

THE LAW "ON THE PEOPLE'S ADVOCATE"
REPUBLIC OF ALBANIA
ASSEMBLY

THE LAW

No.8454, dated 04.02.1999, supplemented by the law no. 8600, dated 10.04.2000, amended by the law no. 9398, dated 12.05.2005, added to and as amended by the law 155/2014, dated 27.11.2014, "ON THE PEOPLE'S ADVOCATE".

Pursuant to Articles 60 through 63, 81 and 83, item 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

OBJECT OF THE LAW

The object of this Law is the adoption of the rules for the organization and functioning of the People's Advocate.

Article 2

DUTIES OF THE PEOPLE'S ADVOCATE

The People's Advocate safeguards the rights, freedoms and lawful interests of individuals from unlawful and improper actions or failures to act of the organs of public administration as well as third parties acting on their behalf. He is promoter of the highest standards of human rights and freedoms in the country.

The People's Advocate guided by the principles of impartiality, confidentiality, professionalism and independence exercises his activity for the protection of human right and freedoms as defined by the constitutional provisions and by the laws. The provisions of this Law shall also apply to protect the rights of foreigners, whether they are residing lawfully, in Albania or not, refugees, asylum seekers as well as stateless persons within the territory of the Republic of Albania, pursuant to the terms set forth by law. People's Advocate carries out also other tasks determined by special laws.

Article 3

REQUIREMENTS FOR ELECTION OF THE PEOPLE'S ADVOCATE

People's Advocate may be any person who meets the following requirements:

- a) Is an Albanian citizen;
- b) Has outstanding knowledge of, and activities in the area of human rights, freedoms and law;
- c) Has distinguished professional skills and moral-ethical qualities;
- d) Has never been convicted criminally;
- e) Is not a member of the Parliament that proposes or elects him.

CHAPTER II

ELECTION, REMOVAL AND RIGHTS OF THE PEOPLE'S ADVOCATE

Article 4

ELECTION OF THE PEOPLE'S ADVOCATE

The People's Advocate shall be elected by three-fifths of all the members of the Assembly. Before taking up or resuming the duty People's Advocate takes an oath before the Assembly. The oath is formulated like: "I swear that while carrying out my duty I will always protect fundamental rights and freedoms of people with no any differentiation and in accordance with the Constitution and the Laws of the Republic of Albania".

Article 5

TERM IN OFFICE

The People's Advocate can remain in office for a 5-year period, with the right of re-election.

Article 6

IMMUNITIES AND SALARY

The People's Advocate shall enjoy the immunity of a High Court judge. His salary shall be equal to the salary of the High Court Chairman.

Article 7

TERMINATION OF MANDATE OF THE PEOPLE'S ADVOCATE

The mandate of the People's Advocate terminates if:

- a) He resigns;
- b) His 5-year term in office elapses;
- c) He dies;
- d) He is removed from office.

Article 8

Dismissal of the People's Advocate:

The People's Advocate shall be removed from office only in case he:

- a) Is convicted by means of a final court decision;
- b) Becomes mentally or physically incapacitated to perform his duties;
- c) Conducts activities that violate the provisions of Article 10 of this Statute;
- ç) Is absent from duty for more than three months.

The motion for the removal of the People's Advocate shall be presented by at least one-third of the members of the Assembly. The decision of the removal from office of the People's Advocate shall be taken with the votes of three-fifths of the members of the Assembly.

Article 9

ELECTION OF A NEW PEOPLE'S ADVOCATE

1. Parliament by no later than three months before the mandate termination as set out in Article 7, paragraph "b", publishes announcement of the vacancy of the People's Advocate. In this case, the People's Advocate shall hold office until the election of a new Ombudsman.

2. In other cases of the mandate termination, according to this law, the announcement for the vacant position of People's Advocate is made by the Assembly, within 10 days from the creation of the vacancy. In these cases, the older commissioner in office performs the function until the election of a new People's Advocate.

3. At the open and public invitation of the Assembly, every citizen who meets the conditions stipulated in this Law may submit candidacy for People's Advocate.

4. The list of candidates passes to the Assembly committee covering legal issues to verify the fulfillment of constitutional and legal criteria and merit of each candidacy. Legal Affairs Commission organizes public hearings with each candidate. At the conclusion of the hearing process, the Commission approves the list of the presented candidates together with the assessment for fulfillment of constitutional and legal criteria and merit of each candidacy.

