



MANUAL

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THE NEW LAW ON LEGAL AID





DEUTSCHE STIFTUNG FÜR
INTERNATIONALE RECHTLICHE
ZUSAMMENARBEIT E.V.



Projekt i zbatuar nga:



MANUAL

THE NEW LAW ON LEGAL AID

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PREFACE

Providing for access to justice by way of free legal aid

Justice reform and legal amendments being undertaken in this context have focused on guaranteeing the right of equal access to the justice system for all, especially with a focus on citizens in need and special categories of beneficiaries provided for by law.

This reaffirmed the commitment of the Albanian State and of the Ministry of Justice to take all necessary steps for a system of fair, transparent and efficient legal aid.

Access to the justice system is a fundamental principle of the rule of law. In its absence, citizens are unable to convey their voice, exercise their rights, contest discrimination and hold decision-makers accountable.

Assigning specific importance to access to justice, the Ministry of Justice has prioritized this right guaranteed in international acts ratified by the Albanian state, but also in the framework of the implementation of law no. 111/2017 “On legal aid guaranteed by the state”, thus engaging intensively in order to implement effectively this right in practice.

Citizens can now go to court, to public administration institutions, be exempt from fees or all costs of judicial litigation and have the opportunity to benefit from non-discriminatory and comprehensive services that promote access to justice, as well as concentrate their focus on the citizen.

These are the initial impacts of the objectives we have as a government in terms of access to justice, which focus on the implementation of the law on state-guaranteed legal aid by all stakeholders, the expansion of primary legal aid services throughout Albania and specialization of attorneys providing secondary legal aid.

Another novum being brought about by this law is the creation of an

institutional network which are charged with the responsibility of providing legal aid services for each form of legal aid, while mentioning here primary, secondary legal aid, exemption from all costs of judicial litigation up to in the execution of the decision.

The current focus and priority is to provide a quality and effective legal service, aiming at effectively ensuring the principle of equality of arms between the parties not only in terms of form but also in term of content. This objective is seen as closely linked to another very important component of providing free legal aid which is the quality and oversight of this service. The guarantee and provision of the service, the cases being handled, the quality and the professionalism that accompanies these services are closely related to each other, as part of a unique service package dedicated to the citizen.

The above instruments aim at and focus on the service to the citizens, but at the same time it serves us to improve our institution, the legal means, while having the final goal, the justice system.

In this short speech, I take this opportunity to thank all the stakeholders involved with whose unstinting support we have managed to guarantee free legal services to all citizens in need. Special thanks go to the EURALIUS V Mission for publishing this handbook which will definitely be an added value for all practitioners of the law.

With the conviction and belief that all the actors involved will continue the cooperation with the same energy and dedication, I wish you success in this important mission!

Ms. Etilda Gjonaj (Saliu), Minister of Justice

Dear readers,

The High Judicial Council, as the constitutional governing body of the judicial system, has the constitutional and moral responsibility to guarantee the right of individuals to access independent, efficient and impartial courts.

The Council considers that free legal aid and guaranteeing it by the state is one of the facilitation mechanisms to increase access to justice. This is especially true for groups in need, which can not afford to pay court fees before the courts and at the same time to provide effective legal advice and representation.

The decentralization of the free legal aid scheme, through the involvement of the courts in this process, created the premises for an increase in citizens' access to justice. However, such a prerequisite would not be possible without the interaction and cooperation of all actors, who make up the mosaic of the free legal aid scheme.

I am pleased to see such a collaboration materialized in the drafting of the Free Legal Aid Manual, which we publish today! The handbook provides an overview of the free legal aid system, legal framework and institutions involved. In order to be a practical product, which helps law practitioners, the manual describes all the procedural steps required to be taken in court proceedings regarding the provision of free legal aid.

Through this introduction, I avail myself of this opportunity to thank the Euralius V Mission, the Ministry of Justice and the Directorate of Free Legal Aid, who have consistently demonstrated a positive spirit of cooperation in ensuring public access to justice.

Our common path will be long, but owing to mutual commitment, moral and professional responsibility and unstinting cooperation, I am convinced that this path will orient us closer to the needs of citizens.

Judicial services are public services and as such they must be guaranteed to all citizens, without distinction, ensuring the functioning of the rule of law, where freedoms and human rights are paramount!

I wish you a pleasant reading.

Ms. Naureda Llagami, Chairwoman of the High Judicial Council

Dear readers,

The Directorate of Free Legal Aid, as an institution dedicated to the good administration and well-functioning of the legal aid system guaranteed by the state, has the responsibility to guarantee equal access to justice through free legal services.

With the initiation of the Justice Reform, being a profound reform that completely affected every element of the justice system, incurred also a profound reform of the free legal aid system, while offering a new spirit, in synchronisation with the requirements and legislation of the Union European. It is now the duty of the institutions responsible for the administration and functioning of the legal aid system to ensure the effective implementation of this law in practice, but above all of the staff and lawyers who provide legal aid, who must keep in mind that their mission in addition to the professional character above all is a moral and humanitarian mission.

The publication of this manual today is the outcome of a great work and a cooperation which has started since the beginning of the functioning of the Directorate. The manual provides an overview of how the legal aid system works and the legislation in force and all the stakeholders involved in this system are aligned. The purpose of this manual is to be widely used in practice by all actors involved in the legal aid system but also by all law practitioners. The manual serves as a guide that analyzes in detail the legal framework and reflects various aspects of implementation in practice.

Through this preface, I avail myself of this opportunity to thank the EURALIUS V Mission, the Ministry of Justice, the High Judicial Council but also the Courts with which the Directorate has signed Memoranda of Understanding, as strong collaborators and supporters in fulfilling the joint mission of guaranteeing access to equal in justice through free legal services.

I am convinced that we are already on the right track in fulfilling our common goal and mission.

Together, we can be as close as possible to citizens in need and vulnerable groups!

I wish you a pleasant reading.

Mr. Ergys Qirici, Director General of the Directorate of Free Legal Aid

I. Introduction

1. Overview

The Law no. 111/2017 on State Guaranteed Legal Aid (Law on Legal Aid) entered into force on 1 June 2018.¹ It foresees a **comprehensive system of**

- Primary Legal Aid (“out of court support”)
- Secondary Legal Aid (representation by an advocate in a court procedure) and the
- Exemption from court fees and court costs.

The Law on Legal Aid is implemented by a number of **Bylaws**.

Relevant provisions in relation to the application of the Law on Legal Aid can also be found in a number of **other laws**.

This **manual’s aim** is to give providers and users of legal aid a **first systematic overview** on the new system of legal aid and some guidance for the practical application of the new system of legal aid.

The manual lays out inter alia the institutional and legislative framework, the conditions for legal aid, the three types of legal aid, the procedure to request and grant legal aid including the appeal procedures, the selection and replacement of the individual advocate and reimbursement. Where needed, the manual also refers to the relevant provisions of other laws, such as the Codes on Civil, Criminal and Administrative Procedure. Possible practical solutions should be provided for the most common procedural steps and situations.

Since on some situations the legal framework is not entirely clear and leaves room for interpretation, the manual can for many situations only elaborate possible solutions but not claim to come up with the only possible solutions.

¹ Since at this point of time the transitional provisions (Article 36 Law on Legal Aid) have no practical impact, they will not be further elaborated.

2. *General Scope of the Law on Legal Aid*

The Law on Legal Aid (Article 1)² governs:

- the **forms, the conditions, the procedure and the rules** for
- the **organisation and administration** of state guaranteed legal aid,
- with the **aim** of the protection of fundamental rights of the individual and his legitimate interests.

3. *Principles (Article 4)*

The principles are (the footnotes refer to specific provisions of the Law on Legal Aid where these principles are implemented)

- Equal access
- Non-discrimination
- Professionalism and quality³
- Efficiency and cost effectiveness⁴
- Confidentiality
- Protection of vulnerable persons⁵ and
- Avoidance of conflicts of interest.⁶

4. *Secondary Legal Aid*

Chapter V deals with Secondary Legal Aid. This is, simplified said, the **representation of a person for the preparation of a law suit and then in a court procedure** by a free of charge advocate.

5. *Exemption from Court Costs and Fees*

Chapter VI governs the Exemption from Court Costs and Fees. Persons may be exempted from the obligation to pay Court Fees and Court Costs.

² Articles without further reference are articles of the Law on Legal Aid.

³ Implemented inter alia through Article 15 (2) (c) for NPOs providing primary legal aid, Article 24 (1) (c) for advocates, trainings of advocates (Article 9 (d)) and for specially trained officers (Article 8 (g)) and supervision, data collection, evaluation and quality assessment by the Directorate (Article 8 (b), (d), (l), (ll), (o)).

⁴ Implemented inter alia through the possibility for reimbursement (Chapter VII Law on Legal Aid) and the Bylaws on the remuneration of advocates, experts and witnesses.

⁵ See Article 11 for special categories of beneficiaries.

⁶ See Article 17 (5) for primary legal aid and Article 24 (5) for secondary legal aid.

6. Primary Legal Aid

Chapter IV foresees institutions that provide, simplified said, **out of court legal support**.

7. Sources of Information

The Forms, Bylaws and NPOs that provide primary legal aid are published on the websites of the Ministry of Justice, the Chamber of Advocates and the Directorate (Article 35).

II. The Legal Framework

1. Overview

Legal Aid is governed by the **Law on Legal Aid and the bylaws** passed under this law.

These legal sources though do not cover all aspects. For some questions the **general legal framework** applies (in some provisions the Law on Legal Aid explicitly refers to such other provisions, e.g. Article 3 (c) concerning secondary legal aid in criminal procedures)), such as for procedural questions

- the Code on Civil Procedure,
- the Code on Criminal Procedure,
- the Code on Administrative Procedure,
- the Advocates Law
- the Law on Court Fees
and for certain organisational issues
- the Law on the Organisation and Functioning of the Ministry of Justice
and
- the Law on Organization and Functioning of the State Administration.

The specific chapters of this manual refer to these laws for further details.

2. EU - Law

Art 47 Charter of Fundamental Rights of the European Union reads as follows:

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
(..)

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

The ECJ (C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft*

mbH v Bundesrepublik Deutschland) has concluded on Article 47 Charter of Fundamental Rights of the European Union inter alia as follows:

'() In making that assessment, the national court must take into consideration

- the subject-matter of the litigation;*
- whether the applicant has a reasonable prospect of success;*
- the importance of what is at stake for the applicant in the proceedings;*
- the complexity of the relevant law and procedure; and*
- the applicant's capacity to represent himself effectively.*

In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts.'

3. International Law

a. Council of Europe

i. Overview

The following legal acts of the Council of Europe are specifically relevant:

- Article 6 ECHR
- Resolution (78) 8 on Legal Aid and Advice
- Recommendation R (93) 1 on effective access to the law and to justice for the very poor

ii. Article 6 ECHR - Overview

Article 6 ECHR reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing (...)

Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

That means that there is an explicit provision in Article 6 ECHR for legal aid in **criminal law** but not for civil law. The right of access to a lawyer in criminal proceedings applies throughout the entire proceedings, from police questioning to the appeal (*Salduz v. Turkey*).

iii. Article 6 ECHR – Criminal Procedures

Determining whether the ‘interests of justice’ (merits) require the provision of legal aid in criminal law involves taking three factors into account, namely:

- the seriousness of the offence and the severity of the potential sentence;
Where an individual’s liberty is at stake, the interests of justice in principle call for legal representation (*Benham v. the United Kingdom*). This obligation arises even if there is only a possibility of a custodial sentence (*Perks and others v. the United Kingdom*).
- the complexity of the case;
Where “the proceedings were clearly fraught with consequences for the applicant” and the case is complex, legal aid should be granted (*Pham Hoang v. France*).
- the defendant’s social and personal situation (*Quaranta v. Switzerland*).
Applicants do not have to show that the absence of legal aid caused “actual damage” to their defence; they must only show that it appears “plausible in the particular circumstances” that a lawyer would be of assistance (*Artico v. Italy*).

Example: In *Zdravko Stanev v. Bulgaria* the applicant was unemployed. He complained that he was refused legal aid in criminal proceedings for forging documents in a civil action. He was convicted of the offence and fined €250. He was also ordered to pay €8,000 in damages.

The ECtHR noted that the applicant was initially at risk of a prison sentence; although none was imposed, the damages award was significant in view of his financial situation. The applicant had a university degree, but no legal training. The proceedings were not of the highest level of complexity but involved issues regarding the rules on admissibility of evidence, the rules of procedure and the meaning of intent. Additionally, the criminal offence with which the applicant was charged involved the impugment of a senior member of the judiciary and called into question the integrity of the judicial process in Bulgaria. A qualified lawyer would undoubtedly have been in a position to plead the case with greater clarity and to counter more effectively the arguments raised by the prosecution. The Court ultimately found a violation of Article 6 (3) (c) of the ECHR.

iii. Article 6 ECHR – Civil Procedures

There is no obligation to provide legal aid for all proceedings involving **civil rights and obligations** (*Del Sol v. France*).

Nevertheless also in civil law procedures according to the case law of the ECtHR under certain circumstances legal aid has to be provided:

Airey vs Ireland: “the right to a fair trial could include an implied right to legal aid in civil cases if it is indispensable for an effective access to justice, e.g. when the procedure or case is very complex or when legal representation is compulsory”.

Steel and Morris vs UK: “Depending on the importance, complexity of the case and applicant’s abilities to represent himself”.

P., C. and S. v. the UK: “There is no automatic right (...) for legal aid or legal representation’ in proceedings which determine civil rights. Two circumstances do call for legal aid or representation:

- 1) indispensability of assistance (due to compulsory legal representation or the complexity of the procedure) or
- 2) fairness in light of what is at stake.”

There may be occasions when the possibility of appearing before the High Court in person, even without a lawyer’s assistance, will meet the requirements of Article 6 § 1 (even if the applicant was faced with the burden of proving the truth of the allegations made against the other party) (*McVicar v. The United Kingdom*).

In cases concerning issues of particular importance to an individual (such as contact with their children), legal aid may be required, particularly if an individual is vulnerable (for example, has mental health problems) (*Nenov v. Bulgaria*).

Refusing legal aid on the ground that an appeal did not, at the time of application, appear to be well-founded may in some circumstances impair the very essence of an applicant’s right to a tribunal (*Aerts v. Belgium*).

iv. Article 6 ECHR – General Questions

Legal aid is an individual right and not an obligation that had to be exercised by the party (*Černius and Rinkevicius v. Lithuania*). The fact that a party did not apply for legal aid to enable them to be represented by specialist lawyers, does not mean that they waived certain other procedural rights (in the concrete case: the right to the guarantees of adversarial process) (*Meftah and Others v. France*).

Legal aid does not have to take a particular form; states are free to decide how to meet their legal obligations (*Airey vs Ireland*). It though has to be effective: The requirements of a fair trial are though not met if the

legal aid lawyer has never visited the (hospitalized, mentally ill) party he represented (*A.N. v. Lithuania*).

States are **not obliged to spend public funds to ensure total equality of arms** between the assisted person and the opposing party, “as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary” (*Steel and Morris vs UK*).

To avoid arbitrariness, a legal aid system should establish a **fair mechanism for selecting** cases likely to benefit (*Gnahoré v. France*). It is for states to establish systems that comply with the ECHR. Failing to make a formal decision on a legal aid request may violate Article 6 (1) (*A.B. v. Slovakia*).

Further relevant decisions of the ECtHR are mentioned in the relevant chapters of this manual.

b. UN

Two specifically relevant acts exist:

- **The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** 2012 (UN Doc. A/C.3/67/L.6, at) and
- **UN International Covenant on Civil and Political Rights (“ICCPR”)** (Article 14 (3)(d)) which reads as follows:

“3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality
 (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;”
- Article 16 of the 1951 Convention Relating to the Status of Refugees (**Geneva Convention**) (which may have some importance in the application of Article 10 c) states as follows:

“Access to courts 1. A refugee shall have free access to the courts of law on the territory of all Contracting States. 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from cautio judicatum solvi. 3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence”.

4. *The Law on Legal Aid*

a. *The Law itself*

The Law on Legal Aid is structured as follows:

- Chapter I: General Provisions
 - o Article 1: Scope of the Law
 - o Article 2: Objective of the law
 - o Article 3: Definitions
 - o Article 4: Principles of legal aid
 - o Article 5: Forms of legal aid
- Chapter II: Organization of Legal Aid
 - o Article 6: The institutions involved
 - o Article 7: Minister of Justice
 - o Article 8: Directorate for Free-of-Charge Legal Aid
 - o Article 9: National Chamber of Advocates
- Chapter III: Beneficiaries of Legal Aid
 - o Article 10: General eligibility criteria
 - o Article 11: Special categories of beneficiaries
 - o Article 12: Insufficient income and property
- Chapter IV: **Primary** Legal Aid
 - o Article 13 to 16: Institutions delivering primary legal aid
 - o Article 17: Request and procedure
- Chapter V: **Secondary** Legal Aid
 - o Article 18: Overview
 - o Article 19 to 23: Request and procedure
 - o Article 24: Delivery of secondary legal aid by advocates
- Chapter VI: **Exemption** from fees and costs
 - o Article 25: Overview
 - o Article 26 to 27: Request and procedure
 - o Article 28: Effectuation
- Chapter VII: **Reimbursement**
 - o Article 30: Reimbursement from the losing party
 - o Article 31: Reimbursement from the beneficiary
 - o Article 32: Reimbursement from the beneficiary in case of false information

- Chapter VIII: **Final and transitional** provisions
 - o Article 34: Bylaws
 - o Article 35: Publications
 - o Article 36: Transitory provisions
 - o Art 38: Entry into force

b. The Bylaws

The following bylaws exist:

- **Concerning the Directorate:** Order of the Prime Minister No. 59; Date 25.03.2019 about the Approval of the Structure and Organic of the Directorate of Free Legal Aid
- **Concerning primary legal aid**
 - o Decision No. 55 dated 6.2.2019 of the Council of Ministers on the determination of procedures and documentation for the authorization of Non-Profit Organizations providing state guaranteed primary legal aid
 - o Decision No. 110 dated 6.3.2019 by the the Council of Ministers determining the procedures and rules for the selection of the Non-Profit organizations being authorized for providing the primary legal aid guaranteed by the state, benefiting funds out of the state budget and the way of their financing method
 - o Appendix 1 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state'
- **Forms (Order No 225 dated 25/3/2019 on the Approval of the Forms of Legal Aid guaranteed by the State):**
 - o Request and self-declaration
 - Appendix I: Form of the request and self-declaration for primary legal aid
 - Appendix II: Form of the request for secondary legal aid;
 - Appendix III: Form of the request for exemption from payment of judicial fees and judicial expenses
 - Appendix IV: Form of self-declaration regarding the income and properties
 - Appendix V: Form of self-declaration regarding the specific categories
 - o Registration forms
 - Appendix VI: Form of register for registering the requests and self-declarations according to forms

- Appendix VII: Form of register of non-profit-making organizations providing primary legal assistance
- o Appeal
 - Appendix VIII: Form of complaint against the decision rejecting the request for secondary legal aid
- **Concerning advocates:**
 - o Model contracts with advocates (Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state' and Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process)
 - o Lists of advocates, principle of rotation and selection and replacement of advocates
 - Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process and
 - Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes
 - o Remuneration criteria and payment procedure (Joint Instruction No 18, dated 5.8.2020, on the approval of the criteria for obtaining payments and remuneration fees for lawyers providing secondary legal aid)
- **Concerning the exemption from fees and costs**
 - o Remuneration fees for experts and witnesses (Instruction No 4, dated 12.12.2012, of the Council of Ministers "On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial" and Instruction on some amendments and addenda to instruction No 4, dated 12.12.2012, of the Council of Ministers "On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial")
 - o Procedures for the payment of court costs (Instruction of the Minister of Justice No. 6, dated 20/08/2019, on rules and procedures

for making the payments of the judicial expenses, wherefore the exemption has been decided in the event of granting legal aid)

- **Concerning the recovery of fees and costs**
 - o Bylaw on the procedure, the periodicity and the rules of verification of the change of circumstances (Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits)
- **Concerning the collection of data**
 - o Instruction No. 1, dated 08/03/2019 of the Minister of Justice on “The approval of rules and procedures for the collection, completion and administration of registers’ data”

5. The Code on Civil Procedure, The Code on Criminal Procedure and The Code on Administrative Courts and certain other national laws

These laws contain on one hand provisions that deal explicitly with legal aid, on the other hand general provisions that are relevant when the Law on Legal Aid is applied in a concrete procedure. Those provisions are elaborated to show how the different steps in the procedure for the request for, the decision on and the implementation of legal aid works in a concrete procedure.

III. The Institutions involved

1. Overview

The following institutions are involved in the organization, administration and implementation of the system of legal aid:

- Minister of Justice (Articles 6 and 7)
- The Directorate of Legal Aid (Articles 6 and 8) including the specially trained officers (Primary legal aid service centers) (Article 14)
- National chamber of advocates (Articles 6 and 9)
- Local chamber of advocates (Article 24 (2))
- The Courts (Article 6)
- The Proceedings Bodies (Article 21)
- NPOs providing primary legal aid (Article 15)
- Legal clinics at the Higher Education Institutions providing primary legal aid (Article 16)

2. The Minister of Justice (Article 7)

The Minister of Justice is mainly responsible for budgetary and supervisory issues, policy and law making and reporting. These tasks and responsibilities can be grouped as follows:

- proposes to the Ministry of Finance the **annual draft budget** for legal aid
- **reports** every year in the Assembly on the situation of the system of legal aid
- concerning **law making**
 - approves and publishes various form sheets
 - approves the model contracts
 - approves the rules and procedures for the collection, filling and administration of the information of the request register and the self-declarations of the subjects of this law and of the register of delivering primary legal aid
 - makes the proposal of the internal organization of the Directorate for Free-of-Charge Legal Aid (Article 8 (1))

- approves the rules and the procedures of making the payments of court costs and fees (Article 28 (4))
- approves the procedure, the periodicity and the rules of verification of the change of circumstances (Article 31 (1))
- approves the other bylaws named in Article 34 (1) to (3) and (5)
- approves the **establishment of primary legal aid service centres**, after having received prior the opinion of the High Judicial Council
- **authorizes NPOs providing primary legal aid** (Article 15 (1))
- approves (after having received prior the opinion of the Directorate for Free-of-Charge Legal Aid and the National Chamber of Advocates) the **criteria and methodology for assessing** the quality of delivery of legal aid services and the **procedures of the supervision** by the Directorate for Free-of-Charge Legal Aid of secondary legal aid services
- concerning **payments**
 - approves (with a joint instruction with the minister responsible for Finances, after having received prior the opinion of the National Chamber of Advocacy,) the criteria for receiving payments and the relevant remuneration fees to advocates, who provide secondary legal aid services;
 - approves the procedures that are followed by the Directorate for Free-of-Charge Legal Aid regarding the payments for court costs
- **publishes** on the official website of the Ministry of Justice
 - the list of advocates offering secondary legal aid services and
 - the list of authorized not for-profit organizations that offer primary legal aid services;

3. *The Court and Proceeding Body*

The Courts (Article 6) and proceedings body (Article 21) are competent for the approval of **secondary legal aid and the exemption from court fees and costs**.

The proceedings body (Article 21) also appoints and replaces the concrete advocate (Article 24 (1) (c), (3) and (6); see also the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process).

4. The Directorate Of Free Legal Aid (The Directorate)

a. Overview

The Directorate is the **main actor** in the administration and implementation of the system of state guaranteed legal aid. It is a public legal person under the subordination of the Ministry of Justice. Its tasks can be grouped as follows:

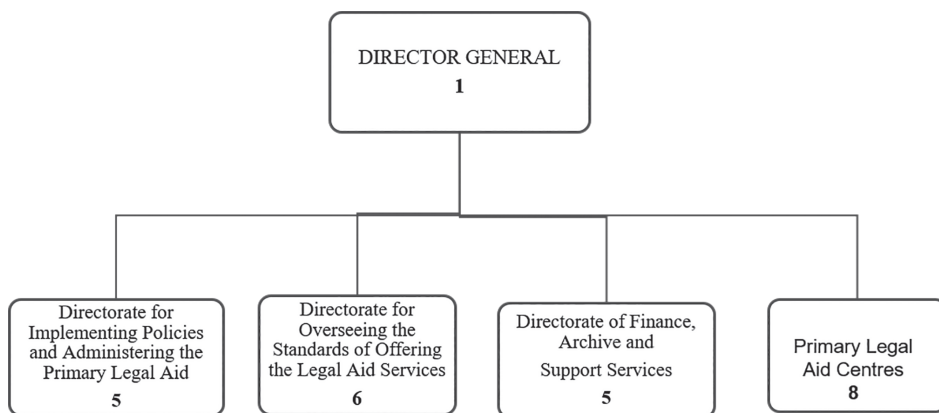
- Organization and administration of the system of legal aid as such
- Drafting of bylaws
- Certain responsibilities in the administration of specific cases of legal aid

It was established with the Order of the Prime Minister No. 59; Date 25.03.2019 on the Approval of the Structure and Organigram of the Free Legal Aid Directorate.

b. Internal Organisation of the Directorate

The detailed structure is laid down in the Order of the Prime Minister No. 59; Date 25.03.2019 on the Approval of the Structure and Organigram of the Free Legal Aid Directorate. The number of employees of the Directorate in total will be 25 persons (Article 3 of the Order).

Its structure shall be as follows:



c. Administration and Implementation of the system of legal aid as such

The Directorate's tasks can be summarized as follows:

- Reporting to the Ministry of Justice;

- Implementing the policy on legal aid;
- Managing and proposing (planning) the budget on legal aid;
- Supervision and quality assessment;
- The conclusion of contracts with authorized Non Profit Organizations delivering primary legal aid and with advocates delivering secondary legal aid
- The management of primary legal aid service centers
- Data management including the register of requests and self-declaration.

This task is further specified in the Instruction No. 1, dated 08/03/2019 of the Minister of Justice on “The approval of rules and procedures for the collection, completion and administration of registers’ data”. It applies to a) requests and self-declarations of the beneficiary and b) the data of the register of non-for-profit organizations providing primary legal aid.

- Publications / Public relations
- Organisation of awareness activities and legal education
- Publication of lawyer’s list for secondary legal aid (Article 8/2 (h);
- Drafting of sublegal acts.

d. Responsibilities in the administration of specific cases of legal aid

The Directorate’s tasks are:

- The payment of advocates and court costs
- To effectuate reimbursement
- In secondary legal aid and concerning the exemption from fees and costs the Directorate
 - o gets decisions on secondary legal aid and exemptions according to chapter VI notified (Article 23 (ç), Article 21 (3) and Article 27 (4)) and
 - o examines and lodges possible appeals (Article 22 (9) and Article 27 (3))

e. Drafting

The Directorate is responsible for the drafting of certain bylaws.

5. The National and Local Chambers of Advocates

a. Overview

Some tasks are carried out by the National Chamber of Advocates and some by the Local Chamber of Advocates.

b. The National chamber of advocates (Article 9)

The National chamber of advocates *inter alia* approves, concerning the advocates delivering secondary legal aid,

- the criteria and the procedures for their selection,
- the principle of rotation and
- the list of advocates (see for all: Articles 3 to 10 of the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process and the Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes).

c. The Local chamber of advocates (Art 24 (2))

In cases where the advocate is not appointed or replaced by the proceeding body (Article 21), the Local chamber of advocates

- appoints from the list of advocates (drafted by the national chamber) according to the principle of rotation the advocates delivering secondary legal aid and
- replaces them under certain circumstances.

6. The Providers of Primary Legal Aid

See the chapter on primary legal aid.

IV. Criteria for Legal Aid

1. Overview

Articles 10 to 12 stipulate **general criteria** that have to be fulfilled both to qualify for primary and secondary legal aid and the exemption of costs and fees. The following paragraphs examine which of these articles apply under which circumstances.

The provisions on primary and secondary legal aid require **further specific conditions** (see points 6 and 7).

Article 10 deals with the general conditions, Article 11 with special categories of beneficiaries and Article 12 with persons with insufficient income and property.

2. Article 10 (General Personal Criteria)

a. Overview

Article 10 regulates the general conditions every applicant has to fulfil in order to qualify for legal aid. (See also the point on secondary legal aid and reimbursement for details).

The following persons may qualify for legal aid (if they meet the other conditions for legal aid):

- Albanian citizens with domicile or residence in Albania
- Foreign citizens (or stateless persons) with
 - temporary or permanent residence in Albania and permit of stay or
 - who enter legally to Albania and benefit from international agreements ratified or based on the principle of reciprocity and
- Certain “refugees” or asylum-seekers

b. Albanian Citizens

Only Albanian citizens with **domicile or residence** in Albania qualify for legal aid. The question if somebody has a domicile or residence in

Albania is determined according to the relevant provisions on domicile and residence. These are foreseen in the law 10129/2009 on civil status, as amended in 2018.

c. Foreign Citizens and Stateless Persons (as mentioned in Paragraphs b and c)

Article 10 deals with **two categories** of foreign citizens and stateless persons, namely those mentioned in paragraphs b and c on one hand and “refugees” in paragraph ç on the other hand.

Foreign citizens according to paragraphs b and c (or stateless persons) qualify for legal aid if they

- stay in the territory of the Republic of Albania for a temporary or permanent period and have a permit of stay or
- enter legally to Albania and benefit from international agreements ratified or based on the principle of reciprocity

Paragraph b does not (in contrast to paragraph a) refer to the legal terms of residence or domicile but refers to the stay “for a temporary or permanent period” in combination with a “permit of stay in compliance with the legislation in force on foreigners”.

d. “Refugees” (as mentioned in Paragraph ç)

Paragraph ç mentions the following groups of persons:

- Asylum seekers,
- Persons entitled to the status of refugee and
- Persons that are in the process of appeal of administrative and/or judicial decisions for the refusal of the application for asylum or revocation of the decision on the status of refugee in accordance with the legislation in force for asylum in the Republic of Albania.

The terms used in paragraph ç have to be interpreted in line with the respective laws.

e. Legal Persons

According to the wording legal persons, such as limited companies, do not qualify for legal aid.

According to the ECJ (C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*)⁷ legal aid may

⁷ See more differentiated ECtHR: Different treatment of natural and legal persons is justified by the necessity to control the use of public funds; legal aid to (foreign) legal

not under any circumstances be excluded for legal persons and has concluded *inter alia* as follows:

'The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer. In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve. With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, inter alia, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.'

f. Relevant case law on the ECHR and the 1951 Convention Relating to the Status of Refugees (Geneva Convention)

In criminal proceedings legal aid must be available for illegal immigrants without residency papers. In this case, the applicant did not speak the native language (*Biba v. Greece* (2000)).

When serious family law issues are at stake, which affect not only the applicant - for example when contesting child paternity - only particularly compelling reasons would justify the difference in treatment between lawful and unlawful residents (*Anakomba Yula v Belgium* (2009)).

According to the case law of the ECJ (C-391/16, C-77/17 und C-78/17) a stateless person or third-country national, who fulfills the criteria of the **Geneva Convention**, has to be considered a refugee in the sense of Article 14(4) to (6) of Directive 2011/95/EU and the Geneva Convention irrespective if he was formally declared a refugee and thus is eligible to the rights (also Article 16 of the Geneva Convention) conferred to every refugee under the Geneva Convention. It also stressed, that the Directive is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter of Fundamental Rights.

Those principles are implemented in Article 10.

persons may be subjected to reciprocity (*Granos Organics Nacionales S.A. v. Germany* (2012)).

3. Article 11 (Specific Groups of Beneficiaries)

a. Case Law of the ECtHR

The accused or suspected person's personal circumstances are important. The interests of justice test indicates that free legal assistance may be required for persons considered vulnerable, such as children, persons with mental health problems and refugees (*Quaranta v. Switzerland*).

b. Article 11

Article 11 implements the principle of Article 4 (e). It mentions groups of persons who qualify for legal aid irrespective of their income and / or property. Some of these groups are eligible to legal aid only in certain procedures, e.g. criminal procedures, some are eligible to legal aid in all possible procedures. Some of these groups already have particular rights in some procedures, such as under Article 49 Code on Criminal Procedure (mandatory defence). The relation of the Law on Legal Aid to these specific provisions will be elaborated under the relevant points of this manual. The groups covered by Article 11 can be divided in subgroups as follows:

- **Victims:**
 - o victims of domestic violence;
 - o sexually abused victims and human trafficking victims, at any stage of a criminal proceeding
 - o minor victims and minors in conflict with the law, at any stage of a criminal proceeding;
- **Children:**
 - o children living in social care institutions;
 - o children under guardianship who request to initiate a proceeding without the approval of their legal guardian or against their legal guardian
- **Other vulnerable persons:**
 - o persons that benefit from the payment for disability in compliance with the provisions of the law on social aid and services, including also persons that benefit from the status of blindness;
 - o persons undergoing involuntary treatment in mental health service institutions according to the provisions of the legislation in force on mental health;
 - o persons undergoing voluntary treatment in mental health service institutions for serious mental diseases;

- o persons against whom the removal or restriction of the capacity to act is requested, at any stage of this proceeding
- o persons with removed or restricted capacity to act who request to initiate a proceeding against their legal guardian, for regaining the capacity to act without the approval of the legal guardian
- persons who are **beneficiaries of social protection programs**
- persons to whom the right has been infringed through an action or inaction that constitutes **discrimination** on the basis of the decision of the competent organ, according to the legislation in force for protection from discrimination.

4. Article 12 (*Insufficient Income and Property*)

a. Case Law of the ECtHR

The ECtHR has not provided a definition of ‘sufficient means’ (as a condition for legal aid). The particular circumstances of each case will be taken into account to determine whether a party’s financial circumstances justify granting legal aid. The applicant bears the burden of proving insufficient means (*Croissant v. Germany*). All the evidence must be considered, including evidence of the applicant’s status (such as whether s/he has spent time in custody), information provided by the individual, and any evidence contradicting the applicant (*Pakelli v. Germany*).

Determining this question is a matter for national courts, which must assess the evidence in accordance with the requirements of Article 6 (1) (*R. D. v. Poland*).

The ECtHR has held that there will be no violation of Article 6 (1) if an applicant falls outside the legal aid scheme because his/her income exceeds the financial criteria, provided the essence of the right of access to a court is not impaired (*Glaser v. the United Kingdom*).

b. Overview and Scope of Application of Article 12

Article 12 defines under which circumstances persons who fall **under Article 10 but are not already covered by Article 11** may qualify for legal aid. They fulfil the conditions of Article 12 if they have **neither sufficient income nor sufficient property**. Both terms are defined in this law.

The wording of Article 12 seems to refer only to secondary legal aid as it states that “possessed by everyone that proves that they have insufficient income and property to bear the costs for counselling, representation and/or defence in criminal cases, in administrative and in civil law cases”. The

clear wording of chapter III (that is not restricted to secondary legal aid), Article 17 (2) (“(...)shall sign a self-declaration that he/she satisfies the criteria defined in this law (...)”) and Article 25 show that **also for primary legal aid and the exemption from court costs and fees** applicants must either fall under Article 11 or 12.

The criteria of Article 12 apply **irrespective of the value of the claim and the amount of possible costs and fees**.

c. Burden of Proof – the Determination of insufficient Income or Property

Article 12 (1) foresees that the applicant “**proves** that they have insufficient income and property”. There is no corresponding wording in Articles 10, 11 or 17. According to Article 25 (5) (a) the request for secondary legal aid is rejected when “the conditions stipulated in Article 11 and 12 of this law are not fulfilled”. Two questions arise in this respect:

1. Which declarations and evidence must the applicant submit? and
2. What steps must / may the deciding body take to verify these declarations and evidence?

These questions can be answered as follows:

The Law on Legal Aid clearly has the idea that the main piece of evidence to “prove” that the conditions of Articles 11 and 12 are fulfilled, are the respective forms of self-declaration (see Articles 17 (2), 18, 19 (4) and 26 (1)). That means the **Law on Legal Aid already regulates in an exhaustive manner which declarations and evidence** (documentation) the applicant must provide.

These provisions being read together with Article 22 (3) also show that in general the deciding body may (and must) only check if the **forms and documents required by law are complete** and not conduct an elaborate procedure if the declarations and documentation are correct. Article 32 regulates the consequences if it later turns out that the declarations and documentation were incorrect or incomplete: If the given information was incorrect reimbursement can be sought from the beneficiary.

Such an interpretation is also in line with the case law of the ECtHR on Article 6 ECHR. It states that “*The defendant bears the burden of proving that he cannot afford to pay for legal assistance, but he does not have to prove his indigence “beyond all doubt”.* (Pakelli v Germany, ECtHR, Judgment of 25 April 1983).

d. Insufficient Income

i. Definition of the term "Income"

Article 3 (f) defines the term income as follows:

"Monthly incomes that are secured by the family from wages, economic activity, interests from bank accounts, income from immovable property.

In these income will not be included economic aid/social assistance, social pension, unemployment payments, benefits of invalids according to the status of the work of war invalid, payments received from household members that care for persons with disabilities, reimbursement of expenses for energy, reimbursement for medicines and medications for those chronically sick and the hygieno-sanitary package for persons with disabilities."

Having said that it is important to keep in mind that **not all sources of income are considered to be income** in the sense of Article 12.

The definition of "income" is quite narrow and leaves open if also other sources (not explicitly mentioned in Article 3 (f)) of income may be covered under certain circumstances, e.g. such as payments from fiscal amnesties. The purpose of the law (that persons with adequate financial means do not qualify for legal aid) would rather support a broader understanding of the term "income".

ii. Insufficient Income - Overview

For the determination, when an income is insufficient, Article 12 differs if a person **lives in a household or not**. Article 3 (g) defines the term "Household".

iii. Definition of the Term "Household" (Article 3 (g))

"Household is a set of persons, related by marriage or cohabitation or in a parent-child, in the family or custody/guardianship relationship, that are living under the same roof and jointly contributing, financially or otherwise, towards the cost of living."

Having said that, it is important to keep in mind that not in every case the income of all persons living in one house has to be considered when calculating the relevant income in the sense of Article 12.

iv. Income (Article 3 (f)) of a Person living in a Household (Article 3 (g))

A person living in a household (Article 3 (g)) thus qualifies for legal aid if

- the total income of all household members,
- divided by their number,
- is lower than 50 percent of the monthly minimum wage.

This rule does not apply if legal aid is applied for a case against another member of the same household. Then the applicant qualifies for legal aid if his income is lower than the monthly minimum wage.

v. Income (Article 3 (f)) of a Person not living in a Household (Article 3 (g))

In this case the applicant qualifies for legal aid if his income is lower than the monthly minimum wage. The monthly minimum wage (2018) was 26,000 ALL.

e. Insufficient Property

i. Definition of the term "Property" in Art 3 (gj)

"(...)is property of any kind, movable or immovable, as well as the real property rights.

Real estate used by the owner or co-owner as his primary home and property excluded from seizure according to the Civil Procedure Code,⁸ are not considered property in the meaning of this law".

It is thus important to keep in mind that **not every property belonging to the party** is considered to be property in the sense of Article 12.

ii. Insufficient property

The property is deemed to be insufficient in this context if the total value

⁸ "Article 529 Things on which seizure cannot be placed

Exempt from the seizure of the property of the debtor are:

1. things of personal use of the debtor and his family such as: clothing, sheets and covers, furniture to the degree they are necessary for their living;
2. food and fuel which are necessary to the debtor and his family for up to three months;
3. decorations and souvenirs, letters, documents of the family and professional books;
4. books, musical instruments, means of art which are necessary for the scientific and artistic activity of the debtor and his family;
5. for persons earning their livelihood through agricultural and livestock raising activity, up to 3 thousand square meters of land, two animals for tilling land, one cow, 6 sheep or 6 goats, seeds for the future planting as well as the food for those animals for three months;
6. on assistance given to mothers with many children or lone mothers, on the retirement, invalidity or family pensions or on the study fellowship unless the obligation is for sustenance. In this case cannot be seized more than 1/2 of the amount of pension or fellowship;
7. on natural fruits one month before they are ripe;
8. Necessary objects of work for ensuring a living."

does not exceed the value of **36 monthly minimum wages**, that is (taking the minimum monthly wage 2018) 936.000 ALL.

There is no provision in the Law on Legal Aid how the **value of property is evaluated**, e.g. how to evaluate the value of real estate. There are by-laws which foresee reference prices for a square meter of a property in different areas of cities and rural zones. That is the Decision of the Council of Ministers No.132/2018, amended with Decision No.168/2019 "On Methodology of Evaluation of Immovable Property Market Value and Determining the Criteria and Regulations on Tax Obligation". For assets, where no such bylaws exist, taking the aim of the Law on Legal Aid into consideration, it is up to the applicant to indicate the value of his property without the need to provide specific documents as evidence for the value of the property.

5. Additional Criteria for Primary Legal Aid

According to Article 17 (4) a person shall be entitled to the delivery of primary legal aid services on the **same issue or case only once**, except for instances when new relevant circumstances justify the delivery of further primary legal aid services to the same person, on the same issue or case. The applicant has therefore to provide relevant information in the request form (Point 3.3 and 3.4 of the request form for primary legal aid).

