

CONCEPT PAPER
On justifying the draft law on
FREE LEGAL AID

*(The concept paper was developed as part of the Project on Advocacy for Legal Aid
Institution in Azerbaijan)*

**AUTHOR: Working Group for the Project on advocacy for legal aid institution in
Azerbaijan**

Baku – 2012

JUSTIFYING THE DRAFT LAW ON FREE LEGAL AID

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1. TERMS OF REFERENCE

1.1. The idea of free legal aid and its objective

Nowadays it is impossible to imagine the idea of free legal aid apart from basic human rights and freedoms essentially. Even it is imprinted at a constitutional level in most countries in the world. But in most cases people's access to this right involves a range of financial restrictions for the state. Therefore, development and scale of free legal aid is subject to national specifics of different countries. The political climate, social processes, as well as the role of various professional associations (e.g. collegiums of advocates) in the country make significant impact on organizing and funding a legal aid system.

Basically sociologists deal with studying the issue of free legal aid provision since the mid last century. According to them, free legal aid provision is based on two models – “*judicare*” and “*welfare*”. Initially, charity activities formed the basis of the *Judicare* model. Lawyers were providing legal aid to people free of charge as part of such charity activity. Such aid was provided on a range of prominent holidays and lawyers considered it as their social responsibility. No specific criteria existed with regard to choosing persons to be provided with legal aid. The tendency to render legal aid on voluntary basis continued till the mid 1980s – before the *judicare* model was adopted. Under this system, individual lawyers were paid money through state funding for delivering legal aid to a group of certain persons. Legal aid service may be provided by any lawyer or professional lawyers as per contracts concluded with private firms in accordance with this system. However, specialization of those legal firms is taken into account in doing so.

The *welfare* model to provide free legal aid was applied starting in 1960s in the USA as a result of the War on Poverty¹ by President Lyndon Johnson. This model is also called “staff attorney”. Under this system, full-time lawyer positions are formed within local communities and these lawyers are engaged in such cases where professional lawyers of the *judicare* system are not involved. Countries such as Canada and Australia use the *welfare* model.

Contemporary social changes, political priorities, and variety of approaches to destination of budgetary funds allocated for provision of such service have led to the rise of new models to render free legal aid. Even it is unclear to which systems these models belong to. Scholars call them *mixed model*. The efficiency of free legal aid service acts as main criterion for identifying the mixed model. In this system, budgetary

¹ http://en.wikipedia.org/wiki/War_on_Poverty

funds are allocated according to the needs of persons that benefit from the service. This is important for saving those funds and preventing additional expenses.

Another point is the efficiency of provision of free legal aid. Main way for optimizing legal aid is to extend the scope of persons to use such service. Actually, at least 50% of the population of a country should have access to optimized free legal aid system. Of course, here provision of legal aid should not be understood as unlimited.

To ensure efficiency of free legal aid, it should be provided in two (2) types – *pre-trial* (primary legal aid) and trial (professional legal aid). Provision of free legal aid to citizens in accordance with this rule and consideration of the following forms of legal aid would allow for people's free access to courts:

- a) Raising awareness of legal issues, delivering advice and explanations;
- b) Drafting of legal documents;
- c) Representation in governmental authorities;
- d) Defense of the interests of suspect, accused persons in criminal proceedings;
- e) Representation and defense of the interests of a convicted person;
- f) Representation of the interests of a person in legal proceedings in cases on administrative errors;
- g) Representation and defense of the interests of a person in civil proceedings;
- h) Representation and defense of the interests of a person in administrative-economic courts.

Primary legal aid means delivery of information about the legal system of a country, regulatory acts in force, rights and duties of legal subjects, exercise of rights within and beyond the court, and methods to enjoy them; provision of advice on legal matters; assistance in drafting of legal documents. And *professional legal aid* means provision of a legal advice, representation in criminal prosecution agencies, courts, as well as governmental authorities, with regard to criminal cases, administrative offences, civil and administrative cases.

1.2. International practice

Country	Body in charge of provision of legal aid	Persons to deliver legal aid	Areas of legal aid	Forms of legal aid delivery	Persons entitled to legal aid	Conditions for legal aid provision	Form of legal regulation of the practice
Turkey	Ministry of Justice, Collegiums of Advocates, Regional Office of Attorneys	Attorneys, internship attorneys	Civil and criminal trial proceedings	Court representation in civil and criminal cases	Poor persons	Legal aid is provided as per a certificate from the head of municipality. The certificate reports the amount of taxes paid by the person, his/her family and property status, etc.	Appropriate instruction adopted by the Turkish Collegiums of Advocates. Criminal and civil procedure legislation
Georgia	Legal aid bureaus, Legal Aid Service under the Ministry of Reformation and Legal Aid	Lawyers and attorneys	Criminal, civil, administrative areas	a) Preparation of legal documents; b) Defense of the interests of an accused or convicted person in criminal proceedings; c) Defense of victims of criminal offences; d) Court representation in civil and administrative cases.	Poor persons	Legal aid bureau sends a request to the relevant executive authority to establish whether a person is needy.	Individual law
Finland	Legal aid bureaus	Lawyers and attorneys	Any legal area	a) Provision of verbal legal advice; b) Court representation; c) Representation in different governmental authorities.	Poor persons, also legal persons on some cases	Submission of income statement. The yearly income norm of citizens is determined by a decision from the Government Council.	Individual law
The Netherlands	Legal Aid Council, Legal aid offices	Lawyers and attorneys	Any legal area	a) Provision of verbal legal advice; b) Court representation; c) Representation in different governmental authorities.	Poor persons, also legal persons on some cases	The head of the municipality of a person's residential area presents a certificate on the	Individual law

						person's income and property status. The person in need of free legal aid submits the certificate to the legal aid office.	
Greece	Collegiums of Advocates	Attorneys, public prosecutors	Criminal, civil, and a number of commercial cases	Court representation; Provision of advice by prosecutor to persons convicted in criminal cases, as well as interested needy parties	Poor natural persons	Poor person means a person, whose income is below the two thirds (2/3) of per capita income for the General Collective Employment Contract. Such persons should file an application to the lawyer's bureau in their residential area.	Individual law
Russia	Central executive authorities and their subdivisions, local executive authorities and their subdivisions, state legal bureaus, agencies that embody non-budget state funds, etc.	Attorneys, persons with higher legal education	Any legal area	a) Provision of written and verbal legal advice; b) Preparation of complaints and applications, as well as other legal documents; c) Representation of the interests of citizens in judicial, municipal and other executive authorities.	a) Citizens whose per capita family income is below the living minimum; b) The disabled persons of the 1 st and 2 nd categories; c) Veterans of the Great Patriotic War, National Heroes, Soviet Union Heroes, disabled or unattended children, the elderly people, juvenile offenders	Legal aid is provided according to a person's application.	Individual law

					in reformatory institutions, etc.		
Germany	Legal aid centers	Lawyers and attorneys	Civil, criminal, employment, administrative, social security. <i>Aid is not provided on tax cases.</i>	) Provision of written and verbal legal advice; b) Preparation of complaints and applications, as well as other legal documents; c) Representation of the interests of citizens in judicial, municipal and other executive authorities.	Poor natural persons	Legal aid is provided according to a person's application. For this purpose, the person has to submit income and property statement.	Procedural and individual legislation
Moldova	Ministry of Justice, Collegiums of Advocates, National Council on Legal Aid, regional bureaus	Attorneys and public attorneys, lawyers (Parajurists)	Criminal, civil, administrative and other cases	) Provision of written and verbal legal advice; b) Preparation of complaints and applications, as well as other legal documents; c) Representation of the interests of citizens in judicial, municipal and other executive authorities.	Poor natural persons, defendants in criminal and administrative cases, etc.	Legal aid is provided according to a person's application or verbal request. For this purpose, the person has to submit income and property statement. Calculation considers the person's income for the last six (6) months.	Procedural and individual legislation

1.3. Legal regulation subject of the draft law on free legal aid

Provision of free legal aid by the state is particularly important because of the necessity of court protection of basic human rights and freedoms embodied in universal international documents, ensuring free and equal access to legal assistance through providing and organizing legal aid, as well as addressing financial and economic impediments to securing access to justice.

Legal regulation subject of the draft law on free legal aid includes conditions, extent and rules for provision of legal aid by the state for the protection of human rights and freedoms and legal interests of people.

However, in drafting the law on legal aid, it is necessary to precisely establish the borderline between the regulation subject of this law's and that of the law on advocacy. As mentioned above, the principle of access to courts forms the basis for the idea of free legal aid. At present, access to courts is a main condition for power division and securing basic and essential human rights in any constitutional state. Prominent US lawyer Forer notes that "People's right of access to courts cannot be imagined to be at the same extent with the employment, education, housing and other rights because justice is central to the political system in any country."² For the first time, this principle was noted internationally in Article 10 of the Universal Declaration on Human Rights adopted by the United Nations General Assembly in 1948. Later, the same principle was stated in more details in Article 6 of the European Convention on Human Rights: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone charged with a criminal offence has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."* Under this term, two (2) points should be considered when a judge assigns a lawyer for delivery of free legal aid to an accused person: a) interested person doesn't have sufficient funds to pay for the services of a defense counselor; b) and delivery of such service is required by the interests of a fair trial. In establishing the interests of justice, all circumstances of the incident that occurred are taken into consideration. In doing so, gravity of the crime, gravity of the penalty, complexity of the criminal case, as well as the personality of the perpetrator shall not act as main criteria.³

² Forer L. G. Money and Justice. New York; Lndon, 1984. P. 25

^{3 3} В.А.Туманова, Комментарий к Конвенции и практике ее применения, Москва 2002, стр. 94

Moreover, the principle of *access to lawyers and legal services* was embodied in the document on the role of lawyers adopted by the United Nations 1990 Congress on the Prevention of Crimes and the Treatment of Offenders.

