

## LEGAL AID IN CRIMINAL JUSTICE IN VIET NAM

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### I. REGULATIONS ON LEGAL AID IN CRIMINAL JUSTICE

In Viet Nam, before 1997, the right to legal aid was generally recognized in the right to a defence. The right to a defence is a constitutional right recognized in all versions of the Vietnamese constitutions. The 2013 Constitution stipulates: "Any person who has been arrested, held in custody, temporarily detained, prosecuted, investigated, charged or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defence from lawyers or other people" (Clause 4 of Article 31) and for the first time recognizes: "The adversarial principle shall be guaranteed in trials" (Clause 5 of Article 103).

On 6 September 1997, the Prime Minister issued Decision No. 734/TTg on the establishment of organizations providing pro bono legal services for the poor and policy beneficiaries, creating an important legal basis for the emergence and development of a system of legal aid organizations. To flesh out Decision No. 734/TTg, the Ministry of Justice promulgated and coordinated with other ministries and branches in promulgating 15 legal documents quite comprehensively regulating legal aid organizations and activities; guiding the establishment, organization and operation of legal aid organizations and their payroll, personnel and material foundations; subjects, scope and domains of legal aid; building and development of a contingent of legal aid collaborators; management of legal aid and professional operations; and funding for legal aid activities.

On 29 June 2006, a historic step forward in legislative activities in the field of legal aid was that the National Assembly passed the Law on Legal Aid, raising the institutional level from the Prime Minister's Decision. The introduction of this Act consistently demonstrated the Party and State's policy in providing legal aid and legal support to protect citizens' legitimate rights and interests, especially the disadvantaged ones.

However, facing the new development requirements of the country, the implementation of the 2013 Constitution and many important new laws promulgated by the National Assembly, requirements for institutional modification to improve the quality of legal aid were raised. Therefore, on 20 June 2017, the XIV National Assembly approved the new Law on Legal Aid. The introduction of the Law on Legal Aid in 2017 marked an important milestone in perfecting the institution of legal aid in particular and implementing the 2013 Constitution on human rights, basic rights and obligations of citizens in general, thereby continuing to affirm that legal aid is an important element in the criminal justice system and the responsibility of the State in ensuring human rights and citizens' rights for legal aid beneficiaries.

The Criminal Procedure Code is an important legal document that is closely related to legal aid activities. Article 16 of the Criminal Procedure Code 2015 stipulates:

An accused person is entitled to defend himself or be defended by a lawyer or another person. Competent procedural authorities and persons are responsible for informing accused persons, defendants and litigants of all of their rights of defence, legitimate rights and benefits according to this Law. Moreover, competent procedural authorities and persons shall provide explanations and guarantee the implementation of all of such rights and benefits.

It can be said that this is an important principle for legal aid institutions. To ensure this principle, the Criminal Procedure Code 2015 has a number of provisions on legal aid such as: (1) Supplementing the

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category of advocates as legal assistants to defend free of charge for policy beneficiaries; (2) Specifying the responsibilities of the procedure-conducting agency related to the guarantee of the right to legal aid specified in Article 71 (Responsibilities for announcement and explanation of rights and duties of participants in proceedings and assurance of their execution of such obligations and rights), Article 76 (Appointment of defence counsel) and articles related to assuring the rights and obligations of procedure participants; (3) Supplementing regulations on principles of conducting proceedings against persons under 18 years old (Article 414), including ensuring the right to a defence and legal aid.

At the same time, the Law on Temporary Detention and Custody also stipulates the rights and obligations of persons held in custody and temporary detention to receive instructions and explanation and exercise self-defence, ask for the appointment of defence counsel and legal aid (Point dd, Clause 1, Article 9).

To solidify the above provisions of the Law on Legal Aid, the Criminal Procedure Code, the Law on Temporary Detention and Custody, in order to ensure the right to legal aid of persons arrested, detained and accused, ministries have issued many specific guiding circulars such as the Circular of the Ministry of Public Security,<sup>1</sup> the Joint Circular of the Ministry of Justice, the Ministry of Public Security, the Ministry of National Defence, the Ministry of Finance, the Supreme People's Procuracy and the Supreme People's Court.<sup>2</sup>

Up to now, it can be said that the legal framework on legal aid in criminal justice has been relatively comprehensive, further affirming that legal aid is a legal institution associated with judicial institutions, establishing the State's responsibility in ensuring human rights and citizenship for the disadvantaged groups who cannot afford legal services and policy beneficiaries who need attention and help in specific cases directly related to their legitimate rights and interests.

