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LEGAL AID

ANNUAL REPORT of LEGAL AID OF KOSOVO - 2007

to the
**Assembly of Kosovo
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“Since its establishment, Legal Aid has been a reserved power of UNMIK, whereas following the constitution of the Legal Aid Commission up to date, UNMIK continues to be responsible for the budget, finance, procurement and recruitment areas”.

F o r e w o r d

UNMIK Regulation No. 2006/36, chapter 11.2 of the Constitutional Framework for Self-Government in Kosovo, sets the legal basis for the establishment of the Legal Aid Commission (LAC), whereas the operation and transfer of competencies from the UNMIK Department of Justice shall start on 26 September 2007, upon the inauguration of this Commission.

The Legal Aid Commission is established as an independent body, responsible for the provision of free legal aid in criminal, civil and administrative areas to all nationals of Kosovo, foreign citizens that temporarily reside in Kosovo (principal of reciprocity) and other individuals as provided for by laws or international agreements.

Legal aid is provided for free to all those citizens lacking material means and unable to effectively access justice; to vulnerable groups: to the homeless, the elderly, women, children, to the disabled, to members of non-Albanian communities in Kosovo, but not only limited to poor people, but also persons arrested or detained by the police regardless of their financial state, as well as to all cases of obligatory defense pursuant to articles 73 and 74 of the Provisional Criminal Procedure Code of Kosovo.

The establishment of this body, the first of its kind in the region, is an indication of the progress achieved and speaks of the aspirations of Kosovar society for a better future, where the rule of law and respect for human rights are listed among the objectives of a special importance.

In achieving its mission, the Legal Aid Commission remains committed to respecting the principle of discrimination towards none, despite ethnicity, race, political belief, gender or any difference, the principal of transparency and full respect for the law and international conventions. In accomplishing its mandate, the LAC will closely collaborate with all its local and international partners, in particular with the actors dealing with the implementation of the rule of law standard in the Republic of Kosovo.

Naturally this entire process is not at all easy. Many challenges lie ahead of us, such as the completion of transfer of power from the UNMIK Department of Justice to the Legal Aid Commission, the drafting of a strategic plan for the development of LA, the drafting and adoption of a functional organigram for LA (building a new organizational structure) as well as completing and professionally training the LA staff etc., with the goal of transforming the LAC into an independent, modern and efficient institution, aiming at continuously improving the quality and quantity of the services, so that it matches the complexity and importance of the mandate entrusted to it under the law.

In order to achieve all these objectives at an optimal level, I believe that in the near future along with other engagements, a legal initiative would have to be undertaken for a specific amendment to the regulation on the establishment of this institution, as there are many unclear issues and contradictions which do not clarify at the required level the internal structure, the position and the status of this authority.

It is clear to us that the mere establishment of an institution is not sufficient to achieve the objectives, considering the high level of poverty in our country, but maximum engagement is needed by the entire LAC staff and in particular institutional support (a larger budget in the following years), by not leaving aside the role of potential donors and the collaboration with the civil society and other actors, so that this institution can establish a deserved place in the institutional structure of the Republic of Kosovo.

Thanks to all those who contributed to the institutionalization of Legal Aid in Kosovo, and I assure you of the highest consideration and dedication of the entire LAC staff, in achieving our objectives and obligations always in the interest of those citizens who need this assistance the most and which in our country are unfortunately abundant.

Dear Mr. President, Honored Presidency, Dear Members of the Parliament, I am honored to have been given the opportunity to accomplish a legal obligation, pursuant to article 4 item 4.17 of UNMIK Regulation No. 2006/36, to submit the first annual report on work performance on behalf of the LAC, to the Assembly of the Republic of Kosovo.

Respectfully yours,

Sokol Haziri

Legal Aid Commissioner

INTRODUCTION

The right to access to justice and to a fair trial are widely included in conventions, international and European agreements on human rights.

The obligation of the State to provide free legal support to financially weak groups (unfavorable) and vulnerable groups are included in the UN Basic Principles of the Role of Lawyers and in the European Charter on Fundamental Rights.

Article 3 of the UN Basic Principle on the Role of Lawyers states: "Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons."

Between 2001-2005, the European Agency for Reconstruction funded the project "Free Legal Aid in administrative and civil cases", implemented by the Kosovo Chamber of Advocates, and realized by local NGO's. Upon completion of the project and from the reports issued it was established that more than half of the population in Kosovo needs free legal aid.