As mentioned above, the conditions, extent and rules for provision of legal aid form the basis for the regulation subject of the draft law on free legal aid. Under the draft law, free legal aid may be delivered to the following persons subject to the following conditions:

- a) Persons, who don't have sufficient funds to pay for legal aid that is required by the interests of justice when such aid is needed in criminal cases;
- b) When provision of immediate legal aid is needed for persons detained for legal proceedings regarding criminal prosecution or administrative errors;
- c) When provision of legal aid is obligatory on the grounds established by the criminal procedural legislation of the Republic of Azerbaijan;
- d) When provision of legal aid is obligatory on the grounds established by the civil procedural legislation of the Republic of Azerbaijan;
- e) When legal aid is needed in cases of administrative offences, civil and administrative cases and personal funds are not sufficient to pay for delivery of this service, and such cases are legally and procedurally complicated;⁴

⁴ Annex1: the 19th Article of the Draft Law.

2. CURRENT SITUATION WITH FREE LEGAL AID PROVISION

2.1. Analysis of local and international legislation on provision of free legal aid

Effective restoration of rights based on a fair hearing by an independent court is embodied in a number of international acts, including Article 14 of the International Pact on Civil and Political Rights, Articles 7, 8, 10 of the Universal Declaration on Human Rights, and Article 6 of the Convention on Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

Under Articles 8 of the Universal Declaration on Human Rights, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law.

Under Article 12 of our Constitution, the state secures the human and civil rights and freedoms, decent living standards for citizens of the Azerbaijan Republic, and Section III of Article 25 pronounces that the state guarantees equal rights and freedoms for everyone irrespective of property status.

Under Article 61 of the Constitution, legal remedy is guaranteed for rights and freedoms of everyone and legal aid is provided free of charge and at the account of the state in cases established by law. What such aid includes is detailed in a number of legislative acts of Azerbaijan.

Firstly, under Article 14.4 of the Criminal Procedure Code, any person detained or arrested shall be informed immediately about the reasons for detention or arrest, as well as the content of suspicion or charges, and his/her rights to silence and counsel. In another words, interrogator, investigator, prosecutor or the judiciary shall take measures to uphold the right of victims, suspects or accused persons to good-quality legal aid. Under the criminal procedural legislation, legal aid delivered by defense counsel to a suspect or accused person is paid for at the account of the person provided with the defense on the basis of conditions negotiated between the defense counsel and that person. But if a suspect or accused person doesn't have sufficient funds to pay for the services of defense counsel and the participation of defense counsel in the criminal proceedings is obligatory as established by law, the agency in charge of the criminal proceedings shall ensure provision of legal aid to that person through funding from the state budget of the Republic of Azerbaijan.

Additionally, some legislative and practical problems regarding provision of legal aid in criminal proceedings need clarification.

The criminal responsibility is the heaviest one among the types of legal responsibility – disciplinary, administrative, civil and criminal responsibilities.

That is why it is a priority issue to effectively protect a person brought before such responsibility in terms of his/her rights and freedoms established in the Constitution and international treaties to which the Republic of Azerbaijan is a party. Analysis of the legislation suggests that Articles 66-99 of the Criminal Procedure Code establishes the legal status of parties to the criminal procedure and Article 92 on Defense Counsel is the largest one among them in terms of extent and content. Article 92 details defense counsel's participation, rights and responsibilities in criminal proceedings, acts prohibited (from the standpoint of the interests suspect or accused person), circumstances that rule out defense counsel's participation in the criminal procedure. Rights and freedoms of suspects and accused persons are guaranteed not only in Articles 90-92 but also in a number of other articles of the Criminal Procedure Code.

Nevertheless, there is a need for a number of essential arrangements to ensure that parties to a criminal procedure receive effective legal aid.

Issues on provision of legal aid in criminal proceedings can be analyzed in some directions:

a. Who need effective legal aid in criminal proceedings and how it is justified?

- *Analysis of the criminal procedure legislation shows that the law accommodates rather the rights and freedoms of a suspect or accused person. Recently, reports from the Council of Europe, OSCE and United Nations agencies repeatedly note that there is a necessity for effective protection of the rights of victim and witnesses, and progress in this direction is very weak in member countries in terms of both legislation and real practice.*

We consider that Concept paper on provision of free legal aid should imprint opportunities to receive immediate legal aid for not only suspects or accused persons, but also witnesses and victims. To justify our view, it is sufficient to have a look at some examples.

A victim of any offence is not sure about applying to the police, prosecutor's office or court and doesn't know what kind of rights he/she is entitled to for compensating physical, material and moral damages incurred and how to exercise those rights. He/she could take a swindle as a civil dispute or vice versa. Under such circumstances, the victim needs to have primary legal aid before applying to a law enforcement agency. Clearly, the law provides for free legal aid only for a suspect or accused person, so what about the victim.

The same arguments apply to the witness as well. Criminal prosecution agency in charge of inquiry or preliminary investigation of any criminal offence invites a person to witness. Under such circumstances, he/she needs primary legal aid as a person must be called by a summons that indicates in what capacity, when and where to come, and warns of forced escort against default in appearance. Just imagine that an operation officer makes a mobile call to notify that he/she has to come to the police agency. Definitely, that person rankles morally irrespective of in what capacity he/she was called. He/she needs primary legal aid and legal advice about what expects him/her in that agency. Also in case a person is not invited (called) to the police as established by law, he/she has the right to default appearance. Awareness of this right not only calms down the witness, but also helps him/her concentrate and encourages telling the truth in order to avoid any negative consequences for him/her.

b. Some essential points on legal aid to a suspect or accused person.

A person has the right to access to defense counsel from the moment of arrest. The concept of the moment of arrest should be clarified first. The physical moment and legal moment of arrest are differentiated. The physical moment means the moment of factual restriction of the person's freedom of movement and under the precedents of the European Court (Engel v. The Netherlands, 1976), a person's right to defense counsel must be satisfied exactly from that moment. The legal moment of arrest is the completion of arrest formalities such as arrest order and arrest protocol when appropriate. Analysis of the Criminal Procedure Code shows that the legislation recognizes the legal moment of arrest as Article 7.0.39 of the Criminal Procedure Code defines the concept of arrest as a short-term restriction of a person's liberty and holding him/her in temporary detention centre.

In our best view, it would be a progressive step towards upholding human rights and freedoms that the draft law provide for satisfying the right to legal aid from the moment of physical arrest of a suspect or accused person, and making available a public defender or parajurist through a hotline in such circumstances. Because international norms to which the Azerbaijan Republic accedes take precedence over the domestic regulatory legal acts.

Chapter 43 of the Civil Procedure Code provides for the right to appeal and cassation of court decisions.

Upper instance hearing of a case based on appeal of court acts as established by the Civil Procedure Code originates from the meaning of Article 60 of the Constitution as an inalienable element of the right to remedy. Under Article 416 of the Civil Procedure Code, the cassation instance court reviews only whether substantial and procedural legal norms are duly applied. Under Articles 424 and 433 of the Code, the Plenary Board of the Supreme Court reviews exceptionally such cases as concern legal issues and newly discovered circumstances regarding judicial acts that have taken legal effective. In order to ensure a comprehensive and good-quality protection of the rights of parties to such case, Article 67 of the Civil Procedure Code stipulates that those parties take part in the cassation hearing only with an advocate. These terms of the Civil Procedure Code correspond to the requirements of Article 61 of the Constitution. Under Section 1 of that article, everyone is entitled to high-quality legal aid.

Under Article 20 of the Law on Advocates and Advocacy Activity based on these norms of the Constitution, poor people in need of legal aid in court are provided by the state with legal aid subject to no restriction. As an independent legal institution, advocacy protects rights, freedoms and statutory interests of natural and legal persons and renders high-quality legal aid to them. Advocacy activity is carried out in accordance with clients' instructions to protect or represent their rights and interests. Lawyer's participation in justice is conducted in accordance with a contract between a client and a private legal practitioner or a lawyer's agency.

Nowadays, provision of legal aid by the state is a topical issue for lawyers. Under the procedural legislation, an advocate's participation in hearings of cases on criminal proceedings as well as cassation civil proceedings is obligatory. In such cases, the state provides an advocate to people, who could otherwise not afford to hire an advocate, on obligatory basis. Too low amount of a fee paid by the state to an advocate and the complication of procedure for obtaining that fee leads to an advocate's reluctance to administer the case, and so the only hope is for the initiative of the advocate him/herself. Fees for the legal services of advocates amounted to AZN0.90 (ninety qepik) per hour till September, 2009. This figure was increased to AZN2.00 (two manat) by a Cabinet of Ministers decision as a result of an instruction to raise the fees for legal aid provided by the state. This instruction had been made by the 2005 Presidential Decree on Measures to Improve Material and Technical Provision of the Collegiums of Advocates of the Republic of Azerbaijan. Although the increased fee doesn't satisfy advocates at all, hopefully this tendency will continue to bring the fee in conformity with the the needs of advocates.