6. Additional Criteria for Secondary Legal Aid and the Exemption from Court Costs and Fees

Article 22 (5) (b) and Article 27 (2) regulate that the application for secondary legal aid or the exemption from court fees and costs is rejected when it "is **evidently abusive or manifestly ill-founded**."

This condition is in line with the **ECHR**, as the ECtHR stated that 'Refusing to provide legal aid on the merits – because of insufficient prospects of success, or because of a claim's frivolous or vexatious nature (for example, the claim is brought merely to cause annoyance) – may be legitimate' (*Staroszczyk v. Poland, Steel and Morris v. the United Kingdom*).

7. Change of Circumstances - Reimbursement

Article 31 enables the state (the Directorate) to seek reimbursement from the person that received legal aid if the circumstances have changed. Chapter VIII deals with reimbursement in more detail.

V. Primary Legal Aid

1. *What is Primary Legal Aid?*

Primary legal aid is defined in Article 3 (b) and also Article 3 of Appendix 1 of the Order of the Minister of Justice No 226 dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’. It comprises

- providing of information regarding the legal system and legal acts,
- the delivery of counselling,
 - which “is the delivery of information on the manners and the possibilities of solution of a concrete legal matter” (Article 3 (ç))
- the delivery of advice on the procedures of mediation and the alternative means of dispute resolutions,
- the delivery of assistance in drafting and establishing of documentation to
 - put in motion the state administration or
 - for requesting secondary legal aid
- representation before administration bodies,
 - Secondary legal aid is only provided before (administrative and civil) courts, and
- the delivery of all other forms of necessary legal support not constituting secondary legal aid.

2. *The Providers of Legal Aid*

a. Overview

The possible providers of primary legal aid are

- Specially trained officers in primary legal aid service centers (or other premises) (Article 14)
- NPOs providing primary legal aid (Article 15)
- Legal clinics at the higher education institutions providing legal aid (Article 16).

There is no provision in the Law on Legal Aid regulating which of these institutions provide at which places and to what extent primary legal aid.

b. Structure of Primary Legal Aid according to the Bylaws

According to the Order of the Prime Minister No. 59; Date 25.03.2019 on the Approval of the Structure and Organigram of the Free Legal Aid Directorate there shall be four primary legal aid centers financed by the FLAD budget but will have under its administration also other open centers with the support of the donors.

In addition, there will be NPOs and legal clinics delivering primary legal aid.

c. Specially trained officers in primary legal aid service centres (Article 14)

Primary legal aid shall be delivered at

- legal aid service centers⁹ or
- in other suitable premises by specially trained officers¹⁰ employed at these centers.

Currently FLAD administers primary legal aid centres in Tirana, Elbasan, Lezhe, Durres, Lushnje, Fier, Pogradec, Gjirokaster, Shkodra and Diber.

d. NPOs providing Primary Legal Aid (Article 15)

NPOs that are **authorized** by the state (Article 15 (1)) according to the conditions and procedure laid down in Article 15 (1) and (2) may provide primary legal aid.

The bylaw on the authorization of NPOs is the “Decision No. 55 dated 6.2.2019 of the Council of Ministers on the determination of procedures and documentation for the authorization of Non-Profit Organizations providing state guaranteed primary legal aid”

It governs

- The publication of the relevant information for applications by the Directorate (Article 4)

⁹ A primary legal aid service center (Article 3 (d)) is a specialized unit for the delivery of primary legal aid organized as ‘direct unit offering services to the public’ as per the provisions of the law on the organisation and functioning of the state administration.

¹⁰ A “specially trained officer” is an officer (Article 3 (dh)) graduated from a second cycle of studies in law, as defined in the legislation in force on higher education and who has undergone a special training, and who has then been assigned with the duty to provide primary legal aid in a primary legal aid service centre.

- The information and documentation that has to be provided by applying NPOs (Article 5)
- The submission of the information and documentation by the applying NPO and the examination of the submitted information and documentation by the Directorate (Article 6 to 10) and
- The decision on the authorization of the NPO by the Minister of Justice (Article 11 to 12) and the appeal against that decision (Article 13)
- The validity (two years) and publication of the authorization (Article 14 and 15)
- The revocation of the authorization (Article 16 to 17)
- The registration of data of authorized NPOs (Article 18) with the data specified in Article 8 of Instruction No. 1, dated 08/03/2019 of the Minister of Justice on “The approval of rules and procedures for the collection, completion and administration of registers’ data” and
- Notification obligations by the NPOs (Article 19)

The **selection and financing of NPOs** providing primary legal aid is further determined in the **bylaw** Decision No. 110 dated 6.3.2019 by the the Council of Ministers determining the procedures and rules for the selection of the Non-Profit organizations being authorized for providing the primary legal aid guaranteed by the state, benefiting funds out of the state budget and the way of their financing method. It outlines

- the principles (Article 2)
- the allocation of a yearly budget to NPOs (Article 3)
- the publication of that budget (Article 4) and
- the call for applications for financial support (Article 5)
- the general and specific criteria NPOs have to meet (Article 6)
- the content of applications (Article 7)
- the organization of the evaluation committee and appeal committee that evaluate these applications (Article 8 to 13)
- the process of evaluating these applications (Article 14 to 17)
- the process of the conclusion of the contracts with the NPOs (Article 19) and the content of these contracts (Article 20)
- the possible amount of financial support per NPO (Article 21)
- the obligations of NPOS (Article 22) and their supervision by the Directorate (Article 23) and the consequences in case of breach of contract (Article 24)
- the reporting by the Directorate (Article 25)

The model contract is governed by the Appendix 1 of the Order of the Minister of Justice No 226 dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’.

By order of the Minister of Justice in September 2020, 12 NPOs were authorized to provide primary legal aid as follows:

1. "Counseling Center for Women and Girls"
2. "Protection of the rights of urban and rural women Berat"
3. "Center for integrated legal services and practices"
4. "Young intellectuals of hope"
5. "Center for the Protection of the Rights of the Child in Albania (CRCA)"
6. "Elbasan Women's Forum"
7. "Free Legal Service (TLAS)"
8. "Different and equal"
9. "Albanian Legal and Territorial Institute (ALTRI)"
10. "Center for Civic Legal Initiatives"
11. "Albanian services for refugees and migrants"
12. "Albanian Consumer Center"

e. Legal Clinics providing Primary Legal Aid (Article 16).

Legal clinics (established at higher education institutions) may provide primary legal aid. They can conclude cooperation agreements with the Directorate.

A "Legal clinic" is by definition of Article 3 (ë) "an organizational unit of a higher education institution, organised and functioning in accordance with the provisions of the legislation in force on higher education, and that delivers primary legal aid without a profit motive, in accordance with the definitions in the statute of the higher education institution".

The following legal clinic exist:

- Luarasi University
- European University of Tirana
- Wisdom University College
- Aleksandër Moisiu University, Durrës
- Ismail Qemali University, Vlora
- University College "Bedër"
- University of Tirana, Law Faculty
- "Qirjazi" University
- Albanian Mediterranean University
- Legal Clinic Shkoder

3. How to get Primary Legal Aid? The Procedure (Article 17)

See for the conditions to receive legal aid: point IV.

The application for primary legal aid can be made **orally or in writing**.

The applicant has to fill in a **self-declaration form** with the respective form and attach the documentation required (as foreseen by the sublegal act). The form for the request can be found in Appendix 1 of the Order No 225 dated 25/3/2019 on the Approval of the Forms of Legal Aid guaranteed by the State. The form and self-declaration are **sufficient to prove** that the applicant meets the conditions for primary legal aid. The provider of primary legal aid is not meant to carry out further investigations if the given information is correct.

If the conditions are met (see point IV) primary legal aid is **delivered immediately** (if possible) or a date for the provision of primary legal aid is given to the party.

A **record** is kept with the content as foreseen in Article 17 (7) that is further specified in Art 6 of the Instruction No. 1, dated 08/03/2019 of the Minister of Justice on “The approval of rules and procedures for the collection, completion and administration of registers’ data”.

Each state guaranteed legal aid service provider shall periodically send to the Directorate every month, the data of requests and self-declarations of the requesting entities submitted in order to receive state guaranteed legal aid. The data is sent within the first 5 (five) days of the month following the reference month (Article 3 Instruction No. 1, dated 08/03/2019 of the Minister of Justice on “The approval of rules and procedures for the collection, completion and administration of registers’ data”).

According to Article 4 lit d of Appendix 1 of the Order of the Minister of Justice No 226 dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’ the providers of primary legal aid have to **report** quarterly or upon the request of the Directorate regarding the cases and progress on the provision of legal aid service, by attaching the relevant documentation that proves the performance of the services offered.

4. Relation to Secondary Legal Aid (Article 17 (6) and Article 3 (b) (iv))

If during the provision of primary legal aid it becomes evident, that the need for delivery of secondary legal aid services exists, the party should be accordingly informed and assisted.

VI. Legal Aid in Court Procedures: Secondary Legal Aid and Exemption from Court Costs and Court Fees

1. Overview on Secondary Legal Aid and the Exemption from Court Costs and Court Fees

The provisions on secondary legal aid and the exemption from court costs and fees are **partly identical or partly similar but also differ in certain aspects**:

- Article 25 first sentence (on the conditions for the exemption from court costs and fees) is similar to Article 22 (5) (a) (that governs the dismissal of the request for secondary legal aid if the conditions stipulated in Article 11 and 12 of this law are not fulfilled).
- Article 27 (2) and (3) refer for the procedure for the exemption from court costs and court fees to Article 22 (that regulates the procedure for the application and granting of secondary legal aid).

Due to this reason some general **questions that apply both to secondary legal aid and the exemption from court costs and fees** will be covered in this chapter. Certain aspects that are only relevant concerning the exemption from court costs and fees will be dealt with in the next chapter on the exemption from court costs and fees.

Articles 49 and 49/a Code of Criminal Procedure deal with certain and specific forms of legal representation in criminal procedures. The rules for secondary legal aid in criminal procedures (e.g. Article 21) differ from the provisions for secondary legal aid in civil and administrative procedures (see point 13 for details).

2. Overview on Secondary Legal Aid

Secondary legal aid is (see Article 18)

- provided by advocates included in the list approved by the National Chamber of Advocates,

- upon the request (according to the form) of
- the person entitled to receive secondary legal aid under articles 11 or 12 of this law.

Secondary legal aid is first approved by decision of the court or proceeding body. The individual lawyer is then in principle appointed and also replaced by the local chamber of advocates. Only in cases covered by Article 21, the proceeding body (and not the chamber of advocates) appoints and replaces the individual lawyer (Article 21 (2)). The rights and interest of the state are protected by the Directorate: it may appeal decisions and seek reimbursement.

3. *What is Secondary Legal Aid?*

According to Article 3 (c) “Secondary legal aid” is the legal service that is offered for

- the compilation of the necessary legal acts for putting in motion the court (i.e. the pre-court phase),
- the delivery of counselling, representation and defence before the court in
 - o administrative and
 - o civil and
 - o in criminal cases
- for which is not applied the mandatory defence in accordance of the criminal procedural legislation. That means that in this respect the Law on Legal Aid is subsidiary to the Code on Criminal Procedure. The relation between the Law on Legal Aid the Code on Criminal Procedure and its specific provisions will be elaborated under point 13.

The **model contracts** (see Art 5.2 of the Model Contract in the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process and Model contracts with advocates and Article 5.1 of Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’) specify the obligations of the advocate in that sense.

4. The Conditions – possible Beneficiaries

a. Overview

See point IV on the conditions in general.

b. Article 10 (General Criteria)

As a general rule, only persons fulfilling the conditions of Article 10 (1) shall benefit from legal aid (Article 10 (2)).

c. Non abusive / not manifestly ill founded

According to **Article 22 (5) (b)** the request (for secondary legal aid) is dismissed in cases when it “is evidently abusive or manifestly ill founded”.

There is no comparable wording in **Article 25 (1)** for the exemption from court costs and fees. Article 25 (1) refers to “Persons, entitled to secondary legal aid according to articles 11 or 12 this law”. The referral to “Persons, entitled to secondary legal aid” and a systematic interpretation show that also the exemption from court costs and fees is only granted if the request is not evidently abusive or manifestly ill founded. Only persons qualifying for secondary legal aid are entitled to the exemption from court costs and fees.

The wording “is evidently abusive or manifestly ill founded” has to be read with the understanding that the procedural step for which legal aid is sought “is evidently abusive or manifestly ill founded”, i.e. that a statement of claim is “is evidently abusive or manifestly ill founded”. Point 3.1.3 of the form for the request for secondary legal aid requires the applicant to provide data about the case wherefore legal services are asked for, such as “What happened? Who are the parties/persons involved in conflict with you? Additional circumstances of significance to the case?”. In the following cases the claim and the application for secondary legal aid could be evidently abusive or manifestly ill founded:

- If the applicant claims something that is legally impossible (e.g. the purchasing price for the sale of the moon),
- If the prescription period has passed,
- If a party that does not benefit from legal aid under the given circumstances would not take the risk of a court proceeding and would not start a court proceeding, e.g. because the chance of eventually collecting the claimed money from the defendant is very low (e.g. due to his known bad economic situation),
- If the applicant knows that his position is wrong.

5. *The Competent Bodies to decide on Secondary legal Aid and the Exemption from Court Costs and Court Fees*

a. *The Law on Legal Aid*

The request has to be addressed to

- the court that is competent for the examination of the merits (Articles 19 (1), 20 (1), 22 (2) and 27 (1) for the exemption of court fees and costs) or
- (if Article 21 is applicable) the proceeding body that commences the investigation (Articles 19 (1), 20 (2), 21 (1))

b. *The Competent Court*

i. *Overview*

According to Article 22 (4) the court, “in compliance with the provisions of this law and the provisions of the procedural legislation”, after examination of the request, shall accept (paragraph a) or dismiss (paragraph b) the request. The request may only be dismissed when the applicant does not fall under conditions of Article 10 (1) (see on Article 10 above), “the criteria stipulated in Article 11 and 12 of this law are not fulfilled;” or “b) is evidently abusive or manifestly ill-founded.” That means that the **fact, that the applicant makes his application at the wrong court is no reason to dismiss the application.**

The Law on Legal Aid does in the context of legal aid not further regulate

- the territorial or functional competence or
- if and to what extent the court must and may examine its competence and
- how the court has to proceed when it is not competent.

These questions are governed by the respective procedural laws (see Article 22 (1)).

ii. *Civil Procedure*

Examination of Competence

According to **Article 61** (1) of the Code of Civil Procedure, the court can express itself ex officio not competent and transfer the file to the competent court only concerning the competence of the subject, the function or the exclusive subject-matter competence, while for the territorial competence only upon the request of the party. If legal aid is applied for before the initiation of a court procedure there is no (other) party that could request

the transfer to the competent court if the application for legal aid was lodged at the wrong (not competent) court.

The application of Article 61 (1) Code of Civil Procedure in situations, when the application is made, before the actual procedure is initiated, may cause the following problems: If the wrong (not competent) court approves legal aid the chamber of advocates of that district appoints the lawyer out of the list of lawyers of that district. This will lead to practical problems when the statement of claim is then lodged at the right (competent) court. This would lead to the result that the legal aid lawyer needed to travel to the competent court where the actual procedure is conducted.

Taking into consideration these deliberations and the special circumstances of the legal aid procedure it might be considered to allow courts in that situation (the application for legal aid is made before the initiation of a procedure) to check ex officio their territorial competence and to transfer the application to the competent court.

Functional Competence

The Law on Legal Aid does not determine if the decisions on legal aid are taken by a single judge or an adjudicating body composed of three (or more) judges.

Also in the Code on Civil Procedure there is no specific provision on that matter. Article 35 and Article 158 and 158/a are the relevant general provisions.

“Article 35

The First Instance Court tries by means of an adjudicating body composed **of one or three judges**.

The adjudicating body composed of **three judges** shall try the following cases:

- a) lawsuits exceeding the value of 50 million ALL;
- b) *repealed* lawsuits that contest administrative acts exceeding the value of 20 million ALL only if one of the parties requires this in the preliminary session, according to article 158/a of this Code.
- c) lawsuits for the declaration of a person as missing or deceased.
- ç) lawsuits for the deprivation or limitation of a person’s legal capacity to act.

Other cases shall be tried by one judge.

The Court of Appeal considers the case in a panel consisting of **three judges**. The court of appeal shall examine by **single judge** claims worth up to 150.000 ALL, as well as other cases provided for in this Code.

The High Court adjudicates in a Chamber with a panel consisting of 3 judges. The High Court adjudicates in Joint Chambers, with the participation of all judges, the cases envisioned explicitly in other provisions of this Code.”

All arrangements and decisions in the **preliminary phase** are taken by a single judge (Articles 158 and 158a Code on Civil Procedure; see also point **7 b for the preparatory phase**).

If the application is made before the initiation of the court procedure, the **value** of the claim (that is also relevant for the functional competence) could be established (following Articles 65 to 70 Code on Civil Procedure) according to the information given by the applicant on the planned statement of claim.

iii.Criminal Procedure

Overview

In most cases (be it as mandatory defence under Article 49 Code on Criminal Procedure or under Article 21) the legal aid advocate will already be appointed by the proceeding body. Only in cases where a party applies for legal aid at a later stage, the legal aid advocate is appointed by the court.

There is hardly a situation thinkable where a party (as may more frequently be the case in civil procedures) applies for legal aid before the criminal procedure is initiated. I.e. that the problems described above for civil procedures concerning applications before the initiation of the procedure will hardly arise in criminal procedures.

Functional Competence

There is no specific provision on the functional competence for decisions on legal aid. Thus the general rule of Articles 13 (first instance) and 14 (appeal) Code on Criminal Procedures applies.

iv. Administrative Court Procedure

General Remarks

According to its Article 1 (2) the provisions of the Administrative Courts Law are **supplemented with the provisions of the Code of Civil Procedure**, except for the cases and as long as this law does not provide otherwise.

Examination of Competence

Article 13 Administrative Courts Law is the relevant general provision: A failure of substantive or functional competence is raised even on own initiative at any condition or level of the examination. A failure of territorial competence may be raised or objected to by the parties only before the judicial examination of the evidence has begun. The court declares its lack of competence for the reasons provided in this article by decision and orders the acts sent to the competent court.

Functional Competence

The Law on Legal Aid does not determine if the decisions on legal aid are taken by a single judge or an adjudicating body composed of three (or more) judges.

Also in the Administrative Courts Law and the Code on Civil Procedure there is no specific provision on that matter. Article 12 Administrative Courts Law is the relevant general provision."

1. An administrative court of first instance adjudicates with a judicial panel consisting of three judges disputes related to public administrative contracts and requests submitted in implementation of letters "d" and "dh" of article 7 of this law. All other disputes are examined with a **judicial panel consisting of one judge**.
2. The Administrative Court of Appeal adjudicates with a judicial panel consisting of:
 - a) Three judges, appeals against decisions of the administrative court of first instance;
 - b) Five judges, lawsuits against a normative subordinate legal act."

6. The Request

a. Overview

The request can be lodged **in person or through post** (Article 19 (1)), also through a legal **representative** or a representative supplied with power of attorney, or by the spouse, cohabitant or kin relation of the first degree (Article 19 (2)).

For further details concerning the representation, such as excluded persons or the form of the power of attorney, the respective rules of procedure apply, e.g. for the Code of Civil Procedure Article 96 and Article 14 Administrative Courts Law; the latter refers to the provisions of the Code on Civil Procedure.

The request can be lodged at the **following stages** (Articles 19 (1), 22 (5)):

- before the initiation of a judicial proceeding,
- at the initiation of a judicial proceeding and/or
- at any stage of a judicial proceeding, until judicial investigation has not been declared closed (see later for details for the specific procedures)

The request is **exempted from fees and costs**.

Every request has to be **registered** including the data further specified in Article 7 of the Instruction No. 1, dated 08/03/2019 of the Minister of Justice on "The approval of rules and procedures for the collection, completion and administration of registers' data".

b. The Forms

The application has

- to be drafted according to the **request form sheet** approved by the Minister of Justice (Article 18) and, according to Article 19 (4)
- be accompanied by a **self-declaration** of fulfilment of the criteria for benefitting as defined in this law, according the self-declaration form sheet with
- the **justifying documentation** according to the list of documents that shall serve for certification of fulfilment of criteria shall be defined by order of the Minister of Justice.

The forms are governed in Order No 225 dated 25/3/2019 on the Approval of the Forms of Legal Aid guaranteed by the State and attached as an annex to this manual.

c. Formal Errors

i. Overview

The question is how the court has to proceed if the request has formal errors. Three scenarios seem to be possible in practice:

- Scenario 1: The applicant does not use the forms for the request and the self-declaration but provides all information that is necessary, so that the court can examine that / if the applicant fulfils the criteria for legal aid.
- Scenario 2: The applicant does not use the forms for the request and the self-declaration and does not provide all information that is necessary for the court to examine that / if the applicant fulfils the criteria for legal aid.
- Scenario 3: The applicant uses the forms for the request and the self-declaration but does not fully or correctly fill them in so that he does not provide all information that is necessary for the court to examine that / if the applicant fulfils the criteria for legal aid.

Scenario 1: The request may only be dismissed when “the conditions stipulated in Article 11 and 12 of this law are not fulfilled;” (see on Article 10 above) or “b) is evidently abusive or manifestly ill-founded.” That means that only due to the fact, that the applicant does **not use the forms**, but **provides all necessary information and documentation** to examine his request, his application for legal aid may **not be dismissed**. There seem to be also no legal basis for the court to ask the applicant to correct his request by using the forms.

Scenario 2 and 3:

According to Article 12 the applicant must prove that he has insufficient income and property.¹¹ The court must examine the request (Article 22 (1)) and after examination dismisses the request for legal aid when the conditions of Article 11 and 12 are not met. What must / may the court do when the information provided is not sufficient to fully examine if the conditions for legal aid are met? The following deliberations can be made:

According to Article 22 (4) the court, “in compliance with the provisions of this law and the provisions of the procedural legislation”, after

¹¹ See also Article 8 .” Code of Civil Procedure (“The parties shall be subject to the obligation of submitting the facts whereon they base their claims.) and Article 12 Code of Civil Procedure (“The party asserting a right shall be subject to the obligation of establishing the facts whereon he/she bases its claim in compliance with the law.”).

examination of the request, shall accept (paragraph a) or dismiss (paragraph b) the request.

Article 22 (3) indicates that the court should ask the applicant to complete his incomplete application and not simply dismiss the application: Article 22 (3) should be read in a way that the court may not only ask the state administration bodies, that possess the missing documentation, but also to **ask the applicant himself to provide further information and documentation**. This would also be in line with Article 154a Code Civil Procedure and Article 25 (1) (a) Administrative Courts.

ii. Article 22 (3)

Article 22 (3) contains a provisions that deals with a specific situation where

- the applicant “declares the impossibility of securing the documentation”, as well as
- “in any other case where the court values that the correction or completion of the request may be cause for delays which affect the essence of the rights of the applicant”.

Under these circumstances the court may order the submission of the necessary documentation from the state administration bodies that possess it.

7. The Examination of the Request

a. Examination of the Request in General

The court examines the request for secondary legal aid in compliance with the provisions of the procedural legislation and as much as possible, with the provisions of the Law on Legal Aid (Article 22 (1)). The question is, in which format the request is examined and the decision taken, i.e. if the decision is taken in a court session or not.

b. Examination of the Request in Civil Procedures

According to Article 29 Code on Civil Procedure “The court bases its decision on the evidences presented by the parties or by the attorney, taken in court session.” This corresponds to Article 309 Code on Civil procedure “The decision is based only on data which are in the acts and which have been considered in court session”. Article 172 states that “The consideration of the case before the court is made orally, but the parties may present in writing their explanations and claims with regard to the case in trial.”

The question is, if also for decisions in legal aid there has to be a court session or if the decisions on legal aid can be rendered without a session. Article 22 (2) (b) (stating that the decision is taken “during the preliminary actions or in the preparatory session”) shows that decisions on legal aid can also be rendered without and outside court sessions. Also Article 158a (2) (a) Code on Civil Procedure foresees that by decision, without conducting a preliminary hearing, the court exempts “the plaintiff from payment of the fee in the instances provided for by law and a request has been made by the plaintiff”. According to Article 158b (2) Code on Civil Procedure a preparatory hearing shall be held only as long as summoning and hearing the parties is deemed necessary by the judge and in other cases provided by law. That means that in the case that the application is lodged **before the initiation of the procedure or in preparatory phase** the examination of and the decision on the request **has not necessarily be done in an oral court session**.

c. Examination of the Request in Procedures at the Administrative Courts

According to Article 3 (2) Law on Administrative Courts an administrative court, according to the nature of the case, shall examine a case in a judicial hearing orally or in chambers based on written acts. I.e. that in general the administration court can examine and decide on an application on legal aid **outside a court session** (see also Article 39 (1) Law on Administrative Courts).

Concerning preparatory actions Article 25 (1) (ç) Law on Administrative Courts refers to Article 158a Code Civil Procedure.

8. The Decision on the Request

a. Possible Decisions of the Court

The court may eventually accept or dismiss the request (Article 22 (4)).

b. Time of Decision (Art 22 (2))

The time of decision depends on when the application was lodged:

- The court has to decide within 5 days from the date of receipt of the request, when the request has been submitted **before initiation** of the judicial proceeding (paragraph a);
- during the **preliminary actions or in the preparatory** session before the scheduling of the judicial session/hearing, when the request for legal aid has been submitted together with the statement of claim

- (paragraph b);
- according to the provisions of the procedural legislation and the provisions of this law, when the request has been filed **during judicial examination** (paragraph c).

Paragraph (a) (before initiation):

Paragraph (a) has to be read in conjunction with Article 22 (3). Article 22 (3) stipulates that when the court asks a state administration body for missing documentation “the request for secondary legal aid is deemed to be filed at the end of the time limit imposed by the court for presentation of the missing document by the state administration body.” The same rule applies when the court asks the applicant to complete the information or documentation provided (see 7 b and c). That means that the time limit of 5 days only commences once the application is complete.

Paragraph (b) (preliminary actions or in the preparatory hearing):

The relevant provisions seem to be

- Article 158a (2) (a) Code Civil Procedure for decisions outside the preliminary hearing: “The judge shall, by decision, without conducting a preliminary hearing, conduct the following arrangements: a) exempt the plaintiff from payment of the fee in the instances provided for by law and a request has been made by the plaintiff” and Article 25 (1) (ç) Law on Administrative Courts that refers to Article 158a Code Civil Procedure.
- Article 158b Code Civil Procedure for decisions in the preliminary hearing.

Paragraph (c) (during judicial examination):

There seems to be no provision in the Code on Civil Procedure that sets a time limit until when legal aid can be applied for.

According to Article 34 Law on Administrative Courts the judicial session is held according to the articles of the Code of Civil Procedure, to the extent that they are compatible with this law.

c. Type of Decision

i. Civil Procedure

The decision on legal aid could be

- An intermediary decision (Article 125 Code on Civil Procedure),
or

- A final decision (Article 126 Code on Civil Procedure) or
- A non-final decision (Article 127 Code on Civil Procedure)

Taking into account the wording of these three articles it seems to be an **intermediary decision** (Article 125 Code on Civil Procedure). Another argument is that according to Article 22 (7) the appeal against the dismissal is a special appeal (that according to Article 470 Code on Civil Procedure is the appeal against intermediary decisions; see also Article 315 Code on Civil Procedure).

The decision both on approval and dismissal of the request for secondary legal aid shall **be reasoned** (Article 22 (6)).

d. Notification of the Decision of the Court (Article 23)

The decision of the court on the approval or dismissal of the application has to be notified to

- the applicant
- the person who has submitted the request for secondary legal aid, if different from the applicant;
- the proceeding body, if the conditions of Article 21 of this law apply (see point 13 on Article 21 for the question to whom the decision of the proceeding body has to be notified)
- the Directorate and
- the local chamber of advocacy, in case the request for secondary legal aid has been approved.

The Directorate keeps a register of requests and self-declaration. Its content is governed in Article 7 Instruction of the Minister of Justice on "The approval of rules and procedures for the collection, completion and administration of registers' data".

9. The Appeal Procedure (Article 22 (7) to (9))

a. Overview

The Law on Legal Aid has different provisions for appeals against the approval (Article 22 (7) and (8)) and dismissal (Article 22 (9)) of the application for legal aid.

b. Appeal against the Dismissal (Article 22 (7) and (8))

i. The Law on Legal Aid

The provisions on the appeal procedure in the Law on Legal Aid are

clearly oriented on the provisions of the Code of Civil Procedure and partly even use the terminology of the Code of Civil Procedure.

The appeal against the dismissal is a **special appeal** (see Article 470 Code on Civil Procedure).

The appeal does **not hinder the continuation** of the adjudication of the case.

The appeal must be made with a **special form**. It can be found in Appendix VIII of the Order No 225 dated 25/3/2019 on the Approval of the Forms of Legal Aid guaranteed by the State.

Procedure at the court of appeal:

The court of appeal decides in consultation chamber (see Article 465a Code on Civil Procedure) and shall take the decision within 15 days from receipt of the acts. Against this decision a recourse is not permitted.

ii. Civil Procedure

The following issues are not regulated in the Law on Legal Aid. Therefore the Code on Civil Procedure applies:

The Law on legal Aid does not regulate the **time limits** for an appeal, but states that the appeal of the applicant is a special appeal. Thus Article 443 Code on Civil Procedure applies: special appeals must be filed within 5 days.

The appeal has to be presented to the court which has issued the decision against which an appeal is made (Article 446 Code on Civil Procedure).

The Law on legal Aid does not regulate that / if the appeal has to be notified to the parties. Thus Article 447 Code on Civil Procedure applies: the appeal is **notified** to the parties, i.e. in this case also to the Directorate.

Since there is no opposing provision in the Law on Legal Aid, the Directorate can do an **opposing appeal** in the sense of Article 456 Code on Civil Procedure.

iii. Criminal Procedure

Article 21 (4) and (5) contain rules what the applicant can do if his application for legal aid is rejected (see for details point 13 d vii). The following considerations only apply for (the probably rare cases) where Article 21 (4) and (5) are not applicable.

The Law on Legal Aid does not regulate the **time limits** for an appeal.

Thus Article 415 Code Criminal Procedure applies: the time limit to file an appeal is fifteen days.

The appeal is submitted to the secretary of the court, which issued the appealed decision (Article 413 Code Criminal Procedure).

The appeal shall be **notified** to the prosecutor, the defendant and the private parties by the secretary of the court having issued the decision (Article 414 Code Criminal Procedure).

According to Article 423 Code Criminal Procedure the party not having filed an appeal within the time period may file a **counter appeal** within five days from the day he received the notification of the appeal of the other party.

iv. Administrative Procedure

According to Article 44 Code on Administrative Courts the means and time limits of appeal are the same as those provided in the **Code of Civil Procedure**, except when it is provided otherwise in this law.

c. Appeal against the Approval (Article 22 (9))

i. The Law on Legal Aid

According to the wording of Article 22 (9) the Directorate may appeal against the acceptance (only) when it claims that the request is evidently abusive or manifestly ill-founded and not if it claims that the applicant does not fulfil the criteria of Articles 10 to 12. It will have to be clarified if the reasons of appeal were restricted on purpose or if a reference to Articles 10 to 12 was omitted by error.

Since Article 22 (9) does (in contrast to Article 22 (7)) not refer to the special appeal, the **provisions on normal appeals** apply. Article 22 (9) states that "In this case shall be applied the time-limits and the rules for appeal of final decisions in accordance with the provisions of the procedural legislation." Thus the time-limits and the rules for appeal of final decisions in accordance with the provisions of the procedural legislation apply. I.e. that different procedural rules apply for the appeal of the Directorate against the approval than for the appeal against the dismissal.

Against the decision of the court of appeal a recourse to the High Court is not allowed.

ii. Civil Procedure

The following issues are not regulated in the Law on Legal Aid. Therefore

the Code on Civil Procedure applies:

The Law on legal Aid does not regulate the **time limits** for an appeal. Thus Article 443 Code on Civil Procedure applies: the appeal must be filed within 15 days.

The appeal has to be presented to the court which has issued the decision against which appeal is made (Article 446 Code on Civil Procedure).

The Law on legal Aid does not regulate that / if the appeal has to be notified to the applicant. Thus Article 447 Code on Civil Procedure applies: the appeal is **notified** to the parties. Also the applicant seems to be a party in that sense.

Since there is no opposing provision in the Law on Legal Aid, the applicant can do an **opposing appeal** in the sense of Article 456 Code on Civil Procedure.

For this case (appeal against the approval) there is no provision corresponding to Article 22 (7) ("The appeal of the decision does not hinder the **continuation** of adjudication of the case"). Since there is no opposing provision in the Law on Legal Aid, according to Article 449 Code Civil Procedure "Execution of the appealed decision shall be suspended until the Court of Appeal has completed consideration". I.e. that the decision on legal aid only becomes effective once the court of appeal has decided upon the appeal. Having said that there though is no provision foreseeing that the local chamber of advocates has to be informed about an appeal against the approval or that in case of an appeal against the approval the selected advocate may not become active. On the contrary: According to Article 24 (4) the advocate shall "immediately after being acquainted with the decision of the competent court and the decision of the local chamber of advocacy or the decision of proceeding body on his appointment as an advocate for the delivery of secondary legal aid, shall enter into contact with the person to whom secondary legal aid has been granted and shall start with the delivery of the requested services". Article 24 (4) implies that it has to be seen as a special provision to Article 449 Code on Civil Procedure so that even if the Directorates appeals the approval of legal aid the appointed lawyer may and must become active. On the other hand Article 1 of Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state' refers to legal aid "in favor of persons who have benefitted according to a final decision of the competent court".

Since Article 22 (9) does (in contrast to Article 22 (7)) not refer to the special appeal, the **provisions on normal appeals** apply. These are especially

Articles 460 to 465 Code of Civil Procedure.

iii. Criminal Procedure

In cases covered by Article 21, there is no appeal against the approval of legal aid.

For cases falling under Article 22 see already above.

The execution of the appealed decision is suspended until the conclusion of adjudication in the appeal court, unless provided for otherwise by the law (Article 417 Code Criminal Procedure). See for the same issue already the paragraph above on civil procedures.

iv. Administrative Procedure

According to Article 44 Law on Administrative Courts the means and time limits of appeal are the same as those provided in the **Code of Civil Procedure**, except when it is provided otherwise in this law.

The Administrative Court of Appeal examines the case within 30 days from the date the appeal comes from the court where the appeal was submitted (Article 48 (2) Law on Administrative Courts).

The appeal in the Court of Appeal as a rule is examined based on documents in chambers (Article 49 (1) Law on Administrative Courts).

10. The Appointment of the Advocate (Article 24)

a. Relevant Case law of the ECtHR

In *Croissant v Germany* the ECtHR held that the wishes of the applicant should not be ignored, but that the choice of lawyer – taking into consideration the interests of justice – is ultimately for the State.

Notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute. It is necessarily subject to certain limitations where free legal aid is concerned (*Almasi v Serbia*).

In *Daud v Portugal*, the legal aid lawyer was only appointed three days prior to the trial for a serious, complex case. The ECtHR held that it was manifestly evident to the State authorities that the legal aid lawyer did not have time to prepare for the trial, and that they should have intervened to ensure the quality of the defence.

b. Overview

Different rules apply depending on if legal aid is granted by the proceeding body (Article 21; see below point 13) or the court. This paragraph deals with **situations** that are **not covered by Article 21** (see Article 23 (3) and (6) (a)).

The decision of the court on legal aid has to be notified to the **Local Chamber of Advocates** (Article 23 (d)). According to the wording of Article 23 (d) the decision of approval has to be notified to the chamber before it is clear if the Directorate appeals this decision and thus before it is known if the decisions becomes final and effective (see on that problem above 9 c).

The Local Chamber of Advocates then appoints the advocate (if Art 21 does not apply)

- from the list of advocates
- who have a yearly contract with Directorate
- according to the principle of rotation.

The chamber forwards its decision on the appointment of the specific advocate together with the decision of the court to the advocate and the party.

The advocates has to contact the party immediately. Further details are governed by the respective **bylaws** (see points 10 c to f). Point 11 deals with the replacement of the advocate.

c. The Bylaws

Bylaws have been adopted on the principle of rotation (Art 21 (6) and Art 9 (b)), model contracts, the remuneration fees and the selection of advocates (Art 9 (a)). These are:

- Model contracts with advocates (Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state' and Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process)
- Remuneration criteria and payment procedure (Joint Instruction No 18, dated 5.8.2020, on the approval of the criteria for obtaining payments and remuneration fees for lawyers providing secondary

legal aid)

- Principle of rotation (Criteria and procedure for the selection of advocates)
- Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process and;
- Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes

d. The Contract between the Advocate and the Directorate (Rights and Obligations of the Advocate)

The advocate delivering secondary legal aid enters into a **contract** with the Directorate. This contract is regulated by Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on "The approval of the contracts of legal aid guaranteed by the state".

The contract is valid for a term of one year from the date of signing, but in each case until the approval of the new list and conclusion of new contracts (Article 2.1 of the Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on "The approval of the contracts of legal aid guaranteed by the state").

The termination of the contract does not inhibit the advocate to represent the beneficiary until the final resolution of the case, except when the circumstances exist for his substitution (Article 2.2 of the Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on "The approval of the contracts of legal aid guaranteed by the state").

The advocate may dissolve the contract, by preliminarily notifying the local chamber of advocacy. In this case, the advocate shall continue to provide Secondary Legal Aid to the Beneficiary until his substitution from the local chamber of advocacy (Article 9.3 of the Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on "The approval of the contracts of legal aid guaranteed by the state").

Article 5 of the Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on "The approval of the contracts of legal aid guaranteed by the state" further determines the **tasks and duties** of the advocate. They are inter alia as follows:

The advocate shall act in time and without causing any delays, immediately

upon receipt of notification by the local chamber of advocacy, on the decision of the court, which has accepted the request for the provision of the secondary legal aid to the Beneficiary. The advocate shall keep regular and continuous contacts with the beneficiary for keeping him continuously informed on the case for which the secondary legal aid is provided.

At the end of work the advocate shall, according to the format approved by the Ministry of Justice, submit a report.

e. The List of Advocates (Chapter I of the Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes)

i. Overview

The list of advocates interested in taking over secondary legal aid in civil and administrative proceedings is drafted

- separately for each local chamber of advocates
- for each calendar year
- according to the rules set out in Chapter I of this instruction.

ii. The Procedure to Draft the List of Advocates

After a call for expression of interest is published, advocates shall present within the given time limit the expression of interest by filling out the application form (according to the template determined).

Out of these applications the advocates are drawn by lottery which is organized by a Technical Secretariat (that shall be established): The Albanian Chamber of Advocacy shall set the date for the organization of the lottery in appropriate premises, and shall notify in advance the Chairpersons of the Local Chambers of Advocacy, the Free Legal Aid Directorate, the Ministry of Justice, the High Judicial Council and the High Prosecutorial Council.

The ranking of advocates in the list of advocates that provide secondary legal aid services for each chamber is made by lot.

The results of the lottery together with a report on the lottery organization process shall be immediately made public on the official website of the Albanian Chamber of Advocacy. The approval of the final lists of advocates that provide secondary legal aid, shall be made by the Albanian Chamber of Advocates, within the date of February 1 of each calendar

year, through the lottery.

The list of advocates for each chamber also contains information on the specialization of the advocate in the field of law, when the specialization is necessary, as in the case of representation of minors, victims and in other cases defined by law. After the final approval of the lists, they are forwarded for publication on the official website of NCA, the Ministry of Justice, and the Free Legal Aid Directorate. The approved list of advocates who will provide secondary legal aid services, according to the local chambers of advocacy, shall be valid until January 31 of the following year.

f. The Selection of the individual Advocate (Chapter II of the Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes)

i. Selection of the Advocate

The local chamber of advocates appoints within 8 hours from the decision of the court to accept the request for the provision of secondary legal aid an advocate from the list of advocates according to the order in the list, starting with the advocate ranked first. The local chamber shall immediately notify the Free Legal Aid Directorate of the appointment of an advocate.

The selection of advocates by rotation shall be made sequentially from the list, starting from the advocate ranked first and in descending order.

In case the number of court decisions for accepting requests on granting secondary legal aid is greater than the number of advocates providing this service, the Local Chamber of Advocacy shall appoint advocates starting from the first ranked advocate on the list, and further in descending order.

In case the service to be performed requires specialized knowledge, as in the case of representation of minors, victims and in other cases provided by law, the Local Chamber of Advocacy shall appoint the first advocate, listed, who is specialized in the relevant field of law. For any other matter that requires specialized knowledge in the same field of law, an advocate listed lower in the list and specialized in that field of law shall be appointed.