For this reason, the European Agency for Reconstruction funded the project "Establishment of a Comprehensive System of Legal Aid in Kosovo" implemented by the German agency ICON institution. The realization of the project played an important role in the integration of the legal aid system. Thanks to the Government of Kosovo which understood the importance and the mission of the provision of free legal aid, it allocated from the Kosovo Consolidated Budget a modest budget in order to make it functional and operational. In this way the Government of Kosovo established the cornerstone for the institutionalization of legal aid and it gave a different dimension from the current state of the legal aid in Kosovo

The general goal of the institutionalization of legal aid is the establishment of a new legal and institutional framework in an integrated legal aid system.

The integrated legal aid system is aimed at filling an existing gap in the current legal system in Kosovo in order to enable citizens in a difficult economic state to benefit from free professional services.

The long-term aim of the integrated legal aid system is to assist in the strengthening of the rule of law in Kosovo by enhancing the citizens' legal culture in utilizing institutional means of resolving disputed situations that can only be achieved through the equal access of all citizens to legal aid services.

In this regard, UNMIK Regulation 2006/36 On Legal Aid was drafted and entered into force on 07 June 2006. Pursuant to Section 1 of this Regulation and in accordance with the Constitutional Framework on the Provisional Self-Government in Kosovo, the Legal Aid

Commission is established as an independent body, where legal aid is de jure operational. At first the Legal Aid Coordinator was recruited thus establishing the second Legal Aid institution, the Legal Aid Coordination Office (LACO).

For the Legal Aid system in Kosovo, the year 2007 was the year of big challenges from both the material and the technical perspective and in particular from the perspective of responsibilities.

Since its establishment, the Coordination Office started working on the drafting of the secondary legislation and has now managed to adopt a part of the relevant policies which will contribute to ensuring a professional service in providing free legal aid in Kosovo. The other part remains to be realized in the following year with the recruitment process for the remaining staff, in the position of Finance Officer, IT Officer and Procurement Officer

On 26 September 2007 the first Legal Aid institution - the Legal Aid Commission - was inaugurated (LAC). The LAC as a decision-making body is composed of the Commissioner and 8 deputies to the Commission, manages and monitors the legal aid system and is responsible for ensuring that the provision of legal aid is effective, efficient, all-inclusive and in accordance with the best internationally accepted standards as well as in full accordance with the relevant legislation in Kosovo. The first step towards accomplishing its legal obligations was made by the Commission through realizing the transfer of competencies from the internationals to the Kosovars, as until then, the political and executive management of the Legal Aid in Kosovo was under UNMIK reserved powers, which was conducted (realized) through the Department of Central Administration of the Ministry of Justice.

Upon the adoption of the strong legal basis by the LAC and upon its promotion and implementation by the LACO, the Legal Aid body in general will have an impact so that free legal aid is developed professionally and with financial certainty. The Legal Aid body will make sure that in the name of justice all providers of legal aid become aware of the protection of the interests of all citizens who, due to a lack of financial means, are denied fair and equal access to justice, in particular to vulnerable groups (children, minorities, victims of domestic violence, elderly, physically disabled, etc.) by means of providing free legal aid.

In the course of achieving its mission, Legal Aid works and will continue working in a transparent and consultative way, aiming at achieving its goals in the process of developing an authentic sector of the justice system.

March 2008

Drita Rexhepi

Legal Aid Coordinator

I. Legal basis for Legal Aid

The Legal Aid Commission is established pursuant to Chapter 11.2 of the Constitutional Framework on the Provisional Self-Government of Kosovo.

On 07 June 2006, UNMIK Regulation No. 2006/36 On Legal Aid entered into force.

During 2007 the Legal Aid system focused on the development of the standards framework as a precondition to providing a legal aid that is effective, efficient, all-inclusive, flexible and consistent.

This regulation abrogates any provision of the law in force that is not in compliance with it.

The Legal Aid system in Kosovo is in compliance with the law in force, in particular with the Framework of the Convention for the Protection of National Minorities, to be provided in the required languages.

During this reporting period, the LAC has drafted an administrative directive on the implementation of UNMIK Regulation No. 2006/36 On Legal Aid, the Legal Aid Handbook, and the labor regulation, a Code of Ethics applicable to LAC and the Legal Aid staff and all necessary forms for the parties.

All the conditions in order to ensure a proper functioning of the legal aid in Kosovo are modified and adapted.

