LEGAL AID ACT

Chapter One

GENERAL PROVISIONS

Art. 1. This Act regulates the legal aid in criminal, civil and administrative cases before all court instances.

Art. 2. The legal aid pursuant to this Act shall be delivered by attorneys and shall be funded by the State.

Art. 3. The purpose of this Act is to guarantee equal access to justice to all persons by ensuring and providing effective legal aid.

Art. 4. The legal aid funds shall be provided from the republican budget.

Art. 5. Legal aid shall be granted to natural persons on the grounds specified in this and other acts.

Chapter Two

LEGAL AID BODIES

Art. 6.

(1) The state policy in the area of legal aid shall be formed, coordinated and implemented by the Minister of Justice.

(2) The legal aid shall be organized by the National Legal Aid Bureau (NLAB) and by the bar councils.

(3) The NLAB shall be an independent state body, which is registered as a legal entity, state funded and based in Sofia. The NLAB shall be a second-level spender of budgetary appropriations.

(4) The NLAB shall have separate budget, which is prepared, executed, finalized and rendered account of by it.

Art. 7. (1) The NLAB shall be assisted by an administration.

(2) The organization of NLAB’s work, structure, staff and of the functions of the units of its administration shall be regulated by Rules of Procedure adopted by the Council of Ministers.

Art. 8. The NLAB shall:

1. provide general and methodological guidance for the providing of legal aid;
2. prepare a draft legal aid budget;
3. disburse the funds of the legal aid budget;
4. organize the maintaining of a National Legal Aid Register
5. remunerate the provided legal aid
6. monitor the provision of legal aid;

Editorial note: Republican budget is the bigger part of the public budget while the other part is the judicial system budget.
Legal Aid Act of the Republic of Bulgaria  
Adopted on September 21, 2005. Entered into force on January 1, 2006  

7. prepare draft laws and other normative acts in the area of legal aid, which shall be submitted to the Council of Ministers by the Chairperson of the NLAB;  
8. analyze the information necessary for the proper planning and management of the legal aid system;  
9. popularize the legal aid system;  
10. adopt decisions for reimbursement of costs incurred pursuant to art 27(3);  
11. endorse the forms pursuant to this act  
12. conduct the international legal cooperation in the area of legal aid.

Art. 9. (1) The NBLA shall examine and resolve the matters of its competence at meetings.  
(2) The decisions of the NBLA shall be adopted by a simple majority of its members.

Art. 10. (1) The NBLA shall be managed by a Chairperson  
(2) In his/ her activity the Chairperson shall be assisted by a Vice Chairperson.

Art. 11. (1) The NLAB shall consist of five members - the Chairperson and the Vice Chairperson of the NLAB and three additional members.

(2) The Chairperson and the Vice Chairperson of the NLAB shall be appointed and dismissed by an Order issued by the Prime Minister on the basis of a decision of the Council of Ministers. The Minister of Justice shall propose nominations to the Council of Ministers.

(3) The remaining three members of the NLAB shall be appointed by the Supreme Bar Council.

Art. 12. The members of the NLAB shall be appointed, for a term of three years. They can be reappointed and respectively reelected for a second term of three years.

Art. 13. Members of the NLAB shall be Bulgarian citizens, who:
1. hold a Master’s degree in Law and have legal qualification;  
2. have not less than 5 years of legal experience;  
3. have not been sentenced to prison for deliberate crimes, regardless of the fact of exculpation;  
4. are not sole traders, managers, procurators or members of a managing or controlling body of a commercial company or cooperation.

Art. 14. (1) The term of service of a member of the NLAB shall be terminated in advance:
1. upon his/ her request;  
2. upon serious and systematic violation of this Act;  
3. in case he/ she is convicted of a deliberate crime with a final verdict;  
4. in case of inability to perform his/ her duties for more than 6 months;  
5. in case he/ she is placed under judicial disability;  
6. in case of death.

2 Editorial note: have completed all exams in order to practice law.  
3 Editorial note: “legal experience” is defined in the Law on judicial system.
(2) In the cases under par.1 the Prime Minister or the Chairperson of the Supreme Bar Council shall submit a proposal for the dismissal of the Member before the end of his/her term of service.