## **II. LEGAL AID PROVIDERS AND THEIR ROLE IN CRIMINAL JUSTICE: LEGAL AID BENEFICIARIES; FIELDS AND FORMS OF LEGAL AID PROVISION**

### **A. Legal Aid Providers and Their Role in Criminal Justice**

#### **1. The Law on Legal Aid**

According to the Law on Legal Aid, legal aid-providing organizations are state legal aid centres and organizations participating in legal aid provision (including law-practicing organizations and legal counselling organizations signing legal aid contracts or registering to participate in legal aid provision in accordance with Law on Legal Aid).

Legal aid-providing persons include: (i) legal aid officers; (ii) lawyers providing legal aid under contracts signed with state legal aid centres; and lawyers providing legal aid as assigned by organizations participating in legal aid provision; (iii) legal counsellors with at least two years' experience in legal counselling in organizations participating in legal aid provision; and (iv) legal aid collaborators.

#### **2. The Law on Lawyers**

In addition to the Law on Legal Aid, the Law on Lawyers also stipulates that lawyers have an obligation to provide pro bono legal aid (at least four hours per year). Legal aid activities of lawyers according to the Law on Lawyers are different from legal aid activities according to the Law on Legal Aid. Providing pro bono legal aid to legal aid beneficiaries is not only an obligation but also a professional ethic of lawyers.

#### **3. Role of Legal Aid Officers and Lawyers Providing Pro Bono Legal Aid in Criminal Justice**

The 2015 Criminal Procedure Code stipulates that legal assistants and lawyers have the following roles: (1) a defence counsel (Article 72), (2) a defender for the legitimate rights and interests of persons facing accusations or requisitions for charges (Article 83), and (3) a defender for the legitimate rights and interests of crime victims or litigants (Article 84).

<sup>1</sup> Circular No. 46/2019/TT-BCA, dated 10 October 2019, by the Minister of Public Security.

<sup>2</sup> Joint Circular No. 10/2018/TTLT-BTP-BCA-BQP-BTC-VKSNDTC-TANDTC, dated 29 June 2018, issued jointly by Ministry of Justice, the Ministry of Public Security, the Ministry of National Defense, the Ministry of Finance, the Supreme People's Procuracy and the Supreme People's Court.

## **B. Legal Aid Beneficiaries**

According to the Law on Legal Aid, there are 14 groups of legal aid beneficiaries: (1) People with meritorious service to the revolution; (2) members of poor households; (3) children; (4) ethnic minority people residing in areas with extremely difficult socio-economic conditions; (5) the accused who are aged between 16 years and under 18 years; (6) the accused who are members of households living just above the poverty line; (7) people experiencing financial difficulties who fall into one of the following cases: (i) natural parents, spouses or children of fallen heroes or persons nurturing fallen heroes during their childhood; (ii) agent orange victims; (iii) the elderly; (iv) people with disabilities; (v) victims in criminal cases who are aged between 16 years and under 18 years; (vi) victims of domestic violence cases or matters; (vii) victims of human trafficking under the Law on Human Trafficking Prevention and Combat; (viii) HIV-infected people.

## **C. Fields and Forms of Legal Aid Provision**

In Viet Nam, legal aid is provided in law-related fields, except the fields of trade and commerce. Forms of legal aid provision include: (1) participation in legal proceedings; (2) legal counselling; (3) representation beyond legal proceedings.

# **III. RESULTS OF LEGAL AID IMPLEMENTATION IN CRIMINAL JUSTICE**

According to Report No. 141/BC - BTP, dated 14 July 2021, by the Ministry of Justice on the preliminary review on five years of implementation of the Legal Aid Innovation Project for the period 2015–2025, from 2016 to 2020, there were 310,081 legal aid cases nationwide, including 92,082 cases involving legal proceedings (accounting for 29.7 per cent of the total number of cases). The number of cases involving legal proceedings increased gradually over the years (2016: 10,937 cases, 2017: 15,519 cases, 2018: 16,886 cases, 2019: 21,244 cases, 2020: 27,496 cases). In 2021 and 2022, despite the impact of the Covid-19 pandemic, legal aid providers continue to exhaust all solutions and combine great efforts to achieve the core goal of carrying out the case with high quality. As a result, the number of legal aid cases, especially those in legal proceedings in 2021, 2022 increased and reached the highest level ever since (33,127<sup>3</sup> cases in 2021 and 32,081<sup>4</sup> cases in 2022).