II

Legal Aid in Kosovo functions *based on UNMIK Regulation No. 2006/36 through its own institutions* at three levels:

- I. Legal Aid Commission;
- II. Legal Aid Coordination Office;
- III. Legal Aid District Bureaus.

1. Legal Aid Commission (LAC)

The first institution that establishes the functioning of legal aid is the Legal Aid Commission (LAC). Its functions are carried out independently from the PISG's and without intervention.

The Legal Aid Commission enables access to justice by providing legal aid in criminal, civil and administrative cases, to all citizens of Kosovo who due to a lack of financial means are not able to realize these rights.

The Legal Aid Commission was inaugurated on 26 September 2007.

The Commissioner and the Deputies to the Legal Aid Commission as professionals are fully dedicated to this very important and very significant institution for Kosovo, that is the first and the only one of its kind in the South-Eastern part of Europe. They consider their duties as the achievement of obligations in compliance with their mandate in this institution, which aims to be a role model and an example in the region and more widely.

In this regard the LAC, by facing various challenges, held some meetings in which many issues in relation to the work of the legal aid system in Kosovo were discussed and decided. The aim of this is for all citizens of Kosovo in a difficult economic state, who meet the criteria as set forth under the Regulation No. 2006/36 on Legal Aid, to have equal access to justice, by providing them with professional legal aid services.

During 2007 the LAC modified all the preliminary conditions for the development of policies, procedures and programs for the provision of legal aid. It established the priorities in relation to the types of matters for which legal aid will be provided, and supervised the implementation of decisions and directions issued by the Commission.

The Legal Aid Commission is composed of a Commissioner and eight deputies, who are professionally qualified, have knowledge in legal aid and the judiciary and provide relevant knowledge and valuable skills.

Composition of the Commission

Name and surname	Position	Institution	Mandate
1. Mr. Sokol Haziri	Commissioner	Office of the Prime Minister	4 years
2. Mr. Altay Suroy	Deputy	Ministry of Justice	3 years
3. Mrs. Besa Krajku	Deputy	Supreme Court	3 years
4. Mr. Abdurrahim Broqi	Deputy	Ministry of Community and Return	3 years
5. Mrs. Sladjana Vasic	Deputy	Ministry of Community and Return	5 years
6. Mr. Fadil Racaj	Deputy	Ministry of Labour and Social Welfare	3 years
7. Mr. Isa Mustafa	Deputy	Kosovo Chamber of Advocates	3 years
8. Mrs. Gjylieta Mushkolaj	Deputy	Women's network	3 years
9. Mrs. Virgjina Dumnica	Deputy	Women's network	3 years

During 2007 the Legal Aid Commission held 2 meetings:

On 21 November 2007, the LAC Constitutional Meeting was held, where the main policies for the establishment of internal rules and procedures were discussed and in that regard in principle it adopted all the standard draft acts. Also in the same meeting the budget was reviewed and the implementation of Administrative Instruction No. 12/2007 "On

Unification of Salaries/Increments of Presidents/Chairmen and Members of Boards, Councils, Commissions established by the Provisional Institutions of Self-Government of Kosovo” was adopted.

In principle the LAC was informed about the budget for 2007, as it is required under the European standards and UNMIK Regulation No. 2006/36 On Legal Aid, whereas concerning the draft policies it was decided to make them public to all interested parties, in order to provide them with their comments and concerns for their consideration.

Also in this meeting the Budget and Finance Committee was established, with three members nominated by the LAC. In addition the LAC established the Committee to collect the donors’ contribution.

In its second meeting, held on 12 December 2007, Draft Administrative Instruction No.2006/36 on the implementation of UNMIK Regulation No. 2006/36 on Legal Aid was adopted and the Proposal for the Administrative Instruction on Utilization of Stamps was reviewed.

In this same meeting the LAC adopted the forms for legal aid applications and reviewed the proposals for the attorneys’ fees to be engaged in the service of providing legal aid by the LAC.

In the seminar organized by the UNDP for the Commission for the legal aid program in Kosovo which was held on 6 and 7 December 2007 in Gjakovë/Đakovica several methods of compensation for attorneys were presented as well as in relation to the representation and provision of legal aid at courts.

Considering that the Kosovo Consolidated Budget for legal aid for this year is very small, the Belgian model was selected. This model consists of collecting points or credits which are exchanged into money. At this seminar it was decided that a point would be assessed at Euro 3 and in this way it will be divided by the existing budget according to the dynamics of providing legal aid per every quarter.

