

LAW No. 04/L-017 ON FREE LEGAL AID

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo;

Approves

LAW ON FREE LEGAL AID

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

The purpose of this law is to establish a functional system for free legal aid in civil, administrative, minor offences and criminal procedure by which it shall be ensured effective approach in justice for the citizens that have no sufficient financial means.

**Article 2
Scope**

This law determines the meaning, types, extension, users and providers of free legal aid, establishment of the Council and Agency for free legal aid, competences, procedures and conditions for realization of the free legal aid, and financing of the free legal aid.

**Article 3
Definitions**

1. Terms used in this law shall have this meaning following:

1.1. **Free legal aid** - a right in a free legal professional service for the citizens that fulfill the criteria determined by this law;

1.2. **Applicant** - a person who requires free legal aid;

1.3. **Beneficiary** - a person who realizes the right in free legal aid in compliance with criteria determined by this law;

1.4. **Provider** - each natural or legal person who in compliance with this law provides free legal aid, as employed or contracted by the agency or in partnership with it;

1.5. **Advocate** – member of the Chamber of Advocates of the Republic of Kosovo;

1.6. **List of the Advocates** - the list of lawyers prepared by Kosovo Chamber of Advocates;

1.7. **Gross family incomes** – the incomes of the applicant and all members of his family, including the incomes realized from the work and other profitable engagements, selling of

the property, inheritance, gifts and all incomes or other profits gained in Kosovo or abroad, but excluding the property which according to the Law on Execution Procedure is exempt from mandatory execution or alienation;

1.8. **NGOs in Partnership** - a non-governmental organization that enters in partnership with the Agency.

CHAPTER II BASIC PROVISIONS

Article 4 Extension and types of free legal aid

1. Free legal aid shall be provided in the whole territory of Republic of Kosovo.
2. Free legal aid shall be provided in civil, administrative, minor offences and criminal procedure.
3. Free legal aid shall be provided for the following types:
 - 3.1. information and legal advices relating to legal procedures;
 - 3.2. drafting the paper-work and entire other technical assistance that has to do with completion of the case; and
 - 3.3. representation in civil, administrative, minor offence and criminal procedure.

Article 5 Authorized services

1. Authorized services of free legal aid shall be provided within the primary and secondary legal aid.
2. Primary legal aid includes the following services:
 - 2.1. information and legal advices regarding the legal procedures;
 - 2.2. drafting of paper-work and entire other technical aid that has to do with completion of the case;
 - 2.3. representation in civil, administrative and minor offence procedure;
 - 2.4. defense and representation in all phases of criminal procedure;
 - 2.5. information and legal advices related to violation proceedings;
 - 2.6. information, legal advices and aid in the mediating and arbitral procedures as foreseen by the law in force;
3. The secondary legal aid includes services which are foreseen in sub-paragraph 2.2. and 2.3. of the paragraph 2. of this Article.

CHAPTER III
USERS OF THE FREE LEGAL AID

Article 6
Criteria for delivery of free legal aid

1. Free legal aid is provided to all persons who fulfill the criteria as follow:
 - 1.1. qualification criteria;
 - 1.2. financial criteria; and
 - 1.3. legal criteria.

Article 7
Qualification criteria

1. According to the qualification criteria, on free legal aid are entitled:
 - 1.1. the Citizens of the Republic of Kosovo which reside in the Republic of Kosovo;
 - 1.2. all persons with provisional residence in the Republic of Kosovo;
 - 1.3. other persons defined by law, or rules of international law, that bound Republic of Kosovo;
 - 1.4. persons to whom assistance on free legal aid is provided on the basis of reciprocity.

Article 8
Financial criteria

1. According to the financial criteria, the legal aid is provided:
 - 1.1. primary and
 - 1.2. secondary.
2. The Primary legal aid shall be provided to all persons that acquire the right from social aid, or are in similar situation with persons acquiring the right from social aid.
3. The Secondary legal aid shall be provided to all persons who's gross family incomes are lower than the average family incomes.

Article 9
Legal criteria

1. According to the legal criteria, the legal aid shall be provided by assessing validity of the case as;
 - 1.1. real value of the request;
 - 1.2. argumentative power of the evidences presented by the applicant; and

1.3. probability for the success of the request.