The quality of legal aid services has improved. Many cases of legal proceedings are effectively implemented by legal aid providers with many cases being sentenced to lighter sentences or transferring crimes or changing the penalty frame to a lower level than recommended by the People's Procuracy. The participation of the legal aid providers team at procedure-conducting agencies assists the procedure-conducting agencies and proceedings-conducting persons to objectively investigate, prosecute and adjudicate, handing out sentences to the right person for the right crime and in accordance with the law. For legal aid beneficiaries who are the accused or defendants, the case which involves legal aid providers helps them maintain peace of mind and confidence because they have spiritual support and legal help. This result is demonstrated in the increasing rate of successful and effective cases, the number of criminal cases accepted by the Trial Panel with favourable circumstances for the defendant at the request of the legal aid officer, the assessment and recognition of the procedure-conducting agencies and proceedings-conducting persons. According to statistics, from 2018 (the year the Law on Legal Aid 2017 took effect) to the end of the first six months of 2020, 62 of 63 provinces had 8,389 successful and effective cases (accounting for 27.84 per cent<sup>5</sup> of the total number of cases of legal proceedings).

According to the report of the Vietnam Bar Federation, the number of legal aid cases (without division of field) that lawyers had performed from 2015 to 2022 is as follows: 7,250 (2015); 85,320 (2016); 18,022 (2017); 20,692 (2018); 12,835 (2019); 17,877 (2020), 7329 (2021); 10998 (2022 – reports from 50 of 63 Bar Associations).

<sup>3</sup> Report No. 90/BC-CTGPL, dated 1 March 2022, by the Legal Aid Department, Ministry of Justice on summarizing legal aid innovation in 2021 and tasks and working solutions in 2022.

<sup>4</sup> <https://tgppl.moj.gov.vn/Pages/chi-tiet-tin.aspx?ItemID=1920&l=Nghiencuutraodoi>

<sup>5</sup> Report No. 141/BC - BTP, dated 14 July 2021, by the Ministry of Justice on the preliminary review of 5 years of implementation of the Project of Legal aid Innovation for the period 2015-2025.

#### **IV. GENERAL AND PARTICULAR DIFFICULTIES AND CONCERNS RELATED TO LEGAL AID IN CRIMINAL JUSTICE FOR OFFENDERS AND VICTIMS**

*Firstly*, people's ability to access legal aid services is still limited, so the annual number of legal aid cases is still low compared to the number of people eligible for legal aid.

*Secondly*, there are legal restrictions to legal aid:

- The right to legal aid has not been stipulated in the Constitution, so some legal aid providers and beneficiaries are not deeply aware of the concept of legal aid in the proceedings, the right to receive legal aid, and the responsibility of the competent authorities, especially the agency conducting the proceedings in ensuring the above right. Therefore, it is not possible to coordinate and create conditions for legal aid practitioners, legal aid providing organizations and legal aid beneficiaries in ensuring the implementation of legal aid rights of the beneficiaries.
- The implementation of provisions of procedural codes and laws related to legal aid beneficiaries is not as effective as intended.

*Thirdly*, although the quantity and quality of legal aid providers have been improved, they still cannot meet the people's legal aid demand. There are only 668 legal aid officers in 63 legal aid centres.

*Fourthly*, many organizations and individuals have not been mobilized to participate in legal aid activities according to the provisions of the Law on Legal Aid (currently there are only 667 of 17,284 lawyers, 159 of 5,000 law-practicing organizations, 39 of 200 legal consultancy centres nationwide participating in legal aid while lawyers and legal consultants have lots of knowledge and skills in legal aid in criminal justice for both offenders and victims).

*Fifthly*, although the beneficiaries of legal aid have been expanded (from 6 groups of beneficiaries to 14 groups of beneficiaries, according to the Law on Legal Aid 2017), those who are not eligible for legal aid according to the provisions of the Law on Legal Aid and cannot afford to hire a lawyer to protect their legitimate rights and interests make up the majority of the population.

Moreover, in some criminal cases, particularly serious cases falling under the jurisdiction of provincial-level investigating agencies, where the accused are the beneficiaries of legal aid, defence counsel must be appointed according to regulations. According to the Criminal Procedure Code 2015, the investigating agency often requests both the State Legal Aid Centre and the Bar Association to appoint defence counsel for the accused. That leads to the case of both defence cases where the Centre and the Bar Association participate in pro bono defence for the same beneficiaries in a case. In cases with a large number of defendants, the number of lawyers and legal aid officers involved is quite large, causing a waste of state resources (costs of remuneration for defence counsel from the state budget).

