

“REPORT ON STATE LEGAL AID IN ALBANIA”¹

Monitoring on the work of the State Commission for Legal Aid (SCLA)

Introduction

Citizens’ access to free legal aid is an important process for all those individuals who cannot afford to pay for a private attorney and seek to exercise their civil, political, economic, and other rights, through the implementation of administrative, civil, or penal procedures envisioned in the country’s legislation. There are several non-profit organizations in Albania that provide free legal services; however, considering the focus and priorities of each organization as well as the high level of poverty among people, the general needs of citizens for free legal aid are not possible to meet solely through the services provided by these NPOs.

For a number of years now, the Albanian Helsinki Committee (AHC), in the context of the program “Free Legal Clinic,” supported financially by Civil Rights Defenders², has been offering a diverse package of free legal services to citizens who are victims of human rights violations in Albania. The package includes legal services such as: legal counseling, assistance in compiling documentation, verification of complaints, interventions with state institutions, monitoring court hearings and representation in all three levels of the judicial system, the Constitutional Court, and the European Court of Human Rights in Strasbourg.

In order to improve the situation of citizen’s access in judicial system, on December 22, 2008, the Assembly of Albania approved Law no. 10039, dated 22.12.2008 “On Legal Aid.” The law stipulates the conditions, kind, manner, and procedures for the provision of legal aid by the state, for the purpose of protecting the fundamental human rights and freedoms of the individual, as well as of other legitimate interests of his/her. The law classifies legal aid provided financially by the state into a) primary and b) secondary. Primary legal aid is the provision of information about the legal system in the Republic of Albania, normative acts in force, the rights and obligations of subjects of the law, the manner for exercising the rights of the individual, in judicial and extra-judicial processes, as well as the provision of aid in compiling legal documents or other forms. Secondary judicial aid is the provision of the services of counseling, representation, or defense in penal judicial processes, civil and administrative judicial processes, as well as the presentation before administrative state bodies.

The law determines the responsible institutions for the administration of the legal aid services – the Ministry of Justice, the National Chamber of Lawyers, and the State Commission on Legal Aid. The State Commission on Legal Aid (SCLA) is a collegial state body, which is made up of 5 members, 1 representative from the Ministry of Justice, 1 from Ministry of Finance, 1 from National Chamber of Lawyers, 1 from the High Council of Justice, and 1 from civil society organizations. The State Commission on Legal Aid is chaired by Ms. Blegina Agolli who is the Chair member of this Commission.

¹ Monitoring the activity of the State Commission for Legal Aid

² The former Swedish Helsinki Committee

This report seeks to analyze from a theoretical and practical standpoint issues related to the enforceability of the Law “On Legal Aid” and the activity of the State Commission on Legal Aid. The purpose of this report is to highlight how effective state legal aid is in Albania and address some of the main needs that should be resolved with priority in the future. The methodology pursued for drafting this report is through obtaining information from meetings held with members of the State Commission on Legal Aid and the analysis of legal and sublegal acts in force on state judicial aid.

General Considerations on the Functioning of the State Legal Aid

Although it has been 3 years since the approval of the law “On Legal Aid,” AHC finds that enforcement of this law is taking place at a slow pace. The engagement of state structures responsible for the enforcement of the law has been inadequate and factors influencing the slowness of this process have been mainly of a technical-organizational nature, such as lack of coordination and cooperation, insufficient budget to cover human resources and material needs, lack of the infrastructure and sublegal acts, etc.

The current activity of state institutions responsible for the enforcement of the law during 2011 has been mainly of an organizational character. By means of decision no. 98, 9.2.2011, the Council of Ministers approved the structure of the State Committee for Legal Aid and the staffing pattern of its secretariat, meanwhile the its internal regulations is lately approved by the Ministry of Justice. An important process as a function of the law’s implementation was the drafting and approval of some very important decisions by SCLA. The “Tirana Legal Aid Service” (TLAS) organization, the “Euralius” mission in Albania, and other civil society organizations have provided major aid in drafting these decisions.