1.1. Exercising the function of the Legal Aid Commission

Since its constitution, in September 2007 until the end of the year, the LAC during the two meetings held, has adopted a series of bylaws – regulations which establish the work of Legal Aid and create the ground for the issue of any decision.

The regulations adopted by the LAC are:

1. Administrative Instruction on the implementation of UNMIK Regulation No. 2006/36 On Legal Aid, which establishes the rules of implementation of the Regulation on Legal

Aid, and in particular prescribes the procedures to be implemented in order to obtain legal aid. It also establishes the criteria on the right to legal aid from the financial perspective and the tariff fees as well as the legal aid service cost.

2. The Legal Aid Handbook, as a means useful to the officers in district bureaus (DLABs), in the everyday application of legal aid, its rules and legal practices in their everyday work.

3. The Code of Ethics for the LAC and the LA staff which establishes the highest standards of conduct for the staff, including integrity, impartiality and objectivity.

4. Forms (applications for applicants, forms for attorneys, experts, etc.).

All these bylaws entered into force on 12 December 2007.

In November 2007, The LAC Commissioner, Mr. Sokol Haziri paid a visit to the English Legal Services Commission (Legal Aid) in London, with the purpose of obtaining information on the method of the functioning of legal aid in that country. On that occasion the needs of the LA in Kosovo for collaboration and exchange of experiences in the future were identified.

2. Legal Aid Coordination Office (LACO)

The Coordination Office (LACO) as the main office in the legal aid system is the second institution of Legal Aid. It is responsible for the management of legal aid and the implementation of legal aid policy in all aspects, prepares the draft budget, and makes recommendations to the LAC in relation to matters of policies, budget and administration.

The Coordination Office is the LAC Secretariat and is responsible for the proper functioning of the LACO, for the assignment and supervision of the work of all employees of legal aid and the performance of duties under all the contracts.

It is directed by the Coordinator who is at the same time the LAC Secretary and coordinates the work for all the Legal Aid employees and has managed the establishment of the district bureaus.

2.1. Activities of the Legal Aid Coordination Office

The Legal Aid Coordination Office is responsible for the day-to-day operational matters, in relation to the legal aid services provided. This means the processing of the cases of applicants, appeals, any type of request submitted to Legal Aid by the providers of legal aid or the applicants, as well as the cases initiated by the LAC itself.

Before and after the process of the establishment of the Legal Aid Commission the LAC realized:

- The Inauguration of the Legal Aid Commission;
- Recruitment of professional staff;
- Establishment of district bureaus;
- Furnishing bureaus and the making of necessary preparations to commence work;
- Training of officials to provide legal aid.

During 2007, the Legal Aid Coordination Office had drafted secondary legislation as necessary to implement the program for a qualitative service in providing legal aid such as:

- The Administrative Instruction on the implementation of UNMIK Regulation No. 2006/36 On Legal Aid;
- Code of Conduct and Ethics for providers of legal aid;
- Instruction on internal legal aid administrative rules for the Coordination Office and the District Bureaus;
- The Regulation on the work of Appeals Committee;
- The Regulation on the work of the Legal Aid Commission;
- The Legal Aid Handbook.

The Coordination Office has made all the necessary preparations to ensure access to legal aid Kosovo wide and has completed all the necessary preparations for the district bureaus. In this regard the LACO has recruited 12 legal aid officers and 5 administrative assistants.

In March 2007, the Legal Aid Coordinator, Mrs. Drita Rexhepi, attended the conference on “Position analysis of the displaced persons from Kosovo into Serbia”, held in Belgrade on 27 June 2007 – 29 June 2007, attended in Bečići - Montenegro, the Working Group Seminar “Position analysis of displaced persons from Kosovo into Serbia, organized by the Catholic Relief Services (CRS), and introduced the Legal Aid system of Kosovo. At the aforementioned seminar the presentation of Kosovo was selected as the best presentation.