Article 10 **Immediate free legal aid**

Exceptionally in an urgent case, immediate free legal aid shall be provided to all persons detained by police, regardless the criteria required by this law.

CHAPTER IV **FREE LEGAL AID COUNCIL**

Article 11 **Establishment and composition of the council for free legal aid**

1. In order to ensure the free legal aid, there shall be established the Council for free legal aid (hereafter, Council), as crucial institution which carries out its functions independently from other public institutions and without instructions and interferences from any person, as well as exercises direct supervision of the Agency.

2. The Council is composed of seven (7) members, who are qualified experts and have knowledge on justice system.

3. The members of the Council are elected from the Assembly of the Republic of Kosovo from the ranks of proposed candidates by the following institutions:

3.1. Ministry of Justice;

3.2. Ministry of Labor and Social Welfare;

3.3. Ministry for Returns and Communities;

3.4. Ministry of Finances;

3.5. Kosovo Chamber of Advocates;

3.6. Supreme Court;

3.7. The Council shall announce public invitation for NGO members, wherein from all members it shall select three (3) of them, and then proposes them before the Assembly of the Republic of Kosovo for electing.

4. Each institution, envisaged in sub-paragraph 3.1. to 3.6. of paragraph 3. of this Article, should propose three (3) members, wherein one of them will be elected by the Assembly of Republic of Kosovo.

5. Ministry for Community and Return should propose the members from the minorities in Kosovo.

Article 12 **Proposal and electing procedure**

1. Initiation of the procedure for electing the Council's members from the relevant institutions shall be conducted by Council with the request, not later than six (6) months before the expiration of the mandate of the actual members of the Council.

2. Relevant institutions respond to the Council with the list of the proposed candidates in the time line of thirty (30) days from the date of receiving of the request from the Council.
3. The Council shall send the list with the proposed names to the respective commission of the Assembly of Republic of Kosovo for selection of the Council members in the timeline of fifteen (15) days from the day of delivery of the list with proposed persons.
4. The procedure for appointment of the Council members is applied in conformity with internal rules of the Assembly of Republic of Kosovo.
5. If the mandate of the member ends before expiration of the term for which he is electing the procedure of proposal and appointment of a new member is applied in conformity with provisions of this law.
6. During the proposal and electing procedure as well as selection of the candidates for Council members, there should be ensured the gender and ethnic representation. The Council should have a chairperson.

Article 13 **Competences and responsibilities of the Council**

1. The competences of the Council are:
 - 1.1. drafting of policies and rules for providing free legal aid that will ensure effective, efficient, comprehensive, flexible and sustainable system;
 - 1.2. the exercise of monitoring of work of the Agency and comprehensive functioning of the system of free legal aid;
 - 1.3. identification of priorities on providing of free legal aid, depending on sources and financial means available;
2. According to the needs the Council establishes special commissions for exercising the competences stipulated in paragraph 1. of this Article.
3. The council establishes, by decision, the Complaint Commission which decides in second instance for the complaints exercised against decisions issued by the regional office.
4. The Council reports to Assembly of the Republic of Kosovo once a year concerning the work of the Agency and publishes the Report in the official web page of the Agency.

Article 14 **Conditions for selection of Council members**

1. The persons that fulfill the following conditions shall be selected as Council members:
 - 1.1. to be the citizen of Republic of Kosovo;
 - 1.2. to be university educated;
 - 1.3. to have a character, honesty and high morale;
 - 1.4. to have experience and knowledge in justice system;
 - 1.5. not being convicted by final judgment for criminal offence punishable by the legislation in force of the Republic of Kosovo;

1.6. not to exercise a function in any political party, member of the parliament in the Assembly of the Republic Kosovo or member of Government Cabinet.

Article 15

Mandate of the Council Members

1. The Council's members shall be elected in three (3) years mandate without the right for re-election.
2. The Head of the Council shall be elected by the members of the Council with the mandate of one and a half year without the right for re-election.
3. The Head of the Council represents the Council, convenes and leads the meetings of the Council and carries out other responsibilities determined by this law and by the Rules of Procedure issued by the Council.
4. The chairperson of the Council shall have his deputy, who will be appointed from the ranks of the Council according to rotation system with the mandate of one (1) year.