In spite of very important steps undertaken to date for the enforcement of the law “On Legal Aid,” AHC notes that to date, no individual has benefited from state legal aid. Citizens’ needs for free legal services continued to be covered only by NPOs specialized in this area, through their limited human and material resources. Furthermore, AHC notes that in spite of the fact that the competencies of institutions responsible for the implementation of the law “On legal aid” are provided for in its provisions, cooperation and coordination of work between these institutions needs to be strengthened further. AHC suggests that these institutions sign agreements or memoranda of understanding for a detailed regulation of their cooperation at an institutional level and to specify measures to be undertaken by each institution to effectively guarantee the efficiency of the state’ legal aid.

Legal Acts of the State Commission for Legal Aid

The decision making body of the State Commission for Legal Aid based on the competences provided by the law has approved 5 decisions, which envision a more detailed regulation with regard to the priorities of state legal aid for the period 2011-2012, the criteria to be met by lawyers, lawyer firms, and NPOs to offer state-funded legal aid, procedures to be followed by individuals seeking legal aid, the reward for lawyers and criteria for the evaluation of legal aid offered by these subjects. More concretely, SCLA has approved the following decisions:

Decision No. 1, dated 25.06.2011 establishes the priorities to be pursued in the provision

of primary and secondary legal aid during 2011 and 2012. The priorities have been set in the areas of civil law, family law, labor law, social insurance, and cases of discrimination in the context of the cooperation agreement that the SCLA signed with the Commission for Protection against Discrimination.

Joint decision by SCLA (no. 2, date 25.06.2011) and the National Chamber of Lawyers, dated 25.06.2011, establishes the rules and procedures to be pursued for the assignment of attorneys, law firms, and non-profit organizations that will provide legal aid. According to this decision, transparency, open competition, provision of services by more than one subject, professionalism, and non-discrimination are some of the basic principles that should lead the SCLA and the National Chamber of Lawyers in assigning attorneys, law firms, and non-profit organizations that will provide legal aid.

Decision no. 3, date 25.06.2011 of the SCLA approves the model of the application form to be used for requests and documents to be attached to this application form by the individual addressing the SCLA to seek state legal aid. In case the individual seeks legal aid in the form of representation in a civil or administrative case, he/she needs to complete himself or through his/her representative the sample application form according to criteria set forth in this decision. When the petitioner submits a request for legal aid in other forms, provided for in the law “On legal aid,” the application form shall be completed by the person authorized by the State Commission for Legal Aid or the lawyer. This decision determines the list of documents that the petitioner should attach to the application form. Among others, the petitioner should submit documents proving he is part of social protection programs or meets the following conditions to be included in them. If the petitioner meets the conditions to be included in the social protection programs, he/she should submit 7 certificates, precisely from the Labor Office, the Tax Office, the Social Insurance Office, the Immovable Property Registration Office, the Vehicle Registration Office, Municipality Sections, if subjects registered with these, and the Labor Inspectorate, if they appear informally employed.

Decision No. 5, dated 25.06.2011 of the SCLA regulates the method for evaluating and determining the amount of reward for lawyers who will provide primary and secondary legal aid in the civil and administrative areas. The level of reward for lawyers is determined by points, with each point valued at 1,000 Lek. Points are calculated as a function of the character of the case and the provided legal services.

Decision No. 5, dated 25.06.2011 of the SCLA determines the criteria, standards, and forms of control of quality in the provision of primary and secondary legal aid with a view to guaranteeing the highest standards of professionalism in real and effective access to justice. The State Commission for Legal Aid is the responsible body that verifies and examines the quality of legal aid provided by lawyers. The SCLA submits its quality control results to the National Chamber of Lawyers of Albania, which addresses them according to procedures provided for in the “procedure for complaints about and discipline of lawyers” of the Law on the Lawyer’s Profession in the Republic of Albania, the Code of Ethics and the Statute of the National Chamber of Lawyers.

Regarding the above, the Albanian Helsinki Committee lauds the work of the SCLA, the National Chamber of Lawyers and the Ministry of Justice with regard to drafting and

approving the above legal acts. AHC particularly appreciates the expertise provided by the Tirana Legal Aid Service and the Euralius Mission during the process for compiling these acts. Nevertheless, AHC wishes to present some of its findings with regard to the contents of these acts and their enforceability in practice.