In case the approved list of advocates providing secondary legal aid services under the jurisdiction of a chamber, has no advocates who have

specialized knowledge, as in the case of representation of minors, victims and in other cases provided by law, the Albanian Chamber of Advocates after the notification received from the local chamber shall appoint one of the advocates from the ranks of advocates, who are specialized in the closest field required by the approved list of the Local Chamber of Advocacy. In such a case, the appointment of an advocate shall be also notified to the Local Chamber of Advocates, which has the advocate under its jurisdiction.

ii. Appointment Procedure

The Local Chamber of Advocates shall contact by phone and by e-mail the selected advocate. In case the advocate, after his notification, refuses to take over the duty, it will be contacted the next advocate on the list. Refusal to take office shall be made by the advocate in writing, specifying the reasons for refusal.

If the advocate does not respond to the call/email, he/she is given a reasonable time, but in any case, not more than 24 hours, to respond. In case of non-return of the call/e-mail, the local chamber of advocacy shall immediately call the next advocate on the list.

Upon receiving confirmation from the advocate according to the above procedure, the local chamber of advocacy shall decide on the appointment of an advocate with the foreseen template.

The local chamber of advocates shall forward the decision of the competent court, together with its decision on the appointment of an advocate to the person, whose request for secondary legal aid had been accepted.

11. The Replacement of the Advocate

a. Relevant Case Law of the ECtHR

If the legal aid lawyer fails to provide effective representation, and this is manifest or is brought to the State authority's attention, then the State is under an obligation to intervene and rectify the failure (*Kamasinski v Austria*).

The right to free legal assistance is not satisfied by the formal appointment of a lawyer: this right must be practical and effective (see *Artico v. Italy*; also Albanian Constitutional Court No.73/2015; no. 6/2013; no. 37/2011; no. 25/2011).

An individual who requests a change of legal aid lawyer must present

evidence that the lawyer failed to perform satisfactorily (*Lagerblom v. Sweden*).

b. The Law on Legal Aid

Different rules apply depending on if legal aid is granted by the proceeding body (Article 21; see below point 13) or the court. This paragraph deals with **situations** that are **not covered by Article 21** (see Article 23 (3)).

The local chamber of advocates has to replace the advocate if there is a **conflict of interest** (Article 23 (5) and (6) (b)).

c. The Bylaw

i. Order of the Minister of Justice No 226 dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’

In addition to Article 23 (5) and (6) **Article 5.2. of the Appendix 2 of the Order of the Minister of Justice No 226** dated 25/3/2019 on ‘The approval of the contracts of legal aid guaranteed by the state’ states that the advocate shall not waive of the provision of the Secondary Legal Aid, except in **cases of waiver determined by the Law on Advocacy**, including, but without limitation to the case of the conflict of interest. In each case of obligation to waive, the advocate shall immediately inform the local chamber of advocacy, with the aim of his/her substitution. In this case, the advocate shall continue to deliver the Secondary Legal Aid until his/her substitution, according to the provisions of Law on Advocacy and shall implement any and all the obligations provided in the Law on Advocacy.

ii. Chapter II of the Joint Instruction No. 17, dated 05.08.2020 on the rules for the application of the rotation principle in appointment of advocates, who will provide secondary legal aid in civil and administrative Processes

If the advocate appointed to provide legal aid has **legal obstacles** according to the provisions of article 9, of Law no. 55/2018 “On the Profession of Advocate in the Republic of Albania”, he/she shall address a reasoned request to the local chamber of advocacy (see already point 11 c I above). If the local chamber of advocates deems that the request contains reasonable grounds, it will **replace** the advocate who has given up representation by immediately notifying the Free Legal Aid Directorate. The substitute advocate shall be appointed referring to the first vacant number in the list of advocates.

When the local chamber of advocacy assesses the request as **unfounded**, it will refuse to replace the advocate. In case the advocate again refuses to attend the hearing, the local chamber of advocacy will start the replacement procedure and notify the Albanian Chamber of Advocacy for the initiation of disciplinary proceedings. The advocate will continue to stay in office until he/she is replaced by another advocate from the local chamber of advocacy.

12. The Payment of the Advocate

a. The Advocates Law

Article 16 Law on Advocates states that the remuneration of the advocate for work carried out shall be set inter alia "b) in compliance with the provisions of the legislation in force on state guaranteed legal aid".

b. Law on Legal Aid

The advocate is paid according to the **remuneration scheme** set by the Ministry of Justice (Article 7 (g)) by the Directorate (see point d on mandatory defence, pursuant to the provisions of Article 49 (7) and Article 49/a of the Criminal Procedure Code).

c. Bylaws in General

According to Article 5 (2) (iv) of the Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state' the advocate shall provide secondary legal aid in favour of the Beneficiary, **only upon the Service Fee**, without having the right to other benefits, except for the Service Fee (see also Article 6 Appendix 2 of the Order of the Minister of Justice No 226 dated 25/3/2019 on 'The approval of the contracts of legal aid guaranteed by the state').

d. Bylaw on Criminal Procedures (Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process)

According to Article 38 of this Decision the reward for the work done by the lawyer during the process of providing free legal aid shall be done by:

- The **Directorate** for the legal aid for the people without sufficient financial means;
- The **Prosecution Office** shall do it for legal aid in the conditions of the mandatory defence, pursuant to the provisions of Article 49 (7) and Article 49/a of the Criminal Procedure Code.

e. Bylaw on the tariffs and payment of advocates (Joint Instruction No 18, dated 5.8.2020, on the approval of the criteria for obtaining payments and remuneration fees for lawyers providing secondary legal aid)

i. Remuneration Criteria / Procedure

Upon completion of the legal aid procedures, the advocate must submit to the Directorate the **form for the remuneration** and annex certain documents.¹²

Where the advocate **waives** the provision of secondary legal aid, he shall not be entitled to compensation for the service provided.

ii. Remuneration Fees and Expenses

The advocates is entitled to

- the **fee** (as foreseen in the annex to the Instruction) and
- the reimbursement of **expenses** in accordance with the legislation in force, "On the financial treatment of employees who are sent with service outside the employment centre, within the country."

The annex to the Instruction foresees the following fees:

¹² The tax invoice for the service having been provided; copies of the decision of the courts having been rendered for the case or copies of other acts, compiled according to appendix 1; the report on the completion of work, according to the format approved by the Ministry of Justice.

	1. LEGAL AID IN CRIMINAL MATTERS	Fees
1	<u>Representation in criminal matters</u>	
	Service regarding detention and arrests up to the amendment of the security measure	15 000
2	<u>Legal aid for the preliminary investigation up tot sending the case to court</u>	
	For criminal contraventions	20 000
	For crimes sentenced up to 10 years imprisonment at judicial district court	50 000
	For crimes sentenced to more than 10 years imprisonment at the Special Court of First instance for corruption and organized crime	60 000
3	<u>Legal and for trials at first instance</u>	
	For criminal contraventions	20 000
	For crimes sentenced up to 10 years imprisonment at judicial district court	30 000
	For crimes sentenced to more than 10 years imprisonment at the Judicial District Court	80 000
	For crimes tried at the Special Court of First instance for corruption and organized crime	96 000
4	<u>Legal aid for trials at the courts of appeal, high court and constitutional court</u>	
	For trials at appeal courts	40 000
	II. LEGAL AID IN CIVIL AND ADMINISTRATIVE FIELD	
1	<u>Representation at the first instance</u>	
	Representation at the first instance, non-contentious	15 000
	Representation at the first instance, contentious	40 000
2	<u>Representation at the court of appeal, high court and constitutional Court</u>	
	Representation at the court of appeal	45 000

	Representation at the high court and constitutional court	60 000
3	<u>Extra-judicial legal services</u>	
	Preparation of the complaint	15 000
	Recourse to the High Court and Request to the Constitutional Court	25 000
	Providing legal aid in form of advice	500 – 15 000 ALL/ hour
	III. OTHER LEGAL SERVICES	
	Other legal services which are not included in the items above	

13. Criminal Procedures - Article 21 (Proceeding Body)

a. The Relation between the Code of Criminal Procedure and The Law on Legal Aid – Overview

Secondary legal aid according to the Law on Legal Aid applies for “the delivery of counselling, representation and defence before the court in (...) criminal cases for **which is not applied the mandatory defence in accordance of the criminal procedural legislation**” (Article 3 (c) Law on Legal Aid).

This corresponds to Article 49 (7) Code of Criminal Procedure whereas “the defence cannot be secured pursuant to this provision and paragraph 3 of Article 49, it is guaranteed by the institutions providing free legal aid, pursuant to the legislation in force.”

That means that the provisions on secondary legal aid of the Law on Legal Aid only apply when the provisions for mandatory defence of the Criminal Procedure Code do not apply.

In a first step in the following paragraphs the respective provisions of the Code on Criminal Procedure will therefore be briefly outlined.

Even if the Law on Legal Aid applies, Article 21 and some other paragraphs contain separate rules for Legal Aid in the phase of investigation by the Proceeding Body.

Article 21 (7) regulates that “Detailed rules in connection with the

guarantee of obligatory defence from the institutions foreseen in this law, according to the provisions of the Criminal Procedure Code shall be approved by the High Prosecutorial Council.”. These rules can be found in the **Decision of the Prosecutorial Council No 231**, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process. This decision contains provisions for the selection, replacement, payment and rights and obligations of advocates falling under Article 49 and 49/a Code of Criminal Procedure and the Law on Legal Aid.

b. Code of Criminal Procedure

i. Overview

Two provisions in the Code of Criminal Procedure are particularly relevant:

- Mandatory defence (Article 49 Code of Criminal Procedure) (which applies irrespective of the financial means)
- The defendant without sufficient financial means (Article 49/a Code of Criminal Procedure)

ii. Mandatory Defence (Article 49 Code of Criminal Procedure)

The proceeding authority shall provide immediately a lawyer paid by the State to the defendant, who has not appointed or no longer has a retained lawyer, if one of the nine following categories of defendants or procedural situations where mandatory defence applies. They are as follows:

The defendant:

- “a) is under eighteen years of age;
- b) is deaf and mute;
- c) has limited capabilities which hinder his ability to defend himself;
- ç) is charged with a criminal offence, punishable by not less than 15 years’ imprisonment, in the maximum term;
- d) is charged with a criminal offence pursuant to letters “a” and “b”, of Article 75/a, of this Code;
- dh) has been declared escaped or in absentia upon a court decision;
- e) the arrested or the detained person is questioned;
- ë) in the cases provided for by paragraph 5 of Article 205, or paragraph 1, of Article 296 of this Code;

f) in every other case provided for by law.”

The defence counsel is **assigned** by the proceeding body (Article 49 (2) Code of Criminal Procedure)) according to the list of the Chamber of Advocates (Article 49 (3) Code of Criminal Procedure); see point 13 d for details).

The assigned lawyer shall **cease** his functions if a retained lawyer is appointed.

The lawyer shall assist the defendant during all phases of the proceedings, as long as the conditions provided in Article 49 (1) Code Criminal Procedure exist.

If the presence of the lawyer is required and the retained or appointed lawyer has not been provided, has not shown up or has withdrawn from the defence, the court or prosecutor shall fine the lawyer (Article 350 (4) Code Criminal Procedure). If his absence is justified, the court or the prosecutor may **appoint another lawyer** in substitution, who shall exercise the rights and takes over the duties of the lawyer.

According to Article 21 (7) Law on Legal Aid **detailed rules** in connection with the guarantee of obligatory defence from the institutions foreseen in this law, according to the provisions of the Criminal Procedure Code shall be approved by the High Prosecutorial Council. This was done with the **Decision of the Prosecutorial Council No 231**, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process (see point 13 d for details).

iii. Defence according to Article 49a Code Criminal Procedure

Article 49a Code Criminal Procedure reads as follows:

“If instances for **mandatory defence do not exist** and the defendant who has **no sufficient financial means** requests a defence lawyer, the proceeding authority appoints the defence lawyer from the list made available by the institutions of free legal aid. The expenses of the defence shall be covered by the State.”

Article 49a Code Criminal Procedure must be read in conjunction with and in the light of the Law on Legal Aid. In cases where Article 49 Code Criminal Procedure on mandatory defence does not apply, the criteria and procedures for legal aid are governed by the Law on Legal Aid. The Law on Legal Aid foresees secondary legal aid not only when the beneficiary

has insufficient income and property (Article 12) but irrespective of the financial means of the beneficiary also for members of certain groups.

One of the issues that the Free Legal Aid Directorate has faced in practice is related to the mandatory defence for the defendants in a trial. The Special Court against Corruption and Organized Crime has filed some requests addressed to the Free Legal Aid Directorate, through which it requests the mandatory defence for 6 defendants, as the defence counsels - selected ex officio – have failed to appear in the hearings repeatedly.

At this point, we are facing two different systems: From one side: the system of the advocates of secondary legal aid guaranteed by the state; and from the other side: the system of ex officio advocates.

Article 49 of the Code of Criminal Procedure of the Republic of Albania provides for that: *“When the defence cannot be secured pursuant to this provision and paragraph 3 of article 49, the defence is ensured by the institutions which administer the free legal aid, pursuant to the legislation into force.”* (Law no. 111/2017 “On legal aid guaranteed by the state”).

According to Law no. 111/2017, *“secondary legal aid”* is the legal service that is guaranteed for the drafting of the acts necessary to involve the court; the provision of the counselling; the representation and the defence before the court in the administrative, civil and **criminal cases, for which the mandatory defence is not applied, according to the stipulations of the criminal procedural legislation.**

Furthermore, the HPC decision no. 231, dated 12.11.2019, which adopts the rules and the procedures that are followed by the proceeding body which initiates the investigations, on assigning – based on the rotation principle – the defence counsel and replacing him/her with one of the advocates from the list of the advocates, who provide the secondary legal aid services in the criminal proceeding, provides for that: *“When the mandatory defence cannot be guaranteed from the list provided by the Chamber of Advocates of Albania, according to the provisions of the Criminal Procedure Code, the defence shall be guaranteed from the list of the advocates who guarantee Secondary Legal Aid in the criminal proceeding.”*

If we refer to the above legal provisions, their purpose is not to overlap the two above mentioned systems, but to be complementary to one another in the function of, and in compliance with, the constitutional right on guaranteeing the legal defence, according to article 31 of the Constitution of the Republic of Albania.

When we read the provisions of the special law on legal aid, it is noticed

that secondary legal aid (defence with an advocate from the lists of secondary legal aid providers) is offered in the criminal cases where the mandatory defence is not applied according to the stipulations of the criminal procedural legislation. In the cases referred by the Special Court against Corruption and Organized Crime, we are in the conditions when the mandatory defence is not applied according to article 49 of the CPC.

With regard to the procedure that should be followed to benefit secondary legal aid, pursuant to Law no. 111/2017, *the competent body for rendering the decision is not the Free Legal Aid Directorate, but the courts and the proceeding body, according to the applicant's procedural position*. Under these conditions, when it is tried that the applicant is a defendant without sufficient financial means, the proceeding body that initiates the investigations shall examine immediately whether the criteria stipulated in article 12 of this law are met. When the proceeding body that commences the investigations deems that the criteria have been met, **they assign a defence counsel from the list of the advocates who provide secondary legal aid services**, and shall notify immediately the person, for whom secondary legal aid is guaranteed, as well as the assigned defence counsel.

iv. Rights of Victims

According to Article 58 (ç) Code Criminal Procedure (The rights of the victim of the criminal offence) the victim of a criminal offence has the right “to choose a defence lawyer and when it is the case to receive **free legal aid** pursuant to the legislation into force”.

Articles 36 and 37 of the **Decision of the Prosecutorial Council No 231**, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process contain further provisions relevant for victims:

The rules based on the instruction on the rules for the implementation of the principle of rotation in assigning lawyers who will provide legal aid shall be applied for the victims of the criminal offence as well as the accusing victims regarding their claims on the submission of the civil claim inside and outside the criminal process.

The **civil defendant** in the criminal process shall, as a rule, be defended by the same lawyer assigned to follow the criminal process. When the lawyer does not want to follow the civil case, the lawyer shall be replaced pursuant to the rotation rules and pursuant to the calendar of the cases.

According to Article 8 of the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process a (separate, second) **list of advocates** is composed of the advocates **specialized and trained** in the cases for the juveniles, for the victims of trafficking, domestic violence and sexual abuse.

v. Other relevant Provisions in the Code of Criminal Procedure

Article 6 (Right to defence) and Article 34/a (1) (d) (Rights of the defendant) **Code Criminal Procedure** underline that the defendant, if he has no sufficient means, shall be guaranteed legal defence by a lawyer free of charge and that prior to the questioning for the first time or prior to the completion of the acts where his presence is mandatory pursuant to the law, the proceeding authority **shall inform the defendant** about the rights provided for in Article 34/a (d) Code Criminal Procedure (i.e. on the right to choose a lawyer or to get a free of charge lawyer; see also Article 13 Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process).

There are similar provisions in the **Decision of the Prosecutorial Council No 231**, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process: The proceeding body shall initiate the investigatory actions, which need to be carried out in the presence of the defence counsel, only after a time limit not less than one hour, which commences after the appearance of the advocate at the proceeding body in order for the **advocate to consult** with the defendant and the acts of the investigatory file (Article 12 of the Decision). After the assignment of the defence counsel, the proceeding body shall provide him/her the opportunity to appear as soon as possible at the required place.

c. Relevant Provisions in the Code of Criminal Justice for Children

Article 19 (3) (a) Code of Criminal Justice for Children stipulates the right of the **child in conflict with the law** to free legal (see also Article 11 (c)) and psychological aid.

Article 20 (1) Code of Criminal Justice for Children foresees similar rights also for the **child victim or witness** at any stage of criminal justice for children; they are entitled to free legal aid (see also Article 11 (c)) and psychological assistance provided by the state according to the respective legislation (see also Article 36 Code of Criminal Justice for Children).

According to Article 31 Code of Criminal Justice for Children the child in conflict with the law or the victim shall be defended by defence **counsels specialised** in justice for children, except when the child or legal representative of the child choose another defence counsel. The National Chamber of Advocacy makes available a list of lawyers specialised in juvenile justice to the free legal aid institutions. This is further governed in Article 8 of the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process: A (second, separate) list of advocates is composed of the advocates specialized and trained in the cases for the juveniles, for the victims of trafficking, domestic violence and sexual abuse.

The institution administering free legal aid, in cases foreseen by law, provides immediately legal assistance upon the request of the child or any competent body. When the **request is made by the child**, it may be submitted in any form and before the competent body according to the rules foreseen by the legislation in force.

Article 48 Code of Criminal Justice for Children (Child protection) regulates that if a child in conflict with the law fails to choose a defence counsel, the competent body performing the respective procedural action **shall assign immediately the defence counsel** according to the provisions of the Code and special laws on legal aid, to the extent it does not contradict this Code.

Article 59 (3) Code of Criminal Justice for Children (**Consent to the diversion measure**) requires that prior to obtaining the consent, the child shall be provided with counselling and free legal aid service in order to understand the proposed diversion measure and whether it is appropriate to and acceptable by them.

According to Article 127 (3) Code of Criminal Justice for Children (**Proceedings for the imposition of disciplinary measures**) the child arrested/sentenced has the right to a defence counsel in the hearing where the disciplinary misconduct is examined and, before a hearing starts, the

child shall be informed of the right to have a defence counsel. Such right shall be exercised within 6 hours from the provision of information, if the child so consents. If the defence counsel fails to appear on time, an ex officio lawyer shall be assigned to the child. The child shall consent to the ex officio lawyer. Expenses for the ex officio lawyer shall be covered according to the provisions of the legislation on legal aid.

Beside these provisions, there is also a specific **law no.18/2017 On the Rights and Protection of the Child**. It foresees in Article 29 that:

"The child, in any administrative and judicial process, is guaranteed free legal and psychological assistance, in accordance with his interests, development and skills.

2. Legal and psychological assistance is provided to the child directly and without hindrance, based on the principle of non-discrimination and the highest interest of the child.

3. Legal assistance to the child includes all administrative, judicial actions, as well as the advice provided by the representative, the lawyer chosen by him or appointed by the responsible authorities according to the legislation in force, during the entire administrative or judicial process."

d. Proceeding Body (Article 21)

i. Overview

Article 21 and the other provisions of the Law on Legal Aid are only applicable if the provisions on **mandatory defence do not apply** (Article 3 (c); see also point 12 (a)).

Article 21 deals with the situation that legal aid is provided by the proceeding body. In this case the court has to decide on objections of the applicant against the decision of the proceeding body (Article 21 (4)).

Articles 20 (2), 23 (c), 24 (3) and 24 (6) (a) contain further provisions that apply for situations that fall under Article 21.

ii. Information obligations of the proceeding body according to Articles 24 and 25 of the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process

At the moment of the arrest, the duty of the proceeding body is to **notify and explain** to the detainee/arrested person/defendant:

- His/her right to benefit legal aid guaranteed by the state in case there is a financial incapacity to afford a defence counsel from the market.
- His/her right to benefit free legal aid when the conditions to benefit from the mandatory defence are met, pursuant to articles 49 and 49/a of the Criminal Procedure Code.

The proceeding body shall ask the detainee/arrested person/defendant to fill in a statement/form, according to the form adopted by the Directorate of Free Legal Aid, where he/she shall declare the economic condition and shall express the will that he/she requires to be defended by a lawyer assigned by the state.

See also Point 13 b to c

iii. Request

Law on legal Aid

The request shall be submitted to the proceeding body that commences investigation (Article 19 (1) and 20 (2)).

relevant case law of the ECHR:

Legal aid has to be provided at any stage of the procedure:

Salduz v Turkey (2008): “The investigation stage is particularly important for the preparation of the criminal proceedings as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial.”

In *Nechiporuk and Yonkalo v Ukraine* (2011) the ECtHR has noted “the particular vulnerability of an accused at the early stages of the proceedings when he is confronted with both the stress of the situation and the increasingly complex criminal legislation involved”.

The ECHR requires that suspects be given access to a lawyer, appointed by the State if necessary, before they are interrogated by the police (*Salduz v Turkey*).

These judgements are reflected in Article 6 (Right to defence) and Article 34/a (1) (d) (Rights of the defendant) Code Criminal Procedure.

iv. Criteria

The body starting investigations examines whether the “criteria stipulated in Article 12 of this law are fulfilled”.

v. Notification of the Decision

The decision on acceptance or dismissal is reasoned and is **notified** to the defendant and the Directorate (Article 21 (1) (c) and (3)).

vi. Option 1: Legal Aid or Mandatory Defence is granted

In case of a positive decision, the **proceeding body assigns** according to the bylaws passed under Article 21 (6) the advocate from the list available from the National Chamber of Advocacy and informs the advocate and the defendant on its decision. In this case the proceeding body appoints the advocate and not the local chamber of advocates (Article 24 (1) (c) and (3)).

The **Decision of the Prosecutorial Council No 231**, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process further regulates the **selection and appointment of the advocate** (both for legal aid lawyers and mandatory defence according to Article 49 Code on Criminal Procedure) as follows:

The Chamber of Advocates of Albania shall, within February 1 of each calendar year, provide the approved **lists of advocates** and shall publish them on its official webpage (Article 3 of the Decision). The list is drafted according to the procedure laid down in Articles 4 and 5 of the Decision. There are two lists (Article 7 and 8 of the Decision): The first list is composed of the advocates who meet the criteria stipulated by the National Chamber of Advocates and the Directorate and the second list is composed of the advocates specialized and trained in the cases for the juveniles, for the victims of trafficking, domestic violence and sexual abuse (see also point 13 b iii and c).

The Albanian Chamber of Advocates shall take measures for the cases when there is a lack of the lists of advocates assigned in a judicial district. In such a case, it shall require the local chamber of advocates which is the closest with the proceeding body of that judicial district, to provide the proceeding bodies with the list and the order of the advocates assigned to provide legal aid provided by the state (Article 24 of the Decision).

The advocates included in the legal aid list serve as **advocates** (Article 6 of the Decision)

- For the defendants qualifying for legal aid under the Law on Legal Aid and

- For the defendants who are under the conditions of the mandatory defense according to the provisions of Article 49 (7) and Article 49/a of the Criminal Procedure Code.

The **selection of the advocates** is done through a rotation successively from the list, starting from no.1 of the list, then moving on to no. 2, continuing one after the other up to the end of the list (Article 5 of the Decision). When the mandatory defense cannot be guaranteed from the list provided by the Albanian Chamber of Advocates, according to the provisions of the Criminal Procedure Code, the defense shall be guaranteed from the list of the advocates who provide secondary legal aid in the criminal process (Article 10 of the Decision).

The further procedure is as follows (Articles 15 to 24 of the Decision):

The proceeding body shall **contact** via the telephone and/or through the electronic mail the **advocate** assigned according to the ranking in the list provided by the local chamber of advocates. Then there are three options:

Option 1:

When the advocate responds to the phone call or to the electronic mail and **confirms** the defense according to the respective case, he shall be given a reasonable time limit, not less than one hour, to appear at the requested place. After accepting the defense the advocate enters the **contract**.

Option 2:

When the advocate **refuses** to accept the task, the next advocate in the list shall be contacted.

Option 3:

When the advocate **fails to respond** to the phone call or to the electronic mail, a period of 20 minutes is provided to him/her to respond.

When the advocate is unavailable, an attempt shall be made to contact him/her again after 20 minutes.

When the phone call/electronic mail is not responded after the second notification, the proceeding body shall operate immediately by contacting the next advocate in the list.

When the advocate on duty according to the calendar does **not respond to the call of the proceeding body for 3 subsequent cases**, when his/her defense is requested, he/she shall be positioned at the end of the list and

shall be replaced by the subsequent advocate in the list according to the order. In such a case, the replacing advocate does not lose his/her turn to be assigned in the duty.

The proceeding body shall **notify in writing the Albanian Chamber of Advocates** on the cases of the refusal and/or of the failure to reply of the advocates in the list for the free provision of legal aid.

vii. Option 2: Legal Aid is NOT granted

In case the request for legal aid is **dismissed**, the applicant may **object** against the decision of the proceeding body with a lawsuit at the criminal court of first instance, competent for examination of the trial on the merits, within 5 days from the receipt of notice on this decision. The court shall examine the case with one judge, in accordance with the rules foreseen in the procedural legislation, within 15 days from registration of the case. Against this decision shall be allowed special appeal at the court of appeal within 5 days from the receipt of notice. The court of appeal shall examine the appeal in consultation chamber within 10 days from the date of receipt of acts.

viii. Obligation of the Proceeding Body according to Articles 28 and 29 of the Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process

The proceeding body shall take measures to carry out the actions in the presence of the lawyer, according to the provisions of the Criminal Procedure Code. The proceeding body shall, during the assignment of the lawyers for free legal aid, comply with the principle according to which the lawyer assigned in a phase of the proceeding shall defend the client in all the phases of the investigation and of the adjudication.

ix. Evaluation of the advocate

The proceeding body asks the detainee/arrested person/defendant to fill in the form pursuant to the form approved by the Directorate on the **evaluation of the work** of the assigned lawyer (Article 35 of the Decision).

x. Replacement of the advocate / end of the function

The Law on Legal Aid:

The decision to **replace** the advocate (because of **conflict of interests** as

foreseen in Article 24 (5)) is in this situation taken by the proceeding body (Article 24 (6) (a)).

The Decision of the Prosecutorial Council No 231, dated 12.11.2019, on the approval of the regulation for the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from the list of advocates providing secondary legal aid services in the criminal process contains **further situations** where the advocate can be replaced:

The advocate **assigned from the approved list for legal aid shall cease** to exercise his/her functions as an advocate, when (Articles 11 and 32 of the Decision):

- The conditions of the mandatory defence are met and the legal aid advocate is replaced pursuant to the provisions of Article 49 (6) of the Criminal Procedure Code. In this case, the copy of the minutes on the replacement of the advocate drafted at the proceeding body shall be filed with the responsible structures providing legal aid.
- The defendant without sufficient financial means does not accept his further defence, according to the provisions of Article 24 (5).

The lawyer may according to Article 30 of the Decision exceptionally also be **replaced**, when at least one of the following conditions is met:

- There is a conflict of interest (this reason corresponds to Article 24 (5));
- The lawyer and/or the detainee/the arrested person/the defendant submits a reasoned request in writing on the waiver (see also Articles 11 and 32 of the Decision);
- The lawyer does not appear before the proceeding body repeatedly and unreasonably;
- The lawyer, due to the extraordinary circumstances, is incapable to represent the client in that case;
- Other reasons provided for in the law or sublegal acts.

Article 30 of the Decision does not further determine when and under which circumstances a request is “reasoned”.

When the lawyer assigned to provide legal aid faces obstacles for the engagement and the continuation of the defence, he/she shall address to the proceeding body and to the Local Chamber of Advocates with a reasoned request. The prosecutor shall commence the replacement procedure and shall notify the Albanian Chamber of Advocates. The lawyer shall continue to stay in duty until he/she is replaced with another lawyer (see Articles 31 to 34 of the Decision).

14. Further relevant Provisions in the Code on Civil Procedure

According to Article 158 Code on Civil Procedure in course of the preliminary arrangements of the single judge the court **informs the defendant** on the opportunity to request legal aid.

VII. Exemption from Court Costs and Court Fees

1. Overview

a. Law on Legal Aid

Article 3 (h) defines the term “Exemption from court fees and costs” as a form of free-of-charge legal aid, for the exemption from payment of court fees and other court costs, by decision of the competent court, if the criteria imposed by this law are fulfilled.

Article 3 (i) and (j) define the terms

- “**Court fees**” as the fee in accordance with the definition provided by the legislation in force on court fees in the Republic of Albania and
- “**Court costs**” as the expenses made in the framework of the judicial proceeding, necessary for adjudication in accordance with the meaning given in the procedural legislation, except for the court fee.

Chapter VI covers

- Court fees
- Court costs such as expenses for translators, witnesses, experts, site inspection or examination of items in situ and
- The obligation for prepayment of the fee for initiating execution of the execution order to the state judicial bailiff service

b. Law on Court Fees

According to Article 9 (1) Law on Court Fees the litigant may be exempt from the obligation to pay court fees or other court costs, when a request from them is made, in accordance with the criteria and the procedures defined in the law on legal aid.

c. Code on Civil Procedure

Article 102 Code on Civil Procedure **defines** “Court costs” (they consist of fees and other costs necessary to adjudication) and “Court fees” (“their types, rates, and other issues related to them, shall be regulated in a specific law”).

In case a party is granted the exemption from costs the obligation of **prepayment** of court costs (Article 105 Code on Civil Procedure) does not apply (Article 105b Code on Civil Procedure).

The fixed **fees set for executing** the executive order are initially paid by the creditor and, upon completion of the execution procedure, are charged to the debtor. Other expenses, during the execution procedure, are paid by the party that caused them (Article 525 Code on Civil Procedure).

d. Code on Criminal Procedure

According to Article 485 Code on Criminal Procedure (Expenses suffered by the state) the **criminal procedural expenses** are paid in advance by the state, except those related to the acts requested by the private parties.

In the final decision the court defines the obligation to pay the expenses paid in advance by the State.

2. The Bylaws

The **expenses of experts and witnesses** are governed by the Instruction No 4, dated 12.12.2012, of the Council of Ministers "On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial" and the "Instruction on some amendments and addenda to instruction No 4, dated 12.12.2012, of the Council of Ministers "On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial".

The second bylaw is the Instruction of the Minister of Justice No. 6, dated 20/08/2019, on **rules and procedures for making the payments of the judicial expenses**, wherefore the exemption has been decided in the event of granting legal aid.

3. Beneficiaries (Article 25)

See point IV.

4. The Request

See point IV and V.

The request has to be made by using the **form**.

Point of time

The request can be made

- together with the request for secondary legal aid;
- attached to the statement of claim, in compliance with the provisions of the procedural legislation;
- at any phase of the proceeding until judicial investigation has not been declared closed.

Exemption from payment of **one, several or all** court fees and/or court costs can be asked.

The request has to be addressed to the **court** that is competent for the decision on the merits.

5. The Examination of the Request and the Decision on the Request

a. Examination of the Request

The court examines the request in compliance with the provisions of the procedural legislation and as far as possible with the provisions of Article 22 (Article 27 (2)).

See point V for details.

b. Notification of the Decision

The decision on **acceptance** of the request for exemption from payment of court fees and court costs shall be immediately notified to the **Directorate** (Article 27 (4)) and the **requesting party** (Article 316 Code on Civil Procedure).

6. The Payment of the Costs and Fees

a. The Law on Legal Aid

The court costs are paid by the Directorate according to the procedures for the payment of court costs (Article 28 (2)).

The bylaw on the remuneration of experts and witnesses (Art 28 (3)) and the procedures for the payment of court costs (Art 28 (4), 7 (g)) regulates with which amount and when experts and witnesses are paid.

b. The Bylaws

The Instruction No 4, dated 12.12.2012, of the Council of Ministers "On the Determination of the amount of **expenses and Payments of**

Experts and Witnesses during the Trial” and the “Instruction on some amendments and addenda to instruction No 4, dated 12.12.2012, of the Council of Ministers “On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial” and the Instruction of the Minister of Justice No. 6, dated 20/08/2019, on rules and procedures for making the payments of the judicial expenses, wherefore the exemption has been decided in the event of granting legal aid” foresee the following system:

On the selection of experts:

The court invites experts who provide expertise in a judicial process, based on the records of the Electronic Register of Experts (Article 1 Instruction No 4, dated 12.12.2012, of the Council of Ministers “On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial”) and calls an expert outside the Electronic Register of Experts only when, for the needs of the process, the expert is required from specific areas of expertise for which the law does not provide their licensing (Article 4 Instruction No 4, dated 12.12.2012, of the Council of Ministers “On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial”). Any expert cannot be assigned to provide his expertise in more than 30% of the number of court cases for which the same type of expertise is required within a calendar year (Article 3 Instruction No 4, dated 12.12.2012, of the Council of Ministers “On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial”).

On the amount of expenses and payment of experts, translators and witnesses:

Part II of the Instruction No 4, dated 12.12.2012, of the Council of Ministers “On the Determination of the amount of expenses and Payments of Experts and Witnesses during the Trial” determines the expenses and payment of experts, part III of this Instruction the expenses of witnesses and part IV the payment of translators.

Experts are eligible to certain travel expenses and allowances (depending on the distance of their residence from the court) and a maximum payment of 40 000 ALL.

On the payment of witnesses, experts, translators and for the inspection of the items and location inspection (see Article 2 Instruction of the Minister of Justice No. 6, dated 20/08/2019, on rules and procedures for making the payments of the judicial expenses, wherefore the exemption has been decided in the event of granting legal aid):

Payments for experts and witnesses in cases when the court has decided exemption from the payment of court expenses are made **by the Directorate**. The details are governed by the Instruction of the Minister of Justice No. 6, dated 20/08/2019, on rules and procedures for making the payments of the judicial expenses, wherefore the exemption has been decided in the event of granting legal aid as follows (see Articles 3 to 5 of that Instruction):

The Directorate makes the payments based on the court decision. Within 15 days as of the date of pronouncement by the court of the decision for exemption from the payment of judicial expenses , the witness, expert and translator shall **submit at the Directorate** the taxation documents for the services provided and, as appropriate, the supporting documentation as mentioned in Article 4 of that Instruction. The failure to provide a tax documentation under the provisions of the legislation in effect for taxation consists a cause for not making the payments.

At the end of each month the Directorate makes (depending on the budget available) the **payments** of judicial expenses, according to the chronological sequence of the notified judicial decisions and consolidated with the establishing documentation (Articles 6, 8 of the Instruction) and notify the recipient, the beneficiary of legal aid and the court of the payment (Article 7 of the Instruction).

7. The Appeal Procedure

The provisions of Article 22 apply (Article 27 (3)).

VIII. Reimbursement

1. Overview

a. Content

The law regulates two scenarios in this context:

- Reimbursement from the **loosing party** in civil and administrative cases (Article 30) and
- Reimbursement from the **beneficiary** (Articles 31 and 32; see also Art 6 “Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits”)

The general possibility to ask a beneficiary for reimbursement is in line with the case law of the ECtHR: “There is no guarantee for a definitive exemption from legal costs. Reimbursement may be required after the trial if the person concerned has the means to meet the costs” (X. v. Germany (1982)).

b. Bylaws

The relevant bylaw is the “Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits”.

c. The competent Institutions

The **Directorate** is competent for the seeking of reimbursement.

2. Reimbursement from the loosing Party (Article 30)

a. Relevant Provisions in the Code on Civil Procedure

According to Article 106 Code on Civil Procedure (The burdened party)

- The fee, the other court costs as well as the remuneration of a lawyer that were paid by the plaintiff, shall **be charged to the defendant** to

- the extent of the part of the lawsuit that was endorsed by the court,
- The fee and the other court costs, from the payment of which the party has been exempt shall be **charged to the other party** to the extent of the part of the lawsuit that was endorsed by the court and
- The **defendant is entitled to request** payment of court costs incurred, in proportion to the unendorsed part of the lawsuit. The defendant is entitled to request payment of court costs incurred, even in the event of the decision for dismissal of adjudication.

b. Scope

Article 30 applies only in **civil and administrative** cases. According to its wording it applies when the “party which has been exempt from payment of court fees and court costs”. In that case the other party shall be “charged the payment of court fees and court costs”. Thus according to its wording Article 30 does not apply to expenses made for secondary legal aid, i.e. the fees paid to the advocate. It can be questioned if the omission of expenses for secondary legal aid was on purpose and if the expenses made for secondary legal aid, i.e. the fees paid to the advocate, may not also be recovered from the losing party.

c. The Conditions

If the beneficiary of secondary legal aid and/or exemption from court fees and court costs

- **wins** by a final decision and
- the other party that lost is charged in accordance with the **court decision** to pay the court fees and costs immediately to the Directorate.

d. The Procedure

According to the Law on Legal Aid the decision (that charges the other party) is not notified to the Directorate. The beneficiary though is obliged to submit to the Directorate a **copy of the final judicial decision** and of the mandatory execution of the court decision (Art 4 “Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits”).

If this losing party does not pay voluntarily, by request of the Directorate, the judicial bailiff service shall begin the **obligatory execution procedures** in accordance with the legislation in force.

3. *Reimbursement from the Beneficiary*

a. *Overview*

There are **two situations** where reimbursement from the beneficiary can be sought:

- If there is a change of circumstances or
- If the beneficiary gave initial false or untrue information

Both options are **not limited to civil and administrative** cases but apply also in criminal procedures.

b. *Change of Circumstances (Article 31 (1 and 2))*

The conditions for reimbursement are that

- The circumstances changed and because of that
- The beneficiary does not fulfil the legal criteria for legal aid anymore.

Article 6 a “Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits” specifies Article 31 as it states that reimbursement can be sought from the beneficiary if the “financial **income** is such that they do not fall under any of the categories of **Article 12**”.

c. *The Procedure*

The Directorate shall, following the approval of the legal aid, seek the beneficiary to sign up to a statement where they commit themselves to the **obligation to notify about changes** in the financial circumstances, or where they do not want to follow the judicial proceedings any more, thus admitting to the voluntary return of the benefited amount to this effect (Article 3 “Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the Circumstances for the Return of Profits”).

The **Directorate** shall periodically, each year, **verify** the economic and financial situation of the beneficiary, as well as the stage of the proceedings wherein the beneficiary party is involved (Article 1 of the Instruction). The Directorate may nevertheless always carry out the verification if there is data or indications of change in circumstances (Article 2 of the Instruction). The Directorate may seek information from the beneficiary and public and non-public institutions who might be aware of the situation that the beneficiary is in (Article 5 of the Instruction).

Where the Directorate finds out that the conditions for reimbursement

are fulfilled, it shall make a substantiated **decision**, wherein reflecting:

- a) the data having been collected by it;
- b) the accurate calculated amount which has to be returned by the beneficiary, and
- c) the time period within which the benefited amount has to be returned, which shall under no circumstances exceed the time period of six months as of the date of finding out the respective circumstances (Article 7 of the Instruction).

In this case the Directorate shall notify to the beneficiary the obligations for the voluntary reimbursement of expenses made, the concrete amount and the time-limit for fulfilment of this obligation

If **no voluntary payment is made** the Directorate makes a statement of claim to the court (Article 8 of the Instruction).

4. Reimbursement from the Beneficiary under Article 31 (3)

Reimbursement (according to Article 31 (1) and (2)) can also be sought from the beneficiary (and not the advocate) when the person, to whom the request for secondary legal aid and/or exemption from court fees and court costs has been approved or the appointed advocate:

- a) has **not filed the statement of claim** in the court, after within three months from the date when the decision of the court on the acceptance of the request for secondary legal aid has become final (see also Article 6 b of the Instruction);
- b) has **withdrawn** from the adjudication of the lawsuit, from the right of the lawsuit, from appeal and recourse, or from the execution of the execution order (see also Article 6 c of the Instruction).

5. Reimbursement from the Beneficiary because of untrue or false Information and Data (Article 32)

Reimbursement can be sought from the beneficiary when the beneficiary received legal aid by presenting false or untrue data (Article 6 ç of the Instruction No 2, dated 25/03/2019, on the Procedures, Periodicity and Rules for the Verification of the).

The Directorate has to issue a decision according to Article 7 of the Instruction (see above point 3). In case of lack of voluntary execution, the Directorate shall file a statement of claim at the court.