3. District Legal Aid Bureaus (DLAB)

The District Legal Aid Bureaus establish the third level of the functioning of Legal Aid. With the purpose of creating all the conditions to ensure reasonable access to legal aid Kosovo wide, 5 district bureaus are established and equipped in:

1. Prishtinë/Priština Region – covering 10 Municipalities (Prishtinë/Priština, Ferizaj/Uroševac, Podujevë/Podujevo, Lipjan/Lipljan, Glogovac/Glogovce, Shtime/Štimlje, Fushë Kosovë/Kosovo Polje, Obiliq/Obilić, Kaçanik/Kaçanik and Shtërpçë/Štrpce);
2. Prizren region – covering 6 Municipalities (Prizren, Suharekë/Suva Reka, Rahovec/Orahovac, Malishevë/Mališevo, Opojë and Dragash/Dragaš);

3. Pejë/Peć Region – covering 5 Municipalities (Pejë/Peć, Gjakovë/Đakovica, Istog/Istok, Klinë/Klina and Deçan/Dečani);
4. Mitrovicë/Mitrovica Region – covering 6 Municipalities (Mitrovicë/Mitrovica, Vushtrri/Vučitrn, Skenderaj/Srbica, Zubin Potok/Zubin Potok, Leposaviq/Leposavić and Zvečan/Zvečan);
5. Gjilan/Gnjilane Region – covering 4 Municipalities (Gjilan/Gnjilane, Kamenicë/Kamenica, Viti/Vitina and Novobërdë/Novo Brdo).

DLAB receive applications for legal aid and decide on:

- a) The applicants' financial eligibility;
- b) The possibility of providing the type of aid requested considering the types of legal aid available;
- c) The right of the applicant to primary or secondary legal aid, etc.

In each DLAB, 2 legal aid officers and 1 administrative assistant provide legal aid in civil, administrative and criminal area.

The DLAB provide a duty attorney for emergency legal aid, through a toll-free phone line, to all persons arrested and detained by the police.

III. Inter-institutional collaboration

In order to ensure the quality of the legal aid services provided in the legal aid system, pursuant to Regulation No. 2006/36 On Legal Aid, the LAC has collaborated with the Kosovo Chamber of Advocates, which every 3 (three) months updates for the LAC the lists of advocates available to represent the cases of legal aid applicants. Also pursuant to the Regulation, Legal Aid aims to enter into partnership with NGO's which provide legal aid and with the Law Faculty for the student programs.

The activity of the LA in the field of international cooperation with institutions which are mainly related to the field of justice, in 2007 was fruitful and in this regard the LA has collaborated with the European Agency for Reconstruction (EAR) in the project Support to Justice, UNDP, USAID, NCSC - Justice Support Program, OSCE, etc.

IV. Information for the Legal Aid budget

Pursuant to Section 4.14 UNMIK Regulation No. 2006/36 On Legal Aid: "The Legal Aid budget is each year allocated from the Kosovo Consolidated Budget, adopted by the Assembly of Kosovo".

For 2007 from the Kosovo Consolidated budget the means at the amount of Euro 296.803,00 were allocated to the Legal Aid.

BUDGET		AMOUNT
1.	Salary and per-diem	59.469,00 Euro
2.	Goods and services in the amount of	228.333,00 Euro
3.	Municipal expenses in the amount of	9.000,00 Euro