(3) The Council of Ministers or the Supreme Bar Council shall deliver a decision within a one month period for the dismissal, and respectively, the appointment or election of a new member.

(4) The new member of the NLAB shall complete the term of service of the dismissed one.

Art. 15. (1) The Chairperson and the Vice Chairperson shall perform their duties under employment contract terms and shall not hold any other employment position under an employment contract or another type of contract for the term of his/her service.

(2) The remuneration of the Chairperson and the Vice-Chairperson shall be determined as follows:

1. of the Chairperson – at the amount of three average monthly salaries of the employed persons in the public sector according to National Statistics Institute’s data;

2. of the Vice Chairperson – 90 percent of the remuneration of the Chairperson pursuant to i.1.

Art. 16. The NLAB’s members shall receive remuneration for attending a meeting of the NLAB amounting to 50 percent of the minimal monthly salary for the country per member

Art. 17. The Chairperson of the NLAB shall:

1. organize and manage the activity of the NLAB pursuant to this Act, the Rules of Procedure under Art.7, par.2 and the decisions adopted by the NLAB;

2. be responsible for the implementation of the NLAB’s competencies;

3. represent the NLAB before third parties;

4. appoint and dismiss the civil servants from NLAB’s administration, and enter into and terminate the employment contracts of the employees of the NLAB administration, hired under employment contract legal terms;

5. submit the acts under Art.8, i.7 before the Council of Ministers ;

6. submit an annual report for the NLAB’s activity before the Council of Ministers, the Supreme Bar Council and Supreme Judicial Council;

7. conducts activities monitoring the implementation of this Act in person or through persons authorized by him/her;

8. issue orders within the competencies assigned to him/ her.

Art. 18 The bar councils organize the provision of legal aid in the respective court districts and:

(1) prepare a statement (position) in regard of the applications of attorneys from the bar for registering with the National Legal Aid Register;

(2) prepare and maintain a list of attorneys on duty

(3) pursuant to art. 25 i. 4 and 5 assign the providing of legal aid to an attorney registered with the National Legal Aid Register. The assignments shall take into consideration the professional experience and qualifications of the attorney and the type, the factual and legal complexity of the case, as well as other assignments of the attorney and his/her work load;

(4) monitor the provision of legal aid by the attorneys from the bar;
Chapter Three
TYPE AND SCOPE OF THE LEGAL AID

Art. 21. The types of legal aid shall be:

1. consultation in view of reaching an agreement out of the court room before the beginning of the judicial proceedings or before submitting a case to the court;
2. drafting documents necessary for submitting a case;
3. representation in court;
4. representation in cases of detention under art. 70 (1) of the Ministry of Internal Affairs Act.

Art. 22. (1) Legal aid under Art. 22, i.1 and 2 shall be provided to persons who are eligible for receiving social aid monthly allowances under the Rules on the Application of the Social Aid Act and to persons hosted in specialized institutions for providing social services.

(2) The legal aid under art. 21, par. 1 and 2 shall also be provided to adoptive families or to families of relatives where a child is hosted pursuant to the Child Protection Act.

(3) The circumstances under par. 1 and 2 shall be certified by an Order of the Director of Social Aid Directorate, or by a court decision for the hosting of the child, respectively.

Where a person has not exercised his/her right of receiving social aid allowances under the Rules on the Application of the Social Aid Act, he or she shall present before the NLAB a certificate issued by the Director of Social Aid Directorate certifying his or her eligibility for receiving social aid.

Art. 23. (1) The legal aid system under Art. 21, i.3 shall cover the cases in which legal counseling or representation is required by law.

(2) The legal aid system shall cover as well all cases where the suspect, the accused, the incriminated, the defendant or the party in a criminal, civil or administrative case does not possess the necessary means to pay for an attorney, wishes to have one and the interests of justice require it.

(3) In criminal cases the assessment whether or not the suspect, the accused, the incriminated or the defendant has the necessary means to pay for legal counseling shall be made by
the body directing the procedural actions on the grounds of the established financial situation of the person party in the particular case.