5. The nominations for People's Advocate are to be presented to the Assembly in written, by not less than 28 members, selected among the candidates who meet constitutional and legal requirements and merit, according to the committee that covers legal affairs, in the list approved by it.

6. The People's Advocate is elected by three-fifths of all the members not later than 30 days from the mandate termination or the date of dismissal.

Article 10

INCOMPATIBILITIES WITH THE DUTY OF THE PEOPLE'S ADVOCATE

The People's Advocate shall be prohibited from being member of any political parties or organizations carrying out any other political, state or professional activities, or participating in the steering bodies of social, economic or commercial organizations. He may exercise the right to teach or be a book author.

Article 11

GRANTING THE PREVIOUS POSITION TO THE PEOPLE'S ADVOCATE

Upon termination of the duty pursuant to items "a" or "b" of Article 7, the People's Advocate it is entitled to resume the public duty or position he occupied prior to his election. If this is not possible, (he/she) shall be provided an equivalent position.

CHAPTER III

COMPLAINTS, INVESTIGATIVE PROCEDURES AND POWERS OF THE PEOPLE'S ADVOCATE

Article 12

THE RIGHT TO COMPLAIN

Every individual, group of individuals or non-government organization, claiming that his/their rights, freedoms or lawful interests have been violated by the unlawful, improper actions or failures to act by the organs of the public administration, shall have the right to complain or notify the People's Advocate and to request his intervention to remedy the violation of the right or freedom. The People's Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests.

Article 13

INITIATION OF THE PROCEEDINGS

The People's Advocate, upon finding or suspecting that a right has been violated, shall initiate an investigation (of the case), upon the complaint or request of the interested or affected person, or on his own motion if the particular case is in the public domain.

In cases when People's Advocate starts the investigation procedure on his own initiative and when the custodian or the legal representative do not take any action, then it is not asked for the consent of the injured when he is a minor or mentally disabled or disabled people or when it comes to protect the rights of a big number of individuals. While protecting the interests of a wide community affected by the administrative procedure, People's Advocate has the right to start an administrative procedure and participate in it, in accordance with the requirements of the Code of Administrative Procedure.

Article 14

CONDITIONS OF ADMISSIBILITY OF COMPLAINTS, REQUESTS AND NOTIFICATIONS

The People's Advocate may refuse to initiate or may terminate the investigation of a case if the same case has been decided or is being scrutinized by public prosecutor or a court. In such a case, he shall be entitled to request information by those authorities who must respond to his requests as soon as possible and no later than 30 days.

Article 15

NO SPECIAL FORM REQUIRED FOR COMPLAINTS AND NOTIFICATIONS

No special form shall be required for the complaints, requests or notifications submitted to the People's Advocate, provided the object of the complaint or request is clearly indicated. The People's Advocate shall not accept anonymous complaints or requests.

Article 16

SERVICES FREE OF CHARGE

All services rendered by the People's Advocate with reference to the complaints, requests or notifications shall be free of charge.

Article 17

ADMINISTRATION OF COMPLAINTS AND NOTIFICATIONS

The People's Advocate, following the review of a complaint, request or notification of a violation, shall decide to:

- a) Accept or refuse to look into the case;
- b) Send a reply to the interested person indicating his rights and the remedies he can pursue to protect those rights;
- c) Forward the case to a competent authority.

In all cases the People's Advocate shall notify the interested person (of his decision) within 30 days from the date he received the complaint, request or notification.

Article 18

PROCEDURE AFTER ADMISSION OF COMPLAINTS FOR REVIEW

Following admission of a complaint, request or notification, the People's Advocate shall proceed in one of the following ways:

- a) Shall initiate himself an investigation procedure;
- b) Shall request explanations from the organs of public administration and public prosecution's office in cases of pre-trial detention and arrest;
- c) Shall make a recommendation to the High State Audit to exercise its powers.

Article 19

INVESTIGATIVE PROCEDURES

In case the People's Advocate decides to proceed with an independent investigation, he shall be entitled to:

- a) Conduct investigations on the spot, including the access to any premises of public institutions and examination on the spot of the acts and papers pertaining to the case under investigation.
- b) Request explanations from all organs of central and local administration and obtain all files or material relevant to the investigation;
- c) Interrogate any persons that, in his judgment, is involved in the matter under investigation and ask for the presence in his office of all people without immunity.
- d) Arrange or request an expert opinion. People's Advocate has the right to give the deadline for the completing of the above mentioned.

