



ACCESS TO JUSTICE AND FREE LEGAL AID IN ALBANIA

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Abstract

One of the most important elements of the regular legal process is the actual opportunity of citizens to participate in various processes. It is guaranteed by a number of international acts such as: Universal Declaration of Human Rights, International Covenant on it Civil and Political Rights, European Convention of Human Rights, etc¹. All these instruments are foreseen to provide the rights of individuals for legal protection, equality before the law, effective legal remedies, etc. One of the essential mechanisms to guarantee participation in access to justice is legal aid guaranteed by the state. Some of the most important recommendations of the Committee of Ministers in the Council of Europe have established that legal aid is possible not only for legal protection in judicial processes, but even in cases of need for legal advice, for all citizens who have no economic opportunities. In 2017, the Assembly of Albania approved the new law on Legal Aid guaranteed by the state within the framework of the Justice Reform. This study aims to present a summary of Law No. 111/2017 "For Legal Aid guaranteed by the State". It analyses the law on legal aid in three aspects, analysis of types of legal aid and subjects, analysis of the number of legal aid beneficiaries and citizens' perception of legal aid. It also aims to present a general overview through submission of statistics on the beneficiaries of the law, the number of aid providers legal and citizens' perception. This article highlights the problems of the monthly reports of the Free Legal Aid Directory and the lack of cooperation between the Legal Free Aid Directory and the Ministry of Justice in Albania. It stressed the necessity to provide the primary legal aid service with full efficiency and to treat every case according to concrete specifications. It is important the increase of number of cases that are addressed near the centres of new primary legal aid. Cooperation with the new primary legal aid service centres is also should be administered by the Free Legal Aid Directory.

Keywords: Free Legal Aid, primary legal aid, secondary legal aid, justice reform, monthly reports

¹ Ling, V. 2020, February 13, Legal Aid Handbook 2020/21, *Legal Action Group*, 49



INTRODUCTION

In Albania, until 2008, legal aid was provided only in the legislation criminal, within the framework of forced protection. A specific law on legal aid was first approved in 2008. The Law "On Legal Aid" was amended in 2013 and 2014. It was improved by expanding the categories benefiting from legal aid, inclusion in legal aid and exclusion, in civil and administrative judicial processes, of the individual from the obligation to pay the tax on deeds, as well as the expenses of necessary for notices or other judicial services, the creation of legal clinics local etc. Despite the changes, the law did not stand the test of time.

After approximately 10 years' in order to establish and operate an efficient system that maximally guarantees citizens' access to justice, in 2018 was approved law no. 111/2017 "On legal aid guaranteed by the state"². This law is followed by the approval of 13 by-laws which regulate in detail the operation of 3 legal aid systems (primary legal aid, secondary and exemption from taxes and court fees).

One of the main innovations of law no. 111/2017 is the creation for the first time of a public institution dedicated to the good administration and functioning of legal aid, the Free Legal Aid Directorate (DNJF). Another innovation worth mentioning is the creation of a dedicated Directorate within the DNJF, directly responsible for the supervision and control of the quality of the legal aid service guaranteed by the state (Directorate of Supervision of Legal Aid Standards).

Consolidation of the primary legal aid system, but also the intensive work of the Aid Directorate Free Legal in the promotion of the system has led to a progressive increase in the number of beneficiary citizens from primary legal aid services from 23 cases for 2019, to 4191 cases for the year 2020, in 8153 cases for 2021 as well as 7616 cases for 2022. In total are 19,983 cases.

Also, for the first time in the region, an online platform dedicated to free legal aid services was made possible (juristionline.al) through the toll-free number 08001010. Regarding secondary legal aid, in 2019, in the list of providing lawyers of legal aid guaranteed by the state, has resulted 60 lawyers; 70 lawyers in 2020; 124 lawyers in 2021, while in 2022 157 lawyers were contracted.

The progressive growth of the interest of lawyers to become part of secondary legal aid is a clear indication that the system of secondary legal aid is functional and ready for citizens in need. This fact also results from the number of requests for secondary legal assistance (representation by lawyers of guaranteed by the state in court). Only during the year 2021, 671

² <https://www.drejtesia.gov.al/wp-content/uploads/2019/02/LIGJ-nr.-111-2017-date-14.12.2017.pdf>

people have benefited from secondary legal aid and exemption from court fees and expenses (out of 849 court decisions in total), 7-fold increase in treated cases compared to 2020 (181 cases in total). For 2022, there are administered 1030 decisions bringing the total number to 2060 decisions.

The number of judicial decisions administered for secondary legal aid is directly translated in the cost for the state budget as well as in the increase in the number of judicial representations that are needed to be supervised in terms of service quality, by the Directorate of Supervision of Delivery Standards Legal Aid Service, part of the Free Legal Aid Directory.