Annex 1
LAW
Nr. 111 / 2017
ON STATE GUARANTEED LEGAL AID

Based on articles 78 and 83, paragraph 1, of the Constitution, on the proposal of a member of Parliament,

THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER I
GENERAL PROVISIONS

Article 1
Scope of the law

This law establishes the forms, the conditions, the procedure and the rules for the organisation and administration of state guaranteed legal aid, with the aim the protection of fundamental rights of the individual and his legitimate interests.

Article 2
Objective of the law

This law has as an objective:

- a) to create a system for the organisation and delivery of free-of-charge legal aid in an effective and equal manner for all individuals in need in order to enable to them access to justice.
- b) to ensure the proper organization, proper administration and proper functioning of the state institutions responsible for the administration of legal aid
- c) to ensure the delivery of professionally competent, high quality, efficient and effective legal aid services.-

Article 3 Definitions

In this law the following terms shall have the following meanings:

- a) *“Legal aid”* is the free-of-charge legal service and the other services provided for in this law, for persons meeting the requirements of this law which are guaranteed and financed by the state;
- b) *“Primary legal aid”* is:
 - i. providing of information regarding the legal system of the Republic of Albania, the normative acts in force, the rights and obligations of subjects of law and the methods of enforcing and exercising these rights both in judicial and extrajudicial proceedings,
 - ii. the delivery of counselling,
 - iii. the delivery of advice on the procedures of mediation and the alternative means of dispute resolutions,
 - iv. the delivery of assistance in drafting and establishing of documentation to put in motion the state administration or for requesting secondary legal aid,
 - v. representation before administration bodies, and
 - vi. the delivery of all other forms of necessary legal support not constituting secondary legal aid;
- c) *“Secondary legal aid”* is the legal service that is offered for the compilation of the necessary legal acts for putting in motion the court, the delivery of counselling, representation and defence before the court in administrative and civil cases and in criminal cases for which is not applied the mandatory defence in accordance of the criminal procedural legislation;
- ç) *“Counselling”* is the delivery of information on the manners and the possibilities of solution of a concrete legal matter;
- d) *“Primary legal aid service centre”* is a specialized unit for the delivery of primary legal aid organized as ‘direct unit offering services to the public’ as per the provisions of the law on the organisation and functioning of the state administration;
- dh) *“Specially trained officer”* is an officer, graduated from a second cycle of studies in law, as defined in the legislation in force on higher education and who has undergone a special training, and who has then been assigned with the duty to provide primary legal aid in a primary legal aid service centre;
- e) *“Special training”* is the initial and continuous training program approved by the Directorate on Free-of-Charge Legal Aid, for the officers that offer primary legal aid in the primary legal aid service centre.

- ë) *“Legal clinic”* is an organizational unit of a higher education institution, organised and functioning in accordance with the provisions of the legislation in force on higher education, and that delivers primary legal aid without a profit motive, in accordance with the definitions in the statute of the higher education institution.
- f) *“Income”* in the meaning of this law are the monthly incomes that are secured by the family from wages, economic activity, interests from bank accounts, income from immovable property. In these income will not be included economic aid/social assistance, social pension, unemployment payments, benefits of invalids according to the status of the work of war invalid, payments received from household members that care for persons with disabilities, reimbursement of expenses for energy, reimbursement for medicines and medications for those chronically sick and the hygieno-sanitary package for persons with disabilities;
- g) *“Household”* is a set of persons, related by marriage or cohabitation or in a parent-child, in the family or custody/guardianship relationship, that are living under the same roof and jointly contributing, financially or otherwise, towards the cost of living;
- gj) *“Property”*, in the meaning of this law, is property of any kind, movable or immovable, as well as the real property rights. Real estate used by the owner or co-owner as his primary home and property excluded from seizure according to the Civil Procedure Code, are not considered property in the meaning of this law.
- h) *“Exemption from court fees and costs”* is a form of free-of-charge legal aid, for the exemption from payment of court fees and other court costs, by decision of the competent court, if the criteria imposed by this law are fulfilled.
- i) *“Court fees”* is the fee in accordance with the definition provided by the legislation in force on court fees in the Republic of Albania.
- j) *“Court costs”* are the expenses made in the framework of the judicial proceeding, necessary for adjudication in accordance with the meaning given in the procedural legislation, except for the court fee.
- k) *“Fee for initiating execution of the execution order”* is the fee that is prepaid to the state judicial bailiff service, for the initiating execution of an executive title, in accordance with the provisions of the legislation in force

Article 4 **Principles of legal aid**

Delivery of legal aid is based on the following principles:

- a) equal access to legal aid;

- b) equality and non-discrimination of individuals entitled to legal aid;
- c) professionalism in legal aid service delivery;
- ç) quality, efficiency and cost-effectiveness of delivered services of legal aid;
- d) confidentiality;
- dh) avoidance and prevention of conflict of interests;
- e) protection of the rights of vulnerable persons.

Article 5

Forms of legal aid

Legal aid is delivered in the following forms:

- a) primary legal aid,
- b) secondary legal aid;
- c) exemption from payment of court fees and other court costs according to the law and exemption from the obligation to prepay the fee for initiating execution of the execution order.

CHAPTER II

ORGANIZATION OF STATE GUARANTEED LEGAL AID

Article 6

Institutions responsible for administration and award of legal aid

The responsible institutions for implementation of this law are:

- a) the Minister of Justice;
- b) the Directorate for Free-of-Charge Legal Aid;
- c) the National Chamber of Advocacy;
- ç) the competent courts according to the provisions of this law.

Article 7

Tasks of the Minister of Justice

The Minister of Justice shall have the following responsibilities and execute the following tasks:

- a) develops the state policy in the field of legal aid;
- b) proposes to the Ministry of Finance the annual draft budget for legal aid, in compliance with the rules foreseen in the legislation for the management of the budgetary system;
- c) oversees the well-functioning of the legal aid system and the

- effectuation of the annual budget for legal aid;
- ç) reports every year in the Assembly on the situation of the system of legal aid;
- d) approves the following acts:
 - i) the form sheet of the request for primary legal aid;
 - ii) the form sheet of the request for secondary legal aid;
 - iii) the form sheet of the request for exemption from payment of court fees and other court costs;
 - iv) the form sheet of the self-declaration for primary legal aid;
 - v) the form sheet of the self-declaration of income and property in accordance to the objective of the law;
 - vi) the form sheet of the self-declaration for special categories according to Article 11 of this law;
 - vii) the form sheet of the register for the registration of the aforementioned requests and self-declarations;
 - viii) the form sheet of NGOs that offer primary legal aid;
 - ix) the form sheet of the appeal to the decision for dismissal of the request for secondary legal aid.

The Ministry of Justice shall take the necessary measures for the publication of the form sheets provided for in this paragraph in a format accessible by persons with disabilities.

- dh) approves the establishment of primary legal aid service centres, after having received prior the opinion of the High Judicial Council.
- e) approves the model contract with not-for-profit organizations for primary legal aid services as foreseen in this law, after having previously acquired the opinion of the Ministry responsible for finance.
- ë) approves the model contract with advocates for the delivery of secondary legal aid services.
- f) approves, after having received prior the opinion of the Directorate for Free-of-Charge Legal Aid and the National Chamber of Advocates, the criteria and methodology for assessing the quality of delivery of legal aid services and the procedures of the supervision by the Directorate for Free-of-Charge Legal Aid of secondary legal aid services;
- g) approves with a joint instruction with the minister responsible for Finances, after having received prior the opinion of the National Chamber of Advocacy, the criteria for receiving payments and the relevant remuneration fees to advocates, who provide secondary legal aid services;
- gj) approves the procedures that are followed by the Directorate for Free-of-Charge Legal Aid regarding the payments for court costs according

- to the provisions of this law;
- h) publishes the list of advocates offering secondary legal aid services and the list of authorised not-for-profit organisations that offer primary legal aid services on the official website of the Ministry of Justice;
 - i) approves the rules and procedures for the collection, filling and administration of the information of the request register and the self-declarations of the subjects of this law and of the register of delivering primary legal aid;
 - j) accomplishes all other tasks assigned to her or him by this law.

Article 8

Tasks of the Directorate for Free-of-Charge Legal Aid

1. The Directorate for Free-of-Charge Legal Aid is public legal person under the subordination of the Minister of Justice, in the meaning of the law for the organization and functioning of the state administration. The internal organization of the Directorate for Free-of-Charge Legal Aid shall be approved by the Prime Minister, upon the proposal of the Minister of Justice, in accordance with the legislation in force. The employment relations of the employees of the Directorate for Free-of-Charge Legal Aid are regulated by the legislation in force on the civil servant. The employment relationships of the specially trained officers attached to the primary legal aid service centre and of the support staff are regulated according to the Labour Code.

2. The Directorate for Free-of-Charge Legal Aid shall have these tasks:

- a) effectuates the state policy in the field of legal aid;
- b) submits to the Minister of Justice the quarterly reports on the effectuation of this law and on the use of the budgetary financial means allocated for the delivery of legal aid;
- c) assesses the costs and plans the expenditures related to the delivery of legal aid and presents to the Minister of Justice to be included in the state budget;
- ç) manages the budgetary funds for the delivery of legal aid;
- d) collects and analyses information on legal aid delivery to improve the functioning of the system of legal aid delivery and organizes public awareness raising campaigns on the availability of legal aid and the conditions for the benefit of it;
- dh) drafts the annual reports on its activity regarding the implementation of this law and of the state policy in the field of legal aid and presents them to the Minister of Justice;
- e) cooperates with international organisations, legal clinics, and not-for-

- profit organizations, both local and foreign, in the development of the legal aid system, through the raising of awareness and the legal education of the public;
- ë) drafts the model contract with not-for-profit organizations for primary legal aid services as foreseen in this law;
 - f) concludes contracts with not-for-profit organizations for primary legal aid services as foreseen in this law, and effects the respective payments;
 - g) cooperates with the Department of Public Administration for the approval of the initial and continuous training programs for the specially trained officers, supervises their implementation and revises periodically the standards of professional training and the performance of specially trained officers;
 - g) administrates, on the basis of the respective order of the Minister of Justice, primary legal aid service centres at the premises of District Courts or at other suitable premises, in accordance with the legislation in force on the state administration;
 - h) publishes the list of advocates who offer secondary legal aid services on the official of the Directorate for Free-of-Charge Legal Aid;
 - i) publishes the model contract with advocates for the delivery of secondary legal aid services, after approval by the Minister of Justice;
 - j) makes the payments, based on the relevant fees for the remuneration of advocates, who offer secondary legal aid services in accordance with the provisions of this law;
 - k) signs until 1 March of every calendar year, the yearly service contracts with the advocates included in the list approved by the National Chamber of Advocacy for the delivery of secondary legal aid;
 - l) implements the system for the evaluation of the quality of delivery of legal aid;
 - ll) monitors every year the delivery standards of primary and secondary legal aid services by the non-for-profit organisations and the advocates;
 - m) effectuates the rules on the reimbursement of payments, in accordance with this law and protects the interests of the state budget;
 - n) drafts and proposes to the Minister of Justice the sublegal acts in accordance of the provisions of this law.
 - o) maintains, collects, completes and administers the data of the register of requests and self-declarations of subjects of this law and the data of the register of non-for-profit organizations offering primary legal aid according to the rules and procedures approved by the Minister of Justice;
 - p) accomplishes all other tasks assigned to it by this law.

Article 9

Responsibilities and tasks of the National Chamber of Advocacy

The National Chamber of Advocacy shall have the following responsibilities and execute the following tasks:

- a) approves, by joint instruction with Advocacy and the Directorate for Free-of-Charge Legal Aid, the criteria and procedures for the selection of advocates delivering secondary legal aid services;
- b) approves, in cooperation with the Ministry of Justice, the rules on the implementation of the principle of rotation in the appointment of advocates that offer secondary legal aid services in accordance with the provisions of Article 245 of this law and monitors their effectuation from the local chambers of advocacy;
- c) within the date of 1 February of every calendar year, the National Chamber of Advocates approves the list of advocates for the delivery of secondary legal aid services, and forwards this list to the Ministry of Justice, the Directorate for Free-of-Charge Legal Aid and the local chambers of advocacy. In the drafting of this list, the National Chamber of Advocates shall take into account, to the extent possible, the inclusion of advocates of all specialties and levels and the respect of equal gender representation;
- ç) publishes the list of advocates offering secondary legal aid services on the official website of the National Chamber of Advocacy;
- d) prepares and organizes the continuous training programs for advocates who are on the list of advocates for the delivery of secondary legal aid services, in cooperation with the Directorate for Free-of-Charge Legal Aid;
- dh) accomplishes all other tasks assigned to it by this law.

CHAPTER III

BENEFICIARIES OF STATE GUARANTEED LEGAL AID

Article 10

Beneficiaries of legal aid

1. Subjects that shall be beneficiaries of legal aid are:
 - a) Albanian citizens with domicile or residence in the territory of the Republic of Albania;
 - b) foreign citizens or stateless persons, who stay in the territory of the Republic of Albania for a temporary or permanent period and who have been equipped with permit of stay in compliance with the legislation in force on foreigners;

- c) foreign citizens or stateless persons, that enter legally in the territory of the Republic of Albania, and that benefit it on the basis of international agreements ratified by the Republic of Albania or based on the principle of reciprocity;
- ç) asylum seekers, persons entitled to the status of refugee and persons that are in the process of appeal of administrative and/or judicial decisions for the refusal of the application for asylum or revocation of the decision on the status of refugee in accordance with the legislation in force for asylum in the Republic of Albania.

2. The subjects foreseen in paragraph 1 of this article shall benefit legal aid, if fulfilling the criteria foreseen in this law.

Article 11 **Special categories of beneficiaries of legal aid**

Legal aid shall be granted to the following persons, regardless of their income and their property:

- a) victims of domestic violence;
- b) sexually abused victims and human trafficking victims, at any stage of a criminal proceeding;
- c) minor victims and minors in conflict with the law, at any stage of a criminal proceeding;
- ç) children living in social care institutions;
- d) children under guardianship who request to initiate a proceeding without the approval of their legal guardian or against their legal guardian;
- dh) persons that benefit from the payment for disability in compliance with the provisions of the law on social aid and services, including also persons that benefit from the status of blindness;
- e) persons undergoing involuntary treatment in mental health service institutions according to the provisions of the legislation in force on mental health;
- ë) persons undergoing voluntary treatment in mental health service institutions for serious mental diseases;
- f) persons against whom the removal or restriction of the capacity to act is requested, at any stage of this proceeding;
- g) persons with removed or restricted capacity to act who request to initiate a proceeding against their legal guardian, for regaining the capacity to act without the approval of the legal guardian.
- gj) persons who are beneficiaries of social protection programs.
- h) persons to whom the right has been infringed through an action or

inaction that constitutes discrimination on the basis of the decision of the competent organ, according to the legislation in force for protection from discrimination.

Article 12

Beneficiaries of legal aid in case of insufficient income and property

1. The right to benefit legal aid is possessed by everyone that proves that they have insufficient income and property to bear the costs for counselling, representation and/or defence in criminal cases, in administrative and in civil law cases.
2. The income of a person living in a household shall be considered insufficient in the meaning of paragraph 1 of this article, if the total income of all household members, divided by their number, is lower than 50 percent of the monthly minimum wage, as defined according to the legislation in force.
3. The income of a person, not living in a household, shall be considered insufficient in the meaning of paragraph 1 of this article, if it is lower than the level of the monthly minimum wage, as defined according to the legislation in force.
4. If a person living in a household requests legal aid for a case against another member of the same household, paragraph 2 of this article shall not apply. The income of this person shall be considered insufficient in the meaning of paragraph 1 of this article if it is lower than the level of the minimum wage, as defined according to the legislation in force.
5. The property of a person shall be considered insufficient in the sense of paragraph 1 of this article, if its total value does not exceed the value of 36 monthly minimum wages, as defined according to the legislation in force.

CHAPTER IV PRIMARY LEGAL AID

Article 13

Delivery of primary legal aid

Primary legal aid shall be delivered from:

- a) specially trained officers,
- b) not-for-profit organizations,
- c) Legal Clinics, attached to higher education institutions.

Article 14

Delivery of primary legal aid through specially trained officers

Primary legal aid shall be delivered at legal aid service centres or in other suitable premises in accordance with the provisions of the law, by specially trained officers employed at these centres.

Article 15

Delivery of primary legal aid by the not-for-profit organizations

1. Non-profit organizations provide primary legal aid services in compliance with the authorisation approved by the Ministry of Justice. The procedures and documentation for their authorisation are determined by decision of the Council of Ministers.

2. Non-profit organizations that are authorized for delivery of primary legal aid services shall fulfil the following criteria:

- a) be registered in accordance with the legislation in force for non-profit organizations;
- b) to have as the object of their activity provided for in the statute the provision of legal aid services;
- c) have paid their tax obligations in accordance with the legislation in force;
- ç) to have experience in the delivery of legal aid;
- d) not be in the process of bankruptcy and / or liquidation;
- dh) The members of the highest decision-making body and the executive body of the Non-Profit Organization shall not be sentenced by a final court decision for committing an intentional criminal offense which would endanger the public trust and proper delivery of primary legal aid.

3. The non-for-profit organizations authorised for the delivery of primary legal aid receive financing by the state budget, after a competitive and transparent selection process. The procedure, rules of selection of authorised non-for-profit organizations, that benefit financing by the state budget and the manner of their financing shall be defined by decision of the Council of Ministers.

Article 16

Delivery of primary legal aid by legal clinics

1. Primary legal aid shall be delivered by Legal Clinics, established at higher education institutions.

2. The Directorate for Free-of-Charge Legal Aid shall collaborate with legal clinics in accordance with the conditions and criteria foreseen in the respective cooperation agreements, for the training and the improvement of knowledge of students participating at these clinics, on issues connected to primary legal aid.

Article 17

The request and procedure for delivery of primary legal aid

1. The request for delivery of primary legal aid shall be made orally or in writing by the interested person to a primary legal aid service centre or an authorised not-for-profit organization.

2. The person requesting to benefit primary legal aid in accordance with paragraph 1 of this article, shall sign a self-declaration that he/she satisfies the criteria defined in this law, in accordance of the self-declaration form approved by the Minister of Justice, accompanied with the justifying documentation. The list of documents that shall serve for certification of fulfilment of criteria shall be defined by order of the Minister of Justice.

3. Primary legal aid is delivered immediately upon request. In case immediate primary legal aid service delivery is impossible, the person shall immediately be informed on the date and time of the delivery of the requested service.

4. A person shall be entitled to delivery of primary legal aid services on the same issue or case only once, except for instances when new relevant circumstances justify the delivery of further primary legal aid services to the same person, on the same issue or case.

5. In case that in the course of delivery of primary legal aid services, a conflict of interest is detected, this service shall be interrupted immediately. In case where primary legal aid is provided by a primary legal aid service centre, the case is dealt with in accordance with the provisions of the Code of Administrative Procedures for the avoidance of conflict of interest. In the case of primary legal aid provided by an authorised non-profit organization, the latter shall take measures to avoid the conflict of interest in accordance with legal provisions in force, by ensuring the delivery of primary legal aid services to the applicant.

6. If it becomes evident in the course of delivery of primary legal aid services that the need for delivery of secondary legal aid services exists, the person shall immediately be informed for the conditions of award of secondary legal aid and shall be assisted in completing a request for the delivery of secondary legal aid.

7. During delivery of primary legal aid services shall be kept a record which shall contain:

- a) name, surname and personal identification number of the applicant;
 - b) domicile address, contact data, family status, employment status of the applicant;
 - c) short description of the issue or case for which primary legal aid services have been requested;
 - ç) if applicable, length of the meeting or meetings;
 - d) short description of the delivery of primary legal aid services and outcome of this delivery.
 - dh) declaration that the applicant has not benefitted prior primary legal aid for the same problem or issue;
 - e) other data in accordance of the format approved by the Minister of Justice.
8. The storage and processing of personal data of applicants for primary legal aid services shall be made in compliance with the provisions of the law for the protection of personal data.

CHAPTER V SECONDARY LEGAL AID

Article 18 Delivery of secondary legal aid

Secondary legal aid is provided by advocates included in the list approved by the National Chamber of Advocates, upon the request of the person entitled to receive secondary legal aid under articles 11 or 12 of this law. The application is drafted according to the request form sheet approved by the Minister of Justice.

Article 19 Request for secondary legal aid

1. The request for delivery of secondary legal aid shall be filed by the interested person, personally or through the postal service, to the court or proceeding body that commences investigation, before the initiation of a judicial proceeding, at the initiation of a judicial proceeding and/or at any stage of a judicial proceeding, until judicial investigation has not been declared closed, in accordance with the rules provided for in the procedural legislation.
2. The person entitled to secondary legal aid may submit the request

foreseen in paragraph 1, of this law, through a legal representative or a representative supplied with power of attorney, or by the spouse, cohabitant or kin relation of the first degree.

3. The request for secondary legal aid shall be exempted from court fees and costs.

4. The person, who seeks to benefit secondary legal aid shall sign a self-declaration of fulfilment of the criteria for benefitting as defined in this law, according the self-declaration form sheet approved by the Minister of Justice accompanied with the justifying documentation. The list of documents that shall serve for certification of fulfilment of criteria shall be defined by order of the Minister of Justice.

Article 20

Submission of request for secondary legal aid and the competent organ for its examination

1. The request for secondary legal aid shall be filed at the court competent for examination of the trial on the merits, except when provided otherwise in this law.

2. The request for secondary legal aid of the defendant without sufficient financial means shall be submitted to the proceeding body that commences investigation in accordance with article 21 of this law.

Article 21

Procedure for delivery of secondary legal aid for the defendant without sufficient financial means

1. In the case the request for secondary legal aid is filed by the defendant without sufficient financial means, the proceeding body that commences investigation shall immediately examine whether the criteria stipulated in Article 12 of this law are fulfilled.

2. If the proceeding body that commences investigation values that the criteria are fulfilled, it shall immediately appoint a defence lawyer from the list of advocates for the delivery of secondary legal aid, and shall immediately inform the person to whom secondary legal aid has been granted, as well as the defence lawyer that has been appointed.

3. The decision for accepting or dismissing the request for secondary legal aid shall be reasoned and shall be communicated to the applicant and the Directorate for Free-of-Charge Legal Aid.

4. The applicant may object against the decision of the proceeding body for dismissing the request for secondary legal aid, with a lawsuit at the criminal court of first instance, competent for examination of the trial on the merits, within 5 days from the receipt of notice on this decision.

5. The court shall examine the case with one judge, in accordance with the rules foreseen in the procedural legislation, within 15 days from registration of the case. Against this decision shall be allowed special appeal at the court of appeal within 5 days from the receipt of notice. The court of appeal shall examine the appeal in consultation chamber within 10 days from the date of receipt of acts.

6. The High Prosecutorial Council shall approve the rules and procedures to be followed by the proceeding body that commences investigation in the appointment on the basis of the principle of rotation of the defence lawyer and his substitution from the list of advocates that offer the services of secondary legal aid in the criminal process.

7. Detailed rules in connection with the guarantee of obligatory defence from the institutions foreseen in this law, according to the provisions of the Criminal Procedure Code shall be approved by the High Prosecutorial Council.

Article 22

Examination of the request for secondary legal aid by the court

1. The court examines the request for secondary legal aid in compliance with the provisions of the procedural legislation and as much as possible, with the provisions of this law.

2. The decision in connection with the request for secondary legal aid shall be taken by the competent court:

- a) within 5 days from the date of receipt of the request, when the request has been submitted before initiation of the judicial proceeding;
- b) during the preliminary actions or in the preparatory session before the scheduling of the judicial session/hearing, when the request for legal aid has been submitted together with the statement of claim;
- c) according to the provisions of the procedural legislation and the provisions of this law, when the request has been filed during judicial examination.

3. In cases where the applicant declares the impossibility of securing the documentation, as well as in any other case where the court values that the correction or completion of the request may be cause for delays which affect the essence of the rights of the applicant, the court may order the

submission of the necessary documentation from the state administration bodies that possess it. In these cases, the request for secondary legal aid is deemed to be filed at the end of the time limit imposed by the court for presentation of the missing document by the state administration body.

4. The Court, in compliance with the provisions of this law and the provisions of the procedural legislation, after examination of the request, shall decide:

- a) Acceptance of the request for delivery of secondary legal aid;
- b) Dismissal of the request for delivery of secondary legal aid.

5. The request for secondary legal aid shall be dismissed only in cases when:

- a) the conditions stipulated in Article 11 and 12 of this law are not fulfilled;
- b) is evidently abusive or manifestly ill-founded.

6. The decision for the approval and dismissal of the request for secondary legal aid shall be reasoned.

7. Against the decision of the court dismissing the request for secondary legal aid, may be made a special appeal. The appeal of the decision does not hinder the continuation of adjudication of the case.

The appeal shall be made through the template form sheet approved by the Minister of Justice, which is given to the application together with the decision for the dismissal of the request.

8. The court of appeal shall examine the case in consultation chamber and shall take the decision within 15 days from receipt of the acts. Against this decision a recourse is not permitted.

9. The Directorate for Free-of-Charge Legal Aid may appeal the decision of the court for acceptance of the request for secondary legal aid, when it claims that this request is evidently abusive or manifestly ill-founded. In this case shall be applied the time-limits and the rules for appeal of final decisions in accordance with the provisions of the procedural legislation. Against the decision of the court of appeal is not allowed a recourse to the High Court.

Article 23 **Notification of the decision of the court**

The decision of the court on the request for secondary legal aid shall

immediately be notified to:

- a) the applicant;
- b) the person who has submitted the request for secondary legal aid, if different from the applicant;
- c) the proceeding body, if the conditions of article 21 of this law apply.
- ç) the Directorate for Free-of-charge Legal Aid;
- d) the local chamber of advocacy, in case the request for secondary legal aid has been approved.

Article 24

Delivery of secondary legal aid by advocates

1. Advocates that deliver secondary legal aid services shall fulfil these criteria:

- a) have applied with the National Chamber of Advocacy and have been put by the National Chamber of Advocacy on the list of advocates who deliver secondary legal aid;
- b) have concluded a yearly service contract with the Directorate for Free-of-Charge Legal Aid;
- c) have been appointed for the delivery of secondary legal aid services by the proceeding body or the local chamber of advocacy;
- ç) have specialised in fields of law, when specialisation is necessary, as in the case of representation of minors, of victims and in other cases provided for by law.

2. In case of approval of the request for secondary legal aid, shall be acted according to the following rules:

- a) The local chamber of advocacy shall appoint an advocate from the list of advocates for the delivery of secondary legal aid services according to the principle of rotation.
- b) The local chamber of advocacy shall forward the decision of the competent court, together with its decision on the appointment of the advocate, to the latter and to the person to whom the request for secondary legal aid has been granted.

3. The provisions of paragraph 2 of this article shall not be applied in the case when the request for secondary legal aid has been presented by the defendant without sufficient financial means to the proceeding body that commenced investigation.

4. The appointed advocate, immediately after being acquainted with the decision of the competent court and the decision of the local chamber of advocacy or the decision of proceeding body on his appointment as an

advocate for the delivery of secondary legal aid, shall enter into contact with the person to whom secondary legal aid has been granted and shall start with the delivery of the requested services.

5. The appointed advocate shall be replaced by another advocate from the list of advocates for the delivery of secondary legal aid services, only in case a conflict of interest is detected between the advocate and the person to whom the request for secondary legal aid has been approved.

6. A decision of the replacement of the appointed advocate by another advocate from the list of advocates for the delivery of secondary legal aid services shall be taken from:

- a) the proceeding body in case the advocate to be replaced was appointed by this body;
- b) the local chamber of advocacy, in case the advocate to be replaced was appointed by it.

CHAPTER VI

EXEMPTION FROM PAYMENT OF COURT FEES, COURT COSTS AND FROM THE OBLIGATION FOR PREPAYMENT OF FEES FOR INITIATING EXECUTION OF THE EXECUTION ORDER

Article 25

Beneficiaries

Persons, entitled to secondary legal aid according to articles 11 or 12 this law, shall be entitled to exemption from:

- a) payment of general and special court fees as defined in the law on court fees in the Republic of Albania;
- b) payment of court costs (expenses for translators, witnesses, experts, site inspection or examination of items *in situ*) as defined in the procedural legislation;
- c) the obligation for prepayment of the fee for initiating execution of the execution order to the state judicial bailiff service.

Article 26

Request for exemption from payment of court fees and court costs

1. Exemption from payment of court fees and court costs shall be granted upon a request that is drafted in accordance of the request form sheet approved by the Minister of Justice.

2. The request for exemption from payment of court fees and court costs may be presented:

- a) together with the request for secondary legal aid;
- b) attached to the statement of claim, in compliance with the provisions of the procedural legislation;
- c) at any phase of the proceeding until judicial investigation has not been declared closed.

3. In the request for exemption from payment of court fees and court costs may be asked exemption from payment of one, several or all court fees and/or court costs, as defined in Article 25 of this law.

4. The request for exemption from payment of court fees and court costs can be filed by the person entitled to exemption from payment of court fees and court costs, by a legal representative or a representative equipped with power of attorney, or by the spouse, cohabitant, or kin relation of the first degree.

5. The request for exemption from payment of court fees and court costs can be filed personally or through the postal service.

Article 27

Procedure of examination of the request

1. The request for exemption from payment of court fees and court costs shall be submitted to the competent court for examination of the trial on the merits.

2. The court examines the request in compliance with the provisions of the procedural legislation and as far as possible with the provisions of article 22 of this law.

3. The court in compliance with the provisions of this law and the provisions of the procedural legislation, after examination of the request shall decide:

- a) Approval of the request for exemption from payment of court fees and other court costs;
- b) Dismissal of the request for exemption from payment of court fees and other court costs;

Against the decision of the court may be made an appeal in accordance with the provisions of article 22 of this law.

4. The decision on acceptance of the request for exemption from payment of court fees and court costs shall be immediately notified to the

Directorate for Free-of-Charge Legal Aid.

Article 28

Effectuation of the decision

1. The decision on approval of exemption from payment of court fees and court costs shall constitute an executive title and shall be executed in compliance with the provisions of the procedural legislation.
2. Payment of court costs, for which the exemption has been granted, shall be borne by the budget approve by the Ministry of Justice and shall be paid by the Directorate for Free-of-Charge Legal Aid.
3. The payments that are paid by the Directorate for Free-of-Charge Legal Aid, according to paragraph 2, of this law, may not surpass the amount of remuneration of experts and witnesses in a judicial proceeding, defined by the Council of Ministers.
4. The rules and the procedures of making the payments, according to paragraph 2, of this article, shall be defined by instruction of the Minister of Justice, after taking the opinion of the ministry responsible for finance.

Article 29

The right not to prepay the fee for initiating execution of the execution order

Persons who have benefited secondary legal aid under the provisions of this law, shall be entitled for not prepaying the fee for initiating execution of the execution order to the state judicial bailiff service.

CHAPTER VII

REIMBURSEMENT

Article 30

Obligations of the losing litigant party in civil and administrative cases

1. When the party which has been exempt from payment of court fees and court costs, in accordance with this law, wins by a final decision the case for which secondary legal aid and/or exemption from court fees and court costs has been granted, the other party that lost the case shall be charged the payment of court fees and court costs in accordance with the court decision and is obliged to deposit this amount immediately to the account of the Directorate for Free-of-Charge Legal Aid.

2. In case the decision is not voluntarily executed, by request of the Directorate for Free-of-Charge Legal Aid, the judicial bailiff service shall begin the obligatory execution procedures in accordance with the legislation in force.

Article 31 **Cases of reimbursement of benefits**

1. In case that a person, to whom has been accepted the request for secondary legal aid and/or the exemption from court fees and costs, has had his circumstances changed in such a way that he/she does not fulfil the legal criteria for being benefiting subjects of secondary legal aid, the Directorate for Free-of-Charge Legal Aid, shall notify to the beneficiary of legal aid the obligations for the voluntary reimbursement of expenses made, the concrete amount and the time-limit for fulfilment of this obligation. The procedure, the periodicity and the rules of verification of the change of circumstances shall be defined by order of the Minister of Justice.

2. In the event of lack of a voluntary execution of the obligation for reimbursement of expenses within the set time-limit, the Directorate for Free-of-Charge Legal Aid, shall file a statement of claim to the court by requesting the reimbursement of the sum in compliance with the legislation in force.

3. The provisions of paragraphs 1 and 2, of this article, shall be applied also in the instance when the person, to whom the request for secondary legal aid and/or exemption from court fees and court costs has been approved or the appointed advocate:

- a) has not filed the statement of claim in the court, after passage of a three-month time-limit from the date when the decision of the court for acceptance of the request for secondary legal aid has taken a final form;
- b) has withdrawn from the adjudication of the lawsuit, from the right of the lawsuit, from appeal and recourse, or from the execution of the execution order.

Article 32 **Reimbursement in case of false or untrue information**

1. The applicant that has benefited secondary legal aid and/or exemption from court fees and court expenses by presenting false or untrue data; is obliged to reimburse the costs for the advocate delivering secondary legal

aid services and/or the court costs. Independent from the reimbursement of these expenses, the Directorate for Free-of-Charge Legal Aid shall make a criminal report, when concluding that there are elements of a criminal act.

2. In case the request for secondary legal aid and/or exemption from court fees and court costs containing false or untrue information has been submitted by a person other than the person to whom secondary legal aid and/or exemption from court fees and court costs has been granted, the applicant and beneficiary of secondary legal aid and/or exemption from court fees and court costs, are solitarily liable to reimburse the costs defined in paragraph 1 of this Article.

3. The reimbursement of expenses, under paragraphs 1 and 2 of this Article, shall be made according to the request of the Directorate for Free-of-Charge Legal Aid. In case of lack of voluntary execution, the Directorate for Free-of-Charge Legal Aid, shall file a statement of claim at the court to request the reimbursement of the sum in accordance with the legislation in force.

CHAPTER VIII

FINAL AND TRANSITIONAL PROVISIONS

Article 33

Budget

1. The costs for state guaranteed legal aid, in all its forms, are covered by the state budget and by other legitimate sources.
2. Funds for state guaranteed legal aid constitute a separate item in the budget of the Ministry of Justice.

Article 34

Bylaws

1. The Council of Ministers is charged that within three months from the entry into force of this law, to approve the bylaws in effectuation of article 15, paragraphs 1 and 3, and article 28, paragraph 3, of this law.
2. The Minister of Justice is charged that within three months from the entry into force of this law, to approve the bylaws in effectuation of article 7, letters "d", "e", "ë", "f", "gj" and "i", article 17 paragraph 2, article 19 paragraph 4, article 28 paragraph 4 and paragraph 31 paragraph 1 of this law.

3. The Minister of Justice and the Chairperson of the National Chamber of Advocates are charged that within three months from the entry into force of this law, to approve the bylaws in effectuation of article 9, letter “b”, of this law.
4. The Head of the Directorate of Free-of-Charge Legal Aid and the Chairperson of the National Chamber of Advocacy are charged that within 1 month from the establishment of the Directorate of Free-of-Charge Legal Aid, to approve the bylaw in effectuation of article 9, letter “a”, of this law.
5. The Minister of Justice and the minister responsible for finances are charged that within three months from the entry into force of this law, to approve the bylaws in effectuation of article 7, letter “g”, of this law.
6. The High Prosecutorial Council is charged that within 3 months from its creation to approve the bylaw in effectuation of article 21, paragraphs 6 and 7, of this law.
7. The bylaws approved in effectuation of this law shall be published also in the official website of the Ministry of Justice, the Directorate of Free-of-Charge Legal Aid and the National Chamber of Advocacy as well as through other appropriate means.

Article 35

Publications

Form sheets of presentation of requests and of self-declarations provided for in article 7, letter ‘d’, of this law shall be published in the in the official websites of the Ministry of Justice, the National Chamber of Advocates and the Directorate of Free-of-Charge Legal Aid.

Article 36

Transitory provisions

1. The State Commission for Legal Aid shall cease to operate with the establishment of the Directorate of Free-of-Charge Legal Aid.
2. The Directorate of Free-of-Charge Legal Aid shall be established within 3 months of the entry into force of this law.
3. The primary legal aid service centres shall be established within 3 months of the establishment of the Directorate of Free-of-Charge Legal Aid.
4. The State Commission for Legal Aid shall finish the examination of

all submitted requests for legal aid within the time-limit foreseen in paragraph 1 of this law, in accordance with the provisions of law 10039, dated 22.12.2008 "On legal aid".

5. The requests for secondary legal aid that were presented before the entry into force of this law, and that have not been examined by the State Commission for Legal Aid until the date of entry into force of this law, shall be treated in accordance with the rules foreseen in this law.

6. For the existing civil servants of the secretariat of the State Commission for Legal Aid shall be applied the provisions of the legislation in force for civil servants in cases of dissolution or restructuring of the institution.

7. The administrative staff of the State Commission for Legal Aid shall be treated according to the provisions of the Labour Code.

8. All rights, obligations, existing service centres for legal aid, budget and administrative and financial documentation of the State Commission for Legal Aid after the entry into force of this law shall be transferred and administered by the structures of the Ministry of Justice.

9. Until the creation of the High Prosecutorial Council, the duties foreseen by this law for this body shall be carried out by the Minister of Justice.

10. The bylaws issued in effectuation of law no. 10 039, dated 22.12.2008 "On legal aid", as amended, shall be in force until the approval of the new bylaws, in effectuation of this law, for as long as they do not contradict the provisions of this law.

Article 37 **Repeals**

Law no. 10039 date 22.12.2008 "On legal aid", as amended, shall be repealed.

Article 38 **Entry into force**

This law shall enter into force on 1 June 2018.

Approved on 14.12.2017

Annex 2

INSTRUCTION No. 4, dated 12.12.2012

ON THE DETERMINATION OF THE AMOUNT OF EXPENSES AND PAYMENTS OF EXPERTS AND WITNESSES DURING THE TRIAL

Pursuant to Article 100 of the Constitution and Article 105/a of Law no. 8116, dated 29.3.1996 "Civil Procedure Code of the Republic of Albania", as amended, upon the proposal of the Minister of Justice, the Council of Ministers

HEREBY INSTRUCTS:

I. GENERAL PROVISIONS

1. The amount of witness costs and the payment of the experts participating in the court hearings shall be determined according to the rules of this instruction.
2. Each year, the judicial district court publishes the list of licensed experts and updates the list, in cases where the licensing authorities take administrative measures to suspend the license.
3. The court calls licensed experts, defined in the available list.
4. In case there are no experts in the required field in the list or when none of the experts listed is available, the Court calls other experts, referring to the specificity of the required field.
5. Witnesses in a lawsuit are entitled to have the costs of their given testimony duly covered.

II. CRITERIA FOR THE DETERMINATION OF EXPENSES AND PAYMENTS OF EXPERTS

1. The determination of the expenses due to the experts is made on the basis of the following conditions:
 - a) When the expert resides at a distance of up to 100 km from the court where he is called to perform the expertise, his financial treatment includes only the transportation costs, upon the relevant tax document, based on the legislation in force for tax procedures.

- b) When the expert resides at a distance of over 100 km from the court where he is called to perform the expertise, the following expenses will be covered:
 - i) Daily allowance, not more than 2,500 (two thousand five hundred) ALL per day, when the expertise lasts more than one day. For the purpose of calculating the allowance, in this case, the start and return dates are calculated as a full day;
 - ii) Accommodation expenses, upon the relevant tax document, based on the legislation in force for tax procedures, submitted by the hotel and accompanied by the tax coupon, but not more than 3 000 (three thousand) ALL, per each night;
 - iii) Transportation costs, upon the relevant tax document, based on the legislation in force for tax procedures, but not more than the relevant fees, according to the kilometer distance of the line, approved by decision no.66 of the Council of Ministers dated 27.2.2007 "On the change of passenger transport tariffs", as amended.
- 2. The payment for the work performed for the expertise by the licensed expert may not exceed the amount of 40 000 (forty thousand) ALL.

III. CRITERIA FOR THE DETERMINATION OF WITNESS EXPENSES

- 1. The determination of expenses, which belong to the witnesses, is made as follows:
 - a) When the witness resides at a distance of up to 100 km from the court where he is summoned to testify, the coverage of expenses shall include only transportation expenses, upon the relevant tax document, but not more than the relevant fees according to the kilometer distance of the line, approved by decision no. 307 of the Council of Ministers dated 20.7.1992 "On the change of passenger transport tariffs".
 - b) When the witness resides at a distance of over 100 km from the court where he is summoned to testify, the following expenses will be covered:
 - i) Daily allowance, not more than 2,500 (two thousand five hundred) ALL per day;
 - ii) Accommodation expenses, upon the relevant tax document, based on the legislation in force for tax procedures, submitted by the hotel and accompanied by the tax coupon, but not more than 3 000 (three thousand) ALL, per each night
 - iii) Transportation costs, upon the relevant tax document, based on the legislation in force for tax procedures, but not more than

the relevant fees, according to the kilometer distance of the line, approved by decision no. 307 of the Council of Ministers dated 20.7.1992 "On passenger transport tariffs".