Findings and suggestions

- The State Commission for Legal Aid is yet to start implementing procedures envisioned in Decision No. 2 on the selection of lawyers, law firms, and NPOs that will provide legal aid for individuals. Procedures are expected to start in January 2012. AHC considers that keeping such procedures pending for a 6-month period following the approval of Decision No. 2 of the SCLA has had a negative impact on the effectiveness of legal aid offered by the state and in accessing the citizens which has no proper means for affording the costs of an attorney.
- The Albanian Helsinki Committee appreciates priorities established in SCLA's Decision No. 1, whereby legal aid for 2011-2012 will focus on issues covered by civil, family, labor, and social insurance laws. However, based on its experience so far, AHC notes that there are also other priorities, especially in the penal area and in citizens/employees' relations with the public administration, featuring numerous requests for legal aid and are outside the priority list established in Decision No. 2.
- SCLA's Decision No. 3 envisions that on requests for the provision of legal aid in the form of representation in court, for civil or administrative cases, the petitioner or his/her representative, authorized by an authorization, should fill out the sample application form. According to Decision No. 3, respect for the application form for such legal aid is a condition for the validity of the request. Meanwhile, Decision No. 2 of the SCLA provides that the lawyer made available by the SCLA should help the petitioner for legal aid to fill out the application form seeking legal aid in the form of "representation in court on civil and administrative cases." AHC suggests that there should be a clearer legal regulation of this procedure, including from a practical standpoint, without the need for amendments to the decisions, in order for petitioners submitting requests for representation in court are provided the necessary assistance for filling out the application form. Such assistance is particularly necessary for vulnerable groups, such as poor groups of the population that have a low education level, members of the Roma minority, etc.
- Decision No. 3 of the SCLA presents a long list of documents that the petitioner of legal aid should submit in order to benefit any form of state legal aid. From a practical standpoint, AHC notes that individuals will have difficulties in completing the required documentation both in terms of time limits and financial possibilities. It is supposed that individuals addressing the SCLA do not possess the financial means and generally represent the population's poor strata; therefore, covering the financial costs for ensuring documentation is often impossible. Furthermore, completing required documentation, for simple legal services, such as: obtaining legal information or provision of counsel and explanations of legal issues, direct interviews or distance communication, is a bureaucratic requirement that will have a negative impact on the speed and effectiveness of such forms of legal aid. Also, completion of documentation is difficult to achieve for persons

deprived of their liberty and who are in pre-trial detention institutions or institutions for the execution of penal decisions. AHC deems that the procedure is a very important tool that guarantees the exercise of the right. However, AHC suggests that for certain cases and categories of the population especially those who are deprived by liberty or illness persons, etc, there be exemptions from the formal aspects of the submission of the petition and documentation in order to ensure fast and effective state legal aid.

Citizens' awareness

Sensitizing citizens about the existence and containance of the Law on Legal Aid is an information process that seeks to raise their awareness about accessing different forms of state legal aid provided for by the law. Article 11, item 2 of the law "On legal aid" stipulates that legal aid is also provided through legal public education, by means of aid offered to communities through mobile clinics, publications, broadcast and print media campaigns, as well as other similar measures, paying particular attention to problems of groups in most need.

The SCLA has prepared an informative brochure in cooperation with the Tirana Legal Aid Service (TLAS) regarding SCLA's activity and state legal aid. There are plans to implement a pilot project in 5 cities of Albania during 2012, which will enable the dissemination of the sample application form for requesting legal aid in chambers of lawyers and in local government bodies. AHC deems that awareness of citizens about the law "On legal aid" to date is poor and the responsible state institutions have not taken the necessary measures to coordinate competencies envisioned in the law for the purpose of the public's legal sensitization and education. Furthermore, citizens do not have the necessary information with regard to the priorities of legal aid, procedures to be followed to obtain it, and documentation they need to complete. An indicator of this finding is the small number of petitions for legal aid submitted to the SCLA. This institution indicates that it has received 23 requests for legal aid, 13 of which have been on penal cases and 10 for civil cases. According to the SCLA, petitioners have not been granted legal aid as a result of deficiencies in the documentation they have submitted in petitioning for legal aid.