It is worth mentioning also the commitment of the Directorate within the Strategies and International Reporting in conditions where Access to Justice is a very important component important sanctioned by many international acts, for example, the commitment in the framework of the Strategy for Public Legal Education (SELP); Crosscutting Justice Strategy (SND)³; Crosscutting Strategy Against Corruption 2015-2020 (ISAC)⁴; Juvenile Justice Strategy (JJS)⁵; Action Plan for Partnership and Open Government (OGP)⁶; National Action Plan for Equality⁷, Inclusion and Participation of Roma and Egyptians 2021-2025⁸.

Despite the fact that the Free Legal Aid Directorate is newly created, effectiveness and the productivity of the legal aid scheme guaranteed by the state has had a more positive impact in the framework of fulfilling the major mission "Guarantee access to justice for all citizens as one fundamental right with a constitutional character". The current structure of the Free Legal Aid Directorate has been approved by Prime Minister's Order no. 59 dated 25.03. 2019 "For the approval of the structure and organization of the Directorate of Free Legal Aid" amended, with a total number of 25 employees.

PRIMARY LEGAL AID

Based on Article 13 of Law 111/2017, primary legal aid is provided by:

- a) employees with special training;
- b) authorized non-profit organizations;
- c) legal clinics near higher education institutions.

³ https://www.drejtesia.gov.al/wp-content/uploads/2020/10/MONITORING-REPORT-6M-1-2020-_ENG.pdf

⁴ <https://www.drejtesia.gov.al/strategjia-ndersektoriale-kunder-korrupsionit/>

⁵ https://www.drejtesia.gov.al/wp-content/uploads/2017/11/02_Strategjia_e_Drejtewise_per_te_Mitur_2017-2020_English.pdf

⁶ <https://www.opengovpartnership.org/members/albania/#:~:text=This%20action%20plan%20features%20commitments,regulatory%20impact%20assessment%3B%20open%20parliament.>

⁷ <https://www.coe.int/en/web/tirana/-/albania-s-lgbti-national-action-plan-2021-2027-presented>

⁸ <https://www.undp.org/albania/publications/national-action-plan-equality-inclusion-and-participation-roma-and-egyptians-albania>

The administration and promotion of the primary legal aid system has been one of its key priorities of the Directory of Free Legal Aid. This institution has maintained a continuous communication and cooperation with primary legal aid service providers as well as with international partner organizations such as UNDP; OSFA or EURALIUS in order to promote the primary legal aid system.

The Directory of Free Legal Aid administers, based on the relevant order of Minister of Justice, primary legal aid service centres, in the premises of the courts judicial districts or in other suitable premises, in accordance with the legislation in force for state administration.

In the framework of providing the primary legal aid service, this Directory has continued with the opening procedures of primary legal aid service provision centres in cities which have more the need for this nature of service. On 2022, the Directorate of Free Legal Aid administers 14 (fourteen) centres in the city of Tirana, Durrës, Fier, Lezha, Shkodra, Lushnjë, Pogradec, Gjirokastra, Vlora Dibra, Kukes, Korça, Berat and Elbasan.

During 2022, it became possible to open 4 new legal aid service centres primary schools in Berat, Elbasan, Korçë and Kukës (according to the agreement between the Program for the Development of United Nations (UNDP) with the financial support of the Austrian Development Cooperation (ADC).

During 2022, it became possible to pass under administration as part of the structure of the institution of 2 centres opened with the support of UNDP in Durrës and Shkodër (according to the agreement between the United Nations Development Program (UNDP) with the financial support of Cooperation Austrian Development Agency (ADC).

The new judicial map foresees 12 courts of scale first of general jurisdiction, and only 1 appellate court for general jurisdiction and 1 for the administrative one. The closure of the courts in the districts creates the need for the citizens in these districts to have uncertainty about the procedures they should follow as well as the institutions they should go to. As a result, in order to guarantee access to justice, there is a need for the premises of the courts which will be closed to be functional 1 (one) primary legal aid service centre to inform everyone individuals who seek information on the procedures and institutions to which they should refer solving their problems (Planned opening of 6 Primary Legal Aid Service Centers in Tropoja, Mat, Puke, Kurbin, Kavaja and Përmet).

