision of the legal aid in the form of exception from the tax on the acts, as well as from the expenses incurred for the notifications and other judicial services shall be submitted personally by the applicant or his representative, authorised by power of attorney. The request for providing the legal aid in other forms provided in Article 12 of this law, shall not be subject to any formats. It may be submitted orally at the person authorised for providing the legal aid or for appointing the provider of this assistance.

5. If the provision of legal aid is a matter of urgency, the full establishment of criteria may occur at a second stage and the legal aid maybe provided immediately. The person benefitting legal aid, shall, under this provision, be under the obligations provided fro in Article 16/1 and Article 14 of the law. The State Commission for the Legal Aid shall be tasked to set out the urgency conditions on case basis.

6. The application form, associating documents and the detailed rules for implementing the above points of this provision shall be determined by the Legal Aid State Commission.

Article 16/1

Cooperation of the beneficiaries of the legal aid and the state institutions with the State Commission of Legal Aid

1. The person benefitting legal aid shall be obliged to cooperate with the State Commission for the Legal Aid, provide authentic information, whereof the aid has been requested, as well as to ensure at any time information on the circumstances and conditions having changed the cause for providing aid.

2. Failure to apply point 6 of this Article by the person benefiting legal aid in civil and administrative cases consists a cause for the immediate termination of benefiting this legal aid.
Article 17
Refusal to provide legal aid
1. The body entitled to refuse the delivery of legal aid shall be the Chairman of the State Commission for Legal Aid. The decision of the Chairman may be appealed before the State Commission for Legal Aid within 10 days from its notice.
2. The decision of refusal of legal aid provision may be appealed before the court which is competent for the adjudication of administrative disputes.

Article 18
The decision for refusal of legal aid provision
1. The decision for refusal of legal aid provision must contain:
   a) date and place of decision;
   b) applicant’s first and last name;
   c) form of the requested legal aid;
   ç) grounds for refusal to provide legal aid;
   d) appeal procedures;
   dh) other relevant information.
2. The lawyer assigned to provide legal aid may be replaced by the Commission:
   a) if the interested person submits a written request for his/her replacement;
   b) upon request of the lawyer assigned for the provision of legal aid, in compliance with the provisions of the respective law for the legal profession in the republic of Albania;
   c) in case of a conflict of interest.

Article 19
Cooperation with the not-for-profit organizations
1. The not-for-profit organizations specialized in the provision of legal aid services provide the legal aid through lawyers, in compliance with the terms provided in this law.
2. The State Commission for the Legal Aid shall conclude cooperation agreements with such organizations in order to enable the provision of legal aid, in conformity with the forms, terms and conditions provided herein.

Article 20
Lawyers who provide legal aid
1. The primary and secondary legal aid is provided only by persons who exercise the profession of the lawyer.
2. The National Bar Association and the State Commission for Legal Aid shall determine the list of lawyers, who, in conformity with this law, shall be authorized to provide legal aid and also the territorial jurisdiction of their activity. If deemed necessary, the Commission and National Bar Association may organize competitions for the determination of lawyers that shall provide legal aid.
3. The list of lawyers authorized to legal aid services shall be made public.

4. The lawyer appointed for providing the legal aid shall be obliged to accept the task and not abandon it, thus never infringing the right of the represented for protection, other than the cases provided in point 2, article 18. Where the lawyer appointed for providing the legal aid submits a request for resignation under Article 18, point 2, letter “b”, the request shall be motivated and based on facts and/or evidence.

5. The resignation of the lawyer appointed by the State Commission for Legal Aid under point 4 of this Article shall not become effective as long as the party has not been assisted by another lawyer and the expiry of the deadline for the replacing lawyer to get to know the acts and evidence.

**Article 21**

**Legal aid quality assessment**

1. Quality assessment of the provided legal aid is performed by the State Commission for Legal Aid. Upon the request of the interested person, *ex officio*, or upon the request of the Minister of Justice, the Commission shall verify and check the quality in a specific case and based on the results it shall have the right to terminate the service contract with the lawyer authorized to provide legal aid.

2. The assessment form and standards are adopted by the decision of the State Commission for Legal Aid.

3. The assessment results are delivered to the National Bar Association and may serve as a basis for the taking of disciplinary measures against the lawyers.

**Article 21/1**

**Exemption from the payment of the tax on the acts**

1. The request for the exemption from the payment of the tax on the acts as well as from the payment of the incurred expenses for the notifications and other judicial services shall be considered by the State Commission for Legal aid within 10 days since the reception of the request. The detailed rules and criteria for examining and accepting of the request shall be determined upon the decision of the State Commission for Legal Aid.

2. If the State Commission for Legal Aid does not make any statements within 10 days since the submission of the request or if it decides the rejection of the request for the payment of the tax on the acts, as well as from the expenses incurred for the notifications and other judicial services, the court shall, as long as it deems that the conditions for benefiting the legal aid are met, under letter ‘c’ of point 1, Article 13, of this Law, decide during the preliminary arrangements to exempt the plaintiff from the payment of the tax on the acts.

Where the State Commission for the Legal Aid finds out that the economic situation of the person is such that it makes it impossible to pay the tax on the acts, although it does not meet the conditions for benefiting the legal aid under letter “c” of point 1, Article 13, of this Law, may decide that the payment of the tax on the acts be done under the rules provided for in the decision of the Commission at a later stage or in instalments. The rules and criteria for extending the period for paying the tax on
the acts shall be determined upon the decision of the State Commission for Legal Aid, after consulting the Ministry of Finance.

CHAPTER V
FINAL PROVISIONS

Article 22
The Budget
1. The provision of primary and secondary legal aid is funded by the state budget or other legitimate sources.
2. The funds for the provision of legal aid constitute a separate item in the budget of the State Commission for Legal Aid.

Article 22/1
Temporary Provision
1. The Council of Ministers shall be tasked to take the necessary measures for establishing the necessary infrastructure for the normal conduct of the activity of the local legal clinics, as well as planning the necessary budget funds into the State Budget 2014 for their functioning.
2. The Council of Ministers shall take all the necessary measures for opening the local legal clinics by 01/01/2014.

Article 23
The Council of Ministers is tasked with the issuance of subordinate legal acts in implementing Article 6 point 7 of this law.

Article 24
Entry into force
This law enters into force 3 months after the publication in the Official Gazette.

Promulgated by Decree no.5997 of 12 January 2009 of the President of the Republic of Albania, Bamir Topi.