#### **V. SOME ORIENTATIONS AND SOLUTIONS**

##### **A. Enhancing Access to Legal Aid Services for People**

- Researching the implementation of a mechanism for legal aid providers to be on duty at headquarters or by phone at a number of procedure-conducting agencies (police, courts) so that persons held in custody, accused and defendants can get early access to legal aid.
- Set up and maintain a hotline on legal aid so that the legal aid beneficiaries can call whenever there is a dispute or legal problem.
- Promoting the propagation and dissemination of information on legal aid to the people, to help people access and directly enjoy their rights as prescribed by law; diversifying and innovating/creating

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methods of communication about legal aid (via newspapers, radio, television, internet; drawing/acting plays to introduce legal aid; etc.) which are suitable for each specific area, people's intellectual level, especially suitable for ethnic minority groups.

### **B. Amending and Supplementing a Number of Provisions of the Law Related to Criminal Proceedings**

- The right to legal aid should be recognized in the constitution.
- It is necessary to stipulate the time and procedures for the legal aid to participate as the defender for the legitimate rights and interests, especially the defender for the legitimate rights and interests of the denounced person, the accused person, person subject to prosecution. While the Criminal Procedure Code 2015 clearly stipulates the time when the defence counsel participate in the defence, the regulations on the time and procedures for becoming a defender for the legitimate rights and interests are not detailed, especially in the case of a defender for the legitimate rights and interests of the denounced person or the person subject to prosecution.

### **C. Strengthen Training and Education in Order to Develop Legal Aid Resources; Improve the Quality of Legal aid Providers**

Legal assistants who perform procedures in criminal cases not only help legal aid beneficiaries in terms of legal matters, but also help and encourage them to overcome psychological crises. Therefore, in order to enhance the role of legal aid in participating in criminal proceedings and to protect the rights and best interests of legal aid beneficiaries, it is necessary to do the following:

- Organizing training courses, experience sharing seminars, workshops and other forms to improve the capacity of legal aid providers (including legal aid officers, legal aid collaborators, legal consultants and lawyers participating in legal aid), improve the researching skills of case files, improve questioning skills to clarify the contents of the case, enhance the qualifications of the legal aid providers involved in the case; equip those involved with experience using devices to store the information provided; improve skills to collect documents and evidence related to the case; conduct in-depth study of unclear or contradictory points of evidence, mitigating circumstances of criminal liability, motives, purposes, causes and conditions of crime, identity of legal aid beneficiaries; and further prepare to attend the trial thoroughly when participating in criminal proceedings. Legal assistants need to be familiar with the procedures under the Criminal Procedure Code 2015 and fully participate in investigative activities such as experimental investigation, scene examination, exhumation of corpses, distraint of property, confrontation, identification etc. (The Ministry of Justice and Departments of Justice annually organize many training courses for lawyers, legal aid providers and legal consultants in counselling skills and legal support for offenders and victims. The lecturers are lawyers, legal experts with experience in this field).
- Coordinating with the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Public Security to select appropriate topics to train and draw experience on litigation trials in the spirit of judicial reform for legal aid providers and proceeding-conducting persons. Especially, training them with specific skills and experiences to work effectively with subjects with specific psychological characteristics such as: the accused who are aged between 16 years and under 18 years; the accused who are members of households living just above the poverty line; victims in criminal cases who are aged between 16 years and under 18 years; victims of domestic violence cases or matters; victims of human trafficking under the Law on Human Trafficking Prevention and Combat etc.; gender mainstreaming skills in legal aid implementation.

### **D. Attracting Social Resources**

- Continue to study processes and procedures to create favourable conditions for law-practicing organizations, reputable and experienced legal consultancy centres to participate in legal aid; amending regulations on signing legal aid performance contracts in the direction of simplifying procedures and order for selecting and signing legal aid performance contracts. At the same time, the study has specific regulations to honour agencies, organizations and individuals participating and contributing to legal aid activities.

- Coordinating with socio-political, socio-political-professional organizations, socio-professional organizations (such as the Vietnam Lawyers Association, the Vietnam Bar Federation, Vietnam Association for Protection of Child Rights, Vietnam Women's Union etc.) to have solutions to mobilize and motivate members and members of the organization to contribute to the society through participation in legal aid.
- There should be coordination in the provision of legal aid according to the Law on Lawyers in order to take advantage of legal aid resources and save the state budget.

**E. International Cooperation**

Strengthening and expanding cooperation relationships with countries and international organizations on legal aid in general and legal aid in criminal justice in particular in various forms (technical assistance, capacity-building, support resources etc.). In recent years, the Ministry of Justice has also received support from a number of projects such as from the UNDP, UN Women, UNICEF, USAID etc.