The civil procedure legislation doesn't rule out advocate's participation in the case free of charge. Under Article 121.2 of the Civil Procedure Code, if a court issues a decision in favor of a party, which is provided with free legal aid by a lawyer's office, as established, the service fee is charged on the other party to the case to be paid to the lawyer's office.

Nevertheless, the amount and method of payment of legal aid provided by the state for civil proceedings are not defined. Resolution of this issue falls within the competence of the Cabinet of Ministers of the Azerbaijan Republic in accordance with the legislation of the Azerbaijan Republic.

The rights to legal remedy and counsel, which are constituents of the right to a fair trial, are unambiguously and clearly accepted by international justice bodies.

The right to a fair trial was imprinted in Article 6 of the European Convention on Human Rights. European Court of Human Rights decision on Airey v. Ireland dated 9 October 1979 notes that Clause 1 of Article 6 of the European Convention on Human Rights may oblige states on some occasions, if necessary, to provide legal aid by a lawyer in order to ensure real access to justice as legal representation is obligatory for certain category of cases or due to the complexity of a proceeding under the domestic legislation of a number of participatory states. Such position was embodied in the Decision dated 11 October 2002 by the Constitution Court of the Azerbaijan Republic on Articles 67 and 423 of the Civil Procedure Code of the Republic of Azerbaijan: "The right to receive free legal aid as established by law shall be related to the interests of justice first of all and this mainly applies to the guarantee of the principle of equal opportunities for the parties. When required by the interests of justice, the right to free legal aid for low-income persons is an independent right, which is not an alternative to the right to protect one's own position. If there are legal problems, which requires professional expertise on any case, the State should ensure not only the constitutional right to get good-quality legal aid but also secure this right to low-income persons in real situations."

Moreover, according to the legal stand formed in Decision dated 20 May 2011 by the Plenary Board of the Constitution Court of the Azerbaijan Republic on Interpretation of Some Terms of Article 92.12 of the Criminal Procedure Code of the Republic of Azerbaijan, the right to remedy is the security of both the legal interests of a person and the interests of justice, and also is a social value. Since legal relations that arise regarding provision of the right to legal aid for everyone embody public interests, such relations point out to fulfillment of constitutional obligations of the state in this field. And this requires the state to make positive arrangements for protection of the rights of a person, if necessary. In this sense, the necessity to secure the right of an accused person to a high-quality legal aid serves towards a full, objective and comprehensive study of the case circumstances and ultimately, an effective administration of justice.

The right to free legal aid as established by law shall be related to the interests of justice first of all and this mainly applies to the guarantee of the principle of equal opportunities for the parties.

When required by the interests of justice, the right to free legal aid for low-income persons is an independent right, which is not an alternative to the right to protect one's own position. If there are legal problems, which require professional expertise on any case, the State should ensure not only the constitutional right to get good-quality legal aid but also secure this right to low-income persons in real situations.

Furthermore, Article 10 of the Law of the Azerbaijan Republic on Advocates and Advocacy Activity states that no one may be deprived of his/her right to legal remedy.

Statements regarding provision of free legal aid appear on recently adopted socially-oriented legislative acts as well. The Law on Social Services dated 30 December 2011 refers to social-legal services as a type of social service to include provision of legal aid by the state to people in need of social services, and protection of the rights of such people.

Another document of this kind is the Law on Prevention of Domestic Violence dated 22 June 2010. Article 14 of the law provides for provision of free legal aid by the state to victims as part of legal arrangements for prevention of domestic violence.

Activities regarding provision of legal aid at the account of the state aim at development of efficient mechanisms for protection of human rights, which is articulated in two (2) executive orders issued by the President of the Republic of Azerbaijan:

- a) Executive Order on Approval of National Action Plan for Protection of Human Rights in the Republic of Azerbaijan dated 28 December 2006: The Ministry of Education, the Ministry of Justice, and the Human Rights Commissioner were instructed to assist in creation and activities of Legal Clinics under the law schools of higher educational institutions in order to facilitate a more efficient access of the population to legal aid as well as to enable law school students gain practical skills.
- b) Executive Order on Approval of 2008-2015 State Program on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan dated 15 September 2008: the network of centers for legal consultation services in regions will be expanded for raising awareness of poor populations about their rights and providing them with free legal aid service. Moreover, other necessary arrangements will be put in place in order to broaden opportunities for the population to apply to legal institutions. Under the executive order, the Ministry of Justice was charged with establishment of twenty (20) regional centers for legal consultation services to reach out to poor populations about their civic rights and broaden their opportunities for access to free legal aid services. But the

experience of the past period points out to that the limited number of advocates available in regions represents a significant impediment to an efficient operation of this system.

International instruments adopted by Azerbaijan regarding delivery of legal aid provided by a state may act as important grounds in terms of adoption of a law on free legal aid in future. The Law dated 11 May 2005 on Approval of the Council of Europe 2005 Convention on Anti-Human Trafficking means that Azerbaijan has to accommodate a human trafficking victim's right to legal aid and free legal aid in the domestic legislation.

In its Recommendation on No. R(93)1 dated 08 January 1993 on Effective Access to the Law and to the Justice for the Very Poor, the Council of Europe Committee of Ministers recommends that its member states promote legal advice services to protect the rights of the very poor.

In 1996 the Republic of Azerbaijan joined the United Nations Convention against Tortures and Other Cruel, Inhuman or Degrading Treatment and Punishment dated 10 December 1984. A range of subcommittees operate within the framework of this convention to prepare annual reports on torture facts in member countries. The 2011 report presented in March, 2012 touches upon the issue of provision of a person with a lawyer from the moment of arrest. It is very important for prevention of torture against the person at a police station. The report considers that it is necessary to have a legislative mechanism for access of people to effective remedy. It emphasizes the importance of organization of activities of public or in house lawyers to that end and notes that financial autonomy and independence of such entities is essential to operative protection of persons exposed to torture.

In general, the idea of legal aid provided in the Constitution shows up in other regulatory legal acts as follows:

1) The Criminal Procedure Code

Article 153.2.7. if the financial situation of the detainee does not allow him to retain a lawyer at his own expense, create an opportunity for him to meet a duty lawyer from one of lawyer's offices in the area of the temporary detention facility, at the expense of state;

Article 193. Payment for legal assistance provided by defense counsel

193.1. Legal assistance provided by defense counsel to a suspect or accused shall be paid for in accordance with the conditions agreed between the defense counsel and the accused, at the account of the accused.

193.2. If a suspect or accused does not have sufficient funds to pay for the services of defense counsel, and if the participation of defense counsel in criminal proceedings must be guaranteed in accordance with Article 92.3 of this Code, the prosecuting authority shall provide legal assistance at the account of the state budget of the Azerbaijan Republic.

193.3. The court shall make a reasonable decision on whether to exempt a suspect or accused from payment of legal assistance by defense counsel at the account of the state budget of the Azerbaijan Republic, taking into consideration the average monthly income, financial, property and family status of the suspect or accused and other circumstances.

193.4. If the suspect or accused refuses defense counsel and this refusal is not accepted by the prosecuting authority, the legal assistance shall be provided to the persons concerned free of charge on the basis of the court decision, and defense counsel shall be paid from the state budget of the Azerbaijan Republic.

193.5. In accordance with Articles 193.2 -193.4 of this Code, defense counsel shall be paid on the basis of the bill presented by him/her for every working hour at the rate set by the appropriate executive authority of the Azerbaijan Republic, via the appropriate local bar office.

Article 194. Payment by the state for legal assistance by the representative of a victim initiating a private prosecution

194.1. During court proceedings, if the public prosecutor rejects a private prosecution, the court shall decide the rule of payment for legal assistance by the victim's representative to allow for pursuing the prosecution. If the court issues an indictment verdict on that criminal prosecution case, and the person initiating the private prosecution cannot afford to pay his/her representative, the court shall make a reasonable decision to pay at the account of the state budget of the Azerbaijan Republic.

194.2. A lawyer's legal assistance to a person initiating a private prosecution shall be paid for in accordance with Article 193.5 of this Code.

2) The Civil Procedure Code

Article 14.4. Parties to a case shall have the right to defense their rights and interests themselves except for cases where the representation is obligatory under the law. Persons to a case shall be free to choose their lawyers to represent or assist in exercise of their procedural rights.

Article 14.4. If parties to a case do not have sufficient funds to pay for the services of lawyer where participation of a lawyer is obligatory under this Code, they are entitled to free professional legal aid for representation of their interests and exercise of their procedural rights.

3) The Code of Administrative Errors

Article 376. Obligatory participation of attorney

376.1. Participation of attorney is obligatory in cases of juvenile administrative offenders, persons who don't speak the language of the proceedings, and the mute, deaf, blind or other persons who are unable to exercise their defense rights due to physical or psychological defects.

Under such circumstances, refusal of an attorney by the administrative offender, who is under administrative offence proceedings, is not accepted.

376.2. If it becomes impossible for an attorney chosen by the administrative offender, who is under administrative offence proceedings, to appear, the judge or the competent agency (official person) provides that person with an attorney as established by the legislation of the Republic of Azerbaijan.

376.3. If a detainee for administrative offenses cannot afford to hire an attorney due to his/her material situation, that person is provided with legal aid at the account of state funds. In such case, an attorney may not refuse to fulfill his/her duties.