Article 16

Expiration of exercising the function of the Council member

1. The Council member finishes off exercising function when:
 - 1.1. resigns;
 - 1.2. accomplishes his/her mandate;
 - 1.3. terminates membership or terminates employment relation with the institution that has proposed him;
 - 1.4. dies.

Article 17

Dismissal of the Council member

1. The Council member shall be dismissed by the Assembly of the Republic of Kosovo if:
 - 1.1. manifestation of the mental or physical disability which will impede him/her on exercising the function;
 - 1.2. pronouncement of punishment for criminal offence with lawful judgment;
 - 1.3. personal behavior in contradiction with exercising of the function.
2. Dismissal procedure of the Council members shall be applied in conformity with internal rules of the Assembly of Kosovo.

Article 18

Council members' payment

1. The Council members' shall hold regular meeting according to the needs for which they enjoy the right for daily allowance.
2. For other working meetings of the Council its members do not enjoy the right in daily allowance.

3. The Council members shall take daily allowance for each meeting held but not more than once monthly.

CHAPTER V

ESTABLISHMENT, COMPOSITION AND ORGANIZATION OF THE AGENCY

Article 19

Establishment and the Status of the Agency

1. By this law is established the Agency for free legal aid (hereafter, Agency).
2. Agency is an independent public institution which exercises functions and responsibilities in compliance with this law.
3. Agency is the only institution in the territory of the Republic of Kosovo responsible for organization and providing of free legal aid.
4. Bodies of the agency are:
 - 4.1. Executive Directory;
 - 4.2. Regional office for free legal aid (hereafter Regional office), that is determined with special decision of the Council.
5. The headquarter of the Agency is in Prishtina

Article 20

Executive Directory

1. Executive Director is the body of the Agency.
2. Competences of the Executive Director are:
 - 2.1. coordination of work of the system of free legal aid;
 - 2.2. preparation of the proposal for the annual budget of the Agency;
 - 2.3. proposal of the organizational structure of the Agency to be adopted by the Council;
 - 2.4. employment and monitoring of the Agency's employees;
 - 2.5. contracting of goods and services for functioning of the system of free legal aid;
 - 2.6. organization of training for providers of free legal aid;
 - 2.7. running the awareness campaigns regarding free legal aid system;
 - 2.8. preparation of regular annual reports and other reports upon the request of the Council;
 - 2.9. maintaining the registers and preserving the documents and data relating to the functioning of the Agency.
3. Executive Director for his work reports to the Council.

Article 21
Selection of Executive Director

1. The Executive Director of the Agency is selected by the Council, in accordance with the provisions of applicable Law on Civil Service.
2. The conditions for Executive Director of the Agency are:
 - 2.1. to be a citizen of the Republic of Kosovo;
 - 2.2. Bachelor in Law with professional experience at least five (5) years in the field of law;
 - 2.3. to be acquainted with official languages in Republic of Kosovo;
 - 2.4. to have a character, honesty and high morale;
 - 2.5. to have experience and distinguished knowledge in the field of justice system in the Republic of Kosovo;
 - 2.6. not to be convicted by final judgment for criminal offence;
 - 2.7. not to be a member of any political party, deputy of the Assembly of the Republic Kosovo or member of Government Cabinet.

Article 22
Regional offices for free legal aid

1. The regional offices cover the delivering of free legal aid in all territory of the Republic of Kosovo.
2. Regional Offices are obliged to provide free legal aid in the municipalities which are covered by that regional office, through the mobile offices.
3. The competences of regional office are:
 - 3.1. receiving the requests for free legal aid;
 - 3.2. engagement of the providers of free legal aid;
 - 3.3. providing the free legal aid in compliance with determined authorizations by this law;
 - 3.4. keeping the evidences relating to the applicants, beneficiaries and legal services provided;
 - 3.5. coordination with local institutions regarding offering of free legal aid;
 - 3.6. organization of campaigns for legal awareness;
4. The competences defined under paragraph 3. of this Article shall be exercised by the officials whose qualification is determined by sub-legal act.
5. Regional offices for their work shall report to the Executive Director.