- c) When the witness leaves his workplace, he shall be remunerated in equal value with the interrupted daily salary. The remuneration shall be requested from the witness by presenting a supporting document from the workplace and the amount of the salary.

2. The convicts do not enjoy the right to payment for the testimonies given along the serving of the sentence in the institutions for the execution of criminal decisions.

IV. SPECIAL EXPENSES

Translators' payments shall be determined based on the joint instruction no. 3165 of the Minister of Justice and the Minister of Finance, dated 12.5.2004 "On the criteria and procedures for the selection of external translators, the fees for the payment of external translators and the official translation fees that third parties must pay", based on the number of pages. In case the translators are called to appear in court to perform their services, in addition to the payment, their daily expenses shall be covered in the same amount as the ones referred for the experts and witnesses.

V. LAST PROVISION

1. A tax document, for the effect of this instruction, will be considered any transport ticket approved by the Ministry of Finance, the General Taxation Directorate, and any simple or VAT invoice, which must be mandatorily accompanied by a tax coupon.

2. The Ministry of Justice and the Ministry of Finance shall be responsible for the implementation of this instruction.

This instruction shall enter into force after the publication in the Official Journal.

PRIME MINISTER
Sali Berisha

Annex 3
INSTRUCTION
No. 1, dated 06.03.2019
ON SOME AMENDMENTS AND ADDENDA TO
INSTRUCTION NO. 4, DATED 12.12.2012, OF THE COUNCIL
OF MINISTERS, "ON THE DETERMINATION OF THE
AMOUNT OF EXPENSES AND PAYMENTS OF EXPERTS
AND WITNESSES DURING THE TRIAL"

Pursuant to Article 100 of the Constitution and Article 105/a, of Law no. 8116, dated 29.3.1996, "Civil Procedure Code of the Republic of Albania", as amended, upon the proposal of the Minister of Justice, the Council of Ministers

D E C I D E D:

In instruction no. 4, dated 12.12.2012, of the Council of Ministers, the following amendments and addenda shall be made:

1. In division I, points 2, 3 and 4 are amended with the following content:

"2. The court calls experts who provide expertise in a judicial process, based on the records of the Electronic Register of Experts, which is administered and made available by the Ministry of Justice.

3. The court, without prejudice to the administration of justice, selects experts in a fair and transparent manner, considering that any expert cannot be assigned to provide his expertise in more than 30% of the number of court cases for which the same type of expertise is required within a calendar year. This assignment method by the court provides an adequate level of transparency regarding the selection of experts through IT tools.

4. The court calls an expert outside the Electronic Register of Experts only when, for the needs of the process, the expert is required from specific areas of expertise for which the law does not provide their licensing".

2. In division V, after point 1, it is added point 1/1, with the following content:

"1/1. Payments for experts and witnesses in cases when the court has decided exemption from the payment of court expenses in the sense of Law no. 111/2017 "On state guaranteed legal aid" are made by the Free Legal Aid Directorate, according to the rules and procedure defined in the instruction of the Minister of Justice."

This instruction shall enter into force after its publication in the “Official Journal”.

PRIME MINISTER
EDI RAMA
In absence and upon order
DEPUTY PRIME MINISTER

Instruction
no. 1
06.03.2019

Annex 4
DECISION
No. 55 dated 06.02.2019
ON THE DETERMINATION OF PROCEDURES AND
DOCUMENTATION FOR THE AUTHORIZATION OF
NON-PROFIT ORGANIZATIONS PROVIDING STATE
GUARANTEED PRIMARY LEGAL AID

Pursuant to Article 100 of the Constitution, in execution of point 1, Article 15, Law No. 111/2017, dated 14.12.2017 "On state guaranteed legal aid", upon the proposal of the Minister of Justice, the Council of Ministers

DECIDED:

1. Determination of procedures and documentation for the authorization of non-profit organizations providing state guaranteed primary legal aid, according to the provisions of this decision.
2. Non-profit organizations provide state guaranteed primary legal aid services, in accordance with the authorization approved by the Minister of Justice.
3. The legal requirements to be fulfilled by the non-for-profit organizations that are authorized to provide state guaranteed primary legal aid services, are those defined in Article 15 of Law no. 111/2017 "On state guaranteed legal aid".
4. The Free Legal Aid Directorate shall publicly disclose the notification for application containing the addresses of the communication, the documentation to be filed, the deadline and the place of their submission and any other data necessary for the application for authorization. Such notification shall be published on the official website of this institution, the Ministry of Justice and the Official Notices Bulletin.
5. The documentation that must be filed by the non-profit organizations applying for the receipt of authorization by the Minister of Justice to provide state guaranteed primary legal aid services include:
 - a) The act of registration in court;
 - b) a copy of the statute specifying the provision of legal aid as part of the activity;
 - c) documentation proving experience in providing primary legal aid, at least in the last 3 (three) years of their activity, including:
 - i) the full list of primary legal aid projects developed by the

- organization during the last 3 (three) years and statistical data on the beneficiaries of primary aid;
 - ii) the final reports for each of the listed projects, and the financial statements;
 - iii) the total budget of each project, the respective donors, and the list of internal and external experts involved in these projects;
 - iv) evaluation letters from at least 2 beneficiary subjects
- ç) certification from the tax authorities that it has regularly fulfilled the obligations;
- d) confirmation from the court that it is not in the process of bankruptcy and/or liquidation;
- dh) certification from the prosecution office and the court that the members of the highest decision-making body and the executive body are not in the process of investigation or adjudication on issues that affect the public's trust and the adequate provision of legal aid;
- e) The judicial status form of the members of the highest decision-making body and of the executive body.
6. The application for authorization, accompanied by the documentation determined in point 5 of this decision, shall be submitted to the Free Legal Aid Directorate, which assesses whether the application has been completed within the deadline specified in the notification, examines the fulfillment of the legal criteria and verifies the submitted documentation.
7. Applications submitted beyond the deadline do not qualify. The Legal Aid Directorate informs the applicant by e-mail about such availability.
8. In case of finding a lack of documentation, the Free Legal Aid Directorate notifies the applicant for the submission of additional documentation within 10 (ten) working days from the date of notification. Failure to submit additional documentation within this deadline shall lead to disqualification.
9. The procedure for verifying the legal criteria and assessment of the application for authorization shall be made in accordance with the provisions of the Administrative Code Procedures. The procedure for reviewing the application is conducted within a reasonable time but in any case no later than 60 (sixty) days from the date of expiration of the notification term, according to point 4 of this decision.
10. The Legal Aid Directorate verifies the documentation submitted by the applicants for obtaining the authorization and, in the end, prepares an

evaluation report for each non-profit organization that has applied. The report contains the data of the submitted documentation, the assessment of whether or not the legal criteria are met and the respective proposal.

11. The proposal accompanied by the evaluation report shall be submitted to the Minister of Justice, who, within 10 (ten) working days from the date of completion of the verification and evaluation procedure of the application, approves the authorization or not.

12. The application for authorization shall not be approved when the non-profit organization does not meet the legal criteria set forth in Article 15 of Law no. 111/2017, dated 14.12.2017 "On state guaranteed legal aid". Upon its request, the non-profit organization is notified about the reasons of disqualification.

13. A non-for-profit organization that makes claims on the fulfillment of legal criteria has the right to file a complaint at the Minister of Justice by submitting the reasons and supporting documentation within 5 (five) working days from the date of notification. This term may be extended for reasonable circumstances, which are not linked to the availability of the non-profit organization. The Minister of Justice shall examine the complaints and notify the non-profit organization concerned within ten (10) working days from the date of filing the complaint at the Ministry of Justice. Against this decision, appeal can be made at the competent administrative court.

14. The authorization granted by the Minister of Justice is valid for a period of 2 (two) years.

15. The Ministry of Justice publishes the list of non-profit organizations authorized to provide primary legal aid services to the Ministry of Justice on the official website, a list drawn up and updated by the Free Legal Aid Directorate on the basis of the registry held by this directorate.

16. The Minister of Justice, upon the proposal of the Free Legal Aid Directorate, may revoke the authorization given to a non-profit organization if it proves, mainly or based on the facts set forth in the complaints filed with the Ministry of Justice and the information of the Legal Aid Directorate:

- a) repeated non-fulfillment of the provision of primary legal aid services;
- b) deliberate submission of incorrect data during the process of quality verification of the provision of primary legal aid services;
- c) lack of compliance with standards and quality in the legal aid

service provided;

- ç) that the members of the highest decision-making body and the executive body of the non-profit organization have not been punished by a final sentence for committing a deliberate crime that would violate the trust of public and appropriate provision of legal aid .

17. The revocation of the authorization is notified to the non-profit organization and is published on the official website of the Free Legal Aid Directorate. An appeal may be filed against this decision in the competent administrative court.

18. Any data regarding the approval or revocation of an authorization of the non-profit organization shall be registered in the register of the non-profit organizations that provide primary legal aid administered by the Free Legal Aid Directorate.

19. A non-profit organization authorized to provide primary legal aid services immediately notifies the Free Legal Aid Directorate of the existence of circumstances and facts which make it impossible to provide the state guaranteed primary legal aid service in order that the latter takes measures to ensure uninterrupted provision of the primary legal aid service.

20. The Ministry of Justice and the Free Legal Aid Directorate are responsible for the implementation of this decision.

This decision shall enter into force after the publication in the “Official Journal”.

PRIME MINISTER
EDI RAMA
In absence and upon order

DEPUTY PRIME MINISTER
ERION BRAÇE

Annex 5

INSTRUCTION No. 1, dated 08/03/2019 ON THE APPROVAL OF RULES AND PROCEDURES FOR THE COLLECTION, COMPLETION AND ADMINISTRATION OF REGISTERS' DATA

Pursuant to Article 102, point 4 of the Constitution, Law No. 8678, dated 14.05.2001, "On the organization and functioning of the Ministry of Justice", as amended, and Article 7, letter i) of Law No. 111/2017, dated 14.12.2017 "On state guaranteed legal aid",

I HEREBY INSTRUCT:

1. The Directorate for Free Legal Aid maintains, collects, completes and administers:
 - a) the data of the register of requests and self-declarations of the beneficiary subjects of the state guaranteed legal aid;
 - b) the data of the register of non-profit organizations providing primary legal aid.
2. The data of the register of requests and self-declarations of the beneficiary subjects of state guaranteed legal aid shall be collected on the basis of a request for legal aid, self-declaration and any other documentation filed by the applicant for this purpose.
3. Each state-guaranteed legal aid service provider shall periodically send to the Directorate of Free Legal Aid every month, the data of requests and self-declarations of the requesting entities submitted in order to receive state-guaranteed legal aid. The data is sent within the first 5 (five) days of the month following the reference month.
4. Completion and updating of the register of requests and self-declarations of the beneficiary subjects of state guaranteed legal aid are carried out within 5 (five) business days from the time of filing information at the Directorate of Free Legal Aid, according to point 3 of this Instruction.
5. The Register of non-profit organizations providing primary legal aid shall be completed and updated with data from the Directorate of Free Legal Aid within 24 hours of the completion of an action or receipt of information related to their activity.
6. The registration of requests and self-declarations for primary legal aid for each applicant includes the following data:

- i. name, fatherhood, surname,
- ii. gender,
- iii. date of birth,
- iv. citizenship,
- v. family situation (number of members in the family),
- vi. status of employment,
- vii. address and other contact information,
- viii. self-declaration about income and assets,
- ix. if the request for aid is accepted or rejected and the reason for the rejection,
- x. the nature of the legal case(s) for which the aid is requested (civil, administrative, criminal);
- xi. the data of the service provider that has provided the primary legal aid.

7. The registration of requests and self-declarations for secondary legal aid for each applicant includes the following data:

- i. name, fatherhood, surname,
- ii. gender,
- iii. date of birth,
- iv. citizenship,
- v. family situation (number of members in the family),
- vi. status of employment,
- vii. address and other contact information,
- viii. the court or the proceeding authority to which the request was filed;
- ix. type of self-declaration regarding income and assets;
- x. type of the secondary aid requested: (i) representation; (ii) exemption from the payment of court fees; (iii) exemption from the payment of court expenses; and/or (iv) exemption from the execution order fee;
- xi. the nature of the legal case(s) for which aid is requested (civil, administrative, criminal);
- xii. if the request for aid is accepted or rejected by the court/prosecution body, in whole or in part;
- xiii. the date and number of the respective decision and if the decision was appealed (at the court of first instance or appeal, respectively, and the appealing party);
- xiv. data on the decision on appeal against the refusal of legal aid, as applicable
- xv. the name and the data of a lawyer assigned for the provision of secondary legal aid;

- xvi. payments received by the lawyer;
- xvii. reimbursement of payments by the party that has lost the court case or by the legal aid beneficiary, as appropriate.

8. The following data are included in the registration of non-for-profit organizations providing primary legal aid:

- i. the name of the non-profit organization, its legal representatives and contact details;
- ii. data on the decision of the Minister of Justice for the authorization of the non-profit organization;
- iii. jurisdiction or geographical area where the non-profit organization is authorized to provide primary legal aid, and other specifications on the type of primary aid for which it is authorized
- iv. data on the financing contract for the provision of primary legal aid, if such a contract has been concluded;
- v. data on the revocation of the authorization issued by the Minister of Justice, as applicable.

9. The register of requests and self-declarations of the beneficiary subjects and non-profit organizations providing free legal aid (hereinafter "Registers") is kept in electronic form, in Microsoft Excel format.

10. The registers are made public through the website of the Free Legal Aid Directorate, in accordance with the rules of the applicable law on personal data protection.

11. Registers with full data, according to this instruction, are held at the Free Legal Aid Directorate. The full data of the Registers are made available whenever required to the justice authorities in accordance with the purpose of the processing, according to the applicable legislation on personal data protection.

12. The registers are filled in and updated by the authorized employee in writing from the Director of Free Legal Aid.

13. The authorized employee is responsible for the accuracy and updating of the data submitted by him.

14. The authorized employee cannot intervene and change the registers' columns. In the event of material errors in recording the information in the Register, the authorized employee corrects and writes the correct information.

15. Registers are administered by the Free Legal Aid Directorate and for their storage and disposal the rules provided by the legislation in force

for the archives are applied.

16. The authorized employee completes and updates the Registers with data, starting from the first day of providing the state-guaranteed legal aid service.

17. The Directorate of Free Legal Aid is responsible for the implementation of this Instruction.

This instruction comes into effect immediately and is published on the official website of the Ministry of Justice and the Directorate of Free Legal Aid.

MINISTER
Etilda Gjonaj (Saliu)
(seal) (signature)

Instruction
no. 1
08.03.2019

Annex 6

INSTRUCTION No. 2, Dated 25/03/2019 ON THE PROCEDURES, PERIODICITY AND RULES FOR THE VERIFICATION OF THE CIRCUMSTANCES FOR THE RETURN OF PROFITS

In reliance on Article 102, par 4 of the Constitution, of the Law no. 8678, dated 14.05.2001, "On the organisation and functioning of the Ministry of Justice", as amended, and Article 31, par 1, of the Law no. 111/2017, dated 14.12.2017 "On legal aid guaranteed by the state",

I HEREBY INSTRUCT:

1. The Free Legal Aid Directorate shall periodically, each year verify the economic and financial situation of the beneficiary entities of legal aid, as well as the stage of the proceedings wherein the beneficiary party is involved.
2. The Free Legal Aid Directorate may carry out verifications at any time if there is data or indications of change in circumstances.
3. The Free Legal Aid Directorate shall, following the approval of the legal aid, seek the beneficiary entities to sign up to a statement where they commit themselves to the obligation to notify about changes in the financial circumstances, or where they do not want to follow the judicial proceedings any more, thus admitting to the voluntary return of the benefited amount to this effect.
4. The beneficiary entities of legal aid are bound to the obligation to submit to the Free Legal Aid Directorate a copy of the final judicial decision and of the order for the mandatory execution of the court decision.
5. The Free Legal Aid Directorate, to the effect of collecting the data, seek information from the beneficiary entities and public and non-public institutions which might be aware of the situation of the beneficiary entity.
6. The beneficiary entity shall be considered not to meet the legal criteria for benefiting legal aid any more to the effect of returning the benefited amount, in the following instances:
 - a) the financial income is such that they do not fall under any of the categories of Article 12 of the Law no. 111/2017, dated 14.12.2017 "On legal aid guaranteed by the state";

- b) he did not lodge the lawsuit with the court within 3 months as of the date when the decision of the court on the acceptance of the request for secondary legal aid has become final;
- c) he has waived having the lawsuit examined, the right to file a lawsuit, appeal or recourse or enforcing the enforcement order;
- ç) he has submitted untrue or inaccurate data.

7. Where Free Legal Aid Directorate finds out that it is facing one of the situations provided for in par 6 of this Instruction, it shall make a substantiated decision, wherein reflecting:

- a) the data having been collected by it;
- b) the accurate calculated amount which has to be returned by the entity, and
- c) time period within which the benefited amount has to be returned, which shall under no circumstances exceed the time period of 6 (six) months as of the date of finding out the changed circumstances.

8. Where the beneficiary entity refuses by way of action or omission returning the benefited amount, the Free Legal Aid Directorate shall address the court, having decided granting the legal aid, with a request seeking the return of the amount benefited by the entity.

The Free Legal Aid Directorate is tasked with the implementation of this instruction.

This instruction shall enter into effect immediately.

MINISTER
Etilda Gjonaj (Saliu)
(signature) (seal)

REPORT
ON THE DRAFT INSTRUCTION
“ON THE PROCEDURES, PERIODICITY AND RULES FOR
THE VERIFICATION OF CIRCUMSTANCES FOR THE RETURN OF
PROFITS”

**I. PURPOSE OF THE DRAFT-INSTRUCTION AND OBJECTIVES
AIMED TO BE ACHIEVED**

The draft instruction aims to determine the procedures, periodicity and rules for the verification of the circumstances for the return of profits for effects of Law No. 111/2017, dated 14.12.2017 “On the legal aid guaranteed by the state” (hereinafter law. No. 111/2017”). The need for drafting this draft instruction comes as a result of the requirements provided in the law no. 111/2017.

**II. ARGUMENTATION OF THE DRAFT-ACT REGARDING THE
PRIORITIES, PROBLEMS, EXPECTED EFFECTS, NOVELTIES**

The act aims at the determination of procedures, periodicity and rules to be followed by the Free Legal Aid Directorate for the verification of circumstances for the return of the expenses made, the specific amount and the term for the fulfilment of this obligation, from the beneficiary subject of the legal aid guaranteed by the state.

Law no. 111/2017 provides that in case that a person, whose request for secondary legal aid has been accepted and/or the exclusion from the court fees and judicial expenses, whose circumstances have changed in such a manner that he does not meet the legal criteria to be a beneficiary subject of the secondary legal aid, the Free Legal Aid Directorate notifies the beneficiaries of the legal aid for the obligation for the voluntary return of the expenses made, the specific amount and the term for the fulfilment of this obligation.

**III. EVALUATION OF LEGALITY, CONSTITUTIONALITY AND
HARMONIZATION WITH THE DOMESTIC AND INTERNATIONAL
LEGISLATION IN FORCE**

The proposed draft-instruction is based on point 4, Article 102 of the Constitution, point 1 of Article 31 of Law no. 111/2017 “*On legal aid guaranteed by the state*”.

IV. EXPLANATORY SUMMARY OF THE DRAFT-INSTRUCTION CONTENT

The draft instruction consists of 8 points.

Point 1 of the instruction provides that the Free Legal Aid Directorate periodically provides, at least once every two years, the economic and financial situation of the beneficiary subjects of the legal aid, and the phase of the trial with the beneficiary party as a party.

Point 2 of the instruction provides that the Free Legal Aid Directorate may carry out verification at any time in case there are data or indications for the change of circumstances.

Point 3, 4 and 5 of the instruction provide that the procedure followed by the Free Legal Aid Directorate on the collection of data on the change of the financial situation of the beneficiary subjects, by also determining the documents that have to be submitted.

Point 6 of the instruction, referring to the provisions of the law, determines the cases when the beneficiary subjects return the benefited amount, such as financial revenues, they are such ones that they do not include them in any of the categories of Article 12 of Law no. 111/2017; has not submitted the lawsuit at court within 3 months from the date of approval of the legal aid benefit; has withdrawn from the adjudication of the lawsuit, from the appeal or recourse or from the execution of the execution order; has submitted untrue or inaccurate data.

Point 7, following the ascertainment of one of these cases, the Free Legal Aid Directorate takes a decision where it reflects: collected data; the amount accurately calculated and the term within which the benefited amount should be returned, which in any case shall not exceed the term of 6 (six) months from the date of ascertainment of the changing circumstances.

Point 8 in case of refusal of the benefited amount by the beneficiary subject, the Free Legal Aid Directorate approaches, upon a request, the court that has decided on granting legal aid, by asking for the return of the amount benefited by the subject.

V. INSTITUTIONS AND BODIES THAT ARE RESPONSIBLE FOR THE EXECUTION OF THE ACT

The Free Legal Aid Directorate is responsible for the execution of this instruction.

VI. MINISTRIES, INSTITUTIONS AND OTHER SUBJECTS THAT HAVE CONTRIBUTED IN DRAFTING THE DRAFT-ACT

The preparation of this draft-act was made by the Ministry of Justice with the contribution of the UNDP experts.

THE MINISTER
Etilda Gjonaj (Saliu)

Annex 7

ORDER

No. 59, dated 25.03.2019

ON APPROVAL OF THE STRUCTURE AND ORGANIGRAM OF THE FREE LEGAL AID DIRECTORATE

Pursuant to point 3, Article 102 of the Constitution, Article 7 of Law no. 152/2013 "On Civil Servants", as amended and Article 10 of Law no. 9000. dated 30.01.2003 "On the organization and functioning of the Council of Ministers", and Article 21 of Law no. 90/2012 "On the organization and functioning of state administration",

I HEREBY ORDER:

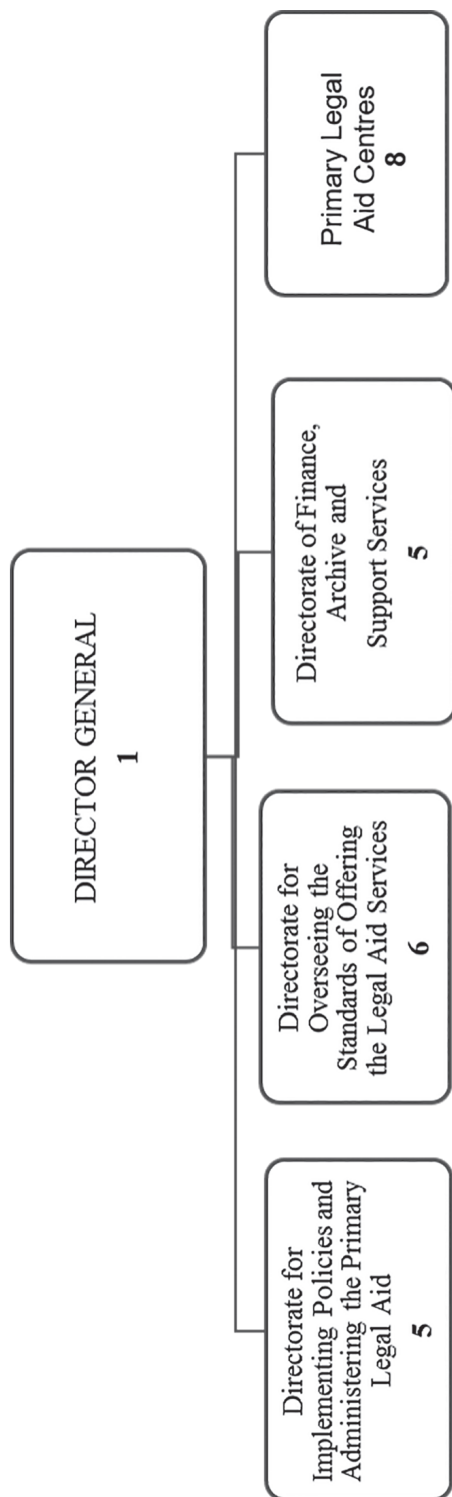
1. Structure of the Free Legal Aid Directorate to be according to Scheme 1, attached to this order and an integral part of it.
2. The organigram of the Free Legal Directorate to be according Scheme 2, attached to this order and an integral part of it.
3. Number of employees of the Free Legal Aid Directorate in total will be 25 persons.

This order shall enter into force immediately.

**PRIME MINISTER
EDI RAMA**

Order
no. 59
25.03.2019

APPROVED STRUCTURE OF THE FREE LEGAL AID DIRECTORATE



Position	Category	Number
Director General	II-b	1
Directorate for Implementing Policies and Administering the Primary Aid		5
Director	III-a	1
Specialist	IV-a	4
Directorate for Overseeing the Standards of Offering the Legal Aid Services		6
Director	III-a	1
Specialist	IV-a	5
Directorate of Finance, Archive and Support Services		5
Director	III-a	1
Finance/Budget Specialist	IV-a	1
Specialist for Human Resources and Services	IV-a	1
Specialist of Archive / Protocol and Secretary	IV-a	1
Storekeeper		1
Primary Legal Aid Centres		8
Specialists (with special training)		8
TOTAL EMPLOYEES		25

**Prime Minister
Edi Rama**

Annex 8

ORDER

No 225 DATED 25/3/2019

“ON THE APPROVAL OF THE FORMS OF LEGAL AID GUARANTEED BY THE STATE”

In reliance on par 4 of Article 102 of the Constitution, on Article 7, par 2, of the Law no. 8678, dated 14.05.2001, “On the organisation and functioning of the Ministry of Justice”, as amended, and letter “d”, Article 7, Articles 17 and 19 of the Law no 111, dated 14.12.2017, “On legal aid guaranteed by the state”,

I HEREBY ORDER:

1. The approval of the forms of legal aid guaranteed by the state (according to appendices), attached to this order and being constituent part thereof:

- Appendix I: Form of the request and self-declaration for primary legal aid;
- Appendix II: Form of the request for secondary legal aid;
- Appendix III: Form of the request for exemption from payment of judicial fees and judicial expenses;
- Appendix IV: Form of self-declaration on income and assets;
- Appendix V: Form of self-declaration for special categories;
- Appendix VI: Form of register for registering the requests and self-declarations according to forms;
- Appendix VII: Form of register of non-profit organisations providing primary legal aid;
- Appendix VIII: Form of complaint against the decision rejecting the request for secondary legal aid;

2. The Secretary General at the Ministry of Justice and the Free Legal Aid Directorate are tasked with the implementation of this Order.
3. The sector of Archives and Protocol shall be tasked with the notification of this Order.

This order shall enter into effect immediately,

MINISTER

Etilda Gjonaj (Saliu)

(seal) (signature)



APPLICATION FORM FOR BENEFITING THE PRIMARY LEGAL AID

Reserved for the institution/organisation where the request is being submitted /
not to be filled out by the applicant

Centre at:
Reference:
Protocol number:
Town:
Date:

SECTION 1 APPLICANT'S DATA:

- a) Name - Father's Name - Surname:
- b) Date of birth:Place of birth:
- c) Marital status (*married / widow(er) / single / divorced*):
- d) Citizenship:.....
- e) Residence in Albania (*with residence permit - temporary*):
① *If not an Albanian citizen.*
- f) Place of residence (*Address*):
(*Postal code / Town / State*)
- g) Correspondence address:(*if different from the above*):
- h) Contacts:
 - Telephone:
 - Email:

Order
no. 225
25.03.2019

SECTION 2: WHY AM I APPLYING FOR FREE LEGAL AID?

2.1. Type of case wherefore you ask for Primary Legal Aid:

Civil ☐

Criminal ☐

Administrative ☐

 You are kindly asked to provide some data regarding the case about which you are asking for legal services, for instance:

- in Family Law: I need to be advised on marriage dissolution , reaching an agreement on the custody of the child, etc.

2.2. You are kindly asked to provide data about the case for which you are demanding Primary Legal Aid:

Focus specifically:

- *What do you need the legal aid for?*
- *What happened?*
- *Additional circumstances of significance to the case?*

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 - If the space above is not sufficient, you are kindly asked to continue at the end of this questionnaire

2.3. Have you submitted any request with any state institution regarding the case?

☐ Yes

☐ No

If YES, specify below:

.....
.
.....
.
.....
.

2.4. Have you previously approached any non-profit-making organisation providing free legal aid services regarding the case?

☐

Yes

☐

No

SECTION 3: CAPACITY OF THE BENEFICIARY OF THE PRIMARY LEGAL AID

3.1. Do you belongg to one of the special categories of legal aid beneficiaries?

☐

Yes

☐

No

If yes, specify the category:

 (Fill out and attach the Self-Declaration Form for the Specific Categories).

3.2. Are you part of the category of beneficiaries due to the insufficient income and properties?

☐

Yes

☐

No

If yes, declare your income and properties:

 (Fill out and attach the Self-Declaration Form of Income and Properties).

3.2.1 For the applicant living alone:

- My income is below the minimum monthly salary amount set out by law.
- My properties are below the 36 minimum monthly salaries set out by law.

3.2.2 For the applicant living in a family:

- The family income is below the 50% of the minimum monthly salary set out by law.
- The properties of the family are below the 36 minimum monthly salaries set out by law.

SECTION 4 STATEMENTS

① *Please read carefully before signing up!*

1. I declare that the entire information I have made available, by way of such application, is true and accurate. I have been informed that, in the sense of the legislation in effect in the Republic of Albania, it is a violation:
 - Making available inaccurate/untrue information/statements;
 - Making available false documents;
2. I declare that I admit that, upon the inaccuracy/falsity of the information and/or document being established, the necessary measures may be taken regarding any costs being incurred as a consequence of the unjust benefit of legal aid due to the established inaccuracy/untruthfulness or falsity.
3. I declare and admit that all the data made available by me may be verified in connection with the accuracy, truthfulness and effectiveness regarding my application and that this declaration may serve as an authorisation for the centre / clinic for undertaking any measure to the effect of verifying the data contained in this form.
4. I declare and admit that hereunder I will inform on any additional information that may change my status as beneficiary of the free legal aid.

SECTION 5: ACCOMPANYING DOCUMENTATION

This application shall be accompanied by the documents as follows:

A. Identity documents of the applicant;

.....;
.....;
.....;

B. Self-declaration form for the specific categories *(associated with the attached documents)*; and/or

Self-declaration form for the income and properties *(associated with the attached documents)*;

C. Other documents:

.....;
.....;
.....;
.....;

Signature of the Applicant

Signature of the clinic/centre
employee

Mr./Ms _____
(name, surname, signature)

Mr./Ms. _____
(name, surname, signature)

In _____
(Town)

Dated: __ __. __ __. 20__ __

① Information referred to above shall be dealt with in compliance with the Law no 9887, dated 10/03/2008 'On the protection of personal data and any disposal of such date shall be conducted in compliance with the Law no. 119/2014 'On the right to information'.

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APPLICATION FORM FOR BENEFITING THE SECONDARY LEGAL AID

Reserved for the institution/organisation where the request is being submitted /
not to be filled out by the applicant

Court:
Reference:
Protocol number:
Town:
Date:

SECTION 1 APPLICANT'S DATA:

- a) **Name - Father's Name - Surname:**
- b) **Date of birth:** **Place of birth:**
- c) **Marital status** (*married / widow(er) / single / divorced*):
.....
- d) **Citizenship:**
- e) **Residence in Albania** (*with residence permit - temporary*):
① If not an Albanian citizen.
- f) **Place of residence (Address):**
(*Potal code / Town / State*)
- g) **Correspondence address:** (*if different from the above*):
.....
.....
- h) **Contacts:**
- **Telephone:**
- **Email:**

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DATA OF THE APPLICANT'S REPRESENTATIVE (*where the application is not lodged personally*):

a) **Name - Father's Name - Surname:**

b) **Correspondence address:** (*if different from the above*):
.....

c) **Contacts:**

– **Telephone:**

– **Email:**

SECTION 2: CAPACITY OF THE BENEFICIARY OF THE SECONDARY LEGAL AID

2.1. Do you belong to one of the special categories of legal aid beneficiaries?

☐

Yes

☐

No

If yes, specify the category:



(*Fill out and attach the Self-Declaration Form for the Specific Categories*).

2.2. Are you part of the category of beneficiaries due to the insufficient income and properties?

☐

Yes

☐

No

If yes, declare your income and properties:



(*Fill out and attach the Self-Declaration Form of Income and Properties*).

2.2.1 For the applicant living alone:

- My income is below the minimum monthly salary amount set out by law.
- My properties are below the 36 minimum monthly salaries set out by law.

2.2.2 For the applicant living in a family:

- The family income is below the 50% of the minimum monthly salary set out by law.
- The properties of the family are below the 36 minimum monthly salaries set out by law.

SECTION 3: WHY AM I APPLYING FOR SECONDARY LEGAL AID?

This request for legal aid is being submitted:

3.1. PRIOR TO THE INITIATION OF THE JUDICIAL PROCEEDINGS ☐

3.1.1. At this stage, the secondary legal aid is useful to you for: ☐

- 1. Advice regarding the judicial settlement of the problem? ☐
- 2. Preparation and submission of a request, lawsuit/pleading to the plaintiff? ☐

3.1.2 Type of case wherefore you ask for Primary Legal Aid:

Civil ☐ Criminal ☐ Administrative ☐

3.1.3 You are kindly asked to provide data about the case wherefore you are asking for legal services:

Focus specifically:

- *What happened?*
- *Who are the parties/persons involved in conflict with you?*
- *Additional circumstances of significance to the case?*

.....

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🐦 - If the space above is not sufficient, you are kindly asked to continue at the end of this questionnaire.

3.2. ALONG WITH THE LAWSUIT ☐

3.2.1. At this stage, the secondary legal aid is useful to you for: ☐

- 1. Advice regarding the judicial settlement of the problem? ☐
- 2. Preparation of defence submission acts and establishing documentation f of the court? ☐

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3. Representation in the course of judicial proceedings? ☐

3.2.2 Type of matter wherefore you ask for Primary Legal Aid:


Civil ☐ Criminal ☐ Administrative ☐ Family cases

3.2.3 Did you involve any advocate for offering legal services regarding the matter?

☐ Yes ☐ No

3.2.4 You are kindly asked to provide data surrounding the reliability of your request:

.....
.....
.....
.....
.....
.....
.....

 -If the space above is not sufficient, you are kindly asked to continue at the end of this questionnaire

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no. 225
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3.3. IN THE COURSE OF JUDICIAL EXAMINATION (*prior to completing the judicial investigation*)

3.3.1 Type of case wherefore you ask for Primary Legal Aid:

Civil ☐ Criminal ☐ Administrative ☐ Family cases ☐

3.3.2 In these proceedings, you are in the capacity of:

- Plaintiff ☐
- Respondent ☐
- Third person ☐
- Don't know ☐

3.3.3. At this stage, the secondary legal aid is useful to you for:

1. Advice regarding the continuation of judicial proceedings? ☐
2. Preparation of defence submission acts and establishing

documentation f of the court?

☐

3. Representation in the course of judicial proceedings?

☐

3.3.4 Did you involve any advocate for offering legal services regarding the matter?

☐

Yes

☐

No

3.3.5 You are kindly asked to provide data surrounding the reliability of your request:

.....

.....

.....

.....

.....

.....

 If the space above is not sufficient, you are kindly asked to continue at the end of this questionnaire

SECTION 4 STATEMENTS

(i) *Please read carefully before signing up!*

1. I declare that the entire information I have made available, by way of such application, is true and accurate. I have been informed that it is a violation in the sense of Article 32 of the Law no 111/2017 and the criminal legislation in the Republic of Albania:

- Making available inaccurate/untrue information/statements;
- Making available false documents;

2. I declare that I admit that, upon the inaccuracy/falsity of the information and/or document being established, the necessary measures may be taken regarding any costs being incurred as a consequence of the unjust benefit of legal aid due to the established inaccuracy/untruthfulness or falsity. Specifically, by way of this declaration, I admit that in the event of any inaccuracy and/falsity of an information or document, I will be obliged to reimburse the expenses for the advocate having offered the legal aid and any expenses or cost that will emerge out of the unjust benefit of the legal aid free of charge.

3. I declare and admit that all the data made available by me may be verified in connection with the accuracy, truthfulness and

effectiveness regarding my application and that this declaration may serve as an authorisation for the centre / clinic for undertaking any measure to the effect of verifying the data contained in this form.

4. I declare and admit that hereunder I will inform on any additional information that may change my status as beneficiary of the free legal aid.

SECTION 5: ACCOMPANYING DOCUMENTATION

This applications hall be associated by the documents as follows:

A. Identity documents of the applicant;

.....;
;
;

B. Authorisation document for the representative of the Applicant;

C. Self-declaration form for the specific categories *(associated with the attached documents)*; and/or

Self-declaration form for the income and properties*(associated with the attached documents)*;

D. Other documents:

.....;
;
;

Signature of the Applicant

Mr./Ms _____
(name, surname, signature)

In _____
(Town)

Signature of the clinic/centre employee

Mr./Ms. _____
(name, surname, signature)

Dated: __ __. __ __. 20__ __

① Information referred to above shall be dealt with in compliance with the Law no 9887, dated 10/03/2008 'On the protection of personal data and any disposal of such date shall be conducted in compliance with the Law no. 119/2014 'On the right to information'.



APPLICATION FORM ON EXCLUSION FROM THE PAYMENT OF FEES AND JUDICIAL EXPENDITURE

Reserved for the institution/organisation where the request is being submitted /
not to be filled out by the applicant

Court:
Reference:
Protocol number:
Town:
Date:

SECTION 1 DATA OF COMPLAINANT:

- a) Name - Father's Name - Surname:
- b) Date of birth:Place of birth:
- c) Marital status (*married / widow (er) / single / divorced*):
- d) Citizenship:
- e) Residence in Albania (*with residence permit - temporary*):
 - ① *If not an Albanian citizen.*
- f) Place of residence (*Address*):
 (*Postal code / Town / State*)
- g) Correspondence address: (*if different from the above*):
- h) Contacts:
 - Telephone:
 - Email:

DATA OF THE COMPLAINANT'S REPRESENTATIVE (*where the complaint is not lodged personally*):

- d) Name - Father's Name - Surname:
- e) Correspondence address: (*if different from the above*):

f) Contacts:

- Telephone:
- Email:

SECTION 2: CAPACITY OF THE BENEFICIARY OF THE PRIMARY LEGAL AID

2.1. Do you belong to one of the special categories of legal aid beneficiaries?

☐

Yes

☐

No

If yes, specify the category:



(Fill out and attach the Self-Declaration Form for the Specific Categories).

2.2. Are you part of the category of beneficiaries due to the insufficient income and properties?

☐

Yes

☐

No

2.2.1 For the applicant living alone:

- My income is below the minimum monthly salary amount set out by law.
- My properties are below the 36 minimum monthly salaries set out by law.

2.2.2 For the applicant living in a family:

- The family income is below the 50% of the minimum monthly salary set out by law.
- The properties of the family are below the 36 minimum monthly salaries set out by law.

Declare your income and properties:



(Fill out and attach the Self-Declaration Form of Income and Properties).

SECTION 3: WHY DO I APPLY FOR BENEFITING LEGAL AID UNDER THIS FORM?

3.1. This request for legal aid is being submitted:

- a) along with the request for secondary legal aid ☐
- b) along with the lawsuit ☐
- c) in the course of judicial examination of the case (prior to the completion of the judicial investigation) ☐

3.2. By way of this request, it is sought:

- a) exception from all the fees and judicial expenses ☐
- b) exception from one or some of the fees and/or judicial expenses ☐

(specify below the fees and/or judicial expense/s wherefore you are seeking the exception from the obligation to pay) ☐

- Exception from the general judicial fees ☐
- Exception from the specific judicial fees ☐
- Exception from the additional judicial fees ☐
- Exception from the payment of the judicial expenses, regarding: ☐
 - Expenses for witnesses ☐
 - Expenses for bailiffs ☐
 - Expenses for experts ☐
 - Expenses for interpreters ☐
 - Expenses for the inspection of items/inspection on the spot ☐
- Exception from the pre-payment of the fee for putting the enforcement order in execution ☐

SECTION 4: STATEMENTS

① *Please read carefully before signing up!*

1. I declare that the entire information I have made available, by way of such application, is true and accurate. I have been informed that it is a violation in the sense of Article 32 of the Law no 111/2017 and the criminal legislation in the Republic of Albania:

- Making available inaccurate/untrue information/statements;
- Making available false documents;

2. I declare that I admit that, upon the inaccuracy/falsity of the information and/or document being established, the necessary measures may be taken regarding any costs being incurred as a consequence of the unjust benefit of legal aid due to the established inaccuracy/untruthfulness or falsity. Specifically, by way of this declaration, I admit that in the event of any inaccuracy and/falsity of an information or document, I will be obliged to reimburse the expenses for the advocate having offered the legal aid and any expenses or cost that will emerge out of the unjust benefit of the legal aid free of charge.