Article 401.1.7. If a detainee does not doesn't have his/her own lawyer, present to him a list of lawyers from the legal consultation office in the area of the temporary detention centre and those practicing in other organizations that provide legal aid in accordance with the legislation of the Republic of Azerbaijan, and allow him/her to contact and meet a lawyer of their choice.

4) The Administrative Procedure Code

Article 108.2. State duties, lawyer's or representative's fees and other costs shall be paid in accordance with the legislation. In cases the amount of those payments is not defined in the legislation, the court imposes a reasonable amount.

2.2. Existing problems with provision of free legal aid.

Provision of highly professional and qualitative legal aid to citizens is an important issue.

The Constitution of the Republic of Azerbaijan imprints the right to qualified legal aid and guarantees its provision free of charge. In practice, free legal aid by the state is provided mainly in cases where participation of defense attorney is obligatory. No doubt that it is necessary to expand these criteria in particular to cover socially vulnerable layers of the population. As a result of Armenia's military aggression, twenty per cent (20%) of the Azerbaijani lands is under occupation and one eighth (1/8) of the Azerbaijani population are refugees and Internally Displaced Persons (IDPs), who were absolutely deprived of their house and livelihoods. This issue is particularly topical for Azerbaijan as more one (1) million of its population is made up of refugees and IDPs.

Absence of a mechanism for provision of pre-trial free legal aid, unavailability of aid for civil proceedings, and other factors impede provision of free and quality legal aid for poor families.

For the purpose of settlement of the problems in question and other problems, it is required to develop and implement national programs on coordinated complex arrangements to secure the right to justice for the mentioned population groups, such as protection of child rights, prevention of juvenile offences, improved awareness raising activities for the underage, legal education and reformation for them, and better methods of application to the court.

In general, main problems existing with access to legal aid in Azerbaijan are the following:

- a. Access of Azerbaijani citizens to lawyer and legal representative free of charge has been restricted. Because there is no mechanism for receiving free legal aid in civil cases. Moreover, it is unclear what the legislation means by phrases such as “ *when his/her material situation doesn't afford to hire a lawyer*”, “*when his/her average monthly income, material, property and family status, as well as other circumstances don't afford*”, etc.;
- b. A lawyer to provide free legal aid is to be appointed by the first instance court. But in order to apply to very that first instance court, a citizen needs a lawyer to assist in filing a proper application as well as other related issues. In another words, under the existing legislation, payment of service fees for a lawyer or a representative at the account of the state covers those cases where the person is already a party to the proceeding;

- c. In general, catastrophically little number of advocates available in regions may be one of the key impediments to the access to legal aid. In terms of per capita number of advocates, Azerbaijan lags behind developed European nations and even South Caucasus republics. And this is one of the major impediments to provision of good-quality legal services and administration of justice. In accordance with Council of Europe recommendations to Azerbaijan on increasing the number of advocates and provision of legal aid for effective exercise of citizens' constitutional rights, the number of advocates doubled, if not tripled, to rise from 370 (three hundred seventy) to 840 (eight hundred forty). Although Azerbaijan still falls behind other countries in terms of per capita number of advocates according to reports from a number of reputed international organizations, selection of candidates to advocacy is conducted on frequent basis to fill this gap. The state is also directly interested in an increased number of advocates. Considering the establishment of new courts, the Collegiums of Advocates of the Republic of Azerbaijan was recommended to consider the issue of increasing the number of advocates and to take measures for enhancing the effectiveness of legal aid provided to populations in regions under the Decree of the President of the Azerbaijan Republic dated 19 January 2006 on Application of the Law of the Azerbaijan Republic on Modernization of the Court System in the Republic of Azerbaijan and Introduction of Changes and Additions to Some Legislative Acts of the Azerbaijan Republic;
- d. Under the legislation, a defendant shall be provided with an advocate at the account of the state. But mostly, a defendant doesn't have an opportunity event to see the face of the advocate. The advocate is needed just to carry out some procedural acts –to sign documents. Because advocates are reluctant to attend such cases due to a very small amount of fees paid by the state for an advocate's service in criminal prosecution as well as delays in payment of such fees;
- e. Under Articles 67 and 407 of the Civil Procedure Code, the party must participate in the cassation instance together with the advocate. However, it should be taken into consideration that to receive legal aid is the right but not the responsibility;
- f. Articles 67 and 407 of the Civil Procedure Code considerably restrict the scope of practice of lawyers that participate in trials as representative;
- g. Fees for the services of lawyers are extremely low. Under the Azerbaijan Republic Cabinet of Ministers decision No. 31 on the amount of sums to be paid to defense lawyers, translators, specialists and experts, a fee to be paid to a defense lawyer for delivery of legal aid in cases established by Articles 193.2 and 193.4 of the Criminal Procedure Code of the Republic of Azerbaijan amounts to AZN2.00 (two manat) per work hour;
- h. In general, the legislation's fails to resolve the issue of legal awareness of the population.

General Statistics (2011)

Dynamics of Growth in the number of advocates

Year Number

Vəkillərin sayının artım dinamikası	
İl	Say
2005	151
2006	24
2007	235
2008	23
2009	67
2010	15
2011	9

Total number of advocates - 738

Capital – 544 including 52 as individuals

Regions – 194 including 87 as individuals

Vəkillərin ümumi sayı - 738	
Paytaxtda - 544	Regionlarda – 194
Onlardan fərdi – 52	Onlardan fərdi - 87

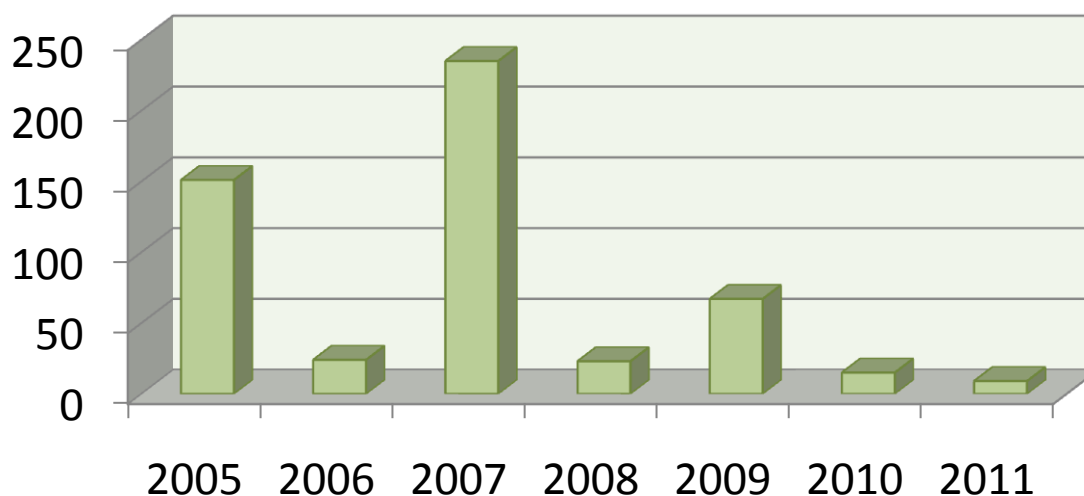
The number of advocate's agencies

Capital – 25

Regions – 16

Vəkil qurumlarının sayı	
Paytaxtda	Regionlarda
25	16

Growth Dynamics in the number of advocates



3. IMPLEMENTATION OF THE LAW ON FREE LEGAL AID INTO THE LEGISLATIVE SYSTEM

3.1. Relationship of the law with legal areas;

The main distinguishing feature of the draft law on free legal aid is its organic association with a number of other legal areas. Here legal areas mean such areas as may have direct impact on human rights. The document in question comprises both procedural and substantial norms.

Procedural legal norms will embody the rights and duties of procedural bodies regarding provision of free legal aid. In another words, application of the new law will impose a range of commitments on procedural bodies, which will have significant o impact on workloads and scopes of activity of those bodies in future.

On the other side, the law will impact the human and civic rights and duties and give rise to new substantial norms in different legal fields.

These changes will come to notice particularly in civil procedure, criminal procedure, social security, administrative, and financial law areas.

The civil procedure law will identify people's opportunities to benefit from free legal aid in civil disputes. The nature and subject of civil disputes and the consequences of the parties' civil asperities to arise from occurrence of such disputes will affect the perspective for application of the law. In my view, the general part of the Civil Code may include a declaratory note on the issue of provision of legal aid by the state poor people for judicial protection of civil rights.

The points mentioned are also relevant to the criminal procedure law as the duties of criminal prosecution bodies regarding provision of immediate aid to persons in need of legal aid will be established, and regulatory basis for cooperation with professional legal aid service providers will be imprinted.

Despite a short period of time that has passed over the adoption of the administrative procedure legislation in Azerbaijan, the judiciary has gained a significant practice in this field, in particular with regard to disputes occurring between citizens and administrative bodies. Vulnerable persons and families without access to effective legal remedies are exposed to legal asperities, which lead to grave consequences giving rise to social grievances in the society, whereas the tendency to satisfy the rights of citizens is

dominant in the most cases on such disputes, according to the statistics. Provision of legal aid is most necessary for the administrative area. Most complaints about the chicanery with administrative bodies come from vulnerable people, who are martyr's families, refugees and IDPs, disabled war veterans, and pensioners. Misunderstanding between authorities and those people is caused mostly due to the latter's lack of information about their rights and duties. In this sense, vulnerable people do need legal aid in the administrative area.