(4) Legal aid in civil and administrative cases shall be provided where on the grounds of the evidence submitted by the respective competent bodies, the court adjudicates that the party does not dispose of the necessary means to pay for legal counseling. The court adjudicates based upon:

1. the income of the person or the family
2. the financial situation certified by a declaration
3. the family status of the person
4. the medical condition of the person
5. the employment of the person
6. other relevant circumstances

Art. 24. Legal aid under art. 21, par. 2 and 3 shall not be provided where:

1. the provision of legal aid is not justified as to the benefit it could bring to the person applying for legal aid;
2. the claim is manifestly ungrounded, unjustified or inadmissible;
3. it is requested for commercial and tax cases under the Tax Procedure Act

Chapter Four
ACCESS TO THE LEGAL AID SYSTEM

Art. 25. (1) The decision for granting legal aid in the cases under art. 21, i. 3 and 4 shall be taken by the body directing the proceedings based on an application of the interested party or on the requirements of law for providing legal counseling. In case of refusal to grant legal aid the body shall provide the grounds for its decision.

(2) In the cases under art. 21, i. 1 and 2 the decision for granting legal aid shall be taken by the Chairperson of the NLAB within 14 days after the submission of the order under art. 22, par. 3. The refusal is subject to appeal under the procedure of the Administrative Proceedings Act.

(3) The act for granting legal aid shall be issued in a written form and shall contain:

1. the name of the act;
2. the name of body that issues it;
3. factual and legal grounds for the issue of the act;
4. the person to whom legal aid is granted;
5. the type of legal aid, and in the cases under art. 21, i. 3 – the case for which it is granted;
6. the procedure for appealing the act;
7. date of issue and signature of the person who has issued the act, with an indication of his/ her position.

Editorial note: at the pre-trial phase that would be the police officer and at the trial – the judge.
(4) The act for granting legal aid shall immediately be sent to the respective local bar council which shall nominate an attorney from the National Legal Aid Register.

(5) When possible the Bar Council shall nominate the attorney, indicated by the person to whom legal aid is granted.

Art. 26. (1) The Bar Council shall notify the body under art. 25, par. 1 and 2 of the nominated attorney.

(2) The body under art. 25, par. 1 and par. 2 shall appoint the nominated attorney as an attorney, defense attorney or special representative in cases where the person is not in the position to appear before the court.

(3) The appointed attorney can authorize another attorney from the National Legal Aid Register.

(4) In exceptional cases when qualified legal aid for a particular case cannot be provided, the local bar council may nominate an attorney from another court region with the consent of the latter.

(5) The appointed attorney, defense attorney or special representative can be replaced upon request of the body under art. 25 par.1 and par.2 in compliance with the procedure of appointment.

Art. 27. (1) The person to whom the legal aid is granted shall immediately notify the body under Art.25, par.1 or par.2 of any changes in the circumstances on which the granting of legal aid is grounded.

(2) The body that has adopted the decision for granting the legal aid can terminate it as of the moment when the change has occurred. A copy of the act is immediately sent to the NLAB.

(3) Should the person not notify of the change of circumstances under par.1 in due time he/ she shall refund NLAB for the expenses incurred as from the moment of the change under a decision of the NLAB pursuant to art. 8, i. 10. The receivable shall be collected pursuant to the Tax Procedure Code.

Chapter Five
ATTORNEYS ON DUTY

Art. 28. (1) In urgent cases, in lawsuits for measures of procedural coercion and interrogations by a judge in pretrial proceedings, the bar council secretary shall appoint an attorney on duty, unless the defendant, the accused or the suspect has authorized a defense attorney himself or herself.

(2) An attorney on duty shall be nominated under the procedure of art. 1 as well to a detainee in the cases under art. 70, par. 1 of the Ministry of Internal Affairs Act, when he/ she cannot authorize an attorney by him/ herself.

Art. 29. (1) An attorney on duty shall be an attorney from the National Legal Aid Register, who has given his/ her consent to be included in the list of attorneys on duty.

(2) The consent under the previous paragraph cannot be for a period shorter than one month and shall express the readiness of the attorney to be appointed as an attorney on duty at any time of the twenty-four-hour period.