Article 19/1

People's Advocate or any persons authorized by him have the right any time, without restriction or preliminary authorization, however having informed in advance the head of the institution, to enter any public administration institutions like prisons, places where the police and prosecution office keep the escorted, detained or arrested people (the detainees), in state units or institutions, mental hospitals, nursery homes, orphanages and other places he is informed or deems that it is possible for human rights and freedoms to be violated. The access to all above-mentioned ambiances intends either the investigation of a complaint, request or a certain notification or an initiative taken by the People's Advocate to conduct an inspection or study. In such a case, the People's Advocate can meet or talk in confidentiality, without the presence of any official people, with any persons being present or kept in these facilities. Any correspondence between these persons and the People's Advocate shall not be obstructed or checked.

Article 20

ACCESS TO INFORMATION OR DOCUMENTS CLASSIFIED AS STATE SECRETS

The People's Advocate shall have the right to request information or documents classified as state secrets that are relevant to the case under investigation. In such cases he shall comply with the rules for the protection of the state secret.

Article 21

ACTIONS AND POWERS AFTER CONCLUSION OF INVESTIGATION

Upon conclusion of an investigation, the People's Advocate shall do one of the following:

- a) Explain to the complainant that his rights have not been infringed upon;
- b) Make recommendations on how to remedy the infringement to the Administrative organ that in his judgment has committed the violation. The submission of recommendation suspends the improper or illegal acts and proceedings until the examination of this recommendation is done and the response to the People's Advocate is given.
- c) Make recommendations on how to remedy the infringement to the authority supervising the administrative organ that has committed the violation. Non examination of recommendation within 30 days leads to the suspension of the improper or illegal acts and proceedings;
- d) Recommend to the public prosecutor to start the investigation if he finds that a criminal offence has been committed; or to re-start the dismissed or suspended investigation;
- e) Upon finding serious violations, propose to the relevant authorities, including the Assembly, to dismiss officials under their jurisdiction;

f) In case of the infringement of right by organs of the judiciary, the People's Advocate, without interfering with judicial procedures shall notify the competent authorities of the violations;

g) Recommend to the injured persons to take their case to the court;

These actions are not mutually exclusive.

Article 22

OBLIGATION OF ORGANS OF STATE ADMINISTRATION TO RESPOND TO RECOMMENDATIONS OF THE PEOPLE'S ADVOCATE

The organs the People's Advocate has submitted to, a recommendation, request or proposal for dismissal shall review the recommendation, request or proposal for dismissal and shall reply within 30 days from the date the recommendation, request or proposal for dismissal is delivered. The reply shall include reasoned explanations on the specific case as well as the actions, omissions or measures undertaken by that organ. People's Advocate should be informed and he has the right to participate in the meetings of public administration collegial organs where his recommendation, request or proposal is examined.

Article 22/1

Sanctions for non-cooperation with the People's Advocate

Refusing to cooperate with the People's Advocate on the part of a civil servant, public official or authority, entitles the People's Advocate to request from the competent authority the initiation of the administrative procedure for disciplinary measures to be taken or even asked their dismissal from work or civil service.

Article 23

CASE FOLLOW-UP

If the People's Advocate does not deem sufficient the reply or measures an organ has undertaken, he is entitled to refer the case to the higher organ in hierarchy. If the violations are repetitive or the respective organ does not respond to the recommendations of the People's Advocate, the latter may present to the Assembly a report, which shall include proposals for specific measures to remedy the violations.

Article 24

RIGHT TO LEGISLATIVE RECOMMENDATIONS

If the People's Advocate finds that it is the content of a statute or other legal act, and not its application that leads to violation of human right recognized by the Constitution or other laws, he is entitled to:

a) Recommend to the organs vested with legislative initiative to propose amendments and improvement to the statute;

b) Propose to the Administration to amend and improve bylaws; Non examination of proposal within 30 days brings consequently the suspension of the sublegal acts power leading to violation of rights and freedoms.

c) Put the Constitutional Court in motion to invalidate those acts.