3. I declare and admit that all the data made available by me may be verified in connection with the accuracy, truthfulness and effectiveness regarding my application and that this declaration may serve as an authorisation for the centre / clinic for undertaking any measure to the effect of verifying the data contained in this form.

4. I declare and admit that hereunder I will inform on any additional information that may change my status as beneficiary of the free legal aid.

RUBRIC 5: ACCOMPANYING DOCUMENTATION

This applications shall be associated by the documents as follows:

A. Identity documents of the applicant;

.....;
.....;
.....;
.....;

B. Authorisation document for the representative of the Applicant;

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C. Self-declaration form for the specific categories (*associated with the attached documents*); **and/or**

Self-declaration form for the income and properties(*associated with the attached documents*);

D. Other documents:

.....;
.....;
.....;
.....;

Signature of the Applicant

Signature of the clinic/centre employee

Mr./Ms _____
(*name, surname, signature*)

Mr./Ms. _____
(*name, surname, signature*)

In _____
(*Town*)

Dated: _____.____. 20____

① Information referred to above shall be dealt with in compliance with the Law no 9887, dated 10/03/2008 'On the protection of personal data and any disposal of such date shall be conducted in compliance with the Law no. 119/2014 'On the right to information'.



SELF-DECLARATION FORM ON INCOME AND ASSETS FOR BENEFITING PRIMARY AND SECONDARY LEGAL AID

Date:

SECTION 1: APPLICANT'S DATA:

- a) Name - Father's Name - Surname:
- b) Date of birth: Place of birth:
- c) Civil status (*married / widow/er / single / divorced*):
- d) Citizenship:
- e) Residence in Albania (*with residence permit - temporary*):
 ① *If not an Albanian citizen.*
- f) Place of residence (Address):
 (Postal code / City / State):
- g) Address for correspondence: (*if different from the above*):

- h) Contact:
 - Telephone:
 - Email:

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SECTION 2: SELF-DECLARATION OF INCOME AND ASSETS

2.1. Self-declaration of Applicant living alone:

2.1.1 Applicant's Income:

- Income from salary / pension in the amount of
ALL/month.
- Income for immovable property lease in the amount of
ALL/month;
- Income from loan/bank deposit interest in the amount of

ALL/month.

- Other (specify the sources and amounts received):

.....

.....

.....

- **APPLICANT'S TOTAL INCOME IS IN THE AMOUNT OF
..... ALL/MONTH**

2.1.2 Applicant's Assets

Movable properties

(For example: cars; quotes/shares in trade companies; bank deposits, etc.)

	Property	Amount of Property
1		
2		
3		
4		
5		
6		
7		

Immovable properties

(Except the residence where the applicant lives)

	Property	Amount of Property
1		
2		
3		
4		

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- APPLICANT'S ASSETS ARE IN THE AMOUNT OF ALL.

2.1.3 Expenses / costs / liabilities of the applicant

- Housing costs (rent) in the amount of ALL/month;
- Child custody/alimony the amount ofALL/month;
- Payment of bank loan in the amount ofALL/month;
- Other (*specify*):

.....

.....

.....

.....

 - If the space above is not enough, please follow the page at the bottom of this form.

- TOTAL LIABILITIES OF THE APPLICANT ARE IN THE AMOUNT OF ALL/MONTH.

2.2. Self-declaration of applicant living with family

(income; the following assets and expenses shall be considered of the applicant and the family jointly)

2.2.1 Family Income:

The family is composed by persons, receiving income as follows hereunder:

- Income form salary / pensions:

1., in the quality of, who is ☐ employed/
retired with income amounting to ALL ☐ unemployed.
2., in the quality of, who is ☐ employed/
retired with income amounting to ALL ☐ unemployed.
3., in the quality of, who is ☐ employed/
retired with income amounting to ALL ☐ unemployed.
4., in the quality of, who is ☐ employed/

retired with income amounting to ALL

☐ unemployed.

5., in the quality of, who is
retired with income amounting to ALL

☐ employed/

☐ unemployed.

- Income for immovable property lease in the amount of
ALL/month;
- Income from loan/bank deposit interest in the amount of
ALL/month.
- Other (*specify sources and amounts received*):

.....
.....
.....
.....



- If the space above is not enough, please follow the page at the bottom of this form.

- .

**- TOTAL INCOME OF THE FAMILY IS IN THE AMOUNT OF
..... ALL/MONTH**

2.2.2 Family Assets

Movable properties

(For example: cars; quotes/shares in trade companies; bank deposits, etc.)

	Property	Amount of Property
1		
2		
3		
4		
5		
6		
7		

Immovable properties
(Except the residence where the family lives)

	Property	Amount of Property
1		
2		
3		
4		
5		
6		
7		

- FAMILY ASSETS ARE IN THE AMOUNT OFALL.

2.1.3 *Expenses / costs / liabilities of the family*

- Housing costs (rent) in the amount of ALL/month;
- Child custody/alimony the amount ofALL/month;
- Payment of bank loan in the amount ofALL/month;
- Other (*specify*):

.....

.....

.....

.....



- If the space above is not enough, please follow the page at the bottom of this form.

- .

- TOTAL LIABILITIES OF THE FAMILY ARE IN THE AMOUNT OF
..... ALL/MONTH.

SECTION 3: DECLARATIONS

(i) *Please read carefully before signing!*

1. I hereby declare that the entire information I have made available, by way of this application, is true and accurate. I have been informed that the following constitutes violation of Article 32 of Law No. 111/2017 and criminal legislation of the Republic of Albania:
 - Provision of inaccurate/untrue information/statement;
 - Provision of false documents;
2. I hereby declare and acknowledge that, should the inaccuracy/falsity of a piece of information and/or a document be proved, the necessary measures may be taken against me regarding any costs being incurred as a consequence of the unfair benefit of legal aid due to the proved inaccuracy/untruthfulness or falsity. In specific terms, through this statement, I acknowledge that in the event of inaccuracy and/or falsity of any information or document, I will be obliged to reimburse the costs of the lawyer who has provided legal assistance and any other expenses or costs resulting from the unjustified benefit of free legal aid.
3. I declare and acknowledge that all the data made available by me may be verified for the effect of their accuracy, truthfulness and effectiveness regarding my application and that this statement may serve as an authorisation for the centre/clinic for undertaking any measures aiming at the verification of the data contained in this form.
4. I declare and acknowledge that I will further inform on any additional information that may change my status as a beneficiary of free legal aid.

SECTION 4: ACCOMPANYING DOCUMENTATION

This application is accompanied by the following documents hereunder:

A. Identity Documents of the Applicant;

.....;
.....;
.....;
.....;

B. Documents certifying income, assets and expenses:

.....;

.....;
.....;
.....;

C. Other documents:

.....;
.....;
.....;
.....;

Signature of the Applicant

Mr./Ms _____
(name, surname, signature)

In _____
(City)

Signature of the clinic/centre employee

Mr./Ms. _____
(name, surname, signature)

Date: __ __. __ __. 20 __ __

① Information given above shall be processed in compliance with Law no. 9887, dated 10/03/2008 "On the protection of personal data and any disposition of such data shall be conducted in compliance with Law no. 119/2014 "On the right to information".

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COMPLAINT AGAINST THE COURT DECISION REGARDING THE REJECTION OF THE REQUEST FOR SECONDARY LEGAL AID

*Reserved for the institution/organisation where the request is being submitted /
not to be filled out by the applicant*

Court:
Reference:
Protocol number:
Town:
Date:

SECTION 1 COMPLAINANT'S DATA

- a) Name - Father's Name - Surname:
- b) Date of birth:Place of birth:
- c) Marital status (*married / widow(er) / single / divorced*):
- d) Citizenship:
- e) Residence in Albania (*with residence permit - temporary*):
 - ① If not an Albanian citizen.
- f) Place of residence (Address) :
 (Postal code / Town / State)
- g) Correspondence address:(*if different from the above*):
- h) Contacts:
 - Telephone:
 - Email:

DATA OF THE COMPLAINANT'S REPRESENTATIVE (*where the
complaint is not lodged personally*):

- g) Name - Father's Name - Surname:
- h) Correspondence address:(*if different from the above*) :
- i) Contacts:

- **Telephone:**
- **Email:**

SECTION 2: DECISION THAT THE COMPLAINT IS LODGED AGAINST

2.1. Data surrounding the decision being contested:

Decision no _____;

Date _____;

Court _____;

2.2. Pertaining to the request, court decided (*quote from the ordering provisions of the decision*):

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.....

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.....

.....

SECTION 3 LEGAL GROUNDS OF THE COMPLAINT AGAINST THE DECISION REJECTING THE REQUEST FOR SECONDARY LEGAL AID

3.1. Requirements for benefiting Secondary Legal Aid are being met (*According to Articles 11 and 12 of the Law 11/2017*):

In concrete terms: The complainant has sought being granted secondary legal aid, in the capacity of:

- the person belonging to one of the special categories of legal aid beneficiaries

☐

Yes

☐

No

If yes, specify the category:

And/or

- person with insufficient income and properties

☐

Yes

☐

No

3.1.2 The decision rejecting the request is not relying on evidence and law, regarding the following:



- If the space above is not enough, please follow the page at the bottom of this form.

(Grounds based whereon the request has been rejected, referring to the grounding of the decision by the court)

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- If the space above is not sufficient, you are kindly asked to continue at the end of this questionnaire

3.2. By way of this complaint, I request the Appeal Court to decide:

- Amending the Decision no _____, dated _____,
of the Judicial District Court _____, deciding the admission of the
request for granting Secondary Legal Aid;

Signature of complainant

Mr./Ms _____

(name, surname, signature)

REGISTER OF REQUESTS AND SELF-DECLARATIONS FOR PRIMARY LEGAL AID

No.	Name Fatherhood Surname	Sex	Date of Birth	Citizenship	Family status (No. of participants)	Employment status	Contact address and data	Self- declaration regarding income and assets	Accepted or rejected the request or reasons	Nature of the case: -civil - criminal - administrative	Provider's data
01											
02											
03											
04											
05											
06											
07											
08											
09											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											

REGISTER OF NON PROFIT ORGANISATIONS PROVIDING PRIMARY LEGAL AID

No.	Name of the NGOs	No. and date of the decision of the MoJ on granting authorization	Jurisdiction/geographical area where the Nonprofit Organization is authorized to provide services	Specifications of the type of primary legal aid, if any	Data on the funding contract, if benefited	Data on the revocation of the authorization, as applicable
01						
02						
03						
04						
05						
06						
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11						
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13						
14						
15						
16						
17						
18						



SELF-DECLARATION FORM FOR SPECIAL CATEGORIES OF BENEFICIARIES

SECTION 1: APPLICANT'S DATA:

- a) Name - Father's Name - Surname:
- b) Date of birth:Place of birth:
- c) Civil status (*married / widow/er / single / divorced*):
- d) Citizenship:
- e) Residence in Albania (*with residence permit - temporary*):
- ① *If not with Albanian citizenship.*
- f) Place of residence (Address):
(Postal code / City / State):
- g) Address for correspondence: (*if different from the above*):
- h) Contact:
- Telephone:
- Email:

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SECTION 2: SELF-DECLARATION FROM SPECIAL CATEGORIES OF BENEFICIARIES

Do you belong to one of the special categories of legal aid beneficiaries?
If yes, select the category below.

Special categories:

- a) Victim of domestic violence
☐ Yes ☐ No
- b) Victim of sexual abuse and/or trafficking in human beings
☐ Yes ☐ No

- c) Juvenile victim and/or in conflict with the law
☐ Yes ☐ No
- ç) Child living in a social care institution
☐ Yes ☐ No
- d) Child in custody, seeking to initiate proceedings without the consent of the legal guardian and/or against the legal guardian;
☐ Yes ☐ No
- dh) A person who benefits from disability payments in accordance with the legislation in force on social assistance and services, including persons who benefit from the status of the blind;
☐ Yes ☐ No
- e) A person undergoing involuntary treatment at one of the mental health service institutions;
☐ Yes ☐ No
- ë) A person, under voluntary treatment at mental health service institutions for severe mental illness;
☐ Yes ☐ No
- f) A person requiring removal or restriction of ability to act;
☐ Yes ☐ No
- g) A person whose ability to act has been removed or restricted, who seeks to initiate a process against a legal guardian in order to regain his ability to act without the consent of the legal guardian;
☐ Yes ☐ No
- gj) A person who benefits from social protection schemes;
☐ Yes ☐ No
- h) A person whose rights have been violated through an act or omission which constitutes discrimination, based on the decision of the competent authority;
☐ Yes ☐ No

SECTION 3: DECLARATIONS

(i) *Please read carefully before signing!*

1. I hereby declare that the entire information I have made available, by way of this application, is true and accurate. I have been informed that the following constitutes violation of Article 32 of Law No. 111/2017 and criminal legislation of the Republic of Albania:
 - Provision of inaccurate/untrue information/statement;
 - Provision of false documents;
2. I hereby declare and acknowledge that, should the inaccuracy/falsity of a piece of information and/or a document be proved, the necessary measures may be taken against me regarding any costs being incurred as a consequence of the unfair benefit of legal aid due to the proved inaccuracy/untruthfulness or falsity. In specific terms, through this statement, I acknowledge that in the event of inaccuracy and/or falsity of any information or document, I will be obliged to reimburse the costs of the lawyer who has provided legal assistance and any other expenses or costs resulting from the unjustified benefit of free legal aid.
3. I declare and acknowledge that all the data made available by me may be verified for the effect of their accuracy, truthfulness and effectiveness regarding my application and that this statement may serve as an authorisation for the centre/clinic for undertaking any measures aiming at the verification of the data contained in this form.
4. I declare and acknowledge that I will further inform on any additional information that may change my status as a beneficiary of free legal aid.

SECTION 4: ACCOMPANYING DOCUMENTATION

This application is accompanied by the following documents hereunder:

A. Identity Documents of the Applicant;

.....;

.....;

.....;

.....;

B. Documents certifying the status of the special category:

.....;
.....;
.....;
.....;

C. Other documents:

.....;
.....;
.....;
.....;

Signature of the Applicant

Signature of the clinic/centre employee

Mr./Ms _____
(name, surname, signature)

Mr./Ms. _____
(name, surname, signature)

In _____
(City)

Date: __ __ . __ __ . 20__ __

① Information given above shall be processed in compliance with Law no. 9887, dated 10/03/2008 "On the protection of personal data and any disposition of such data shall be conducted in compliance with Law no. 119/2014 "On the right to information".

Order
no. 225
25.03.2019

Annex 9

Order no. 226, dated 25.03.2019 “On the approval of contracts of legal aid guaranteed by the state”, amended by Order no. 424 dated 18.12.2020 as well as Order no. 447, dated 31.12.2020, to the Minister of Justice “On some additions and changes to Order no. 226, dated 25.03.2019 ”

In reliance on par 4 of Article 102 of the Constitution, on Article 7, part 2, of the Law no. 8678, dated 14.05.2001, “On the organisation and functioning of the Ministry of Justice”, as amended, and letter “e” and “ë, Article 7, of the Law no. 111, dated 14.12.2017, “On legal aid guaranteed by the state”,

I HEREBY ORDER:

1. The approval of the TEMPLATE contracts of legal aid guaranteed by the state (according to appendices, attached to this order and being constituent part thereof:

Appendix I: approves the template contract with non-profit organizations for primary legal aid services, according to the provisions of this law.

Appendix II: approves the template contract with lawyers on the provision of secondary legal aid.

2. The Secretary General at the Ministry of Justice and the Free Legal Aid Directorate are tasked with the implementation of this Order.
3. The sector of Archives and Protocol shall be tasked with the notification of this Order.

This order shall enter into effect immediately,

MINISTER
Etilda Gjonaj (Saliu)
(signature) (seal)

Order
no. 226
25.03.2019

SERVICE CONTRACT FOR FINANCING AUTHORIZED NON-PROFIT ORGANIZATIONS PROVIDING STATE-GUARANTEED LEGAL AID

Concluded today on in Tirana, between the contracting parties as follows:

Directorate of Free Legal Aid, with address: “Rruga e Barrikadave” nd. 18, entry no. 6, office no. 10 - III, Tirana, represented by the General Director of the Directorate of Free Legal Aid, _____.

Non-Profit Organization _____ with NIPT _____, with headquarters in _____ and address _____ represented by the Executive Director _____ authorized by the Minister of Justice with order no. _____ date ____.

The parties to this contract agree as follows:

Article 1 Legal Basis

This contract is based on:

1. Civil Code, chapter “Contracts”;
2. Law no. 111/2017, “On legal aid guaranteed by the state”,
3. VKM no. 110, dated 6.3.2019, “On determining the procedures and rules for the selection of non profit organizations, authorized to provide primary legal aid guaranteed by the state, which benefit from funding from the state budget and the manner of their financing”.

Article 2 Scope

The object of this contract is to determine the conditions and procedures in the framework of providing primary legal aid and financing of non-profit organizations authorized by the state budget.

Article 3 Determination of the scope of service

The service provider shall deliver legal aid services, including:

- a) Provision of information regarding legal system in the Republic of Albania, normative acts in force, the rights and obligations of the

subjects of the law and methods for the exercise of these rights in the judicial and extra-judicial processes;

- b) Provision of consultation for different legal cases that are not being examined by judicial, mediation or arbitration institutions;
- c) Delivery of information and consultation on the rules and procedures related to mediation and alternative resolution of disputes;
- d) Provision of aid in drafting and preparation of the documents necessary to set in motion the state administration or
- e) Provision of aid to complete documentation regarding the request for primary legal aid;
- f) Representation before administrative bodies;
- g) Provision of all other forms for the required legal support as long as the case is not subject to judicial examination.

Article 4 **Field of activity**

1. Authorized non-profit organization that receives funding from the state budget, provides primary legal aid service to _____;
2. The authorized non-profit organization that benefits from the state budget, provides the primary legal aid service for the target groups _____.

Article 5 **Obligations of the Authorized Non-Profit Organization**

The authorized non-profit organization that receives funding from the state budget is obliged to:

- a) To register any person who addresses a request for legal aid;
- b) Assist the legal aid applicant to complete the primary legal aid application form;
- c) To provide quality legal aid service according to the standards set by the Minister of Justice with the Instruction of the Minister of Justice no. 531 dated 25.11.2019, "On the approval of criteria and methodology for assessing the quality of legal aid services and supervision procedures by the Directorate of Free Legal Aid Legal Aid services";
- d) To report periodically every month or at the request of the Directorate of Legal Aid Free data of requests and self-declaration of requesting entities submitted to obtain legal aid guaranteed by the state according to the provisions of the instruction of the Minister of Justice no. 1 dated 08.03.2019, "On the approval of rules and procedures for the collection, completion and administration of registry data";

- e) To report periodically every 3 (three) months on the use of funded funds and the fulfillment of obligations set out in the service contract according to the provisions of V.K.M no. 110, dated 6.3.2019, "On determining the procedures and rules for the selection of non-profit organizations, authorized to provide primary legal aid guaranteed by the state, which benefit from funding from the state budget and the manner of their financing";
- f) To be subject to supervision through field visit at least 1 (once) a year during the duration of the service contract to verify the standards of service provided according to the provisions of V.K.M no. 110, dated 6.3.2019, "On determining the procedures and rules for the selection of non-profit organizations, authorized to provide primary legal aid guaranteed by the state, which benefit from funding from the state budget and the manner of their financing";
- g) To cooperate with the Directorate of Free Legal Aid in the framework of legal education and awareness of citizens on the system of free legal aid;
- h) To respect the ethics and communication with the subjects that provide the service;
- i) To perform the full service of legal aid and not to give up the service except in cases of conflict of interest or for other reasonable reasons. If there are reasons for non-provision or termination of the service, he immediately notifies the Directorate of Free Legal Aid, which takes action for an alternative provider in each case.

Article 6

Obligations of the Directorate of Free Legal Aid

The Directorate of Free Legal Aid is obliged to:

- a) To pay the financing fee in the bank account of the service provider with the following data:

Beneficiary: _____
Banka _____
SWIFT _____
IBAN _____

- b) To provide conditions for training and continuous updating of the knowledge of primary legal aid service providers engaged in the authorized Non-Profit Organization;
- c) To support the non-profit organization in terms of solving the problems that the latter encounters during the provision of primary legal aid service;

- d) To cooperate with the non-profit organization in the framework of organizing awareness campaigns and legal education of the public;
- e) To provide measures for holding periodic meetings to discuss issues of common interest in order to address the identified problems;
- f) To inform about the state policies undertaken by the Minister of Justice in the framework of strengthening the system of legal aid guaranteed by the state ”.

Article 7

Value of funding obtained

1. The authorized non-profit organization with the conclusion of this contract benefits a funding from the budget of the Directorate of Free Legal Aid in the amount of _____ which in any case does not exceed 20% of the value of the budget planned for the financing of legal aid primary guaranteed by the state according to the definitions of point 21 of DCM no. 110/2019;
2. The purpose of financing is to support the non-profit organization authorized to provide primary legal aid according to the provisions of Article 15 of Law no. 111/2017.
3. An authorized non-profit organization that receives funding from the state budget may not have the same two sources of funding for the same activity.

Article 8

Method of payment and financial transactions

The Method of payment and financial transactions is defined in annex no. 1 of this contract.

Article 9

Method and mechanism of monitoring the use of the obtained financial funds

The method and mechanism of monitoring on the use of the obtained financial funds is defined in annex no. 1 of this contract.

Article 10

Termination of the contract

1. The financing contract of authorized non-profit organizations is valid for a term of 1 (one) year;

2. The financing contract ends before the deadline if the service provider gives up the service. In this case he immediately notifies the Directorate of Free Legal Aid;

3. In case of non-fulfilment of obligations, the provisions provided in the Civil Code will be applied ”.

Article 11 **Dispute resolution**

1. The parties shall endeavor to resolve amicably all disputes that may arise during the implementation of this contract.

2. If this is not possible, the Tirana Administrative Court is competent for resolving disputes. ”

Article 12 **Entry into force**

1. This contract enters into force upon signing.

2. This contract is drafted in Albanian language, in 2 (two) equivalent copies, signed with full will, free and independent, by the contracting parties as follows:

AUTHORIZED NON-PROFIT ORGANIZATION THAT BENEFITS FINANCING

Represented by : _____

FREE LEGAL AID DIRECTORY

Represented by: Mr. Ergys Qirici General Director ”.

PARTIES:

Director of the Legal Aid Directorate

Non-profit Organization

CONTRACT ON THE PROVISION OF SECONDARY LEGAL AID SERVICE

This Contract on the provision of the secondary legal aid service ("The Contract") is entered today as of (.....) on the date of (.....) from and between the following parties:

DIRECTORATE OF FREE LEGAL AID, represented by Mr./Ms. _____, (hereinafter referred to as the **"Contractor"**)

and

Mr./Ms. _____, _____ citizen, born on _____, in _____, resident in _____, identified by the Identity Card/Passport with personal number _____

Number _____ (hereinafter referred to as **"The Service Provider"**).

The parties to this Contract shall be severally referred to as "The Party" or jointly as "The Parties".

Article 1 SCOPE OF THE CONTRACT

1.1. The scope of this Contract is the provision of Secondary Legal Aid by the Service Provider, in favour of persons who have benefitted according to a final decision of the competent court, the right to benefit such free aid, according to the stipulations of Law 111/2017.

Article 2 ENTRY INTO FORCE AND DURATION

2.1. This Contract shall enter into force on the date of its signing by both Parties and is valid for a term of 1 (one) year from the date of signing, but in each case until the approval of the new list and conclusion of new contracts.

2.2. The term of this Contract may be renewed upon written agreement between the Parties.

2.3. The termination of this 1-year Contract does not inhibit the service provider to represent the beneficiary until the final resolution of the case, except when the circumstances exist for his substitution.

Order
no. 226
25.03.2019

Article 3

PRINCIPLES ON THE PROVISION OF SECONDARY LEGAL AID

3.1. Provision of secondary legal aid by the Service Provider is particularly based on the following principles:

- a) equal access of individuals to legal aid;
- b) equality and non-discrimination of individuals entitled to legal aid;
- c) professionalism in providing legal aid service;
- ç) quality, efficiency and cost efficiency for the services provided legal aid;
- d) maintaining confidentiality;
- dh) avoidance and prevention of conflict of interest;
- e) protection of the rights of vulnerable persons.

3.2. In addition to the above, the provision of secondary legal aid by the Service Provider is based on the principles of the Code of Ethics for Advocates.

3.3. Violation of the principles set out in this article, constitutes a serious violation of this Contract and entails the application of sanctions and disciplinary measures, in accordance with the provisions of the Law on Advocacy or any other applicable law.

Article 4

SERVICE FEE AND PAYMENT METHOD

4.1. The fee for the provision of Secondary Legal Aid by the Service Provider is determined according to the fees in the Annex attached to this Contract ("Service Fee").

4.2. The Contractor shall pay the Service Fee to the bank account of the Service Provider with the following data:

Beneficiary:

Bank:

SWIFT:

IBAN:

Article 5

OBLIGATIONS AND GUARANTEES OF THE PARTIES

5.1. In the sense of Law 111/2017, the services of the Secondary Legal Aid that the Service Provider is obliged to render, include, without limitation to, the following:

- Drafting of the acts necessary to set in motion the court, the request, the indictment request/lawsuit or any other procedural request resulting necessary during the court process;
- Drafting of the defense acts, for persons against whom a civil or administrative court process has started;
- Collection and preparation of evidence documentation;
- Consultation about the civil or administrative court process;
- Representation and defense before court in administrative and civil cases;
- Preparation of appeal requests, recourses against court or arbitration decisions;
- Preparation of any type of request addressed to every court in the Republic of Albania, including the Constitutional Court, and the international courts and any organization in which the Republic of Albania adheres to regarding the case for which it provides Secondary Legal Aid, in favour to the Beneficiary;
- In addition to the above, the Service Provider shall make any and every action in fulfilment of the obligations determined in the Law on Advocacy, in the sense of the Secondary Legal Aid, in Law No. 111/2017 and in this Contract.

5.2. The Service Provider declares and guarantees that he/she:

- i. enjoys all the professional qualities and necessary qualifications in order to undertake the obligations according to this Contract;
- ii. shall provide the secondary legal aid services with the highest professional standards and in conformity with the principles determined in Article 3 of this Contract;
- iii. shall act in time and without causing any delays in the provision of secondary legal aid, immediately upon receipt of notification by the local chamber of advocacy, on the decision of the court, which has accepted the request for the provision of the secondary legal aid to the Beneficiary.
- iv. Shall not waive of the provision of the Secondary Legal Aid, except in cases of waiver determined by the Law on Advocacy, including, but without limitation to the case of the conflict of interest.

- v. In each case of obligation to waive, the Service Provider shall immediately inform the local chamber of advocacy, with the aim of his/her substitution. In this case, the Service Provider shall continue to deliver the Secondary Legal Aid until his/her substitution, according to the provisions of Law on Advocacy and shall implement any and all the obligations provided in the Law on Advocacy.
- vi. Shall provide secondary legal aid in favour of the Beneficiary, only upon the Service Fee, without having the right to other benefits, except for the Service Fee;
- vii. Shall provide the fulfilment of obligations according to this Contract by keeping the Contractor unaffected of any actions against him.
- viii. Shall keep regular and continuous contacts with the beneficiary for keeping him continuously informed on the case for which the secondary legal aid is provided;
- ix. Shall submit a report at the end of work, according to the format approved by the Ministry of Justice.
- x. It will provide quality legal aid service according to the standards set by the Minister of Justice with Order no. 531, dated 25.11.2019 "Criteria and methodology for assessing the quality of legal aid services and supervision procedures by the Directorate of Free Legal Aid legal aid services".

5.3. The Contractor declares and guarantees that:

- i. Shall pay the service fee to the Service Provider, without delays, in conformity with this Contract.
- ii. Shall make any and all actions and implement all the obligations according to Law 111/2017 in order to make possible the delivery of the Secondary Legal Aid in favour of the beneficiary.

Article 6

ANTI-CORRUPTION CLAUSE

6.1. In relation to this Contract, except for the service fee provided in Article 4 above, the Service Provider shall not benefit, request or accept from the Beneficiary or other parties involved in conflict with him, any payments, promise for payment, benefit, gift or remuneration, directly or indirectly.

6.2. In addition to the above, the Service Provider shall not offer or promise on his/he own or through third persons, in favour of the Parties or subjects involved in trial, where the Service Provider delivers secondary legal aid, no payment, benefit, gift or remuneration.

6.3. Any violation of the provisions under paragraphs 6.1. and 6.2. above, will constitute a criminal offense within the meaning of the criminal legislation in force and the Service Provider will be subject to proceedings under criminal procedural legislation and subject to ethical proceedings under legislation for the profession of advocate.

Article 7

INDEPENDENT CONTRACTOR

7.1. The parties of this Contract agree that the Service Provider is an independent contractor in relation to the Contractor and for no reason or motive shall be considered as his employee.

Article 8

PRINCIPLE OF GOOD FAITH AND CONFIDENTIALITY

8.1. The parties shall not damage the interests of one another, reputation and image. They shall act in good faith with one another and shall comply with the rights and obligations determined by this Contract, the law and international conventions.

8.2. The parties shall act in good faith, making every and all the necessary actions for the protection of the legal interests of each Party.

8.3. The parties are obliged to maintain this Contract strictly confidential, as well as its content, the respective personal data and any other data without limitation.

8.4. None of the Parties shall be considered that is in violation of this obligation if the dissemination or transfer of information and data above stems from a legal obligation, including, but without being limited to the fulfilment of the obligations set by Law no. 9887, dated 10.03.2008 "On the protection of personal data", tax legislation in force in the Republic of Albania or decision and orders of the Prosecution Office or Courts.

Article 9

TERMINATION OF THE CONTRACT

9.1. This Contract shall duly terminate on the date determined in Article 2 above.

9.2. The Contractor may immediately dissolve this Contract, if the Service Provider breaches any of the obligations provided in this Contract or in the Law 111/2017.

9.3. The Service Provider may dissolve this Contract, by preliminarily notifying the local chamber of advocacy. In this case, the Service Provider shall continue to provide Secondary Legal Aid to the Beneficiary until his substitution from the local chamber of advocacy.

Article 10 MISCELLANEOUS

10.1. This Contract constitutes the entire agreement and understanding between the Parties and supersedes any other prior agreement between the Parties in respect of its object.

10.2. No change, modification, termination, waiver of any point of this Contract shall have effect unless it is in writing and signed by both Parties.

10.3. Failure to exercise or delay in the exercise of a right or indemnity set forth in this Agreement or the law shall not constitute a waiver of the right or indemnity, or a waiver of other rights or indemnities. No partial or complete exercise of the right or indemnity provided for in this Agreement shall prevent the further exercise of other rights or indemnities.

10.4. This Contract shall be governed by and construed in accordance with Legislation of the Republic of Albania.

10.5. The parties will try to resolve amicably any disputes that may arise during the implementation of the contract. If this is not possible, the competent jurisdiction to resolve disputes arising from the execution of this Contract is the Tirana Judicial District Court.

PARTIES

CONTRACTOR
FREE LEGAL AID DIRECTORATE

SERVICE PROVIDER

Represented by:

Annex 10

INSTRUCTION No.6, Dated 20/08/2019 ON RULES AND PROCEDURES FOR MAKING THE PAYMENTS OF THE JUDICIAL EXPENSES, WHEREFORE THE EXEMPTION HAS BEEN DECIDED IN THE EVENT OF GRANTING LEGAL AID

In reliance on Article 102, par 4 of the Constitution, Article 7, letter g)) and Article 28, par 4, of the Law no 111/2017, dated 14.12.2017 "On legal aid guaranteed by the state", the Minister of Justice,

INSTRUCTS:

1. Laying out rules and procedures for making the payments of judicial expenses, wherefore the exception has been decided in the sense of the Law no. 111/2017, dated 14.12.2017 "On legal aid guaranteed by the state".
2. The Free Legal Aid Directorate shall make the payments for witnesses, experts, translators and for the inspection of the items and location inspection, according to the procedural legislation provisions, wherefore the court has decided the exemption from the payment of judicial expenses.
3. The Free Legal Aid Directorate shall make the payments based on a decision of the court, under the provisions of the Instruction no 4, dated 12.12.2012, of the Council of Ministers "On determining the extent of expenses and payments of experts in the course of judicial proceedings", as amended.
4. Within 15 (fifteen) days as of the date of pronouncement by the court of the decision for exemption from the payment of judicial expenses, the witness, expert and translator shall submit at the Free Legal Aid Directorate the taxation documents for the services provided and, as appropriate, the supporting documentation, as follows hereunder:
 - a) taxation document for the transport expenses;
 - a) taxation document for the accommodation expenses;
 - c) document of an indicative character of the job and salary amount;
 - c) any second level bank certification regarding the declaration of the account number in ALL.
5. Failure of the witness, expert and translator to submit a tax documentation

under the provisions of the legislation in effect for taxation consists a cause for not making the payments for the provided services and wherefore the exemption from the judicial expenses has been decided.

6. At the end of each month, the Free Legal Aid Directorate shall draft a report on the announced judicial decisions, taxation documents submitted for each decision, calculation of daily expenses and the budget available for their payment. Based on such analysis, the Free Legal Aid Directorate shall make the payments of judicial expenses, according to the chronological sequence of the notified judicial decisions and consolidated with the establishing documentation.
7. The Free Legal Aid Directorate shall, inform the witness, expert, translator, the court having pronounced the decision and the beneficiary of the state-guaranteed secondary legal aid, whose request for exemption from the payment of the judicial expenses has been admitted, on the payment of court expenses.
 - Notification is accompanied by a copy of the certification given by the bank proving that the payment was made.
 - Notification shall occur within 5 (five) days as of the making of payment, via mail, electronic mail and any other means provided by the legislation in force.
8. Where the monthly limit is not sufficient for the full liquidation of the judicial expenses, the payment shall be postponed to the upcoming month, according to the chronological sequence of the judicial decisions being notified and consolidated with the corroborating tax documentation.
9. In the event of lack of budget funds for the payment of the entire calculated judicial expenses, the Free Legal Aid Directorate shall log into the balance sheet any liabilities carried forward, under the provisions of the legislation in effect regarding the accounting and financial statements, as well as plan the necessary funds for the settlement payment of such liabilities for the upcoming budget periods.
10. The Free Legal Aid Directorate is tasked with the implementation of this instruction.

This instruction shall enter into effect following its publication in the Official Journal.

MINISTER
Etilda Gjonaj (Saliu)
(signature) (seal)

Annex 11

DECISION

No 231, dated 12.11.2019

ON THE APPROVAL OF THE REGULATION FOR THE RULES OF GUARANTEEING THE MANDATORY DEFENSE AND APPOINTMENT OF THE DEFENSE COUNSEL BASED ON THE PRINCIPLE OF ROTATION, FROM THE LIST OF ADVOCATES PROVIDING SECONDARY LEGAL AID SERVICES IN THE CRIMINAL PROCESS

Pursuant to Article 49, par 7, and Article 49/a, of the Law no. 7905, dated 21.03.1995 "Criminal Procedure Code of the Republic of Albania", as amended, on Article 21, par 6 and 7 of the Law no 111/2017 'On state-guaranteed legal aid", Article 159, par 2, of the Law no. 115/2016 "On justice system governance bodies", the High Prosecutorial Council,

DECIDED:

1. The approval of the Regulation "On the rules of guaranteeing the mandatory defense and appointment of the defense counsel based on the principle of rotation from from the list of advocates providing secondary legal aid services in the criminal process" referring to the text attached to this decision.
2. This decision shall enter into force after its publication in the Official Journal and shall be published on the official website of the High Prosecutorial Council.

CHAIRPERSON
GENT IBRAHIMI
(signature) (seal)

Decision
no. 231
12.11.2019

**REGULATION
ON
“THE RULES OF GUARANTEEING THE MANDATORY DEFENSE
AND THE APPOINTMENT OF THE DEFENSE COUNSEL, BASED
ON THE PRINCIPLE OF ROTATION, FROM THE LIST OF
ADVOCATES PROVIDING SECONDARY LEGAL AID SERVICES
IN THE CRIMINAL PROCESS”**

Pursuant to article 49 and 49/a of Law no. 7905, dated 21.03.1995, of the “Criminal Procedure Code of the Republic of Albania”, as amended, of article 21, paragraphs 6 and 7 of Law no. 111/2017, *“On legal aid guaranteed by the state”*, of Article 159, paragraph 2 of Law no. 115/2016, *“On the Justice System Governance Institutions”*, the High Prosecutorial Council

DECIDED:

1. To adopt the comprehensive rules related to guaranteeing the mandatory defense and the defense for the defendant without the necessary financial means, in the criminal process, by the institutions provided for in law no. 111/2017 *“On the legal aid guaranteed by the state”*.
2. The proceeding body which initiates the investigations shall be compelled to enforce the rules on the appointment, based on the rotation principle, of a defense counsel and his/her replacement, from the list of the advocates who provide the secondary legal aid services in the criminal process.
3. The Chamber of Advocates of Albania shall, within February 1 of each calendar year, provide the approved lists, according to the following procedure and shall publish them on its official webpage.
4. The Chamber of Advocates of Albania shall organize the lot in the appropriate premises and shall notify preliminarily the advocates who are part of the list to be present. The notification shall include the date, the time and the place of the lot.
5. After the lot is carried out, the Chamber of Advocates of Albania shall order the advocates alphabetically. The selection of the advocates shall be done through a rotation successively from the list, starting from no.1 of the list, then moving on to no. 2, continuing one after the other up to the end of the list.
6. The advocates included in the legal aid list shall exercise the functions of the legal advocate in the criminal process:

- a) For the defendants without the sufficient financial means, according to the criteria provided for in law no. 111/2017, "On legal aid, provided by the state".
 - b) For the defendants who are under the conditions of the mandatory defense according to the provisions of article 49, paragraph 7, and article 49/a of the Criminal Procedure Code.
7. The first list is composed of the advocates who meet the criteria stipulated by the National Chamber of Advocates and the Directorate of Free legal Aid.
 8. The second list is composed of the advocates specialized and trained in the cases for the juveniles, for the victims of trafficking, domestic violence and sexual abuse.
 9. A responsible person shall be assigned attached to the prosecution office from the administrative personnel for the compliance with the rotation principle for the advocates, according to the list approved by the Albanian Chamber of Advocates.
 10. When the mandatory defense cannot be guaranteed from the list provided by the Albanian Chamber of Advocates, according to the provisions of the Criminal Procedure Code, the defense shall be guaranteed from the list of the advocates who provide secondary legal aid in the criminal process.
 11. The advocate assigned from the approved list for legal aid shall cease to exercise his/her functions as an advocate, when:
 - a. There are the conditions of the mandatory defense and the legal aid advocate is replaced pursuant to the provisions of article 49 paragraph 6 of the Criminal Procedure Code. In this case, the copy of the minutes on the replacement of the advocate drafted at the proceeding body shall be filed with the responsible structures providing legal aid.
 - b. The defendant without sufficient financial means does not accept his further defence, according to the provisions of paragraph 5, article 24 of law no. 111/2017, "On legal aid guaranteed by the state".
 12. The proceeding body shall initiate the investigatory actions, which need to be carried out in the presence of the defense counsel, only after a time limit not less than one hour, which commences after the appearance of the advocate at the proceeding body in order for the advocate to consult with the defendant and the acts of the investigatory file.

13. When the conditions to enjoy the mandatory defense change, the proceeding body shall notify and assist the defendant in order for the latter to apply to benefit free legal aid according to the type of the legal aid.
14. After the assignment of the defense counsel, the proceeding body shall provide him/her the opportunity to appear as soon as possible at the required place.
15. The proceeding body shall contact via the telephone and/or through the electronic mail with the advocate assigned according to the ranking in the list provided by the local chamber of advocates.
16. When the advocate responds to the phone call or to the electronic mail and confirms the defense according to the respective case, he shall be given a reasonable time limit, not less than one hour, to appear at the requested place.
17. After accepting the defense, the advocate assigned for the secondary legal defense, pursuant to the stipulations of law no. 111/2017 "On legal aid guaranteed by the state", shall enter the contract on the parties' obligations according to the format attached to this regulation.
18. When the advocate, after receiving the notification, refuses to accept the task, the next advocate in the list shall be contacted.
19. When the advocate fails to respond to the phone call or to the electronic mail, a period of 20 minutes is provided to him/her to respond.
20. When the advocate is unavailable, an attempt shall be made to contact him/her again after 20 minutes.
21. When the phone call/electronic mail is not responded after the second notification, the proceeding body shall operate immediately by contacting the next advocate in the list.
22. When the advocate on duty according to the calendar does not respond to the call of the proceeding body for 3 subsequent cases, when his/her defense is requested, he/she shall be positioned at the end of the list and shall be replaced by the subsequent advocate in the list according to the order. In such a case, the replacing advocate does not lose his/her turn to be assigned in the duty.
23. The proceeding body shall notify in writing the Albanian Chamber of Advocates on the cases of the refusal and/or of the failure to reply of the advocates in the list for the free provision of legal aid.