Based on Article 15 of Law 111/2017, non-profit organizations provide primary legal aid services in accordance with the authorization approved by the Minister of Justice. Till now Minister of Justice has authorised 15 (fifteen) non-profit organisations operating in Tiranë, Durrës, Elbasan, Vlorë, Berat, Shkodër. (Innovation, public-private partnership to fulfil the

common mission “Equal access to justice for the categories in need and the vulnerable groups”);

1. Woman’s Forum Elbasan (FGE);
2. Center for the Protection of the Rights of the Child in Albania (CRCA);
3. Centre for Civic Legal Initiatives (QNL);
4. Psycho- Social Organisation Vatra;
5. Woman Center Hapa të Lehtë;
6. ALTRI centre
7. Advisory Line for Women and Girls;
8. Association “Protection of the Rights of Urban and Rural Women Berat”;
9. Association “Albanian Services for Refugees and Migrants”;
10. Organisation “Refleksione”
11. Albanian Center for Population and Development
12. Albanian Consumer Centre;
13. Centre of Integrated Services and Practices;
14. Organisation “Të Ndryshëm dhe të Barabartë”;
15. Tirana Legal Aid Society

Twelve cooperation agreements have been signed with legal clinics operating in Tirana, Vloa, Durrësi and Shkodra, specifically:

1. Faculty of Law;
2. “Wisdom” University College;
3. Legal Clinic Shkoder
4. University “Aleksandër Mojsiu” Durrës;
5. University "Ismail Qemali" Vloa;
6. European University of Tirana
7. University “Qirjazi”
8. University “Bedër”
9. University “Mesdhetar”
10. University “Marin Barleti”
11. University “Luarasi”
12. University “Epoka”.

- training has been delivered to 200 students involved with the 12 Legal Clinics of the Faculties of Law.

- 3-month internship for students has been conducted.

- Online legal aid (www.jurisdictionline.al Platform & Green number 0800 1010)⁹:

During 2022, concerning primary legal aid, the application for primary legal aid has been granted to all the applicants from all the service providers. The primary legal aid scheme operates in full capacity and there is high performance by the primary legal aid service providers. 5861 citizens have received primary legal aid in 2022.

- Total applications– 5861 applications for primary legal aid:
- Granted applications – 5861

SECONDARY LEGAL AID

Secondary legal aid is one of the most essential forms of legal aid service guaranteed by the state¹⁰. With the new changes of the legal framework on legal aid, on free representation by attorneys, citizens in need and vulnerable categories have the opportunity to benefit from exemption from all court fees and expenses.

Based on the nature of legal aid issues, the sensitive character they have, representation with free attorneys is of essential importance. Secondary legal aid is provided by attorneys included in the list approved by the National Chamber of the Attorneys, based on the request of the person who enjoys the right to the benefit of legal aid secondary, according to articles 11 or 12, Law No. 111/2017.

Referring to the provisions of law no. 111/2017 “On state guaranteed legal aid”, secondary legal aid is one of the main forms of state guaranteed legal aid services and as such it is offered in cooperation with some institutions. In 2022, the list of lawyers contains a total of 157 lawyers who provide legal aid.

Referring to article 9, paragraph “d” of law no. 111/2017 “On state guaranteed legal aid”, it foresees: The National Bar Association prepares and organises the continuous training programme for the lawyers included in the list of lawyers who provide secondary legal aid services, in cooperation with the free legal aid directorate.

The NBA, in cooperation with FLAD, has organised the following training to fulfil its legal duties:

- On 26-27 May 2022 and on 13 -14 September 2022, Local Bar Association (LBA(Tirana training for lawyers included in the list of lawyers providing secondary legal;
- On 20-21 October 2022 LBA Pogradec/Elbasan dhe Korçë training for lawyers included in the list of lawyers providing secondary legal;

⁹ 1418 cases handled through the jurisdictionline platform and 337 cases handled through the green number

¹⁰ Wiltshire, A. 2023, January 23, Everyday Justice: A Legal Aid Story, *Vanderbilt University Pres*, 23

- On 21 -22 December 2022, LBA Vlorë/Fier/Sarandë dhe Gjirokastrë training for lawyers included in the list of lawyers providing secondary legal;
- On 14 -15 September 2022, LBA Shkodër/Lezhë dhe Kukës training for lawyers included in the list of lawyers providing secondary legal;

- Monitoring the legal aid service quality:

The Directorate Monitoring Standards of Provision of Legal Aid Services has been established within the Free Legal Aid Directorate to fulfil the purposes defined in the law and it is responsible for the initial and continuous monitoring to assess the quality of primary and secondary legal aid service. Based on Article 19 of law no. 111/2017 “On state guaranteed legal aid”, the request for delivery of secondary legal aid shall be filed by the interested person, personally or through the postal service, to the court or proceeding body that commences investigation, before the initiation of a judicial proceeding, at the initiation of a judicial proceeding and/or at any stage of a judicial proceeding, until judicial investigation has not been declared closed, in accordance with the rules provided for in the procedural legislation. The court is the competent body for granting or refusing the application for secondary legal aid. From the court decisions, administered by the Free Legal Aid Directorate, which subject-matter is the application for free secondary legal aid, during 2022, it turns out that there is a total of 1030 court decisions, of which 982 are granted and their subject-matter is the provision of secondary legal aid/exemption from the judicial fee and expense.