A similar impact will be made on social security, financial and other law areas.

3.2. Position of the free legal aid idea in the Constitution

It would not be correct to take the right to good-quality legal aid as a separate right. This right comes of the right of access to courts. Under Article 61 of the Constitution, everyone has the right to high-quality legal aid and such aid is provided by the state free of charge in cases provided for by law. Moreover, every person has the right to defense from the moment of detention, arrest, indictment by competent authorities.

In another words, the Constitution clearly embodies the principal directions of legislative regulation of the free legal aid system for socially vulnerable people. Actually, the unitary territorial structure of our nation provides good grounds for nation-wide application of the legal aid system. Also provision of such aid to the population constitutes an important part of the state-wide guarantee for exercise of constitutional human and civic rights. Therefore, the basis for the legal aid provided and funded by the state may be imprinted at the constitutional level.

Thus, this law to regulate the right to free legal aid is of the constitutional-legal nature because the basic principles of development and formation of that system are related with the constitutional rights of people. What form the basis of a constitutional law are exactly the points mentioned. In its turn, this draft law regulates access to good-quality legal aid, exercise of human right and freedoms, and opportunities for access to justice. Apparently, the legislative practice of the Azerbaijan Republic on legal aid is yet to develop and at present, it is in the period of development.

3.3. Position of the free legal aid idea in other regulatory legal acts

The draft law in question will appear to be core document for provision of legal aid, and relevant changes and additions are to be gradually introduced to other legislative acts.

The scope of cases for provision of free legal aid would be expanded and the category of people to benefit from such aid would be specified through this law. Therefore, It is also planned to define the package of other relevant laws to undergo amendments other than the main draft law.

The draft law on legal aid should take into consideration the borderline between its subject and that of the advocacy law. It should be resolved that how lawful is the practice (consultations, document drafting, representation in courts and other bodies) of other lawyers to offer legal aid after separation of the professional legal aid institution from the advocacy institution with the adoption of the draft law. Should the new law affect the practice of advocates, the advocacy legislation has to undergo relevant structural changes.

Considering that under the draft law, legal aid would be provided also in cases other than criminal ones, access to legal aid service in constitutional, administrative and civil proceedings has to be imprinted in related legislations.

So, it is inevitable to introduce amendments to a range of legislative acts in connection with provision of legal aid. Legislative acts to be amended are the following:

- a) The Law on Advocates and Advocacy Activity: under the draft law, the central collective governing body is the National Council, which is to be made up of members of the Collegiums of Advocates. The advocacy legislation should embody such issues as representation of members of the Collegiums of Advocates in the National Council, negotiation with the Collegiums of Advocates regarding the criteria of selection of lawyers to provide legal aid, etc.;
- b) Mechanisms in administrative procedure and civil procedure legislations for provision of legal aid to needy people – rules for appointment of a lawyer by the judge for provision of legal aid to a needy person, payment of fees to such lawyers should be established;
- c) The legal aid status for persons specified in the Law on Prevention of Disability, Rehabilitation and Social Protection of the Disabled, Law on the Status of Refugees and IDPs, Law on Social Service for the Elderly People, Law on Social

Service, Law on Psychiatric Aid, and Law on Veterans should be imprinted in relevant legislation;

- d) Representation of a Ministry of Justice official in the National Council, submission of quarterly financial reports by the National Council to the Ministry of Justice, and submission of annual reports by the National Council to Milli Majlis (The Azerbaijani Parliament) under the draft law necessitate introduction of relevant amendments to the Statute of the Ministry of Justice and the Internal Regulations of Milli Majlis accordingly;
- e) The Charter of the Academy of Justice may be mentioned as well. Because the draft law refers to the Academy of Justice as the institution to organize basic and ongoing training for lawyers to provide legal aid;
- f) The Law on the Police also needs to be amended as it is the duty of the police to satisfy the right to defense counsel for a detained or arrested person as required by that person and in cases where the participation of defense lawyer is obligatory.

Adoption by the National Council of rules for consideration into applications for legal aid and the statute on comprehensive regulation the activity of legal aid bureaus is essential to organization of legal aid service.

3.4. Social and legal implications of application of the law on free legal aid

Legal norms contained in the draft law would have implications for resolution of social and legal issues.

The law in question would provide access to free legal aid for poor and socially vulnerable people as the scope of matters and people covered by free legal aid will be expanded as compared to the legislation in force.

Reports from the Consultative Council of European Judges, describe Azerbaijan's performance as one of the lowest in terms of per capita number of advocates among Council of Europe member countries. According to statistics, legal consultation offices exist in only twenty five (25) out of sixty four districts of the republic and there are nine (9) advocates per one hundred thousand (100,000) people on average. The most of advocates that provide legal services reside in the capital. So, the situation is very regrettable in regions. This problem stripes the population of access to legal services. This problem may be aggravated even more by young professionals' reluctance for advocacy practice and provision of legal services. Thus, such circumstances pave the way for social tensions between the state and citizens. But an effective organization of legal services in the country would strengthen the population's trust on justice and the state to address any social tensions.

Every day hundreds of people apply to courts for protection of their rights or to authorities for exercise of their rights. It may become impossible for some people to take a step without a lawyer's assistance towards resolution of their problems due to the fact that some lack education and others are pensioners or disabled people. Logically, opening of regional legal aid offices may be useful not only for supporting the population groups in question but also for raising awareness for those people.

Furthermore, opening of the territorial legal bureaus provided for in the draft law may be useful for addressing employment problems of young lawyers in our country. It would also address flow of lawyers from regions to the capital thus allowing for them to practice the legal profession in the region where they reside.

Finally, every state aims at achieving a high-level well-being for its people and strengthening the people's trust and confidence on their state. A really effective organization of legal aid service is the most influential method to enhance the people's trust on justice. Therefore, advanced European and other nations have been applying this method successfully. Of course, no doubt that such practice would give positive outcomes in a country like Azerbaijan that is located in geographically, ethnically, regionally and politically sensitive area.

3.5. Position of the draft law on free legal aid in the state budget

In recent periods, Azerbaijan's economy grows in high rates. Under the Law of the Azerbaijan Republic on the 2012 State Budget, expenses of the 2012 state budget is estimated at USD22,000,000,000.00 (twenty two billion US dollars), which is the highest indicator in the history of the country. And the summary budget is estimated at USD25,000,000,000.00 (twenty five billion US dollars). So, these figures mean that all social programs, social payments, social infrastructure projects can be implemented under the budget.

Moreover, per capita gross domestic product (GDP) amounts to USD7,000.00 (Seven thousand US dollars) and the national poverty line makes up 7.6%.

The 2011 budget of the State Oil Company of the Azerbaijan Republic (SOCAR) amounted to AZN13,000,000,000.00 (thirteen billion manat) in revenues and AZN10,000,000,000.00 (ten billion manat) in expenses. In general, the development potential of the national economy allows for the state of Azerbaijan to fund socially oriented arrangements in future.

Funding of free legal aid service may act as an important factor for implementation of Azerbaijan's commitments to secure human rights, strengthening the democratic reputation of our state in the international community, and maintaining the social-political stability. And the goals of adopting the draft law on free legal aid are the points mentioned.

According to the Presidential Decree on "Law on Implementation of state budget of 2012" amount of expenditures for incourt legal aid and execution of court decisions is **3 728 639** manats. Although previous number was (2011) **3 591 809** manats. Therefore growth rate is 4 % compare with 2011 year. Establishment of new bodies (legal aid bureaus) will be more relevant for rational usage of this amount.

THE REPUBLIC OF AZERBAIJAN

CONSTITUTIONAL LAW

On free legal aid by the state

In consideration of necessity for a fair trial to protect the rights specified in Article 61 of the Constitution of the Azerbaijan Republic and Article 6 of the European Convention on Human Rights and Fundamental Freedoms, delivery of free and equal access to legal aid through provision and organization of legal aid, and addressing financial and economic impediments to implementation of access to justice,

Milli Majlis of the Azerbaijan Republic adopts this constitutional law.

Chapter I. TERMS OF REFERENCE

Article 1. Regulation subject of the law

This law regulates the conditions, extent and rules for provision of legal aid by the state for the purpose of protection of human rights and freedoms and legal interests of people.

Article 2. Definitions

Definitions used in the law are as follow:

Legal aid by the state – provision of legal service for persons, who don't have sufficient funds to pay and meet the conditions established by this law, at the account of special funds allocated in accordance with this law;

Primary legal aid – informing about the legal system of the Azerbaijan Republic, regulatory acts in force, rights and duties of legal subjects, and ways for judicial and non-judicial exercise and enjoyment of rights; provision of advices on legal matters; assistance in drafting legal documents; other forms of assistance that don't come within the purview of the concept of professional legal aid;

Professional legal aid – provision of legal advice; representation on criminal, civil and administrative matters and administrative offences with criminal prosecution bodies, courts, and governmental authorities;

Public defender – a person, who practices advocacy under the legislation, selected on certain criteria for provision of free or partially free professional legal aid at the account of special funds allocated for delivery of legal aid provided by the state;

Parajurist – a person, who has high legal education, doesn't practice advocacy, and after taking special training, provides primary legal aid at the account of special funds allocated for delivery of legal aid provided by the state, under the regulations on the status and qualification of parajurists.

