

STATUTE
No. 8454, dated 04.02.1999

ON 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 Statute

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

Article 2

Duties of the People's Advocate

The People's Advocate shall safeguard the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf.

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

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;
- ç) has never been convicted criminally;
- d) 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.

Article 5

Term In Office

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

Article 6

Immunities and Salary

The People's Advocate shall present to the Assembly an annual report. The People's Advocate shall report to the Assembly whenever the latter so requests and may request the Assembly to hear him on matters he determines important and shall only be responsible to the Assembly. The People's Advocate shall enjoy the immunity of a judge of the High Court. His salary shall be equal to the salary of the President of the High Court.

Article 7

Termination of Functions of the People's Advocate

The functions of the People's Advocate shall terminate if:

- a) he resigns;
- b) his 5-year term in office elapses;
- c) he dies;
- ç) he is removed [from office].

Article 8

Removal from Office 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) he 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

The Assembly shall elect the People's Advocate within one month from the termination or removal from office [of the previous People's Advocate]. Until a new People's Advocate is elected, as well as in case the People's Advocate is unable to perform his duties, the duties of the People's Advocate shall be carried out by the longest-serving commissioner.

Article 10

Incompatibilities with the Duty of the People's Advocate

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

Article 11

Securing the Previous Position of the People's Advocate

Upon termination of duty pursuant to items "a" or "b" of Article 7, the People's Advocate shall have the right to resume the public duty or position he occupied preceding his election. If this is not possible, [he] shall be secured an equivalent position.

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

Article 12

Locus standi

Every individual, group of individuals or non-governmental organisation that claims that his/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of 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 injured person, or on his own motion if the particular case is in the public domain and provided the interested or injured party consents.

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 reviewed by a public prosecutor or a court. In such a case, he shall be entitled to request information by those authorities.

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 the services rendered by the People's Advocate with respect 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; or
- 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 conduct himself an investigation;
- b) shall request explanations from the organs of public administration, as well as the public prosecutor in cases of pre-trial detention and arrest;
- c) shall make a recommendation to the High State Control 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 on the spot investigations;

- b) request explanations from all organs of central and local administration and obtain all files or materials relevant to the investigation;
- c) interrogate any person that, in his judgement, is involved in the matter under investigation;
- ç) arrange or request an expert opinion.

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 state secrets.

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;
- b) make recommendations on how to remedy the infringement to the administrative organ that, in his judgement, has committed the violation;
- c) make recommendations on how to remedy the infringement to the authority supervising the administrative organ that has committed the violation;
- ç) recommend to the public prosecutor to start an investigation if he finds that a criminal offence has been committed;
- d) upon finding serious violations, propose to the relevant authorities, including the Assembly, to dismiss officials under their jurisdiction;
- dh) in cases of infringement of rights by organs of the judiciary, the People's Advocate, without interfering with their procedures, shall notify the competent authorities of the violations;
- e) 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 to whom the People's Advocate has submitted 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.

Article 23

Case Follow-Up

If the People's Advocate does not consider sufficient the reply or measures an organ has undertaken, he shall have the right 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 Of 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 rights recognised by the Constitution or other laws, he shall have the right 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 substatutory acts; or
- c) recommend to the Constitutional Court 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; and
- b) the Prime Minister.

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

- a) statutes and other legal acts;
- b) military orders to the Armed Forces; and
- c) court decisions.

Without prejudice to item "c" of this Article, the People's Advocate shall accept complaints, requests or notifications of human right violations arising from the administration of the judiciary and judicial procedures. The investigations of the People's Advocate shall not infringe the independence of the judiciary in deciding cases.

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.

Article 27

Special Reports to the Assembly

In addition to the report provided by Article 26, the People's Advocate shall report to the Assembly on his own motion or upon written request of the Speaker of the Assembly or a group of members of the Assembly. The Speaker of the Assembly shall decide on whether the report shall be heard by:

1. the plenary session [of the Assembly];
2. distributing the report;

3. the standing committees of the Assembly.

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

Publication Of Reports

The annual and special reports shall be made available to the public and shall be published no later than one month after the date of their discussion by the Assembly. The reports shall be published by the Assembly.

Article 29

Drafting Human Right Reports

The People's Advocate may assist, give opinions and make recommendations in the drafting of reports and other documents by the Albanian State on human rights and freedoms in the Republic of Albania.

Article 30

Co-operation With Non-Governmental Organisations

The People's Advocate shall perform his duties in close co-operation with non-governmental organisations and shall regularly request their opinion on the human rights situation.

The People's Advocate, in co-operation with non-governmental organisations, shall organise, 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

Structure

The Office of the People's Advocate shall have three specialised sections, each headed by a Commissioner.

The sections shall be:

- a) a section for the organs of central administration, local government and third parties acting on their behalf;
- b) a section for the police, the secret service, prisons, armed forces and the judiciary;
- c) a general section in charge of all the issues falling outside the scope of the two other sections, co-operation with non-governmental organisations as well as studies and activities in the area of human rights and freedoms.

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 that shall be adequate for the fulfilment of his duties under this Statute. The representative shall be remunerated from the budget of the People's Advocate.

Article 33

Election and Salary of Commissioners

The commissioners shall be selected from among the most outstanding lawyers for a three-year term, with the right to re-election.

They shall be elected by the Assembly, upon the proposal of the People's Advocate. The requirements of Articles 3 and 10 of this Statute shall also apply to election of commissioners. The salary of the commissioner shall be equal to the two-thirds of the People's Advocate's salary.

Article 34

Termination of Functions And Removal Of Commissioners

The rules in this Statute regulating termination of functions and removal of the People's Advocate shall also apply to the commissioners.

When the position of a commissioner remains vacant, upon the elapsing of the 3-year term or pursuant to items "a", "c" or "ç" of Article 7 as well as Article 8 of this Statute, the People's Advocate, within one month, shall propose to the Assembly the new commissioner to be elected.

Article 35

Employees Of The Office

The staff members of the Office of the People's Advocate shall be members of the Civil Service of the Republic of Albania.

Article 36

Budget

The financial resources for the People's Advocate shall be paid by the state budget, which shall have a separate chapter [line item] for the People's Advocate.

The draft budget shall be proposed by the People's Advocate to the Standing Committee for Economic, Financial and Privatisation Affairs [of the Assembly], which shall submit it to the Assembly for approval pursuant to Statute no. 8379, dated 29.7.1998, "On the drafting and implementation of the state budget."

The People's Advocate shall prepare every year his accounts pursuant to Statute no. 8379, dated 29.7.1998, "On the drafting and implementation of the state budget." 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

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's 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 Privatisation 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 TRANSITORY PROVISIONS

Article 38 *Transitory Provisions*

The Assembly shall elect the People's Advocate within two months from the date of entry into force of this Statute.

The People's Advocate, within one month from his election, shall propose to the Assembly the commissioners.

Article 39 *Internal Regulations*

The People's Advocate, within 3 months from his election and in co-operation with the commissioners, shall adopt internal regulations.

Article 40 *Entry into force*

This Statute shall enter into force 15 days after publication in the Official Journal.