Article 23
Agency's personnel

1. The Civil personnel of the Agency is composed by civil clerks in compliance with the Law on Civil Servants of the Republic of Kosovo.
2. The Civil Personnel of the Agency, shall be selected and dismissed by the Director of the Agency, in compliance with the Law on Civil Servants of the Republic of Kosovo.

Article 24
Working Principles

The work of the Council and of the Agency is based in the principles in which the work of the bodies of state services are based as professional lawfulness, transparency, publicity, responsibility, effectiveness, economizing and impartiality.

Article 25
Non-discrimination and Confidentiality

1. The beneficiary of the legal aid is entitled in legal aid guaranteed under this law, regardless of his/her national origin, respectively ethnicity, race, color, language, religion or political affiliation, gender identity, sexual orientation, health condition, disability, citizenship or residence.
2. The officials of the legal aid and providers of the free legal aid do not express their opinions in public for the issues that have to do with the case being treated or that has remained to be treated before the Judicial or Administrative body. In addition, they restrain oneself from making public comments that could affect the privacy of one or another entity.

CHAPTER VI
PROVIDERS OF FREE LEGAL AID

Article 26

1. Providers of free legal aid are:
 - 1.1. Regional offices;
 - 1.2. Mobile Offices for free legal aid;
 - 1.3. Lawyers advocates;
 - 1.4. Non-Governmental organizations in cases when they enter in partnership with Agency.

Article 27
Regional offices

Regional offices are bodies that exercise their activities in the whole territory of the Republic of Kosovo, as stipulated under the Article 22 of this law.

Article 28
Mobile offices for free legal aid

1. The mobile offices for free legal aid shall be established by the Council with the proposal of the Executive Director.
2. The mobile offices for free legal aid as a form of organization of legal services, act in those municipalities in which the free legal aid offices are not established.

Article 29 Advocates

1. Advocates offer legal services authorized within the primary and secondary legal aid.
2. Kosovo Chamber of Advocacy prepares and delivers at the Agency the list of lawyers who express readiness for offering free legal aid.
3. The agency concludes individual contracts with lawyers that express readiness to offer free legal aid.
4. Advocates provide authorized services of free legal aid under the tariff on compensation determined from the Agency by sub-legal act.
5. Regional Office for cases which should represent at courts and other bodies the beneficiaries of free legal aid, appoint lawyer from the updated list of Advocate chamber.
6. The procedure for engaging lawyers is regulated with sub-legal act.
7. Authorized services of representation and defense in court proceedings are offered only by lawyers.

Article 30 Non-Governmental Organizations

NGO-s provide legal services authorized under the criteria established by the Council on the proposal of the Director of the Agency.

CHAPTER VII PROCEDURES FOR REALIZATION OF FREE LEGAL AID

Article 31 Initiation of Procedure

1. The procedure for realization of free legal aid shall be initiated with the submission of the application in the nearest legal aid office.
2. Form and content of the form for submission of application for legal aid shall be regulated by sub-legal act.
3. The submitter of the application has an obligation to provide the documentation required to prove the grounds of the application for free legal aid.
4. In the absence of relevant documentation for the category of victims of violence, such as validity of the request is taken written statements of witnesses defender.
5. Officials of the office for legal aid shall be obliged to advise the submitter of the request for free legal aid application.

6. The application form is filled out by officials of the Office for free legal aid
7. In case if the legal aid applicant presents untrue statements on the basis of which is based the legal aid, legal aid officials have the right to investigate the financial situation of beneficiaries, requiring every public body to give out the information on the financial situation of him/her.

Article 32

Decision

1. The Decision on request for free legal aid is taken in the office for free legal aid where was submitted the application.
2. In the case of making the decision on free legal aid, the officials of free legal aid asses the criteria set by this law.
3. Legal aid office decides to grant or deny an application for free legal aid.
4. The decision to grant or deny an application shall be taken within five (5) working days from the day of the delivery of completed documentation.
5. The decision to grant free legal aid determines the authorized services for free legal aid which are offered regarding the approved request.
6. Authorized Services of representation or the defense before the court are referred to the lawyer.
7. Free legal aid recipient is obliged to immediately notify the legal aid office for the change of circumstances prescribed with this law, which have influenced the decision to grant free legal aid.
8. If it is concluded that the recipient of free legal aid illegally has benefited or continue to take free legal aid, legal aid offices with decision interrupts immediately authorized services for free legal aid and obligates the beneficiary to reimburse all expenses incurred from providing free legal aid, where all these revenues go to the Kosovo budget.