Article 3. Types of legal aid by the state

In accordance with this law, authorized persons deliver the legal aid by the state in the following forms:

- a) Primary legal aid;
- b) Professional legal aid.

Article 4. Principles of delivery of legal aid by the state

Legal aid by the state is delivered on the basis of the following principles:

- a) Equal rights for all beneficiaries of this aid;
- b) Professional qualification of persons to deliver this aid;
- c) Quality, effectiveness and economic efficiency of the aid;
- d) Confidentiality;
- e) Unacceptability of conflict of interests.

Article 5. State guarantees

The state ensures allocation of budgetary funds essential to provision of legal aid under this Law, and organization and operation of bodies in charge of delivery of legal aid by the state with a view to implementing the principle of smooth access to legal aid.

Article 6. Persons entitled to legal aid by the state

- (1) Limits of legal aid by the state to citizens of Azerbaijan are established by this Law and other relevant legislative acts.
- (2) Foreign nationals and persons without citizenship may benefit from legal aid by the state at governmental authorities and courts of the Azerbaijan Republic in accordance with this Law.

Article 7. Forms of legal aid by the state

Legal aid by the state is conducted in the following forms:

- a) Provision of information, advice and explanation on legal matters;
- b) Drafting of legal documents;
- c) Representation with governmental authorities;
- d) Defense of the interests of suspects, accused persons in criminal procedure;
- e) Representation and defense of the interests of the convicted;
- f) Defense of the interests of a person in court proceedings on cases of administrative offences;
- g) Representation and defense of the interests of a person in civil procedure;
- h) Representation and defense of the interests of a person in administrative-economic courts.

Chapter II. MANAGEMENT OF THE PROCESS OF PROVISION OF LEGAL AID BY THE STATE

Article 8. Bodies in charge of management of the system to provide legal aid by the state

The system of provision of legal aid by the state is managed by the following bodies:

- a) The Ministry of Justice;
- b) The Collegiums of Advocates;
- c) The National Council on legal aid by the state and its area bureaus.

Article 9. Functions of the Ministry of Justice for provision of legal aid by the state

Functions of the Ministry of Justice for provision of legal aid by the state are to:

- a) define the state policy on provision of legal aid by the state;
- b) draft regulatory acts on provision of legal aid by the state;
- c) conduct monitoring of application process of new standards on provision of legal aid by the state, and assessment of the quality of such aid;
- d) draft the budget on provision of legal aid by the state to present to the Ministry of Finance;
- e) carry out other functions established by this Law.

Article 10. Functions of the Collegiums of Advocates for provision of legal aid by the state

Functions of the Collegiums of Advocates for provision of legal aid by the state are to:

- a) take part in development of selection criteria for lawyers to deliver legal aid;
- b) take part in development of legal aid quality assessment criteria;
- c) take part in monitoring of practice of lawyers that deliver legal aid;

- d) choose a disciplinary measure against lawyers in accordance with this Law and the law on advocates;
- e) carry out other functions established by this Law.

Article 11. The National Council on legal aid by the state

- (1) The State Council on legal aid by the state (hereinafter referred to as the National Council) is a collegial legal person with common law subjection in charge of management of the process of delivery of legal aid by the state. The National Council is made up of seven (7) members.
- (2) The National Council is composed of members – one (1) appointed by the Ministry of Justice, three (3) by the Collegiums of Advocates, one (1) by the Ministry of Finance, one (1) by the Judicial Legal Council, and one (1) by public associations.
- (3) Persons with higher legal or economic (for the member appointed by the Ministry of Finance) education, more than five (5) years professional experience, and good reputation in the society are eligible for the National Council membership. The term of office of the National Council is four (4) years. A person shall not be appointed for more than two subsequent terms in office as a National Council member.
- (4) The term of membership of a person closes with the end of his/her term of office, as per written application for resignation from the membership or with his/her death. A member of the National Council may be terminated by at least two thirds (2/3) of the votes of the Council members in case of failure to perform his/her functions due to such reasons that don't allow for his/her performance, or by the appointing body in case of failure to perform his/her functions accordingly. The new member of the National Council shall perform his/her function under the office term of the member terminated.
- (5) The chairperson of the National Council is elected by secret voting of and from among its members for the term of office according to his/her office term as a Council member. The chairperson of the National Council may be terminated by at least one third (1/3) of the votes of its members. A decision on termination of

the chairperson is adopted by at least two thirds (2/3) of the votes of the members through open voting.

- (6) Decisions adopted by the National Council are obligatory for all of its area bureaus, and advocates and parajurists that provide legal aid.
- (7) The Statute of the National Council is approved by the Ministry of Justice. Operation of the National Council is carried out by the administration consisting of the director and other staff members. The Statute of the administration is approved by the National Council.
- (8) Material and technical provision of the National Council is funded by the Ministry of Justice at the account of the state budget as well as other sources unless otherwise established by law.

Article 12. Competences of the National Council

- (1) Functions of the National Council are to:
 - a) Implement the policy on provision of legal aid by the state;
 - b) Ensure that persons involved in delivery of legal aid by the state are trained on initial and ongoing basis through the Academy of Justice;
 - c) Analyze the practice of implementation of this law and adopt recommendations on its full application;
 - d) Maintain the national registry of persons that deliver legal aid by the state;
 - e) Ensure operation of its administration and area bureaus;
 - f) Approve the report on annual activity of the system of provision of legal aid by the state and present it to Milli Majlis, the Cabinet of Ministers, the Ministry of Justice, and the Collegiums of Advocates;
 - g) Submit to the Ministry of Justice a quarterly report on utilization of funds allocated for provision of legal aid by the state;

- h) Cooperate with foreign and international organizations and public associations that operate in the field of legal aid by state;
 - i) Ensure application of pilot programs regarding provision of legal aid by the state;
- (2) In order to fulfill its responsibilities, the National Council's functions are:
- a) Govern the process of delivery of legal aid by the state;
 - b) Send to the Ministry of Justice an expenditure proposal for delivery of legal aid by the state to be included in the state budget;
 - c) Oversee management of budgetary funds allocated for delivery of legal aid by the state, establish rules for conducting a competition to select candidates for the position of Executive Director, and appoint and dismiss the Executive Director of the National Council;
 - d) Establish the rule for conducting a competition to select coordinators for area bureaus, and organize them;
 - e) Identify an income level to be entitled to professional legal aid and produce methods to calculate that income for submission to the Cabinet of Ministers for approval;
 - f) Approve forms of documents required for receiving and providing legal aid by the state as established by this law;
 - g) Approve criteria to select lawyers for delivery of good-quality legal aid by the state as agreed on with the Collegiums of Advocates;
 - h) Establish rules for conducting a competition for selection of lawyers to deliver professional legal aid by the state;
 - i) Establish rules and conditions on payment for services of persons that deliver legal aid by the state;
 - j) Establish professional advancement and practice standards for lawyers, parajurists and other persons that deliver legal aid by the state, and review them on regular basis;

- k) Approve quality assessment criteria for legal aid by the state as agreed on with the Collegiums of Advocates;
- l) Conduct monitoring of the process of professional legal aid delivery and quality assessment of legal aid delivered by authorized persons;
- m) Analyze information about delivery of professional legal aid and consider suggestions on improvement of the system of provision of legal aid by the state;
- n) Carry out other functions in accordance with this law and existing regulatory acts concerning provision of legal aid by the state.

Article 13. Meetings of the National Council

- (1) The National Council meets on a quarterly basis.
- (2) An extraordinary meeting of the National Council convenes as requested by the chairperson of the Council, the Minister of Justice or at least three (3) council members.
- (3) The chairperson of the National Council chairs meetings of the National Council. In his/her absence, the meetings are chaired by a member designated by him/her or in other cases by a person chosen by members present in the meeting.
- (4) The quorum for a meeting of the National Council to be competent is the presence of more than half of its members.
- (5) A decision of the National Council is adopted by a simple majority of votes, signed by the chairperson and the secretary of the meeting, and published on the website of the National Council.
- (6) The minutes of a meeting of the National Council is signed by members present in the meeting.

Article 13¹. Executive Director of the National Council

- (1) Executive Director is appointed by the National Council through competition for a five (5) years' office term renewable once only. The National Council

establishes rules for selection of candidates and conduct of competition for the position of Executive Director.