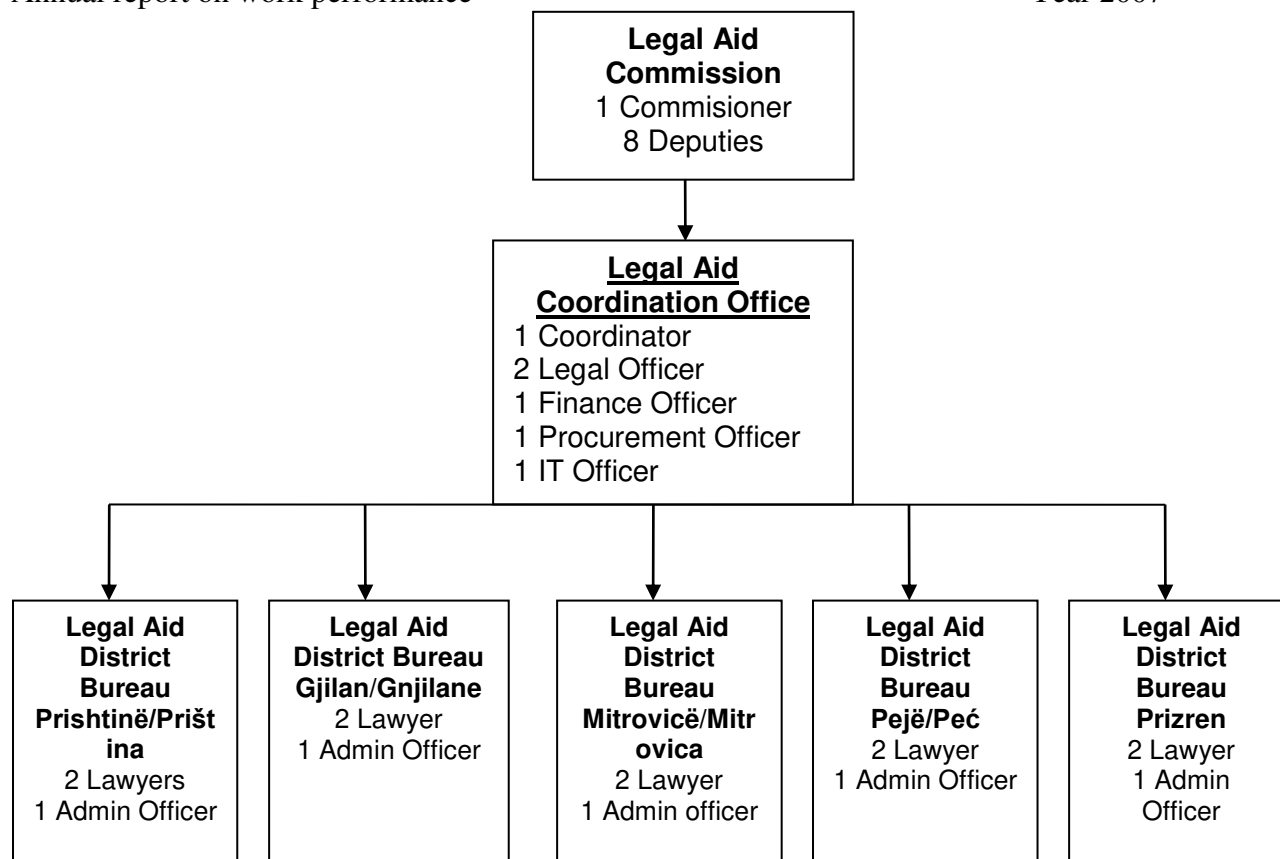
On account of the lack of recruitment of staff in the field of finance and procurement, the management of the legal aid budget until the end of 2007 was an UNMIK reserved power. The Legal Aid budget was managed by the Department of Justice / Ministry of Justice (MoJ), namely the Ministry of Justice's Department of Central Administration.

V. Organizational matters

Based on the specific requirements of Regulation No. 2006/36 On Legal Aid, the internal organizational structure of the legal aid in Kosovo, for 2007 is not entirely completed. Recruitment of staff to the positions of Finance Officer, Procurement Officer and IT Officer are at the final stages.

The organigram presents the current way Legal Aid functions:

The chart of Legal Aid institutions



The internal LA organigram was compiled and drafted by UNMIK. However we have encountered difficulties in the course of its implementation. The Commission would like to see some amendments in the UNMIK Regulation No. 2006/36 in order to clarify the structure of the LA system and ensure compliance with the other structures and agencies of the Government of Kosovo, thus facilitating a more effective implementation of the UNMIK Regulation.

VI. Plans for 2008

For 2008 we have foreseen the drafting of a medium-term strategic plan for the development of legal aid, whereas the concrete objectives foreseen to be realized are:

1. Establishing tariffs based on points, for the payment of advocates engaged in the representation of those who utilize legal aid at courts (footnote);
2. Announcement of the invitation for partnership with the NGO's;
3. Transfer of budget in the criminal field from the Kosovo Judicial Council to the LAC;
4. Completion of rules (standard acts – secondary legislation);
5. Recruitment of staff;
6. Internal organizational restructuring;
7. Changing of the organigram chart;
8. Establishment of Legal Aid clinics;
9. Organization of student programs;
10. Transparency through the establishment of LAC webpage.

In this regard the Legal Aid Commission (LAC) will engage actively and at its maximum capacity in establishing the concrete and practical pre-conditions as part of the integration of the legal aid system, so as to ensure that the service of providing legal aid is as efficient, effective, all-inclusive, flexible and consistent as possible.

Considering the nature of the mission and the progress of the Legal Aid work, the goal of the LAC is to supplement the internal organizational structure, by extending the staff, by recruiting employees for the Coordination Office in the positions of: Manager of 2 Departments, Manager of 2 Divisions, Chief of Legal Office, Executive Assistant, Officer of Personnel & and Logistics and the Managers for the 5 DLABs.