(3) The Bar Council shall keep a list of the attorneys on duty.
Art. 30. (1) The request for appointing an attorney on duty in the cases under art. 28, par. 1 shall be made by the body directing the proceedings to the Bar Council in a written form or over the telephone, not later than three hours prior to the fixed time for the respective proceedings.

(2) The body under art. 25, par. 1 shall explain to the detainee immediately after the detention the right to an attorney on duty and shall notify the local bar council of the need for appointing of an attorney. The appointed attorney shall immediately proceed with the fulfilling of his/ her duties of providing legal aid.

(3) The duties under the previous paragraph shall be fulfilled through handing in to the detainee a copy of a form, explaining his/ her right to an authorized attorney or an attorney on duty as of the moment of detention.

(4) The attorney on duty shall continue providing the legal aid in all stages of the process.

Chapter Six
NATIONAL LEGAL AID REGISTER

Art. 31. The National Legal Aid Office shall maintain a National Legal Aid Register of the attorneys nominated to provide legal aid by court regions of the respective District Courts.

Art. 32. (1) The Register shall be public. It shall be kept in paper and electronic form and published on the Internet.

(2) The National Legal Aid Office shall provide to the Bar Councils information about the attorneys listed in the Register under Art. 31.

Art. 33. (1) An attorney who wishes to be listed in the National Legal Aid Register shall submit an application to the NLAB through the respective Bar Council.

(2) The application under par. 1 shall be completed in a form approved by the NLAB.

(3) The Bar Council shall draft an opinion on the received application and shall send it to the NLAB.

(4) The entry of the attorney in the National Legal Aid Register shall be made upon a decision of the NLAB.

(5) The NLAB may deny an attorney’s application or remove a listed attorney from the Register where:

1. the attorney is under disciplinary sanctions;
2. the attorney is charged with a crime;
3. the attorney has violated this Act or has provided legal aid of a bad quality. The violation or the bad quality of legal aid shall be determined by the Bar Council or NLAB.

The NLAB has to state the grounds for its decisions pursuant to the above para (5)

(6) The removal of a listed attorney shall be made by the NLAB for a term of one year and for a second offence – for three years.

(7) The refusal of an attorney’s application for listing in the Register as well as the removal of a listed attorney from the Register made by the NLAB may be appealed under the terms and conditions of the Administrative Proceedings Act.

Editorial note: pre-trial and trial stages.
Art. 34. (1) The National Legal Aid Register shall be updated for the next calendar year by the end of the month of September of the previous calendar year.

(2) In exceptional cases changes can be also effected in the course of the year under the procedure stipulated for making of entries.

Art. 35. (1) The National Legal Aid Office may conduct activities monitoring the granted legal aid under art. 21. It can require information from the respective body directing the proceedings, in order to certify the volume and the type of the legal aid provided.

(2) The client or the body under art. 25 (1) may refer an attorney’s violations to the NLAB.

(3) The findings from the monitoring activities may serve as grounds for removal of attorneys from the National Legal Aid Register.

Art. 36. (1) The Bar Council shall elaborate and maintain in paper and electronic form a list of the attorneys appointed to provide legal aid, and the list shall be sent regularly to the NLAB. The Bar Council shall notify the NLAB for each change in the appointments.

(2) The list shall be elaborated in a form approved by the NLAB and published on the website of the NLAB.

Chapter Seven
REMUNERATION OF LEGAL AID

Art. 37. (1) Legal aid shall be remunerated under a regulation adopted by the NLAB and shall be contingent on the type and quantity of activities performed.

(2) Where an attorney has provided legal aid for a particular case incompetently or in bad faith, he/she shall not receive remuneration for this particular case regardless of other sanctions.

Art. 38. (1) The type and quantity of the legal aid provided shall be certified by a written report of the attorney in a form, approved by the NLAB.

(2) The Bar Council shall examine and certify the attorney’s report and propose an amount for his/her remuneration based on the type, quantity and quality of the legal aid provided within the amounts stipulated in the regulation pursuant to art. 37.

(3) The appointed attorney shall be refunded for inherent expenses for visits in imprisonment or detention places in another location.

Art. 39. The remuneration of the provided legal aid shall be made by the NLAB by a bank transfer on the grounds of the report under art. 38.