- (2) The office term of the Executive Director closes with the end of his/her office term, as per his/her application or with his/her death. The Executive Director is dismissed by the National Council in case of failure to perform his/her functions or to perform properly, if he/she appears to be lacking an adequate level of professionalism or in case of systematic commitment of disciplinary breaches.
- (3) The Executive Director runs the operation of the National Council administration and his duties are to:
 - a) Ensure that the National Council operates and oversee operation of the system of provision of legal aid by the state;
 - b) Implement quality assessment of provision of legal aid by the state under this law;
 - c) Manage budgetary funds allocated delivery of legal aid by the state;
 - d) Estimate the total of legal aid service by the state, plan expenses and present to the National Council for approval;
 - e) Prepare an annual report on the activity of the system of provision of legal aid by the state and present it to the National Council for approval;
 - f) Ensure that competitions to select coordinators for area bureaus of the National Council are held, and submit the results to the National Council for approval;
 - g) Conclude individual contracts on behalf of the National Council with candidates selected for area bureaus;
 - h) Ensure that competitions for selection of lawyers to deliver professional legal aid by the state are held, and submit the results to the National Council for approval;
 - i) Ensure payment of service fees for persons that deliver legal aid by the state in accordance with this law;

- j) Establish forms of documents necessary for receiving and providing legal aid by the state and submit to the National Council for approval;
 - k) Develop forms of report on utilization of funds allocated for provision of legal aid by the state and submit to the National Council for approval;
 - l) Prepare proposals on professional advancement and practice standards for lawyers, parajurists and other persons that deliver legal aid by the state;
 - m) Prepare proposals on methods to analyze criteria and conditions of provision of professional legal aid and submit to the National Council for approval;
 - n) Consider complaints from natural and legal persons that have received professional legal aid, and those that were denied of such aid, and submit reports on investigation of such complaints to the National Council;
 - o) Summarize the practice of appropriate implementation of this law and prepare recommendations on its application;
 - p) Compile statistic data on needs to legal aid by the state from the area bureaus and analyze it to offer proposals on improvement of the legal aid provision system;
 - q) Draft the statute of the administration and submit it to the National Council for approval;
 - r) Publish public information on the website of the National Council to ensure promotion of the activity of the National Council;
 - s) Perform other functions in accordance with this law;
- (4) Staff members of the National Council administration carry out paper work of the National Council.
- (5) In case of unavailability of the Executive Director, the National Council may appoint another person as a caretaker executive director for the period of his/her unavailability.

- (6) Payment of salaries for the Executive Director and staff of the administration is effected using funds allocated for legal aid by the state.

Article 14. Area bureaus of the National Council

- (1) Area bureaus of the National Council (hereinafter referred to as area bureaus) are legal persons with common law subjection and operate in the areas where appellation chambers (courts) are located.
- (2) To ensure delivery of legal aid by the state in the areas where appellation courts are located, the functions of area bureaus are to:
- a) Organize delivery of legal aid by the state; conclude contracts with lawyers listed to deliver legal aid by the state;
 - b) Consider applications and files of applicants for legal aid and resolve whether to deliver such aid or not;
 - c) Designate a lawyer for delivery of professional legal aid as well as immediate legal aid; conclude contracts with public associations and parajurists to deliver legal aid;
 - d) Compile statistic data on needs to legal aid and the level of legal aid provision in respective areas;
 - e) Perform other functions in accordance with this law.
- (3) Submit activity reports to the National Council on quarterly basis.
- (4) Area bureau coordinator selected through the competition and appointed by the National Council is in charge of ensuring provision of professional legal aid.
- (5) Area bureau coordinator acts in accordance with a contract that establishes his/her rights and duties as well as work procedure;
- (6) The National Council makes aware relevant court instances, criminal prosecution and other interested bodies about appointment of area bureau coordinators.

- (7) Local executive authorities provide area bureaux with non-residential premises for exercise of their activities.
- (8) Area bureaux include operation of the coordinator and administration of the bureau. Statutes of the area bureaux are approved by the National Council and the staff number by the Ministry of Justice.
- (9) Payment of salaries for the coordinator and staff is effected using funds allocated for legal aid by the state.

Chapter III. PRIMARY LEGAL AID

Article 15. Primary legal aid

- (1) Primary legal aid is provided to persons specified in Article 6 irrespective of income level.
- (2) Primary legal aid is delivered by parajurists and public associations qualified for provision of such aid under this law.
- (3) The National Council is in charge of organizing supervision over management of the process of primary legal aid provision and quality control of such aid.

Article 16. Parajurists

- (1) Parajurists act in accordance with the statute approved by the National Council.
- (2) Parajurists are entitled to associate in advisory bureaus.
- (3) Training of parajurists is implemented by the National Council at the account of budgetary funds allocated for that purpose as well as other sources unless otherwise established by law.
- (4) Payment for services of parajurists is effected under contracts concluded with relevant area bureaus using funds from the state budget as well as other sources unless otherwise established by law.
- (5) Local executive authorities may provide parajurists with non-residential premises and material-technical resources.

Article 17. Primary legal aid delivery by public associations

- (1) Public associations qualified for legal aid delivery has the right to deliver primary legal aid.
- (2) The National Council may conclude primary legal aid delivery agreements with public associations in accordance with this law.

- (3) The state provides an appropriate support to the activity of public associations in correspondence with the legislation on public associations.

Article 18. Procedure for provision of primary legal aid

- (1) Persons in need of primary legal aid apply in written or verbal form to authorized subjects provided in Section II of Article 15 of this law according to their place of residence.
- (2) Provision of primary legal aid starts directly from the moment of application. If it is not possible to deliver legal aid immediately, the applicant is given a notice including the date and time of the legal aid, which shall be provided for three (3) days of submission of written or verbal application.
- (3) An applicant may apply for primary legal aid on the same matter once only unless provided that new circumstances regarding that matter are disclosed.
- (4) In cases of conflict of interests, legal aid provider may continue delivering legal aid as per consent from the applicant or may inform the applicant about the possibility to obtain such aid from other authorized persons.
- (5) In case when delivering primary legal aid, it appears that professional legal aid is needed, the applicant is informed about the conditions for receiving such aid and assisted in filing an application for professional legal aid as requested by the applicant.
- (6) Record of delivery of primary legal aid is conducted by the aid provider in a special registry including the applicant's surname, name, personal information, and place of residence, content of the complaint, legal aid delivery period, and results of such aid. If a person applies in verbal for legal aid, delivery of primary legal aid is confirmed by his/her signature in the registry.

Chapter IV. PROFESSIONAL LEGAL AID

Part I. Professional legal aid provision criteria

Article 19. Persons entitled to professional legal aid

- (1) Persons, who are specified in Article 6 of this law and meet the following criteria, are entitled to professional legal aid:
 - a) Persons, who don't have sufficient funds to pay for legal aid that is required by the interests of justice when such aid is needed in criminal cases;
 - b) When provision of immediate legal aid is needed for persons detained for legal proceedings regarding criminal prosecution or administrative errors;
 - c) When provision of legal aid is obligatory on the grounds established by the criminal procedural legislation of the Republic of Azerbaijan;
 - d) When provision of legal aid is obligatory on the grounds established by the civil procedural legislation of the Republic of Azerbaijan;
 - e) When legal aid is needed in cases of administrative offences, civil and administrative cases and personal funds are not sufficient to pay for delivery of this service, and the cases are legally and procedurally complicated.
- (2) An application for professional legal aid shall be made at any stage of a criminal procedure, and prior to the start of proceedings in civil cases.
- (3) Duties of beneficiaries of professional legal aid are to:
 - a) Collaborate with authorized legal aid providers;
 - b) Present true information about the matter in question;
 - c) Keep updated the authorized legal aid providers and those in charge of procedural acts, who work to change the situation that has given rise to the need for the good-quality legal aid.

Article 20. Delivery of professional legal aid irrespective of income level

Professional legal aid is delivered irrespective of income level to:

- a) Persons specified in items b)-d) of Section 1 of Article 19 of this law;
- b) Suspects in administrative offences involving administrative custody punishment;
- c) Persons facing a risk of application of a penalty of administrative expulsion from the country for an administrative offence;
- d) Persons, whose penalty of fine or community service changed to a penalty of confinement or a custody for administrative offence;
- e) Persons, who received a social allowance for six (6) calendar months before submission of application for legal aid under this law.

Article 21. Delivery of professional legal aid subject to income level

- (1) Persons, whose income level is below the standard established by the proper executive authority for receiving legal aid, may benefit from professional legal aid by the state in accordance with items a) and e) of Section 1 of Article 19 of this law.
- (2) An applicant's monthly income and his/her earnings over six (6) calendar months before submission of written application for legal aid are considered when identifying the applicant's income level.
- (3) The form of income statement and the methods of calculation of income and income level to entitle to legal aid by the state are approved by the proper executive authority.
- (4) Identification of an income level to entitle to legal aid by the state is conducted on regular basis in accordance with indexation of cash revenues.
- (5) Applicants specified in Section 1 of this Article shall submit an income statement established by the proper executive authority.

Article 22. Partly free professional legal aid

- (1) Legal aid by the state is provided also to those persons, whose income level is above the levels established by the proper executive authority and who can afford to partly pay for delivery of professional legal aid. In such case, legal aid by the state may be provided to a person without exceeding his/her financial and material possibilities.
- (2) Rules and conditions for provision of partly free good-quality legal aid by the state are established by the National Council.

Article 23. Payment of costs for provision of professional legal aid

- (1) If a civil or administrative court issues a decision in favor of a person that received legal aid by the state, costs for delivery of such legal aid is charged on the person that lost the case.
- (2) If a person received legal aid by the state through submission of forged or wrong information (particularly about his/her financial conditions) that misled the area bureau, that person shall reimburse all costs for the legal aid delivered.
- (3) If a person's financial conditions improve in the course of delivery of legal aid or enforcement of the court decision to disqualify him/her of the right to fully or partly free legal aid by the state, that person shall cover the costs occurred.
- (4) Reimbursements of costs under Sections 1- 3 of this Article shall be transferred to the account of the area bureau.