Article 25

PERSONS AND ACTS OUTSIDE THE JURISDICTION OF THE PEOPLE'S ADVOCATE

The following shall be outside the jurisdiction of the People's Advocate:

a) The President of the Republic;

b) The Prime Minister;

The following acts shall also be outside the jurisdiction of the People's Advocate:

a) Statutes and other legal acts;

b) Military orders to the Armed Forces;

The People's Advocate receives complaints, requests or notifications of violations of human rights, arising from the administration of the judiciary and the enforcement of judicial decisions. The investigation and the People's Advocate's request does not affect the independence of the court in making the decision.

CHAPTER IV

RELATIONS WITH THE ASSEMBLY, OTHER GOVERNMENTAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS

Article 26

REPORT TO THE ASSEMBLY

The People's Advocate shall submit an annual report to the Assembly, which shall discuss it in a plenary session. A copy of the report shall be submitted to the President of the Republic and the Prime Minister. The annual report on the previous year activity should be submitted no later than the 30-th of April of the ongoing year.

Article 27

SPECIAL REPORTS TO THE ASSEMBLY

Besides the annual report, the Ombudsman may submit, on its own initiative or at the written request of the President of the Assembly or of a group of deputies, special reports on various issues within its functions, especially if it is a violation of the constitutional and legal rights. The Speaker of the Assembly estimates on whether the report will be addressed by:

1. The plenary session of the Assembly;
2. Distributing the report;
3. The standing committees of the Assembly or relevant subcommittees.

A copy of the report shall be sent to the President of the Republic, the Prime Minister and the highest administrative authority, whose subordinate (authorities) are mentioned in the report.

Article 28

The Annual Report of the People's Advocate is reviewed by the Assembly within three (3) months from the submission. Special reports of the People's Advocate are discussed in Parliament within 2 (two) months from the submission. If the annual report and special reports are not discussed by the Assembly, within the deadlines set out in this provision, the People's Advocate has the right to publish the report. In each case of the review of these reports by the Assembly, the Ombudsman also publishes the resolution of Parliament or other forms of parliamentary response.

Article 29

Preparation of reports on human rights

The People's Advocate contributes to preparing the reports of the Albanian state for international organizations in the implementation of the conventions ratified by Albanian state, pertaining human rights and freedoms in the Republic of Albania and can submit to them parallel reports. People's Advocate promotes the inclusion of protection of human rights and freedoms, as

stipulated in the Constitution and in legislation, in the curriculum as well as their implementation in educational institutions.

Article 30

COOPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS

The People's Advocate shall perform his duties in close cooperation with non-governmental organizations and shall regularly request their opinion on the human rights situation. The People's Advocate in cooperation with non-governmental organizations, shall organize at least annually a national activity on the situation of human rights and freedoms in the Republic of Albania.

CHAPTER V

COMMISSIONERS, OFFICE AND BUDGET

Article 31

The Office of the People's Advocate is divided into five specialized sections, each headed by a Commissioner.

These sections are:

1. Section for central administration bodies, local government and third parties acting on their behalf.
2. Section for police, secret service, prisons, armed forces and judiciary.
3. National Mechanism for Prevention of torture, cruel, inhuman or degrading treatment or punishment.
4. Section for the protection and promotion of children's rights.
5. General section.

Depending on the needs of the institution, the People's Advocate decides for within the sections to set up and make function special subsections, which are defined in the internal regulations of the institution.

Article 31/1

National Mechanism for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

The People's Advocate shall exercise the functions of the National Mechanism for the prevention of torture, cruel, inhuman or degrading treatment or punishment in accordance with the Constitution, international treaties ratified by the Republic of Albania and the legislation in force.

National Mechanism for the prevention of torture, cruel, inhuman or degrading treatment or punishment is organized and operates as a separate section of the People's Advocate.

Article 32

APPOINTMENT OF A LOCAL REPRESENTATIVE

If the People's Advocate deems it reasonable, he may appoint a local representative for a specific matter and definite time. The local authorities shall provide the representative with office space and working conditions adequate for the fulfillment of his duties under this Statute. The representative shall be remunerated from the budget of the People's Advocate.

Article 33

Conditions for being elected commissioner and their salary

1. Commissioner can be elected any Albanian citizen who at the time of nomination fulfills these legal conditions:

- a) Have completed high education in law, degree "Master of Science" or equivalent to it;
- b) Have seniority in the profession as a lawyer no less than 10 years;
- c) Not be convicted criminally by final court decision;
- d) Not to be a member of political parties, MPs, minister, deputy minister.