24. The Albanian Chamber of Advocates shall take measures for the cases when there is a lack of the lists of advocates assigned in a judicial district. In such a case, it shall require the local chamber of advocates which is the closest with the proceeding body of that judicial district, to provide the proceeding bodies with the list and the order of the advocates assigned to provide legal aid provided by the state.
25. At the moment of the arrest, the duty of the proceeding body is to notify and explain to the detainee/arrested person/defendant:
- a. His/her right to benefit legal aid guaranteed by the state in case there is a financial incapacity to afford a defense counsel from the market.
 - b. His/her right to benefit free legal aid when the conditions to benefit from the mandatory defense are met, pursuant to articles 49 and 49/a of the Criminal Procedure Code.
26. The proceeding body shall ask the detainee/arrested person/defendant to fill in a statement/form, according to the form adopted by the Directorate of Free Legal Aid, where he/she shall declare the economic condition and shall express the will that he/she requires to be defended by a lawyer assigned by the state.
27. The proceeding body shall decide case by case if the detainee/the arrested person/the defendant may benefit defense by a lawyer assigned for the provision of the legal aid guaranteed by the state.
28. The proceeding body shall take measures to carry out the actions in the presence of the lawyer, according to the provisions of the Criminal Procedure Code.
29. The proceeding body shall, during the assignment of the lawyers for free legal aid, comply with the principle according to which the lawyer assigned in a phase of the proceeding shall defend the client in all the phases of the investigation and of the adjudication.
30. The lawyer may be replaced pursuant to the conditions of this regulation as well as exceptionally, when at least one of the following conditions is met:
- a) The lawyer is in the conditions of the conflict of interest;
 - b) The lawyer and/or the detainee/the arrested person/the defendant submits a reasoned request in writing on the waiver;
 - c) The lawyer does not appear before the proceeding body repeatedly and unreasonably;

- d) The lawyer, due to the extraordinary circumstances, is incapable to represent the client in that case;
- e) Other reasons provided for in the law or sublegal acts.

31. When the lawyer assigned to provide legal aid faces obstacles for the engagement and the continuation of the defense, he/she shall address to the proceeding body and to the Local Chamber of Advocates with a reasoned request.

32. The lawyer assigned from the list approved for legal aid ceases to assume his/her functions as a defense counsel, when:

- a) There are the conditions for mandatory defense and the lawyer of legal aid is replaced pursuant to the provisions of article 49 paragraph 6 of the Criminal Procedure Code. In this case, the copy of the minutes for the replacement of the lawyer, kept at the proceeding body, shall be filed with the structures responsible for providing legal aid.
- b) The defendant without sufficient financial means does not accept his/her further defense, pursuant to the provision in paragraph 5, article 24 of law no. 111/2017 "On legal aid guaranteed by the state".

33. The prosecutor shall commence the replacement procedure and shall notify the Albanian Chamber of Advocates.

34. The lawyer shall continue to stay in duty until he/she is replaced with another lawyer.

35. The proceeding body asks the detainee/arrested person/defendant to fill in the form pursuant to the form approved by the Directorate of Free Legal Aid on the evaluation of the work of the assigned lawyer.

36. The rules based on the instruction on the rules for the implementation of the principle of rotation in assigning lawyers who will provide legal aid shall be applied for the victims of the criminal offence as well as the accusing victims regarding their claims on the submission of the civil claim inside and outside the criminal process.

37. The civil defendant in the criminal process shall, as a rule, be defended by the same lawyer assigned to follow the criminal process. When the lawyer does not want to follow the civil case, the lawyer shall be replaced pursuant to the rotation rules and pursuant to the calendar of the cases.

38. The reward for the work done by the lawyer during the process of

providing free legal aid shall be done:

- a. The Directorate of Free Legal Aid attached to the Ministry of Justice shall do it for the legal aid for the people without sufficient financial means;
 - b. The Prosecution Office shall do it for legal aid in the conditions of the mandatory defense, pursuant to the provisions of article 49, paragraph 7 and article 49/a of the Criminal Procedure Code.
39. The Prosecution Office and the Judicial Police, the Albanian Chamber of Advocates, the Local Chambers of Advocates, the Directorate of Free Legal Aid shall be responsible for the implementation of this regulation.
40. This regulation enters into force after its publication in the Official Gazette.

HIGH PROSECUTORIAL COUNCIL

CONTRACT FOR OFFERING THE SECONDARY LEGAL SERVICES

This Contract for offering the secondary legal services (Contract) entered into today on _____, on _____.2020, by and between parties, as follows:

Prosecution Office _____, represented by Mr/Ms _____ (hereunder referred to as 'Contractor')

and **Mr/Ms** _____, citizen _____, born on _____

Resident in _____, identified by ID/Passport with personal number _____, (hereunder referred to as "**Service Provider**")

The Parties to this Contract shall be separately referred to as 'Party' and jointly 'Parties'.

Article 1 SCOPE OF CONTRACT

1.1 The scope of this Contract is the provision of Secondary Legal Aid service by the Service Provider to the benefit of persons who have been granted under a final court decision of the competent court the right to receive this free assistance as provided by law no 111/2017.

Article 2 ENTRY INTO EFFECT AND DURATION

2.1 This Contract enters into force on the date of its signature by both Parties and is valid for 1 (one) year from the date of signature, but in any event until the approval of the new list and the conclusion of new contracts.

2.2 The term of this Contract may be renewed by written agreement between the Parties.

2.3 Termination of the 1-year contract shall not prevent the service provider from representing the representative until the final resolution of the matter, except where circumstances exist for his replacement.

Article 3

PRINCIPLES OF OFFERING THE SECONDARY LEGAL ASSISTANCE

3.1 Provision of Secondary Legal Assistance by the Service Provider is based in particular on the following principles:

- a) equal access to legal aid for individuals,
- b) equality and non-discrimination of individuals enjoying the right to legal aid;
- c) professionalism in providing legal aid service,
- ç) quality, efficiency and cost-effectiveness of legal aid services;
- d) maintaining confidentiality,
- f) avoiding and warning of conflicts of interest;
- e) protection of the rights of vulnerable persons;

3.2 In addition to the above, the provision of secondary legal assistance by the Service Provider is based on the principles of the Code of Ethics of advocates.

3.3 Violation of the principles set forth in this Article constitutes a gross violation of this Contract and shall entail the application of sanctions and disciplinary measures as provided for in the Law on Advocacy or any other applicable law.

Article 4

SERVICE FEES AND WAY OF PAYMENT

4.1 The fee for the provision of Secondary Legal Aid by the Service Provider shall be determined according to the applicable rates approved in connection with this Contract.

4.2 The Contractor shall pay the Service Fee to the Service Provider's bank account with the following information:

Beneficiary

Bank

SWIFT

IBAN

Article 5

OBLIGATIONS AND GUARANTEES OF PARTIES

5.1 For the purposes of Law 111/2017, the Secondary Legal Aid services that the Service Provider is obliged to provide include, but are not limited to:

- Drafting the necessary acts to initiate the process, the request, the lawsuit or any procedural request that is necessary during the proceedings before the prosecution or court.
- Compilation of acts of protection for persons against whom criminal, judicial or administrative proceedings have been initiated.
- Collection and preparation of probation documentation.
- Advising on civil / administrative criminal / judicial process.
- Representation and defense before the prosecutor / court in criminal / administrative and civil cases.
- Preparation of appeals, legality checking requests against judicial decisions, or arbitration.
- Preparing any request to the prosecution or any court in the Republic of Albania, including the Constitutional Court, as well as international courts and any organization to which the Republic of Albania has acceded and relates to the case for which it provides Secondary Legal Assistance in favour of the Beneficiary.
- Except as provided above, the Service Provider shall also perform all actions in compliance with the obligations set forth in the Law on Advocacy in terms of Secondary Legal Aid in Law no. 111/2017, as well as in this Contract.

5.2 The Service Provider declares that:

- I. he has all the professional qualities and qualifications necessary to assume the obligations under this Contract.
- II. he shall provide Secondary Legal Aid Services with the highest professional standards and in accordance with the principles set forth in Article 3 of this Contract.
- III. he will act in a timely manner and without causing any delay in the provision of Secondary Legal Assistance, upon receipt of notification by the Prosecution Office of the decision of the prosecution or court which has accepted the request for the provision of Secondary Legal Assistance to the Recipient.
- IV. he shall not waive the granting Secondary Legal Assistance, unless such waivers are provided for by the Law on Advocacy, including

but not limited to a conflict of interest.

- V. In any instance of the obligation to waive, the Service Provider shall immediately inform the prosecutor / court with a view to its replacement. In this case, the Service Provider shall continue to provide Secondary Legal Aid until it is replaced, in accordance with the provisions of the Law on Advocacy and shall comply with all obligations set forth in the Law on Advocacy.
- VI. he will provide Secondary Legal Aid to the benefit of the Beneficiary only against the Service Fee, while being entitled to no other benefits other than the Service Fee.
- VII. he will ensure compliance with their obligations under this Contract by keeping the Contractor free from any action against him.
- VIII. he will maintain regular and ongoing contact with the Beneficiary in order to keep him or her informed on the matter for which he / she provides Secondary Legal Assistance.
- IX. he will submit a report on the completion of work in the format approved by the Ministry of Justice / Prosecution Office.

5.3 The Contractor hereby declares and warrants that:

- I. he shall pay the Service Provider the Service Fee without delay in accordance with this Contract.
- II. he will perform all actions and comply with any obligation under Law no 111/2017, to enable the provision of Secondary Legal Assistance to the benefit of the Beneficiary.

Article 6

ANTI-CORRUPTION CLAUSE

6.1 In connection with this Contract, in addition to the Service Fee provided for in Section 4 above, the Service Provider shall not receive, request or receive from the Beneficiary or other parties involved in the process or in conflict with him any payment, promise for payment, benefit, gift or reward, directly or indirectly.

6.2 In addition to the foregoing, the Service Provider shall not offer, or promise, on his own or through third parties, in favor of the Parties or entities involved in the process where the Service Provider provides Secondary Legal Assistance, any payment, benefit, gift or reward.

6.3 Any breach provided for in paragraphs 6.1 and 6.2 of the foregoing

shall constitute a criminal offense within the meaning of the applicable criminal law and the Service Provider shall be subject to proceedings under criminal procedure law and subject to ethical proceedings under the law for the profession of lawyer.

Article 7 INDEPENDENT CONTRACTOR

7.1 The parties to this Contract agree that the Service Provider is an independent contractor in relation to the Contractor and for no reason or cause shall be considered as its employee.

Article 8 PRINCIPLE OF GOOD FAITH AND CONFIDENTIALITY

8.1 The Parties shall not prejudice one another's interests, reputation or image. They shall act in good faith with one another and shall respect the rights and obligations set forth in this Contract, law and international conventions.

8.2 The Parties shall act in good faith by taking all actions necessary to safeguard the legitimate interests of each Party.

8.3 The parties are obliged to keep this Agreement, its contents, their respective personal data and any other information strictly confidential, without any limitation.

8.4 Neither Party shall be deemed to be in breach of this obligation if the dissemination or transfer of the above interests and data arises from a legal obligation including but not limited to the fulfilment of the obligations imposed by Law No. 9887, dated 10.03.2008 "On the protection of personal data".

Article 9 TERMINATION OF THE CONTRACT

9.1 This Contract shall terminate on a regular basis within the time limit set forth in Article 2.

9.2 The Contractor may terminate this Contract immediately if the Service Provider violates any of the obligations set forth in this Contract, or in Law No 111 / 2017.

9.3 The Service Provider may terminate this Contract by notifying the Prosecution Office/Court in advance. In this case, the Service Provider

shall continue to provide Secondary Legal Assistance to the Beneficiary until it is replaced by the Prosecution Office/Court.

Article 10
MISCELLANEOUS

10.1 This Agreement constitutes all agreement and understanding between the Parties and shall supersede any other prior agreement between the Parties with respect to its object.

10.2 No amendment, termination, waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Parties.

10.3 Failure to exercise or delay in exercising any right or remedy set forth in this Agreement or in the law shall not constitute a waiver of any right or remedy or waiver of any other right or remedy. No partial or complete exercise of the right or indemnity provided for in this Contract shall preclude the further exercise of other rights or indemnity.

10.4 This Contract shall be governed by and construed in accordance with the applicable legislation of the Republic of Albania.

10.5 The Parties shall endeavor to resolve in good faith any disputes that may arise during the performance of the Contract. If this is not possible the jurisdiction competent to settle disputes arising from the execution of this Contract shall be Tirana District Court.

PARTIES

CONTRACTOR

SERVICE PROVIDER

PROSECUTOR

ADV._____

Decision
no. 231
12.11.2019

Annex 12

ORDER

No.531 DATED 25/11/2019

“ON

**THE APPROVAL OF THE CRITERIA AND METHODOLOGY FOR
THE EVALUATION OF THE QUALITY OF PROVIDING LEGAL
AID SERVICES AND SURVEILLANCE PROCEDURES BY THE
FREE LEGAL AID DIRECTORATE OF THE LEGAL AID SERVICES”**

In reliance on par 4 of Article 102 of the Constitution, on Article 7, par 2, of the Law no. 8678, dated 14.05.2001, “On the organisation and functioning of the Ministry of Justice’, as amended, and letter “f”, Article 7, of the Law no. 111, dated 14.12.2017, “On legal aid guaranteed by the state”,

I O R D E R:

1. The approval of the criteria and methodology for the evaluation of the quality of providing legal aid services and surveillance procedures by the Free Legal Aid Directorate of the legal aid services according to the appendix , attached to this order and being constituent part thereof.
2. The Secretary General at the Ministry of Justice and the Free Legal Aid Directorate are tasked with the implementation of this Order.
3. The sector of Archives and Protocol shall be tasked with the notification of this Order.

This order shall enter into effect immediately,

MINISTER

Etilda Gjonaj (Saliu)

(signature) (seal)

EVALUATION CRITERIA, METHODOLOGY AND SURVEILLANCE PROCEDURES OF THE LEGAL AID

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ACRONYMS AND DEFINITIONS

ACRONYMS	DEFINITIONS
FLAD	Free Legal Aid Department
MEI	Main Evaluation Indicators
Law no 111/2017	Law no 111/2017 “On State-guaranteed Legal Aid”
Law no 55/2018	Law no 55/2018, dated 23.7.2018, “On the legal provision in the Republic of Albania”.
Code of Professional Ethics	Lawyer’s Code of Ethics approved by the Albanian Chamber of Advocates
Primary legal aid office	Refers to the primary legal aid service centers mentioned in Law no. 111/2017 including non-profit organizations mentioned in the law.

I. INTRODUCTION¹

This document has been drafted and approved within the scope of Article 7 (f) of Law no 111/2017 “*On State-guaranteed Legal Aid*”. This document contains the methodology for assessing the quality of provision of legal aid services guaranteed by the state based on the criteria set out here as well as the supervisory procedures to be applied by the Free Legal Aid Department while carrying out the legal aid activity.

1. A number of evaluation models and methodologies have been consulted for the drafting of this methodology, namely:

I. *Assessment of the free secondary legal aid system in Ukraine in the light of Council of Europe Standards and Best Practices*, Council of Europe, September 2016.

II. *American Bar Association, Standards for the Provision of Civil Legal Aid*, August 2006.

III. *Practice Standards for Legal Aid Provides*, Ministry of Justice, New Zealand Government, February 2017.

IV. “*Evaluating Systems for Delivering Legal Service to the Poor: Conceptual and Methodological Considerations*”, *Fordham Law Review*, Volume 67 Issue 5, Gregg G. Van Ryzin and Marianne Engelman Lado, 1999.

II. LEGAL AID

Free legal aid is a consolidated service in many developed countries. The need to provide free legal services has arisen as a result of living in an increasingly complex society composed of a series of laws and administrative procedures that regulate the daily lives of citizens. Thus, in many areas, it has become necessary to obtain specialized legal advice for the performance of administrative procedures or the protection of the legitimate rights and interests of citizens. On the other hand, legal services have become increasingly costly and often unaffordable for citizens with limited economic incomes.

The concept and models of free legal aid were born mainly with the aim of providing judicial representation services. However, it has been noted that there are a number of issues and situations which are not necessarily resolved judicially. With early specialized intervention, these issues can be resolved at the administrative stage when dealing with the citizen's relationship with the public administration, or through alternative dispute resolution in cases of civil disputes. Even for these cases, citizens need specialized legal advice which they may not be able to afford when their economic income is limited.

For the treatment of all the above cases, Law no. 111/2017 has re-organized and re-structured the concept of legal aid guaranteed by the state and divided into two pillars of primary legal aid and secondary legal aid.

According to Article 3 (b) of Law no 111/2017, Primary Legal Aid coincides with the performance of the following legal services:

- i. providing information regarding the legal system of the Republic of Albania, the normative acts in force, the rights and obligations of the subjects of law and the methods for exercising these rights in the judicial and non-judicial process;
- ii. providing legal advice on concrete cases;
- iii. providing advice on mediation procedures and alternative dispute resolution;
- iv. providing assistance in drafting and compiling the necessary documents to seize of the state administration or to seek secondary legal assistance;
- v. representation before administrative bodies; and
- vi. providing all other forms of necessary legal support that do not constitute secondary legal aid.

Pursuant to Article 3 (c) of Law no. 111/2017 Secondary Legal Aid is a legal service that coincides with the performance of the following

legal services:

- i. drafting the necessary acts to seize of the court;
- ii. providing counseling, representation and protection before the court in administrative, civil and criminal matters, for which mandatory protection does not apply, according to the provisions of criminal procedural legislation.

III. PURPOSE OF LEGAL AID

Free legal aid guaranteed by the state and regulated by Law no. 111/2017 has some well-defined goals and objectives. These goals are:

- i. the establishment of a free legal aid system which ensures equal access for all individuals to the justice system;
- ii. well-organized, well-managed and well-functioning of state institutions responsible for the administration of legal aid;
- iii. guaranteeing the provision of legal aid services in a professional, qualitative, efficient and effective manner.

IV. EVALUATION METHODOLOGY

The purposes of free legal aid are to guide the exercise of this activity. More specifically, the activity of free legal aid should be exercised in such a way as to create **access to justice** for citizens with economic difficulties; it should be **well-organized, well-managed** and **functional**; and it must guarantee the provision of legal aid services that are **professional, qualitative, efficient and effective**.

The above objectives should be considered while drafting the evaluation methodology. Only by having clear goals of the activity being evaluated can it be clearly determined what will be evaluated and how it will be evaluated.

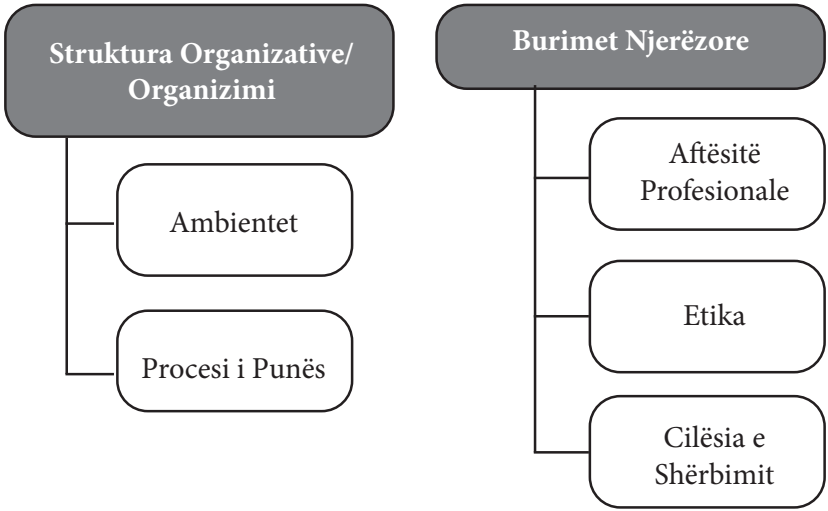
1. What is going to be evaluated?

Based on the goals of legal aid, as a general approach it can be said that it will be assessed whether the way of providing primary and secondary legal aid services meets the general goals of providing access to justice, good organization, good administration, good functioning, professionalism, quality, efficiency and effectiveness. All these elements are closely related to each other and the fulfilment of each of them affects

the realization of the goals of the free legal aid system. Consequently, in order to assess whether the set-up system meets its objectives, concrete elements of the system for which objective data can be collected, must be identified and evaluated.

In this case, the evaluation of the legal aid system will be done through the evaluation of the two main pillars on which this system is built and respectively of the Organizational Structure and Human Resources. The constituent elements of each column will be evaluated based on the Main Evaluation Indicators (MEI) identified below.

Figure 1 - Pillars of legal aid evaluation



2. How is it going to be evaluated?

The legal aid assessment pillars, presented in Figure 1 above will be assessed based on the main assessment indicators (MEI) and the scoring system. Due to the different specifics and needs of the primary legal aid service and secondary legal aid, each of the two systems will have, in addition to the same MEIs, a specific evaluation MEI. For clarity, the primary legal aid MEIs and the secondary legal aid MEIs together with the relevant scoring system will be presented in two specific tables.

2.1. MEIs of Primary Legal Aid

In reliance on the Law no 111/2017, the primary legal aid will be provided by the primary legal aid service centers located within the premises of the courts of the judicial districts or in other suitable premises and by non-profit organizations which enter into a contract with the Free Legal

Aid Department for the provision of primary legal aid services.

For the evaluation of the quality of services of the new centers that will be set up for the primary legal aid, as well as for-profit organizations that will enter into the contracts with the FLAD, in the following are the Main Evaluation Indicators, split up into MEIs of the organizational structure and MEIs of human resources.

Table 1 - MEIs Primary Legal Aid

PILLARS	SCOPE OF EVALUATION	MEI	SCORING SYSTEM
PILLAR I ORGANI- SATIONAL STRUCTURE	Appropriateness of reception premises	<ul style="list-style-type: none"> • Reception Centre • Internal Offices • Archive • Work Devices • Accessibility to office 	1 Point = Excellent: (meeting of MEIs in the field of evaluation has been overcome)
	Appropriateness of working process	<ul style="list-style-type: none"> • Clear assignment and definition Of functions • Reception process and treatment of clients • Regulation of working process 	2 Points = Very Good (MEIs have been met according to all expectations)
PILLAR 2 HUMAN RESOURCES	Appropriateness of Professional Capacities	<ul style="list-style-type: none"> • Education • Professional Training • Training 	3 Points = Good (MEIs have been met partially)
	Observation of the Professional Ethics	<ul style="list-style-type: none"> • Independence • Preservation of confidentiality • Avoiding conflict of interest • Treatment of clients with dignity • Return of documents 	4 Points = Bad (MEIs not met)
	Appropriateness of the Service Quality	<ul style="list-style-type: none"> • Profound Analysis • Quality of drafted documents • Time of examination • Number of examined cases 	5 Points = Very bad (serious failure to meet MEIs) N/A = not applicable

2.2. MEIs of Secondary Legal Aid

Law no 111/2017 stipulates that secondary legal aid will be provided by lawyers selected from the list approved by the National Chamber of Advocates within February 1 of each year.

For the evaluation of the quality of advocates for the secondary legal aid, that will enter into the contracts with the FLAD, in the following are the Main Evaluation Indicators, split up into MEIs of the organizational structure and MEIs of human resources. Some of the MEIs of primary legal aid mentioned above are also applicable in assessing the quality of service of secondary legal aid lawyers. In addition, there are specific MEIs for the assessment of secondary legal aid as described in Table 2 below.

Table 2 - MEIs of Secondary Legal Aid

PILLARS	SCOPE OF EVALUATION	MEI	SCORING SYSTEM
PILLAR 1 ORGANISATIONAL STRUCTURE / ORGANISATION	Appropriateness of reception premises	<ul style="list-style-type: none"> ✓ Internal Offices ✓ Archive ✓ Work Devices ✓ Accessibility to office 	1 Point = Excellent: (meeting of MEIs in the field of evaluation has been overcome)
	Appropriateness of working process	<ul style="list-style-type: none"> ✓ Deadline Identification ✓ Priority treatment ✓ Collection of facts ✓ Collection of evidence ✓ Defense Strategy 	
PILLAR 2 HUMAN RESOURCES	Appropriateness of Professional Capacities	<ul style="list-style-type: none"> ✓ Education ✓ Professional Training ✓ Training 	2 Points = Very Good (MEIs have been met according to all expectations)
	Observation of the Professional Ethics	<ul style="list-style-type: none"> ✓ Independence ✓ Preservation of confidentiality ✓ Avoiding conflict of interest ✓ Treatment of clients with dignity ✓ Return of documents 	3 Points = Good (MEIs have been met partially)
	Appropriateness of the Service Quality	<ul style="list-style-type: none"> ✓ Profound Analysis ✓ Quality of drafted documents ✓ Attendance of hearings ✓ Observation of procedural timing ✓ Judicial outcome 	4 Points = Bad (MEIs not met)
			5 Points = Very bad (serious failure to meet MEIs)
			N/A = not applicable

3. Explanation of MEIs

The main evaluation indicators mentioned above contain indicators which enable the performance of objective assessment of the situation through identified and identifiable data. But in order for MEIs to be measured through the scoring system, their purpose must be clear and there must be explained what is considered appropriate for each MEI in order to meet the objectives of this assessment. This explanation is given for each pillar and when necessary for each MEI as follows:

3.1. Pillar 1 - Organisational Structure/Organisation

The organizational structure and organization are essential for providing legal aid. The suitability of the organizational structure is a prerequisite for achieving the very goals of providing legal aid guaranteed by the state, such as: **providing efficient and effective legal aid services..** In order to guarantee the efficiency and effectiveness of the primary and secondary legal aid, it is necessary to have in place an organizational structure which meets the minimum conditions that enable it to act efficiently and effectively in the course of carrying out its activity, defined in the following MEIs.

A. Appropriateness of reception premises

The provision of primary and secondary legal aid services firstly needs appropriate facilities where all legal aid activities are carried out according to the same standards that would be applied to any private office that provides legal services to its clients. Although in assessing the suitability of the premises should take into account the limited funds that usually exist for primary legal aid or the modest financial capacity of Albanian lawyers, the premises where this activity takes place must respect minimum labour standards and specific needs of the type of the activity.

Reception Office

The primary legal aid center should be equipped with a reception office to perform first communication functions with clients and their registration. The staff of the reception office should consist of lawyers who perform the functions of the first reception of the client: assisting the client in completing the self-declaration forms; providing legal advice or drafting simple requests when the case does not need in-depth review by lawyers; recording customer issues and forwarding to advocates issues that need more in-depth review.

Vlerësimi sipas pikëzimit:

1 Point = Excellent	5 or more lawyers performing the initial reception functions
2 Points = Very Good	3-4 lawyers performing the initial reception functions
3 Points = Good	1-2 lawyers performing the initial reception functions
4 Points = Bad	1 lawyer performing the initial reception functions
5 Points = Very bad	There is no functional separation between the initial reception and the in-depth review

Internal Offices

The primary legal aid center should be equipped with a reception office to perform first communication functions with clients and their registration. The staff of the reception office should consist of lawyers who perform the functions of the first reception of the client: assisting the client in completing the self-declaration forms; providing legal advice or drafting simple requests when the case does not need in-depth review by lawyers; recording customer issues and forwarding to advocates issues that need more in-depth review

Evaluation according to the scoring:

1 Point = Excellent	5 or more lawyers performing the initial reception functions
2 Points = Very Good	3-4 lawyers performing the initial reception functions.
3 Points = Good	1-2 lawyers performing the initial reception functions .
4 Points = Bad	1 lawyer performing the initial reception functions.
5 Points = Very bad	There is no functional separation between the initial reception and the in-depth review

Archive

The primary legal aid office and secondary legal aid advocates should have at their disposal a physical and / or electronic archive for storing files and documents of clients in the written form. Every lawyer or advocate should take care of archiving the documentation according to the rules and standards of the legal profession, taking special care to protect personal data and maintain confidentiality.

Evaluation according to the scoring:

1 Point = Excellent	Physical and electronic archive of each client's file with all the documentation reviewed according to a unified archiving system
2 Points = Very Good	Physical or electronic archive of each client's file with all the documentation reviewed according to a unified archiving system.
3 Points = Good	Physical or electronic archive of clients' files with all the documentation reviewed missing out a unified archiving system
4 Points = Bad	Physical or electronic archive of clients' files with incomplete documentation and missing out a unified archiving system
5 Points = Very bad	No archiving system existing

Work Devices

The primary legal aid center and secondary legal aid lawyers should have facilities equipped with the minimum working tools such as electronic equipment, stationeries, physical legal library consisting of updated codes, legislation summaries, legal manuals, summarised case-law etc.

Evaluation according to the scoring:

1 Point = Excellent	The office is equipped with all the means of physical work, electronics and physical legal library.
2 Points = Very Good	The office is equipped with all the means of physical work, electronics and electronic legal library.
3 Points = Good	The office is partially equipped with minimal working tools
4 Points = Bad	The office is not equipped with functional electronic devices
5 Points = Very bad	The office lacks the main part of the minimum working tools

Accessibility to premises

The premises of the Center for Primary Legal Aid and Secondary Legal Aid advocates must be accessible to persons with disabilities or the elderly and must have the minimum conditions for their reception and accommodation

Evaluation according to the scoring:

1 Point = Excellent	The office is designed to be easily accessible for people with disabilities or the elderly and has special accommodation facilities (opportunities for people in wheelchairs; people with walking difficulties, etc.) /
2 Points = Very Good	The office is easily accessible for people with disabilities or the elderly.
3 Points = Good	There are no significant difficulties for people with disabilities or the elderly in accessing the office (high scores; barriers, etc.).
4 Points = Bad	The office is difficult to be accessed by people with disabilities or the elderly (high levels; obstacles, etc.).
5 Points = Very bad	The office is completely inaccessible to some categories of people with disabilities.

B. Appropriateness of working process

The work process in law offices is a very important element for providing legal services properly. The concept of the work process includes the first meeting with the client, the intermediate meetings and the treatment of the client until the last meeting with him. So the work process includes all the activities performed by the staff (lawyers or advocates) of the primary legal aid or the advocates of the secondary legal aid. In order for the work process to be at satisfactory standards, the conditions of the following MEIs must be met.

Clear assignment and definition of functions

Carrying out each single activity requires clear rules and assignment of functions. This principle is even more valid for the Center for Primary Legal Aid, where the assignment of functions between lawyers and advocates must be clearly defined.

Evaluation according to the scoring:

1 Point = Excellent	Lawyers and advocates have clear and completely separate powers. The advocate cannot exercise the functions of a lawyer and the lawyer cannot exercise the functions of an advocate.
2 Points = Very Good	Lawyers and advocates have clear and completely separate powers. Instances where the advocate or lawyer may exercise each other's functions are clearly defined.
3 Points = Good	There is some division of competence between lawyers and advocates, however many functions can be exercised by both categories.
4 Points = Bad	The division of powers between lawyers and advocates is not clear and is very general
5 Points = Very bad	No division of powers

The process of receiving and treating clients at the First Aid Center

The procedure of reception and treatment of the client's case is essential and should be well defined. There should be borne in mind that clients of the Free Legal Aid Center are often in a difficult psychological situation due to economic difficulties and the duration of the legal problem for which they seek legal assistance. For this reason, there should, while handling the case at the First Legal Aid Center, be avoided that the client be sent from one lawyer to another except in emergencies when absolutely necessary. Also, the reception lawyer, after conducting the initial treatment through registration, filling in the forms and questions related to the case, should address the client to one of the legal aid lawyers if the legal advice is outside the field of competence of the lawyer. Cases subject to the expiry of deadlines will be treated with priority, while other cases will be subject to the waiting list depending on the previous cases

Evaluation according to the scoring:

1 Point = Excellent	Clear client reception and treatment protocol which regulates all stages of reception and treatment of the client, approved and recognized by lawyers and advocates.
2 Points = Very Good	Client reception and treatment protocol which regulates the main stages of client reception and treatment, approved and recognized by lawyers and advocates.
3 Points = Good	The existing client reception and treatment protocol is approved but it is not very clear.
4 Points = Bad	There is a process of reception and treatment of the client which has been created based on experience that has not been formalized through a real protocol.
5 Points = Very bad	The process of reception and treatment of the clients depends on the individual work of lawyers and advocates.

Rules of Procedure of the Primary Legal Aid Center

To the effect of enabling the work process to run smoothly and to apply the minimum conditions set out above, the Primary Legal Aid Center should operate based on the Rules of Procedure of its activity, which define the duties of the staff, the main rules of the work process, as well as of the work process supervisor. This regulation should be known to all primary legal aid staff who may also undergo specific training related to it, if necessary

Evaluation according to the scoring:

1 Point = Excellent	Rules of procedure for the activity with clear definitions of all competencies and supervisory processes approved and recognized by lawyers and jurists.
2 Points = Very Good	Rules of procedure for the activity with clear definitions of all competencies and main supervisory processes approved and recognized by lawyers and jurists.
3 Points = Good	Rules of procedure for the activity with general definitions of all competencies and main supervisory processes approved and recognized by lawyers and jurists.
4 Points = Bad	Rules of procedure for the activity with clear definitions of competencies and main supervisory processes.
5 Points = Very bad	Regulation of the activity does not exist.

The process of reviewing and handling the case by Secondary Legal Aid Lawyers

The process of reviewing and handling the case by the Secondary Legal Aid Lawyer should be in line with the final purpose of the assistance provided is that of representing the client before the court. Consequently the organization of the work process for the review and handling of the case must meet certain minimum standards. First, the Secondary Legal Aid Lawyer must identify from the beginning of the treatment of the case the deadlines for submitting the case to the court, the statute of limitations and other procedural deadlines and inform the Client about them. Secondly, the Secondary Legal Aid Advocate will treat with priority the cases deadlines of which are shorter. Thirdly, the primary legal aid lawyer during the first interviews with the client and the review of the documentation should take care of gathering the facts as clearly and completely as possible as well as gathering evidence that supports the Client's claims. Based on the review of facts, documents, evidence, the Second Aid Lawyer will explain to the Client the possible defense strategies and his suggestions for the most useful strategy as well as keep him informed throughout the judicial representation about the progress of the hearings.

Evaluation according to the scoring:

1 Point = Excellent	The lawyer respects the procedural deadlines, collects evidence, proposes several strategies, advises the appropriate strategy and keeps the client informed. .
2 Points = Very Good	The lawyer respects the procedural deadlines, collects evidence, selects the appropriate strategy and keeps the client informed.
3 Points = Good	The lawyer respects the deadlines, gathers evidence and initiates judicial representation.
4 Points = Bad	The lawyer does not clearly identify the evidence and the defense strategy.
5 Points = Very bad	The lawyer does not meet the procedural deadlines

3.2. Pillar II - Human resources

The human resources are essential for providing primary and secondary legal aid in a satisfactory manner and in accordance with the standards of practicing the legal profession. The suitable human resources are essential to achieving the very goals of providing legal aid guaranteed by the state, such as: **ensuring equal access** to the justice system through the provision of legal aid services in a **professional, quality, efficient and effective manner**.

Equality of access to the justice system must be seen in substance and not in form. Formally providing free legal aid guarantees access to the justice system. But if the free legal aid is not of the right quality, the equality between people with economic means who can hire quality lawyers and people without economic ability who do not have this opportunity is lost. It is therefore very important that in order to guarantee equality of access to the justice system even for the economically weakest, the legal aid provided by the state must be of good quality and meet at least the conditions set out in the following MEIs.

A. Appropriateness of Professional Capacities

The Advocates and jurists who are involved in providing free legal aid should have appropriate professional experience. Professional suitability should be in accordance with the competencies exercised as a rule recruitment parameters should be higher for lawyers who have the competence to handle clients' cases in more depth or perform their judicial representation. However, the tendency of recruitment for both categories of free legal aid professionals should be that of selecting the most qualified candidates, according to the minimum criteria in the following MEIs related to this field of evaluation.

Education

The lawyers and jurists who have continued to be educated beyond compulsory education are considered an added value to the free legal aid system.

Evaluation according to the scoring:

1 Point = Excellent	Advocates and Lawyers with a Master of Science and PhD
2 Points = Very Good	Advocates and Lawyers with a Professional Master
3 Points = Good	Advocates and Lawyers with the mandatory education
4 Points = Bad	Stafi në proces të mbylljes së arsimit të detyrueshëm
5 Points = Very bad	Staff in the process of completing the compulsory education

Professional Qualifications

The professional qualification is essential to guarantee the quality of primary and secondary legal aid. The professional qualifications required for lawyers and advocates should be different and reflect the responsibilities and competencies of each category. However, in the recruitment process, lawyers and jurists with knowledge in civil law, administrative law, criminal law, family law, human rights, litigation, and knowledge in specific areas most encountered in the system should have priority for the free legal aid. Long professional experience and variety of fields covered by lawyers constitute an added value.

Evaluation according to the scoring:

1 Point = Excellent	Professional experience for 10 years and more
2 Points = Very Good	Professional experience 6 - 9 years
3 Points = Good	Professional experience 3 - 5 years
4 Points = Bad	Professional experience 1 - 2 years
5 Points = Very bad	No professional experience False professional experience

Training

The training of free legal aid professionals is an essential element of both primary and secondary legal aid. Primary legal aid advocates and jurists must receive special training in providing primary legal aid. Secondary legal aid advocates should also have special training in the areas of activity covered by them, such as processes with juvenile victims or witnesses, cases of domestic violence, etc. In the evaluation process, the advocates and jurists with special training in providing primary and secondary legal aid, received domestically or abroad, should be considered as an added value. Trainings related to sensitive areas such as domestic violence, child protection, treatment of people with disabilities, etc., have weight in the evaluation process.

Evaluation according to the scoring:

1 Point = Excellent	Training in the system of free primary / secondary legal aid and training in certain areas
2 Points = Very Good	Trainings in the system of free primary / secondary legal aid
3 Points = Good	Trainings in more than 1 specific field
4 Points = Bad	No trainings.
5 Points = Very bad	Untrue information on the trainings

Observation of the Professional Ethics

The profession of the advocate is exercised in accordance with the provisions of Law no. 55/2018, dated 23.7.2018, "On the legal provision in the Republic of Albania"; In compliance with Article 27 of the Law no 55/2018, The National Chamber of Advocates approves the Code of Ethics for Advocates. This code contains all the professional norms and rules that lawyers must meet while practicing their profession. Compliance with these norms and rules must be respected by primary

legal aid lawyers and secondary legal aid lawyers in the exercise of their activity. These norms have been translated into the following MEIs.

Independence

The advocate is independent in the exercise of his profession. To ensure independence the Advocate must be free from any influence that may arise from his personal interests or from external pressure. The advocate in the exercise of the profession acts in accordance with the law, the Statute, the Code of Ethics and the legitimate interests of the client by providing him with professional services based on his best judgment. The advocate should avoid any violation of his independence and not compromise professional standards to satisfy the client, the court or third parties. (This principle also applies to the primary legal aid lawyer).

Evaluation according to the scoring

1 Point = Excellent	An advocate/lawyer is independent in the exercise of his/her profession from any private or state structure
2 Points = Very Good	The advocate/jurist being in hierarchical dependence on the private or state structure does not receive instructions/orders for handling cases from his superiors. .
3 Points = Good	Instructions/orders for handling cases by the superior of the lawyer / jurist are given only in writing and they are implemented if they are not contrary to the client's interest.
4 Points = Bad	The lawyer implements unwritten orders/instructions of superiors to handle the case without analyzing whether they are in the interest of the client.
5 Points = Very bad	The lawyer implements orders/instructions of superiors to handle the case which affect the client's interest.

Preservation of confidentiality

The advocate and jurist must maintain the confidentiality of all information provided by the client when performing services for the client based on the principle of confidentiality (referring to the Law 111/2017).

Evaluation according to the scoring:

1 Point = Excellent	No allegation and/or breach of confidentiality
2 Points = Very Good	The allegations of breach of confidentiality have been substantiated and no action has been taken
3 Points = Good	1 lenient measure for breach of confidentiality by negligence within a period of 3 years.
4 Points = Bad	2 lenient measures for breach of confidentiality within a period of 3 years.
5 Points = Very bad	Serious measures for breach of confidentiality

Avoiding conflict of interest

A advocate may not provide legal aid, advise, represent or defend on behalf of two or more clients in the same matter, if there is a conflict of interest of those clients between them. The lawyer does not represent and waives the representation or defence of two or more persons, when a conflict of interest arises between the clients, when the lawyer is convinced that the representation will affect the relationship with the other client. In this case, the Primary Legal Aid Center ensures that the treatment of one of the clients is transferred to another lawyer of the Primary Legal Aid Center. While the secondary legal aid lawyer encountering a conflict of interest case applies the procedures for waiving the case.