Article 24. Grounds for denial of professional legal aid provision

- (1) Persons specified in Article 19 of this law are not provided with professional legal aid in case:
 - a) Application for legal aid is obviously ungrounded;
 - b) Documents submitted by those persons appear to be revealing that they are not entitled to legal aid;

- c) Costs for provision of legal aid are recoverable by applicant's assets excluding such properties as are not subject to disposal.
- (1.1) Professional legal aid may be denied on cases regarding administrative offences, civil and administrative matters, in case:
- a) The application is concerning the commercial activity of the applicant;
 - b) The amount of the claim is below the living minimum established by the Government;
 - c) The applicant is already provided with professional legal aid on that case;
 - d) The application is concerning the claim of compensation for damages to honor, dignity or business reputation;
 - e) A person applies for legal aid regarding tax, duty or other state payments, except for cases where he/she is defendant;
 - f) The application is concerning a breach of neighborhood rights, except for matters on land boundaries and avoidance of building collapse considering the distance between buildings.
- (2) The response regarding denial of professional legal aid provision shall be well-grounded, and a complaint in this regard may be filed with the court for fifteen (15) days from the receipt of the response.

Part II. Procedure for provision of professional legal aid

Article 25. Application for professional legal aid

- (1) Persons, who meet the conditions provided in Article 19 of this law, may apply for professional legal aid.
- (2) Application for professional legal aid is submitted on the form approved by the National Council.
- (3) Persons specified in items a) and e) of Section 1 of Article 19 of this law shall attach income statements to the application for legal aid.

- (4) Application for professional legal aid may be submitted by the applicant's relative or representative in person or by post.

Article 26. Submission of application or request for professional legal aid

- (1) A person intending to receive professional legal aid under item a) of Section 1 of Article 19 of this law may apply in written to an area bureau, criminal prosecution body or court in this regard. The criminal prosecution body or the court shall send the application and attached documents to the area bureau within three (3) days following the receipt. A decision on delivery of professional legal aid is taken by the coordinator of the area bureau and communicated to the applicant within three (3) days.
- (2) A person carrying out detention in cases under item b) of Section 1 of Article 19 of this law shall make a request to the area bureau for designation of a duty advocate within one (1) hour. The coordinator of the area bureau designates a duty advocate within three (3) hours following receipt of the request and communicates the surname of the duty advocate designated to the person or body carrying out the detention.
- (3) In cases under item b) of Section 1 of Article 19 of this law, a criminal prosecution body or court sends a request to the area bureau for designation of defense counsel in absence of an application from the beneficiary of the legal aid in accordance with Article 25. The decision on delivery of professional legal aid is communicated to the person in need of such aid within one (1) business day following the adoption of such decision by the area bureau coordinator.
- (4) A person seeking professional legal aid under item e) of Section 1 of Article 19 of this law files an application to the area bureau in compliance with the requirements of Article 25. A decision on delivery of professional legal aid is taken by the coordinator of the area bureau and communicated to the applicant within three (3) business days.

Article 27. Decision on delivery of professional legal aid

- (1) A decision on delivery of professional legal aid includes:

- a) Date and place of the decision;
- b) Name and surname of the decision making person;
- c) Name of the decision making body;
- d) Name and surname of the applicant;
- e) Form of the requested legal aid;
- f) Grounds for delivery or denial of professional legal aid;
- g) Surname, name and other information of the advocate designated for delivery of professional legal aid;
- h) Procedure and term for filing a complaint on the decision;
- i) Other necessary information.

(2) When assigning an advocate, the coordinator of the area bureau shall take into consideration the applicant's request for assignment of a particular advocate, his/her extent of professional legal aid delivery practice, and other issues essential to the resolution of the matter.

(3) The rights and duties of an advocate providing professional legal aid are confirmed by the legal aid delivery decision adopted in accordance with this Law.

(4) An advocate designated for delivery of professional legal aid on some matter may be replaced by a decision of the area bureau coordinator due to:

- a) A well-grounded written application from the applicant for professional legal aid;
- b) A well-grounded written application from the advocate that deliver professional legal aid;
- c) A conflict of interests that excludes the engagement of the advocate designated for delivery of professional legal aid on some matter; and etc.

Article 28. Immediate legal aid

- (1) Under item b) of Section 1 of Article 19 of this Law, an area bureau shall ensure provision of immediate legal aid to a person in need of such aid by assigning a duty advocate as per a request from the person or body carrying out detention. An area bureau may send an advocate to areas other than his/her area of registration to deliver legal aid. Court instances, criminal prosecution and other interested bodies of that area shall be informed about it.
- (2) Advocates listed as professional legal aid providers under Article 33 of this Law are included in the list of duty advocates as per their consents provided that they are available for assignment as a duty advocate at any time of the day for a period not less than one (1) month.
- (3) Each area bureau has a list of its duty advocates.
- (4) A request for assignment of a duty advocate is made to an area bureau in written, by fax or telephone.
- (5) A duty advocate delivers legal aid to a person for the period of his/her detention.

Part III. Subjects authorized to deliver professional legal aid

Article 29. Delivery of professional aid by lawyers

- (1) Professional legal aid is delivered by public defenders and those lawyers that deliver legal aid on call.
- (2) Selection of lawyers for delivery of professional legal aid is organized by the National Council and conducted through competition.
- (3) Selection criteria for lawyers to deliver professional legal aid are established by the National Council as agreed on with the Collegiums of Advocates.
- (4) In order to ensure provision of professional legal aid, area bureaus conclude contracts with lawyers that deliver legal aid on call and public defenders to deliver legal aid in the form approved by the National Council.

- (5) Contracts mentioned in Section 4 of this Article establish lawyers' duties regarding delivery of legal aid, rules and conditions for delivery of legal aid, and the rights of the state regarding quality control of such service.
- (6) Basic and ongoing training of lawyers authorized to deliver professional legal aid is organized by the National Council itself and through the Academy of Justice.
- (7) Lawyers that deliver professional legal aid are guided by quality standards and caseload limits established by the National Council, and enjoy guarantees regarding the independence of lawyers provided by the legislation.

Article 30. Public defenders

- (1) Professional legal aid in residential settlements covered by an area bureau is delivered typically by public defenders. If needed, the National Council may conduct selection of public defenders for other residential settlements.
- (2) Public defenders act in accordance with the Statute on Public Defense approved by the National Council.
- (3) Public defenders practice on individual basis or as part of lawyer's bureaus created under the advocacy legislation.

Article 31. Lawyers on call

- (1) A lawyer on call is a person, who is qualified for practice of advocacy under the advocacy legislation and may be called to deliver professional legal aid at the account of funds allocated for provision of legal aid by the state.
- (2) Lawyers intending to be included in the list of lawyers on call shall submit necessary documents to the National Council.
- (3) Area bureaus conclude contracts with lawyers on call under Section 4 of Article 29 of this Law. Such contract may be concluded also with lawyers that practice on individual basis and as part of lawyer's bureaus.

Article 31.1. Lawyer designation by an area bureau

- (1) In case there is no lawyer included in the list of lawyers on call in an area or lawyers in that area are unavailable to meet requests for legal aid, the area bureau designates lawyers that practice in that area but are not included in the list of lawyers on call.
- (2) A lawyer designated under Section 1 of this Article provides professional legal aid to the extent of the matter in question but without exceeding an annual workload of one hundred twenty (120) hours. Services of such lawyers are paid by the same service fee rate for lawyers on call.

Article 32. Professional legal aid service fee payment

- (1) Service fee for delivery of professional legal aid by lawyers is paid in accordance with the contract concluded under Section 4 of Article 29 of this Law.
- (2) Service free for public defenders is paid as a fixed sum.
- (3) Service fee for lawyers on call is paid according to tariffs established by the National Council subject to the nature of the case.

Article 33. Registry of lawyers

- (1) The National Council maintains a registry of public defenders and lawyers on call according to the areas of practice of the area bureaus. The registry is updated and posted on 30th June and 31st December each year.
- (2) Each month area bureaus prepares a list and work schedule of duty lawyers and communicates it to the courts, criminal prosecution and other interested bodies.

Article 34. Registry of services delivered and reports

- (1) A lawyer that delivers professional legal aid shall keep written records of all acts done in connection with implementation of the case assigned to him/her.
- (2) The lawyer shall maintain a registry of services delivered by him/her. The registry shall record personal data on applicant for legal aid, the place and number of and parties to procedural acts done, hours spent on delivery of the

service, and other necessary information. The lawyer shall record acts regarding legal aid delivery in the registry within no later than three (3) business days.

(3) The form of the registry and the period of data storage in it are established by the National Council.

(4) Lawyers submit an annual report in the form established by the National Council or an activity report as requested by the area bureau.

Article 35. Provision of legal aid by public associations

(1) Public associations are entitled to provide professional legal aid except for such cases as constitute an exceptional cycle of the advocacy practice in the Republic of Azerbaijan.

(2) The National Council may conclude contracts on professional legal aid provision with public associations through its area bureaus in accordance with this Law.

Article 36. Ensuring the good quality of professional legal aid

(1) In order to ensure the good quality of legal aid delivery, the National Council may obtain information about the quantity and types of legal aid delivery from its area bureaus and request a review of that information, conduct monitoring, investigate complaints from persons that have received professional legal aid, and control the quality of the service.

(2) Quality control of legal aid is conducted in the order and periods established by the National Council.

(3) The National Council conducts monitoring of the process of professional legal aid delivery jointly with the Collegiums of Advocates. Information obtained from the monitoring and control conducted may serve as grounds for application of a disciplinary measure under the advocacy legislation.

(4) Poor-quality legal aid delivery may serve grounds for termination of a contract concluded under Section 4 of Article 29 and Section 2 of Article 35 of this Law.

Chapter V. FINAL AND TRANSITIONAL TERMS

Article 37. Entry into force

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