2. A candidate who meets the legal requirements provided in paragraph 1 of this Article, is elected Commissioner based on these objective criteria:

- a) Seniority in profession;
- b) Progress in the performance of higher education and obtaining the scientific titles;
- c) In-depth knowledge and/or training in the field of freedoms and human rights and law;
- d) Renowned activity in public opinion, pertaining protecting and promoting respect for the rights and freedoms of citizens;
- d) Enjoy high moral integrity and a clean ethical and moral reputation;

3. The salary of the Commissioner is as two-thirds of the salary of the People's Advocate.

Article 33/1

Election of commissioners

1. The Commissioner is elected by Parliament for a four-year term, which may be renewed only once.

2. People's Advocate, no later than three months before the mandate terminates as defined in the paragraph 1 of this Article, publishes the announcement for the vacant position of Commissioner.

3. In other cases of the mandate termination, according to this law, the announcement for the vacant position of commissioner is done ex officio by the Assembly within 10 days from the creation of the vacancy.

4. At the public access invitation of the People's Advocate, every citizen who meets the conditions stipulated in this Law may submit candidacy for commissioner to the People's Advocate. People's Advocate examines and verifies the fulfillment of the conditions and legal requirements of each candidacy through an open and public process.

5. The People's Advocate, in cooperation with civil society organizations operating in the field of protection of human rights, organizes the process for reviewing and evaluating candidates.

6. The list of four candidates selected by the People's Advocate for every vacancy, together with his appreciation for the fulfillment of the conditions and legal criteria and ranking of candidates, according to his preference, passes to the Assembly committee covering legal issues, no later than 45 days before the mandate termination as defined in paragraph 1 of this article.

7. The Assembly Commission covering legal issues organizes public hearings with four candidates shortlisted by the People's Advocate for each vacancy.

8. After considering the four candidates for each vacancy, the Commission selects two candidates for presentation to the Assembly vote, or in the case of equality of votes, it presents even more candidates who enjoy a greater support among members of the Commission.

9. Candidates selected according to the procedure referred to in paragraphs 7 and 8 of this Article, pass to the Assembly for a vote.

Article 34

Termination of the mandate and dismissal of commissioners

The provisions of this law in cases of the mandate termination and dismissal of the People's Advocate apply to commissioners too. The Commissioner may be removed by the Assembly motivated request of at least 1/3 of the members of the Assembly or of the People's Advocate.

The People's Advocate appoints one of the commissioners in duty to replace the Commissioner whose term has terminated in other cases as stipulated in this Law, until the election of a new commissioner.

Article 35

Organization and the personnel of the People's Advocate Office

Ombudsman is organized in central and local level, based on the needs of the institution and the State Budget.

The structure and organogram of the institution are designated by the People's Advocate according to the number of employees approved in the annual budget of the institution.

The staff of the People's Advocate Office is part of the Civil Service of the Republic of Albania.

The People's Advocate and commissioners obtain the Official Journal free of charge.

Article 36

The People's Advocate Budget

The draft budget of the People's Advocate is proposed by the People's Advocate pursuant to the law on budget management system in the Republic of Albania and approved by the Assembly.

The People's Advocate prepares annually his accounts pursuant to the law on the financial management and audit. The financial records of the Office of the People's Advocate shall be subject to review by the High State Control.

Article 37

ACCEPTABLE DONATIONS TO THE PEOPLE'S ADVOCATE

The People's Advocate may benefit from donations in money or in kind. The donations may not include conditions that might affect the independence, impartiality or constitutionality of the People's Advocate activity. The donations shall be declared and registered in a registry held for this purpose by the Office of the People's Advocate. The People's Advocate shall provide, by the end of the year, the High State Control and the Standing Committee for Economic, Financial and Privatization Affairs [of the Assembly] with a copy of the registry each. The registry shall include the type of donation, quantity, date [of donation], person and mode of delivery of donation. The registry shall also include the name and signature of the donor.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 38

Transitional provisions

Within two months of the entry into force of this law, the Assembly elects the People's Advocate.

Article 38/1

Transitional Provision

The commissioners elected before the entry into force of this law remain in office according to the mandate provided at the time of their appointment.

The People's Advocate, within 10 days of the entry into force of this law, publishes the vacancy announcement for the commissioners to be two sections heads as created by this law.

Article 39

Internal Regulation

The People's Advocate shall adopt the internal rules of the institution drafted in cooperation with the commissioners.

Article 40

This law comes into force 15 days after publication in the Official Journal.

- [AL](#)