Article 33

Subsidiary Application

If by this law is not regulated in general the decision procedure according to the request for allowing free legal aid, provisions of the Law on Administrative Procedure shall be applied.

Article 34

Appeal against decision on refusal of free legal aid

1. Against the decision in which is refused to grant the request for allowing free legal aid, the applicant has the right to appeal to the appeal committee (hereinafter committee).
2. The Appeal is submitted to the Commission within eight (8) days of receipt of the decision on refusal of free legal aid.
3. The committee decides within thirty (30) days from the day of receiving the appeal for free legal aid.
4. The decision of the committee is final decision.
5. The committee deciding regarding the appeal takes the decision as follows:

- 5.1. rejects the appeal as not permitted;
- 5.2. approves the appeal as grounded, abolishes the decision with which was refused the free legal aid and allows the free legal aid; and
- 5.3. refuses the appeal as ungrounded.

Article 35
Appeal against the free legal aid provider

1. Free legal aid beneficiary has the right to appeal against unprofessional and unethical legal services offered by providers of free legal aid.
2. The appeal procedure under this Article takes place at the Appeal Committee, as provided for under Article 13 paragraph 3. of this law.
3. Committee shall decide on the appeal within fifteen (15) days of receipt of the appeal by the office for receiving appeals on free legal aid.
4. The Committee after reviewing the appeal shall decide the following:
 - 4.1. if the approved appeal is addressed against the lawyer, the Council shall notify the Kosovo Chamber of Advocates in order to take disciplinary measures in accordance with regulations of the Chamber of Advocates;
 - 4.2. if the approved appeal is addressed against the official of legal aid office, the Council shall authorize the disciplinary measures prescribed by sub legal act of the Agency;
 - 4.3. if the approved appeal is addressed against a non-governmental organization, the Council shall authorize measures specified in the services contract with the respective organization and shall notify the Minister of Public Administration.

CHAPTER VIII
FUNDING AND SUPERVISION

Article 36
Funding from the Budget of the Republic of Kosovo

1. The Agency shall be financed from the budget of the Republic of Kosovo, in compliance with the Law on Management of Public Finances and Accountability.
2. Agency manages independently with its own budget and is subject to internal and external audit in accordance with applicable law.

Article 37
Donations

Agency may accept additional donations from local and international donations. Funds received from donations shall be reported to the Assembly of Republic of Kosovo on annual basis, in accordance with applicable law.

Article 38
Transitional provisions

1. The members of the Council shall be selected in compliance with this law, within three (3) months after entering into force of this law.
2. The council shall select Executive Director within three (3) months after selecting the members of the Council.
3. Initiation of the procedure for selecting the members of the Council shall be made by the Committee for free legal aid, not later than one (1) month after the entrance into force of this law.
4. The Council issues the internal rules of procedure within three (3) months after selecting the members of the Council.
5. The Council issues sub-legal acts in compliance with this law, within three (3) months after selecting the members of the Council.
6. The Committee for free legal aid shall continue the work upon the entrance of this law in force, in compliance with the scope of work stipulated by this law, as Council for free legal aid until the selection of members of the Council.
7. After the establishment of the Council for free legal aid all clerks of the Committee for legal aid shall be transferred in the Agency, as well as the rights and obligations, cases, equipments, working devices and archive which is necessary for carrying out of responsibilities from its scope of work.

Article 39 **Abrogation provisions**

Upon the entry into force of this law, the UNMIK Regulation no. 2006/36 shall be abrogated.

Article 40 **Entry into force**

This law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 04/L-017
2 February 2012

Promulgated by Decree No.DL-005-2012, dated 14.02.2012, President of the Republic of Kosovo Atifete Jahjaga.