Art. 40. The attorney providing legal aid cannot receive remuneration or expense refunds from his/ her client.

Chapter Eight
PARTICULARITIES IN PROVIDING LEGAL AID IN INTERNATIONAL DISPUTES
Art. 41. (1) The provisions of this chapter shall apply when granting legal aid in international disputes in civil and commercial cases before all court instances. They shall not apply to administrative and criminal cases.

(2) An International dispute pursuant to par. 1 is a dispute where the party applying for legal aid is a person citizen of a European Union Member State or legally residing in a European Union Member State and the dispute is to be resolved before the competent body of another European Union Member State.

(3) The provisions of this Act shall apply when granting legal aid in international disputes, except if otherwise provided in this chapter.

Art. 42. (1) A citizen of a European Union Member State or a person legally residing in a European Union Member State shall be granted legal aid if he or she falls under the provisions of art. 22, par. 1

(2) In case a citizen of a European Union Member State, or a person legally residing in a European Union Member State, does not fall under the provisions of art. 22, par. 1 but nevertheless indicates inability to pay for legal counseling, the NLAB makes an assessment as to whether the applicant is able to pay for it. The assessment shall take into consideration the circumstances under art. 23, para 4 as well as the difference between the minimal expenses necessary to live in the Member State and in Bulgaria.

Art. 43. (1) The body in the Republic of Bulgaria authorized to receive legal aid applications by the competent bodies of the European Union Member States, is the Ministry of Justice of the Republic of Bulgaria.

(2) The body in the Republic of Bulgaria authorized to send legal aid applications to the competent bodies of the European Union Member States is the Ministry of Justice of the Republic of Bulgaria.

Art. 44. (1) The applicant may apply for legal aid before the competent body of the European Union Member State, where he/she is permanently or habitually residing, or directly before the Ministry of Justice of the Republic of Bulgaria, in case the lawsuit will be tried by a court in the Republic of Bulgaria or in case the judgment has to be enforced in the Republic of Bulgaria.

(2) The application for granting legal aid and the documents proving that the person meets the requirements for granting legal aid, submitted before the Ministry of Justice, shall be translated into Bulgarian or another official European Union language, which the Republic of Bulgaria has indicated as acceptable to the EC Commission. There is no necessity for such documents to be legalized.

(3) Upon receiving an application for granting legal aid from a competent body of another European Union Member State, the Ministry of Justice of the Republic of Bulgaria shall verify the compiling and the translation of the documents. If the documents meet these requirements, the application shall be sent immediately to the NLAB for adjudication.

(4) In case the application does not meet the requirements under this article, it shall be sent back to the competent body of the foreign European Union Member State for eliminating the irregularities found.

(5) The National Legal Aid Office sends its decision on the application for granting legal aid to the Ministry of Justice, which forwards it to the competent body of the other European Union Member State that delivers it to the applicant.

(6) The refusal of the NLAB to grant legal aid shall indicate the grounds for the refusal and may be appealed under the terms and conditions of the Administrative Proceedings Act.
Art. 45. (1) Where the case is tried before the court of another European Union Member State or the judgment shall be enforced in another European Union Member State, the applicant – Bulgarian citizen, who resides on the territory of the Republic of Bulgaria, foreign citizen or apatride, to whom long-term residence in the Republic of Bulgaria has been permitted, or a person holding the status of a refugee or entitled to asylum on the territory of the Republic of Bulgaria, can submit his/ her application together with the documents proving that he/ she meets the requirements for granting legal aid, directly before the competent body of the respective European Union Member State or through the Ministry of Justice of the Republic of Bulgaria.

(2) The documents under par. 1 shall be translated into the official language or one of the official languages of the other European Union Member State, or into another official European Union language, which the other European Union Member State has indicated as acceptable to the EC Commission.

(3) The Ministry of Justice of the Republic of Bulgaria is entitled to refuse the transfer of the application, in case it does not comply with the requirements under this chapter. In this case the Ministry of Justice notifies the applicant of the grounds for the refusal.

(4) The Ministry of Justice of the Republic of Bulgaria shall inform the applicant about the documents necessary for the filing of the application for granting legal aid in the other European Union Member State and provide translation of the application and of the documents, proving that the person meets the requirements for granting legal aid.