SCLA's Cooperation with Non-Profit Organizations

The law "On legal aid" attributes an important role to non-profit organizations active in the area of legal aid in terms of the decision-making and cooperation process, and in terms of being included in the provision of state-provided legal aid, etc.

Article 6 of the law "On legal aid" envisions that one of the members of the SCLA's collegial body is a representative from non-profit organizations involved in legal aid services, whose representative is an employee of the Tirana Legal Aid Service (TLAS). Article 19 of the law "On legal aid" provides that, "Non-profit organizations, specializing in the provision of legal aid, shall grant legal aid with lawyers, respecting definitions made in this law. The State Commission for Legal Aid enters into a cooperation contract with these organizations in order to enable the provision of legal aid, in accordance with the forms and conditions provided for by this law." Article 6 of decision no. 2 of the SCLA establishes the criteria to be met by NPOs seeking to offer state-provided legal aid as well as documentation they should submit to the SCLA for this purpose. Procedures for NPOs' applications are yet to

be opened, as is the case also for lawyers and law firms.

AHC deems that Albania has several non-profit organizations that offer free legal services; these have very good capacities from a qualitative standpoint in this area and therefore could be legitimized as providers of state-provided legal aid. AHC notes that the level of cooperation between these organizations and public institutions responsible for the enforcement of the law is at poor levels. Joint activities between NPOs and these institutions have been scarce and were mainly initiated by the civil society.

Recommendations

- We suggest to the State Commission for Legal Aid, the Ministry of Justice, and the National Chamber of Lawyers to enhance further cooperation in order to ensure the effective implementation of the competencies envisioned for each of these institutions according to the law “On legal aid.”
- We suggest to the State Commission for Legal Aid to make a need assessment of the real costs and expenses needed for the state to provide legal aid; these assessments should be submitted to the Ministry of Justice for incorporation into the State Budget. The assessment of necessary costs and expenses should envision as much as possible the organization of awareness raising activities on state legal aid and activities for cooperation with all state and non-state actors whose focus of work is legal aid for the purpose of increasing citizens’ access.
- We suggest to the State Commission for Legal Aid to begin as soon as possible the implementation of procedures envisioned in approved decisions for the purpose of making efficient the provision of state legal aid to individuals.
- We suggest to the Ministry of Justice and the State Commission for Legal Aid to consult a broader array of actors, representatives of state institutions, the civil society, and interest groups regarding priorities for legal aid in the future.
- We suggest to the State Commission for Legal Aid to offer necessary aid to vulnerable groups of the society such as poor strata with low educational levels, members of the Roma minority, etc., on filling out the sample application form for requesting legal aid for representation in court in civil and administrative cases.
- We suggest to the State Commission for Legal Aid to envision in its decision no. 3 exemptions for the obligation to submit required documentation for persons who meet the conditions for incorporation into social protection programs. Other alternative solutions should be guaranteed for ensuring such documentation without costs and quickly, through building bridges of cooperation between the State Commission for Legal Aid and institutions competent for the issuance of such documentation. Exemptions should also be envisioned from the obligation to submit required documentation for individuals seeking simple forms of legal aid such as counseling or legal consultation, which would increase citizens’ access to such services.

- We suggest to the State Commission for Legal Aid to establish contact and cooperation agreements with all NPOs working in the area of legal aid in order to coordinate multiple efforts to ensure the effectiveness of free legal aid in Albania. This may be realized through the organization of joint events to sensitize citizens and increase their public education (*awareness campaigns in the media, street law, publications, etc.*), the organization of debates and round table discussions, the initiation of new legal initiatives or the discussion of needs for amendments to existing legislation on legal aid in order to improve it in the future, etc.
- AHC suggests that priorities for legal aid are consulted with a broader array of actors, representatives of state institutions, civil society, and interest groups.