From the analysis of the data, regarding the performance during 2019, 2020 and 2021, an increase of requests for secondary legal aid and exemption from fees and Court costs is found out. More specifically, for 2019, 32 decisions were issued by the courts on requests for legal aid, in 2020, 181 decisions were issued by the courts on requests for legal aid, for the year 2021 there are 849 decisions issued from the courts on requests for legal aid guaranteed by the state, while for the year 2022 there are 1030 decisions issued from the courts on requests for legal aid guaranteed by state. Regarding the analyses of report of the court cases held during some years, the full preservation of the report is find out. More specifically, civil cases go up to 90% of the total issues for which help is requested. In 2019, 28 out of 32 decisions were on civil issues, 4 criminal issues and 1 administrative issue. In 2020, 154 out of 181 decisions were for civil cases, 13 criminal issues and 14 administrative issue. For the year 2021 754 out of 849 decisions were for civil cases, 61 criminal decisions and 57 administrative decisions, while for

the year 2022 691 out of 1030 decisions were for civil cases, 70 for criminal cases and 269 for administrative cases¹¹.

PROMOTION OF LEGAL AID SYSTEM

The Directorate of Free Legal Aid, conducted 8 television interviews in the framework of the promotion of the legal aid system, legal education of the public. Also within the framework of strengthening cooperation with other institutions that have in their focus the protection of the legal rights of citizens is made possible the signature of 17 (seventeen) cooperation agreements "For ensuring citizens' access to justice through the provision of the free legal aid service according to the provisions of law no. 111/2017, "On the legal assistance of guaranteed by the state".

The purpose of these agreements consists mainly in the cooperation of the parties regarding promotion of the system of legal aid guaranteed by the state through the development of activities, legal education or display of visibility materials, exchange of experience within the framework of improving state policies in the field of aid Legal, development of meetings to discuss issues of common interest, planning and organizing joint trainings in this context, carrying out joint analyses and studies in order to issue recommendations of a legal and administrative nature and making them available to the parties, which will assess the need and form of concrete interventions based on legal powers, creating the necessary spaces regarding the publicity of the free legal aid that is offered for the needy attorneys.

The National Bar Association prepares and organizes continuous training programs for lawyers included in the list of lawyers providing secondary legal aid services, in cooperation with the Directorate of Free Legal Aid. With the aim of assisting lawyers in the process of providing bilateral legal aid, reporting to regarding the follow-up of cases; the interaction of the Directorate of Free Legal Aid with the Chambers Local Advocacy and the exchange of considerations, during 2022, sessions of dedicated to secondary legal aid as a result of a collaboration between UNDP, ADC, DHASH, MoD and the Directorate of Free Legal Aid.

Specifically, in implementation of the legal duties DHKA in cooperation with DNJF have organized the trainings the following.

- On May 26-27, 2022 and on September 13-14, 2022, trainings were held for lawyers of included in the list of lawyers who provide secondary legal aid services in DHVA Tirana.
- On October 20-21, 2022, trainings were held for lawyers included in the list of lawyers that provide secondary legal aid services in DHVA Pogradec/Elbasan and Korçë.

¹¹ <https://ndihmajuridike.gov.al/wp-content/uploads/2023/04/analiza-performances-DNJF-2022-2.pdf>

- On December 21-22, 2022, trainings were held for lawyers included in the list of lawyers that provide secondary legal aid services in DHVA Vlorë/Fier/Saranda and Gjirokastër.
- On November 14-15, 2022, trainings were held for lawyers included in the list of lawyers that provide secondary legal aid services in DHVA Shkodër/Lezhë and Kukës.

CONCLUSIONS

Referring to the methodology, the assessment of the service quality provided by the centres for the primary legal aid is based on the 3 (three)-monthly monitoring as well as monthly narrative reports drafted by the Centres. The reports aim to address problems and recommendations from the employees of the centres regarding the improvement of the activity and service.

The monthly narrative reports have not been forwarded to the Ministry of Justice respectively every month. There is lack of cooperation between these two institutions. In the monthly reports, the columns are not filled with the problems / difficulties faced by the centres and recommendations by employees.

From the reports sent by the centres as well as from the processed statistical data from the Directorate of Policies regarding the primary centres, it results that from several centres are treated a low number of cases.

In these conditions, it is very necessary to continue providing of the primary legal aid service with full efficiency and treating of every case according to concrete specifications. It is necessary the establishment of an online database with all the results of the provision of primary legal aid. The database will be supported by International Organisations in Albania. It is also necessary to continue with the promotion of the legal aid system and orientation regarding its benefits. It is necessary the establishment of an online database with all the results of the provision of primary legal aid. The focus should be on increasing the number of cases that are addressed near the centre. Cooperation with the new primary legal aid service centres is also should be administered by the Free Legal Aid Directory.

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