(5) The Ministry of Justice of the Republic of Bulgaria shall transfer the application together with the attached documents to the competent body of the other European Union Member State within 15 days after the translation of the applications and the documents.

(6) In case the competent body of the other European Union Member State refuses the legal aid application, the applicant shall refund to the Ministry of Justice of the Republic of Bulgaria the costs incurred for the translation of the application and the documents.

Art. 46. The applications under art. 44 and 45 shall be submitted in standard forms, approved by the EC Commission.

Art. 47. The Ministry of Justice of the Republic of Bulgaria submits to the EC Commission the following information:

1. names and addresses of the competent receiving and transferring body;
2. procedures for filing of applications;
3. languages which can be used for filling in the application forms and the attached documents.

Art. 48. An applicant who has been granted legal aid in another European Union Member State, where the case has been heard, shall be entitled to legal aid pursuant to this Act in case the Republic of Bulgaria has to recognize or enforce the judgment delivered on the respective case.

Art. 49. (1) The legal aid granted to persons under art. 42 shall include as well the following expenses, directly related to the international nature of the dispute:

1. for interpreting;
2. for translation of documents, required by the court or another competent body;
3. travel expenses, where physical attendance of witnesses at the court hearing is obligatory required.

(2) The legal aid for persons under art. 45, par. 1 shall include the following expenses:
1. for legal aid under art. 21, i. 1, which is provided in the Republic of Bulgaria before the moment when the legal aid application is filed in another European Union Member State, where the case is heard or the court decision shall be enforced;

2. for translation of the legal aid application and of the documents, proving that the person meets the requirements for granting legal aid.

ADDITIONAL PROVISIONS

§ 1. Systematic violation in this Act means three or more violations

§ 2. The legal aid in civil cases includes also legal aid in subsequent enforcement proceedings, which have started within one year after entering into force of the court decision, in case there is no change in the circumstances existing at the time of the examination of the application for legal aid.

FINAL PROVISIONS

§ 3. The pending cases where an official solicitor or a special representative has been appointed shall be heard pursuant to the current terms and conditions.

§ 4. The Council of Ministers provides the necessary estate, property and financial resources for the starting of the NLAB’s work.


“(6) Where a an award based on the party’s claim is adjudged to a party to whom legal aid under the Legal Aid Act has been provided, the court expenses incurred shall be transferred to the National Legal Aid Office proportionally to the part of the claim that has been awarded. Where a claim has been rejected, the person who has been granted legal aid owes the amount of court expenses proportional to the rejected part of the claim.

§ 6. The following amendments and supplements shall be made to the Attorneys Act (promulgated SG, issue 55 of 06.25.2004; amended issue 43 2005):

1. Article 44 is amended as follows:

“Art. 44 (1) An attorney listed in the National Legal Aid Register shall provide legal aid pursuant to the Legal Aid Act, in case he/ she is nominated to provide it.

(2) The attorney shall work on the assigned case, in which he/ she provides legal aid pursuant to the Legal Aid Act, with the same diligence, as if he was authorized by the client.”

2. Art.89, i.15 is amended as follows:

“15. shall participate in the organization of legal aid pursuant to the Legal Aid Act”
3. In Art. 132, i.6 the wording “official solicitation or special representation” is replaced with “legal aid”.

§7 In the Tax Procedure Code (promulgated, issue 103 of 199; issue 29 of 2000 – Decision N 2 of the Constitutional Court; amended issue 63 SG of 2000; issue 109 of 2001; issue 45 and 112 of 2002; issues 42, 112 and 114 of 2003, issues 36, 38, 53 and 89 of 2004, issues 19, 39 and 43 of 2005) in art. 13 (2) a i. 5 shall be included:

.5 for the expenses under the Legal Aid act incurred after the grounds for its granting have ceased to exist.

§ 8. This Act shall enter into force as of 01.01.2006, excluding Chapter Eight, which enter into force as of the date of entry into force of the Treaty for Bulgaria’s accession to the European Union.

§ 9. The implementation of the Act is assigned to the National Legal Aid Office.