Evaluation according to the scoring:

1 Point = Excellent	No claim or measure of conflict of interest
2 Points = Very Good	The allegation of conflict of interest is proved unfounded
3 Points = Good	1 lenient measure for conflict of interest by negligence within a period of 3 years.
4 Points = Bad	2 lenient measures for conflict of interest within a period of 3 years.
5 Points = Very bad	Serious measures for conflict of interest

Treatment of clients with dignity

The advocates and lawyers of the free legal aid system must enter into a relationship of trust with the client. Trust is achieved when the advocate and jurist treat the client with honesty, integrity and dignity. The advocates and lawyers free legal aid must explain to the client in an understandable language the law and the line of action that will be followed to defend his case, highlighting the possible legal consequences in his favor or to his disadvantage. The advocates and lawyers should answer the client's reasonable questions and requests for information using language that is simple and understandable to the client

Evaluation according to the scoring:

1 Point = Excellent	No allegations from clients for unkind treatment and lack of trust
2 Points = Very Good	Allegations of undignified treatment are proved unfounded by the supervisor
3 Points = Good	Improper treatment and lack of trust comes as a result of inability to manage clients with aggressive / difficult behavior
4 Points = Bad	More than 5 allegations for non-dignified treatment over a period of 1 year.
5 Points = Very bad	Confirmation of cases of undignified treatment

Return of documents

At the request of the client, the advocate and the lawyer of the legal aid shall return to the client any original document received/submitted by the Client. Receipt and return of the original documents shall be followed by minutes signed by the advocate and/or the lawyer and the Client in question

Evaluation by scoring

1 Point = Excellent	Keeping regular minutes on the return of documentation
2 Points = Very Good	Keeping minutes on the return of documentation for at least 90% of cases handled
3 Points = Good	Keeping minutes on the return of documentation for at least 75% of cases handled
4 Points = Bad	Keeping minutes on the return of documentation for less than 90% of cases handled
5 Points = Very bad	Failure to keep the minutes on the return of documentation

Appropriateness of Service Quality

As stated above, the provision of qualitative legal aid is a necessary condition for fulfilling the main goal of guaranteeing equal access to justice. For this reason, all the parameters set by the above-mentioned MEIs shall serve to guarantee that the legal services provided by lawyers and advocates of the free legal aid system are qualitative. On the other hand, measuring the quality of legal services is generally a challenge on its own, because it is influenced by a number of elements which are often beyond the control of the service provider. For this reason, MEIs of the service quality are mainly focused on those elements of service delivery that may be objectively identifiable.

In-depth analysis

Free primary and secondary legal aid professionals shall conduct in-depth analysis of legal issues for which clients seek legal aid. The in-depth analysis shall consist in the clear understanding of the legal issue, verification of the documentation brought by the clients, instruction for bringing additional documentation in case there are shortcomings in the full understanding of the issue. The in-depth analysis is useful especially for primary legal aid lawyers and secondary legal aid lawyers who have the competence to address the case by drafting legal documents in defense of the client's interests and judicial representation. This principle also applies to the lawyers of the Center for Primary Legal Aid who should understand the core of the case before providing consultation, or drafting claims and complaints

Evaluation by scoring:

1 Point = Excellent	In-depth legal reasoning based on the legislation of the field, basic civil, administrative, criminal principles, constitutional principles, human rights according to the ECHR for all cases handled
2 Points = Very Good	In-depth legal reasoning based on the legislation of the field, basic civil, administrative, criminal principles for over 75% of the cases handled
3 Points = Good	In-depth legal reasoning based on the legislation of the field, basic civil, administrative, criminal principles for over 60% of the cases handled
4 Points = Bad	Simple complaints/requests with reference to legislation for over 61% of cases handled
5 Points = Very bad	Simple requests/complaints without legislation and legal reasoning for all cases handled

Quality of drafted documents

Free legal aid professionals, lawyers and advocates, during their work draft requests, complaints, administrative appeals, lawsuits, recourses and similar legal documents according to the need to protect the interests of the client. The quality of the drafted documents will be evaluated by the clarity of the explanation of the case, the quality of the legal arguments, the supporting legislation reviewed, the reference to the main legal principles such as the principles of civil, administrative, constitutional, criminal law, etc., the reference to the legislation of the relevant field.

Evaluation by scoring:

1 Point = Excellent	Documents drafted with in-depth reasoning for all cases handled
2 Points = Very Good	Documents drafted with in-depth reasoning for over 75% of cases handled
3 Points = Good	Documents drafted with in-depth reasoning for 60% of cases handled
4 Points = Bad	Documents drafted without in-depth reasoning for over 61% of cases handled
5 Points = Very bad	Drafted documents without in-depth reasoning

Review Time at the Primary Legal Aid Center

In the framework of the principle of efficiency and effectiveness, advocates and lawyers of the primary legal aid office shall review the case within the shortest possible time. The review time is not predetermined and it is closely related to the complexity of the case under review, the amount of documentation reviewed and the workload of the staff with prior issues. All these elements will be taken into consideration in estimating the review time. Priority will be given to cases that have an expiration date.

Evaluation by scoring:

1 Point = Excellent	1 week
2 Points = Very Good	2 weeks
3 Points = Good	3 weeks
4 Points = Bad	3.5 weeks
5 Points = Very bad	4 weeks

Number of reviewed cases by the primary legal aid

In the framework of the principle of efficiency and effectiveness, advocates and lawyers of the primary legal aid office shall review in depth as many cases as possible. The number of reviewed cases cannot be predetermined and is closely related to the number of clients, the number of pending cases, the time available to staff to handle the cases and other objective circumstances. All these elements will be taken into consideration in estimating the number of reviewed cases and will constitute an important MEI for future human and financial resource planning dedicated to primary legal aid.

Evaluation by scoring:

1 Point = Excellent	10 in-depth reviews per month and simple consultations
2 Points = Very Good	5-10 in-depth reviews per month and simple consultations
3 Points = Good	1-5 in-depth reviews per month and simple consultations
4 Points = Bad	0 in-depth reviews per month and simple consultations
5 Points = Very bad	0 reviews and consultations per month

Participation in court hearings

Secondary legal aid requires active representation of the client's interests during court hearings. For this reason, an objective evaluation indicator to verify the active defense of the Client's interests is also the participation of the advocate in court hearings. The lawyer must regularly attend court hearings, be active during court hearings in defending the client's interests using appropriate procedural means, presenting evidence, calling a witness, etc. Postponement of court hearings by the lawyer shall be rare and due to urgent and unavoidable circumstances.

Evaluation by scoring:

1 Point = Excellent	Participation in all court hearings
2 Points = Very Good	Maximum 2 postponements for the same case, for urgent circumstances
3 Points = Good	Maximum 3 postponements for the same case, for urgent circumstances
4 Points = Bad	More than 3 postponements for the same case
5 Points = Very bad	Unjustified postponements

Compliance with procedural time limits

The secondary legal aid lawyer shall take care to accurately identify all procedural time limits for judicial representation and and comply with them. The loss of procedural time limits due to the negligence of the secondary legal aid lawyer shall be considered a serious violation.

Evaluation by scoring:

1 Point = Excellent	Compliance with all procedural terms
2 Points = Very Good	Missing the interim procedural time limits due to reasons which are beyond the lawyer's control for 5 % of the represented cases
3 Points = Good	Missing the interim procedural time limits due to reasons which are beyond the lawyer's control for 15 % of the represented cases
4 Points = Bad	Missing the interim procedural time limits due to the lawyer's negligence
5 Points = Very bad	Missing the procedural time limits of the lawsuit

Judicial result

The expectation of secondary legal aid clients is the recognition of their claims in court. However, in assessing the judicial result, circumstances beyond the control of the lawyer should also be taken into consideration, such as the validation of the claims; the position of the trial panel; reasoning of the other party etc.

Evaluation by scoring:

1 Point = Excellent	Positive result 100% of the represented cases
2 Points = Very Good	Positive or partially positive result in over 75% of the represented cases
3 Points = Good	Positive or partially positive result in over 75% of the represented cases
4 Points = Bad	Positive or partially positive result in 0-30% of the represented cases
5 Points = Very bad	Negative result of all represented issues

4. Indicators' assessment tools

MEI assessment tools shall be appropriate to the MEIs they wish to assess. They may be diverse starting from monitoring, to self-monitoring through the preparation of reports and their analysis by supervisors, to questionnaires addressed to clients. However, the assessor must be careful to give due importance to the assessment tools used and the information gathered by them, especially for those assessment elements that contain elements of subjectivity.

4.1. Assessment tools for Pillar 1 MEIs (Main Evaluation Indicators) – Organizational Structure

To assess the appropriateness of the working premises, monitoring at the Primary Legal Aid Centers or verification checks at the offices where the secondary legal aid lawyers practice their profession may be used as an assessment tool to verify that the minimum conditions of the premises have been met. Monitoring and checks may be performed at periodic intervals by the person in charge appointed by the Free Legal Aid Directorate.

For the assessment of the appropriateness of the work process at the Primary Legal Aid Centers, two assessment tools may be used where objective and subjective aspects are intertwined. Firstly, a review shall be conducted in order to assess whether there is a regulation of the work process and whether the determination and division of functions contained in it are clear. This assessment may be made by experts assigned by the Free Legal Aid Directorate. The assessment of MEI in relation to the process of receiving and treating Clients may be performed through monitoring at the Primary Legal Aid Centers or through questionnaires of treated clients. In the latter case the evaluator must take into account the subjective elements that may influence the clients treated in order to give one answer or another.

Secondary legal aid lawyers may also use assessment tools to assess the appropriateness of the work process, combining objective and subjective aspects. Firstly, we can evaluate the reports prepared by the secondary legal aid lawyers regarding the case of each Client which contain the description of the case, the procedural timelines, the evidence collected. Secondly, the assessment of the Client's handling, the information provided, their explanations and clarity can be done through questionnaires and/or interviews with the clients handled. In the latter case the assessor must take into account the subjective elements that may influence the clients handled in order to give one answer or another.

4.2. Assessment tools for Pillar 2 MEIs (Main Evaluation Indicators) – Human Resources

In order to assess the appropriateness of Professional Capacities, the objective data obtained from the CVs of advocates and lawyers of primary and secondary legal aid related to education, vocational qualification and training will be used.

Two assessment tools may be used to assess Observance of the Code of Professional Ethics: through monitoring at the Primary Legal Aid Centers, by analyzing clients' complaints, or through questionnaires and/or interviews with clients. In the latter two cases, the assessor must take into account the subjective elements that may affect the clients for the complaints made by them or to give an answer or another and also have a conversation with the advocate or lawyer in question.

In order to assess the Conformity of Service Quality, monitoring may be used as an assessment tool for the quality of written documents drafted by advocates or lawyers, examining elements such as clear explanation of the fact situation, reviewed legislation, knowledge in the specific field, legal argumentation, evidence collected and presented, judicial strategy followed, etc. The assessor should also consider the subjectivity of this assessment in relation to the chosen defense strategy.

For the evaluation of the examination time and the number of cases, the monthly reports prepared by advocates and lawyers or primary legal aid lawyers and the files of each treated client drafted according to Annex 1 attached to this methodology shall be monitored.

For the evaluation of participation in court hearings, compliance with procedural terms and judicial results, the client's files prepared by the Secondary Legal Aid Advocates shall be monitored according to Annex 2 attached to this methodology as well as the final report prepared by the advocate after closing the case. The final report will contain all the information required in the Client Sheet according to Annex 2 and additional information/comments that may need to be reflected after the case is completed. Customer complaints, if any, will also be taken into consideration. In this case, the subjective element that may affect clients' complaints shall also be considered and the case should be examined by hearing the advocate's explanations.

V. OVERSIGHT AND COORDINATION PROCEDURES

In accordance with Article 8 of Law no. 111/2017, the Free Legal Aid Directorate is the body responsible for the administration and oversight of the free legal aid system. In this context, the FLAD shall exercise a number of important functions:

- i. collect and analyze information on the provision of legal aid to improve the functioning of the legal aid delivery system;
- ii. administer the service centers of primary legal aid, in the premises of the judicial district courts or in other suitable premises;
- iii. implement the legal aid quality assessment system;
- iv. oversee every year the standards of provision of primary and secondary legal aid services by non-profit organizations and advocates;

In order to assess service and quality delivery standards, the FLAD will make use of the evaluation methodology according to MEIs and assessment tools described in this document.

1. Coordination and Oversight of Primary Legal Aid

The Free Legal Aid Directorate through its responsible structure shall exercise oversight and coordination functions over the Primary Legal Aid Centers.

Coordination Functions

The structure responsible for overseeing the Primary Legal Aid Centers shall take care of the progress of the work process. The structure responsible for oversight shall designate the contact points with the primary legal aid service centers in relation to every aspect of their activity by handling all issues of ordinary administration.

Oversight functions

Oversight of the standards on providing primary legal aid will be carried out by the structure responsible for oversight at the FLAD. Oversight shall include the following activities:

i. Initial monitoring

This structure will monitor the Primary Legal Aid Center at the time of its establishment to assess whether it meets the minimum standards of appropriateness of the premises according to the relevant MEIs. The person responsible from the Primary Legal Aid Center will keep a record of the state of the premises which will be forwarded to the FLAD.

ii. Quarterly monitorings

Each quarter, the Primary Legal Aid Structure will conduct one-day monitoring to assess the development of work at the Primary Legal Aid Center under its responsibility. During these monitorings, the development of the work process, the observance of the code of ethics, the rules on clients' reception and the archiving of documents will be evaluated. During the monitoring process, the supervisor may also conduct conversations/interviews with clients present at the Primary Legal Aid Center. At the end of the monitoring day, the supervisor shall prepare a report regarding the monitoring.

iii. Continuous monitoring

The structure responsible for supervision shall have access to all documents in electronic or written form, drafted by advocates and lawyers of the Primary Legal Aid Center, which can be continuously monitored and they can request relevant clarifications from advocates and lawyers.

The structure responsible for oversight collects and reviews monthly reports and client files drafted by primary legal aid advocates and lawyers.

It also has the right to handle customer complaints against advocates and lawyers at any time and to arrange meetings with the latter in relation to the issue in question.

iv. Advocates' and Lawyers' Performance Evaluation

Based on the monitorings conducted, monthly reports and customer files sent by primary legal aid advocates and lawyers, the responsible structure shall evaluate the performance of the latter. Performance evaluation will be made using the evaluation IMEs set out for Pillar II - human resources and the assessment tools set out above in this document.

Performance evaluation will be made once a year, at the end of the work year, individually for each lawyer or advocate engaged at the Primary Legal Aid Center. The structure responsible for supervision will draft the preliminary evaluation report, which will be sent to the relevant lawyer or advocate by setting a date for the meeting and discussion of the report.

The final performance evaluation report will be drafted after the meeting and will contain the evaluation and recommendations from the supervision and monitoring as well as the comments and recommendations of the evaluated lawyer or advocate. The performance evaluation report will be drafted according to the attached Annex 3 format.

2. Coordination and Oversight of Secondary Legal Aid

The Free Legal Aid Directorate through its responsible structure for oversight shall exercise oversight and coordination functions on secondary legal aid advocates.

Coordination Functions

The structure responsible for oversight will be the contact point for secondary legal aid advocates under its supervision and for clients followed by these advocates and will handle and coordinate relations between them, if necessary.

Oversight functions

Oversight of the standards on providing secondary legal aid will be carried out by the structure responsible for oversight at the Free Legal Aid Directorate. Oversight shall include the following activities:

v. Initial monitoring

This structure through staff will contact the advocates supervised by it in order to obtain initial information about the case and the first meetings with the designated client, procedural terms and any other useful initial information. The responsible structure can conduct initial monitoring at the offices where the advocate practices his profession to assess whether it meets the minimum standards of suitability of the premises according to the relevant MEIs as well as to keep a record of important findings during initial monitorings.

vi. Continuous monitoring

The structure responsible for supervision shall have access to all documents in electronic or written form, drafted by advocates of the secondary legal aid under its oversight, which can be continuously monitored and relevant clarifications may be requested.

It also has the right to handle customer complaints against advocates at any time and to arrange meetings with the latter in relation to the case in question and to attend any of the court hearings.

vii. Advocates' Performance Evaluation

Based on the initial monitoring and ongoing monitoring and the client files and the final report drafted by the advocate after the completion of the court case, it shall be made the advocate's performance evaluation.

Performance evaluation will be made by using the evaluation IMEs set out for Pillar II - human resources and the assessment tools set out above in this document.

Performance evaluation will be made at the conclusion of the court case for each advocate. A preliminary evaluation report will be drafted, which will be delivered for information to the relevant advocate, setting a date for the meeting and discussion of the report.

The final performance evaluation report will be drafted and will contain the evaluation and recommendations of the structure as well as the comments and recommendations of the evaluated advocate. The performance evaluation report will be drafted according to the attached Annex 4 format.

ANNEX 1

CLIENT SHEET FOR PRIMARY LEGAL AID

First Name: Surname: 	ID No.: Tel. No.: Address:
Problems	<i>Summary description of the client's problem</i>
Institution/s involved	<i>What are the institutions involved in the client's problem/in case it is a problem among private ones, to be set N/A</i>
No. of meetings	<i>The number of meetings held with the client and the reason for having the meetings.</i>
No. of documents reviewed	<i>Approximate number of documents reviewed, important for the case</i>
Legal field	<i>i.e. administrative/civil/criminal/family</i>
Type of consultancy	<i>Verbal consultancy/Written consultancy</i>
Processing time (days)	<i>Number of working days for processing the case</i>
Comments	<i>Other information considered valuable</i>

ANNEX 2

CLIENT SHEET FOR SECONDARY LEGAL AID

First Name: Surname: 	ID No.: Tel. No.: Address:
Type of dispute	<i>Summary description of the client's problem</i>
Procedural terms	<i>Terms of the lawsuit, statute of limitations, other terms</i>
Legal field	<i>i.e. administrative/civil/criminal/family</i>
Institution/s involved	<i>What are the institutions involved in the client's problem/in case it is a problem among private ones, to be set N/A</i>
Number of evidence	<i>Collected evidence</i>
Court hearings	<i>Court hearings are chronologically noted</i>
Deferred court hearings	<i>The number of deferred court hearings and the reasons</i>
Client's notification	<i>Meetings and information through other means</i>
Defense Strategy	<i>Brief summary of the defense strategy</i>
Comments	<i>Other information considered valuable</i>

ANNEX 3

PERFORMANCE EVALUATION REPORT FOR PRIMARY LEGAL AID

First Name: Surname: Title: (Lawyer / Advocate)		NARRATIVE EVALUATION <i>Evaluation made according to MEI's system</i>
PROFESSIONAL CAPACITIES	<i>Total scoring according to MEI's system</i>	
Education	<i>Data about higher education/ Scoring</i>	
Professional qualification	<i>Data about professional qualification/Scoring</i>	
Training	<i>Data on training/Scoring</i>	
CODE OF ETHICS	<i>General scoring according to MEI's system</i>	
Independence	<i>Description of compliance regarding the independence criterion/ problematic cases if applicable/ scoring</i>	
Maintenance of confidentiality	<i>Description of compliance regarding the maintenance of confidentiality/ problematic cases if applicable/ scoring</i>	
Avoidance of the conflict of interest	<i>Description of compliance regarding the obligation of avoidance of the conflict of interest / problematic cases if applicable/scoring</i>	

Treatment of clients with dignity	<i>Description of compliance regarding the obligation for treatment with dignity / problematic cases if applicable/scoring</i>
Return of documents	<i>Description of compliance regarding the obligation to return documents/ problematic cases if applicable/ scoring</i>
SERVICE QUALITY	<i>Total scoring according to MEI's system</i>
In-depth Analysis	<i>Evaluation according to the Client Sheet and drafted documents / Scoring</i>
Quality of drafted documents	<i>Evaluation according to the Client Sheet and drafted documents / Scoring</i>
Examination Time	<i>Evaluation according to the Client Sheet / Scoring</i>
Number of examined cases	<i>Evaluation according to the Client Sheet and other reports / Scoring</i>
TOTAL SCORING:	
COMMENTS AND RECOMMENDATIONS FROM THE RESPONSIBLE STRUCTURE AT FLAD	
COMMENTS AND RECOMMENDATIONS OF THE ADVOCATE / LAWYER	
SIGNATURE Date: Signature:	ADVOCATE'S / LAWYER'S SIGNATURE Date: Signature:

ANNEX 4

PERFORMANCE EVALUATION REPORT FOR SECONDARY LEGAL AID

First Name: Surname: Title: (Lawyer / Advocate)		NARRATIVE EVALUATION <i>Evaluation made according to MEI's system</i>
PROFESSIONAL CAPACITIES	<i>Total scoring according to MEI's system</i>	
Education	<i>Data about higher education / Scoring</i>	
Professional qualification	<i>Data about professional qualification / Scoring</i>	
Training	<i>Data about training / Scoring</i>	
CODE OF ETHICS	<i>General scoring according to MEI's system</i>	
Independence	<i>Description of compliance regarding the independence criterion / problematic cases if applicable/ scoring</i>	
Maintenance of confidentiality	<i>Description of compliance regarding the maintenance of confidentiality/ problematic cases if applicable/ scoring</i>	
Avoidance of the conflict of interest	<i>Description of compliance regarding the obligation of avoidance of the conflict of interest / problematic cases if applicable/scoring</i>	

Treatment of clients with dignity	<i>Description of compliance regarding the obligation for treatment with dignity / problematic cases if applicable/scoring</i>
Return of documents	<i>Description of compliance regarding the obligation to return documents/ problematic cases if applicable/ scoring</i>
SERVICE QUALITY	<i>Total scoring according to MEI's system</i>
In-depth Analysis	<i>Evaluation according to the Client Sheet / Scoring</i>
Quality of drafted documents	<i>Evaluation according to the Client Sheet and drafted documents / Scoring</i>
Participation in Court Hearings	<i>Evaluation according to the Client Sheet / Scoring</i>
Compliance with procedural terms	<i>Evaluation according to the Client Sheet / Scoring</i>
Judicial Results	<i>Evaluation according to the Client Sheet and other reports / Scoring</i>
TOTAL SCORING:	
COMMENTS AND RECOMMENDATIONS OF THE SUPERVISOR	
COMMENTS AND RECOMMENDATIONS OF THE ADVOCATE	
SUPERVISOR'S SIGNATURE Date: Signature:	ADVOCATE'S SIGNATURE Date: Signature:

ANNEX 5

EVALUATION REPORT ON PRIMARY LEGAL AID ORGANIZATIONAL STRUCTURE

Primary Aid Office: Name: Address: Contact Person:	NARRATIVE EVALUATION <i>Evaluation made according to MEI's system</i>
APPROPRIATENESS OF RECEPTION PREMISES	<i>Total scoring according to MEI's system</i>
Reception Center	<i>Description of Reception Centers/ Scoring</i>
Internal Offices	<i>Description of Internal Offices/ Scoring</i>
Archives	<i>Description of archives system/ Scoring</i>
Work tools	<i>Data about work tools/Scoring</i>
Office accesibility	<i>Description of office accessibility/ scoring</i>
APPROPRIATENESS OF THE WORK PROCESS	<i>Total scoring according to MEI's system</i>
Determination and clear division of functions	<i>Description of the division of functions between advocates and lawyers/scoring</i>
Process of Clients' reception and treatment	<i>Description of protocol/Process of Clients' reception and treatment/ Scoring</i>

Regulation of the Work Process	<i>Evidence on the existence of the regulation of the work process and its clarity/scoring</i>
TOTAL SCORING:	
COMMENTS AND RECOMMENDATIONS OF THE SUPERVISOR	
COMMENTS AND RECOMMENDATIONS OF THE CONTACT PERSON	
<p>SUPERVISOR'S SIGNATURE</p> <p>Date:</p> <p>Signature:</p>	<p>CONTACT PERSON'S SIGNATURE</p> <p>Date:</p> <p>Signature:</p>

ANNEX 6

EVALUATION REPORT ON SECONDARY LEGAL AID ORGANIZATIONAL STRUCTURE

Advocate: First Name: Surname: Address/Contact:		NARRATIVE EVALUATION <i>Evaluation made according to MEI's system</i>
APPROPRIATENESS OF RECEPTION PREMISES	<i>Total scoring according to MEI's system</i>	
Internal Offices	<i>Description of Internal Offices/ Scoring</i>	
Archives	<i>Description of archives system/ Scoring</i>	
Work tools	<i>Data about work tools/Scoring</i>	
Office accessibility	<i>Description of office accessibility/ scoring</i>	
APPROPRIATENESS OF THE WORK PROCESS	<i>Total scoring according to MEI's system</i>	
Identification of Terms	<i>Të dhënat nga skeda e klientit për afatet/ pikëzimi</i>	
Priority processing	<i>Data from the Client Sheet on the order of clients' processing / Scoring</i>	

Collection of facts	<i>Data from the Client Sheet about facts / Scoring</i>
Collection of evidence	<i>Data from the Client Sheet on evidence / Scoring</i>
Defense Strategy	<i>Data from the Client Sheet on defense strategy/ Scoring</i>
TOTAL SCORING:	
COMMENTS AND RECOMMENDATIONS OF THE SUPERVISOR	
COMMENTS AND RECOMMENDATIONS OF THE ADVOCATE	
<p>SUPERVISOR'S SIGNATURE</p> <p>Date:</p> <p>Signature:</p>	<p>ADVOCATE'S SIGNATURE</p> <p>Date:</p> <p>Signature:</p>

Annex 13
DECISION
NO 110, DATED 6.3.2019
ON
SETTING OUT THE PROCEDURES AND RULES FOR THE
SELECTION OF NON-PROFIT ORGANIZATIONS AUTHORIZED
TO PROVIDE PRIMARY LEGAL AID GUARANTEED BY THE
STATE BENEFITING FUNDS FROM THE STATE BUDGET AND
THEIR FINANCING METHOD.

In reliance on Article 100 of the Constitution and paragraph 3 of Article 15 of the Law no 111/2017 'On legal aid being guaranteed by the state', upon the proposal of the Minister of Justice, the Council of Ministers

D E C I D E D:

1. Non-profit organizations authorized to provide primary state-guaranteed legal aid (hereinafter "authorized non-profit organizations") receive funding from the state budget after a competitive and transparent selection process based on the procedures and rules set forth in this decision.
2. The procedures of authorised non-profit organizations to benefit funds are based on the following principles:
 - a) Competitiveness;
 - b) equal treatment and non-discrimination of authorised non-profit-making organizations applying for benefiting funding;
 - c) Transparency of all phases related to the review, decision-making and selection of authorized non-profit organizations;
 - ç) Well-defined and public criteria that will enable the evaluation of proposals of authorized non-profit organizations in relation to the objectives and priorities of financial support;
 - d) Effectiveness and maximising the use of public funds, ensuring that objectives and priorities set at a favourable cost for achieving the intended service are achieved;
 - dh) Full respect of the principles of accountability and reporting on the use of public funds;
 - e) Funding the primary legal aid services for the categories of beneficiaries that are of priority to the Free Legal Aid Directory and in the interest of the beneficiaries of primary aid guaranteed by the state;
 - ë) Maintaining the independence of the authorized non-profit organization;

f) Prevention of conflicts of interest, as well as of any other activity that endangers the appropriate provision of state-guaranteed legal aid.

3. The Free Legal Aid Directorate plans, in its budget a special item for the financing of authorized non-profit organizations and draws up, on the basis of the approved amount, the annual financing plan.

4. The Free Legal Aid Directorate shall, within one month of the approval of the budget, publish on its official website an annual financing plan containing:

- a) the amount of financial benefit for the fiscal year;
- b) financial profit targets according to identified needs;
- c) the approximate number of authorized non-profit organizations that may be included in the selection process;
- ç) the opening time of the call for applications; and
- d) the timing of the beginning of the implementation of the primary legal aid guaranteed by the state.

5. The Free Legal Aid Directorate notifies, on its official website of the institution and in the Official Announcement Bulletin, at the beginning of each calendar year or during the year, in special or unforeseen , for the fulfilment of the needs of certain categories of population for primary legal assistance by specifying:

- a) the amount of financial funds available;
- b) the number of authorized non-profit organizations that may benefit from the designated funding;
- c) the general and specific criteria to be met by authorized non-profit organizations;
- ç) the list of documents required to be submitted;
- d) the term of the call termination;
- dh) data on the manner of submitting applications;
- e) as well as other necessary instructions for completing the application, which are determined upon the order of the Director of the Free Legal Aid and published together with the call.

6. To qualify for funding, authorised non-for-profit organizations must meet the following general and specific criteria:

- a) General criteria:
 - i. having received the authorization from the Minister of Justice for the provision of primary legal aid guaranteed by the state;
 - ii. not having two identical sources of funding for the same activities;

iii. no conflict of interest that infringes the fair development of the selection process with the director of Free Legal Aid.

b) Special criteria:

- i. draft proposal containing technical and financial data for the provision of the service, purpose, specific objectives, activities, implementation calendar, intended results, direct beneficiaries;
- ii. data about the staff, specifying the duties and setting out their CVs ;
- iii. to prove that they have experience in the provision of similar services by providing documents and data on the provision of similar services in the past, if this is indispensable according to the respective call,
- iv. other specific requirements that may be required for the provision of primary legal aid, according to a special public call.

7. The documentation for certifying the fulfilment of general and special criteria is filed with the Free Legal Aid Directorate. The non-for-profit organization must prove that it meets the specific criteria by submitting the relevant documents according to point 6 of this decision and the public call. In case of failure to meet one of the specific criteria, the application is considered incomplete and as such not qualifying for the financial benefit.

8. The following shall be set up and operate at the Free Legal Aid Department on part time basis:

- a) Evaluation Commission for reviewing and evaluating applications for funding the authorized non-profit organizations;
- b) Appeals Commission to review complaints about intentional violations of the examination procedure against decisions on the selection of non-profit organizations that receive funding, as well as the amount of funding.

9. The Evaluation Commission shall be composed of 5 (five) members, as follows:

- a) 2 (two) representatives from the Free Legal Aid Directorate, covering legal issues;
- b) 1 (one) representative from the Free Legal Aid Directorate, covering finance and budget issues;
- c) 1 (one) representative from the Ministry of Justice, covering the juveniles issues;
- ç) 1 (one) representative from the Ministry of Justice, covering the finance and budget issues;

10. The Appeals Commission consists of 3 members, whereof 1 (one) representative from the Free Legal Aid Directorate and 2 (two) representatives from the Ministry of Justice. The members of the Appeals Commission cannot participate in the review of applications within the Evaluation Commission.

11. The Evaluation Commission and the Appeals Commission are established during the public call for applications and the names of the members are not made public until the announcement of the outcome of the complaints review. No persons vested with the status of political functionary may sit in the commissions.

12. To the effect of meeting the administrative needs and organizational support for the activity of the Evaluation Commission and the Complaints Commission, upon the order of the Director of Legal Aid, the Technical Secretariat shall be established, composed of representatives of the Director of Free of Charge Legal Aid.

13. More detailed rules on the organization and functioning of the Evaluation Commission and the Complaints Commission are set out in the internal regulation of the Free Legal Aid Directorate, which is approved by order of the Minister of Justice.

14. The Evaluation Commission reviews the applications and assesses the fulfilment of the general and specific criteria and sets out the beneficiary financial measure within 10 (ten) days of the closing date of the public call.

15. The verification results are published on the official website of the Free Legal Aid Directorate within 3 (three) days of the completion of the review process.

16. The Evaluation Commission's decision may be appealed before the Appeals Commission within 5 (five) days of the notification of the results for violations of the procedures as defined in this decision.

17. The complaint is reviewed by the Complaints Commission within 15 (fifteen) days from the filing date.

18. The Appeals Commission issues a reasoned decision for the acceptance or non-acceptance of the complaint. The reasoned decision of the Appeals Commission is notified to the non-profit organization that has filed an appeal, no later than 2 (two) days since the issue of the decision and it is published on the official website of the Free Legal Aid Directorate. A complaint before the competent administrative court may be filed against this decision under the legislation in effect.

19. The Free Legal Aid Directorate enters into a service contract for providing the primary legal aid service with the selected non-profit organization within 10 (ten) days of the completion of the selection process.

20. The service contract is concluded for a period of 1 (one) year and contains:

- a) data on the amount of funding being received;
- b) the territorial scope of the primary legal assistance being provided;
- c) target groups of beneficiaries of intended legal aid;
- ç) the manner and mechanisms of monitoring the implementation of the service contract;
- d) clear definitions regarding:
 - i. the purpose of financial profit and the prohibition of using the value being obtained for other purposes beyond the context of primary legal aid;
 - ii. the manner of making payments and financial transactions through banking institutions in accordance with the provisions of the legislation in force;
 - iii. avoidance of conflict of interest in the use of the financial measure being obtained.
- f) cases where the service contract can be terminated before being completed;
- e) the manner of returning the financial amount in case of termination of the service contract for causes related to non-fulfilment of obligations by the authorized non-profit organization.

21. Any selected non-profit organization being selected may not benefit more than 20% of the budget planned to fund the provision of primary legal aid guaranteed by the state and non-profit-making organisations.

22. The authorised non-profit organisation, benefiting the funding, shall report to the Free Legal Aid Directorate periodically every 3 (three) months on the use of granted funds and the fulfilment of the obligations set out in the service contract.

23. The Free Legal Aid Directorate conducts on-site supervision at least 1 (once) a year during the duration of the service contract to verify the standards of the service provided by the authorised non-profit-making organization benefiting the financing.

24. In case of finding an authorized non-profit-making organization in breach of contract and benefiting financing, the Free Legal Aid Directorate verifies the case and takes action in relation to the violation committed, assuming its powers until the early termination of the service contract and the revocation of the authorization by Minister of Justice.

25. Upon the completion of the implementation of the service contract for the provision of primary legal aid, the Free Legal Aid Directorate draws up a report on monitoring the use of funds by non-profit organization during the 1-year period. The monitoring report is forwarded to the Minister of Justice and contains:

- a) the data of the non-profit organization that has received funding;
- b) the financial amount received;
- c) the method of allocating the financial measure obtained;
- ç) the duration and status of the implementation of the service contract;
- d) provided primary legal aid services;
- dh) number and category of beneficiaries of the services provided;
- e) geographic/territorial expansion of the services being provided;
- ë) the results achieved through the provided services;
- f) the impact on improving the treatment of beneficiaries from the provided primary legal aid.

The format of the monitoring report is approved by order of the Director of Free Legal Aid.

26. The Ministry of Justice and the Free Legal Aid Directorate are tasked with the implementation of this decision.

This decision shall enter into effect following its publication in the Official Journal.

PRIME MINISTER
EDI RAMA
In absence and upon order
DEPUTY PRIME MINISTER
ERION BRAÇE

Annex 14
JOINT INSTRUCTION
No. 17, dated 05.08.2020
ON THE RULES FOR THE APPLICATION
OF THE ROTATION PRINCIPLE
IN THE APPOINTMENT OF ADVOCATES, WHO WILL PROVIDE
SECONDARY LEGAL AID IN CIVIL AND ADMINISTRATIVE
PROCESSES

Pursuant to Article 102, paragraph 4 of the Constitution, Article 9, letter “b” of Law no. 111/2017, “On legal aid guaranteed by the state”, the Minister of Justice and the Chairperson of the Albanian Chamber of Advocacy,

HEREBY INSTRUCT:

CHAPTER I
GENERAL RULES FOR THE PREPARATION OF LISTS
AND LISTING OF ADVOCATES

1. This instruction aims to approve detailed rules for the preparation of lists and the appointment of advocates who will provide secondary legal aid in civil and administrative proceedings, for each calendar year, in accordance with the principle of rotation which guarantees a transparent and inclusive process.
2. The call for expression of interest shall be published on the official website of the Albanian Chamber of Advocacy, within the date of December 20 of the previous year. Advocates shall present the expression of interest by filling out the application form, according to the template determined by the Albanian Chamber of Advocacy. The call shall contain the deadline within which the expression of interest must be submitted, the postal or electronic address where the expression of interest and the relevant documents must be submitted.
3. Lists of advocates providing secondary legal aid shall be prepared separately for each local chamber of advocacy. The list shall include only active members of the respective local chamber of advocacy.
4. A Technical Secretariat shall be established for the organization of lottery procedures and the documentation of each phase. The composition of the Technical Secretariat and the number of members shall be determined by the General Secretary of the Albanian Chamber of Advocacy.
5. The Albanian Chamber of Advocacy, no later than January 20 of each

calendar year, shall set the date for the organization of the lottery in appropriate premises, and shall notify in advance the Chairpersons of the Local Chambers of Advocacy, the Free Legal Aid Directorate, the Ministry of Justice, the High Judicial Council and the High Prosecutorial Council. The notification shall contain the date, time, and place of the lottery.

6. The non-appearance of the representatives of the institutions defined in paragraph 5 of this instruction shall not suspend the procedure of drawing lots.

7. The ranking of advocates in the list of advocates that provide secondary legal aid services for each chamber is made by lot. The lottery for the ranking of advocates is subject to the principles of transparency, traceability, and monitoring of this process.

8. The draw is organized in three transparent boxes. The empty balls are placed in one of them, while the tapes, where the names of the advocates who will practice secondary legal aid services are marked, shall be placed in the other box. In the third box, there will be placed the balls after the insertion in them of the tapes with the names of the advocates who will provide legal aid services.

9. The order of placing the balls in the box and the order of drawing lots for each local chamber of advocacy shall be determined by starting with the drawing of lots for the local chambers that have the largest number of advocates, who will provide secondary legal aid services.

10. The Secretary General of the Albanian Chamber of Advocacy, or a representative of the Technical Secretariat appointed by him, shall conduct the process and shall read aloud the name of the advocate, who is written in it and he/she shall show it to the Technical Secretariat and all the participating representatives. The paper tape contained therein shall be submitted to the Technical Secretariat.

11. The advocate, whose name is written on the paper tape, is ranked first in the list of advocates who will provide secondary legal aid services, for the chamber in which the lot was cast.

12. With the same lottery and the same procedure, provided in paragraph 10 of this instruction, it will be determined the ranking in the list of advocates who will provide secondary legal aid services, for the chamber in which the lot was cast.

13. The results of the lottery and the ranking of the advocates, who will

provide the services of secondary legal aid, for each chamber shall be announced by the Chairperson of the Albanian Chamber of Advocacy.

14. The lottery procedure is recorded on audio and video. Minutes shall be kept for the documentation of each phase of the procedure of organizing and drawing lots according to the provisions of this instruction. The results of the lottery together with a report on the lottery organization process shall be immediately made public on the official website of the Albanian Chamber of Advocacy.

15. The approval of the final lists of advocates that provide secondary legal aid, shall be made by the Albanian Chamber of Advocacy, within the date of February 1 of each calendar year, through the lottery.

16. The list of advocates for each chamber also contains information on the specialization of the advocate in the field of law, when the specialization is necessary, as in the case of representation of minors, victims and in other cases defined by law.

17. After the final approval of the lists, they are forwarded for publication on the official website of NCA, the Ministry of Justice, and the Free Legal Aid Directorate. Copies of the lists shall be sent to the local chambers of advocacy.

18. The approved list of advocates who will provide secondary legal aid services, according to the local chambers of advocacy, shall be valid until January 31 of the following year.

CHAPTER II

PROCESS FOR THE APPOINTMENT OF ADVOCATES

19. The local chamber of advocacy, within 8 hours from the decision of the court to accept the request for the provision of secondary legal aid, shall appoint an advocate from the list of advocates who provide secondary legal aid services, in the jurisdiction of the chamber, according to the order in the list, starting with the advocate ranked first, as per the lottery procedures. The selection of advocates by rotation shall be made sequentially from the list, starting from the advocate ranked first and in descending order. The local chamber shall immediately notify the Free Legal Aid Directorate of the appointment of an advocate.

20. In case the number of court decisions for accepting requests on granting secondary legal aid is greater than the number of advocates providing this service, the Local Chamber of Advocacy shall appoint

advocates starting from the first ranked advocate on the list, and further in descending order.

21. In case the service to be performed requires specialized knowledge, as in the case of representation of minors, victims and in other cases provided by law, the Local Chamber of Advocacy shall appoint the first advocate, listed, who is specialized in the relevant field of law. For any other matter that requires specialized knowledge in the same field of law, an advocate listed lower in the list and specialized in that field of law shall be appointed.

22. In case the approved list of advocates providing secondary legal aid services under the jurisdiction of a chamber, has no advocates who have specialized knowledge, as in the case of representation of minors, victims and in other cases provided by law, the Albanian Chamber of Advocacy after the notification received from the local chamber shall appoint one of the advocates from the ranks of advocates, who are specialized in the closest field required by the approved list of the Local Chamber of Advocacy. In such a case, the appointment of an advocate shall be also notified to the Local Chamber of Advocacy, which has the advocate under its jurisdiction.

23. The Albanian Chamber of Advocacy shall conduct special trainings for advocates in those areas where specialization is needed, in case the approved list of advocates providing secondary legal aid services, under the jurisdiction of a chamber, does not have advocates with specialized knowledge.

24. The Local Chamber of Advocacy shall appoint advocates from the list of advocates, who provide secondary legal aid services under the jurisdiction of the chamber, according to the order on the list, pursuant to the provisions of paragraphs 19 and 20 of this instruction. For cases that require specialized knowledge, advocates shall be appointed according to the provisions of paragraphs 21 and 22 of this instruction.

25. The Local Chamber of Advocacy shall contact by phone and by e-mail with the acting advocated, according to the order on the list. In case the advocate, after his notification, refuses to take over the duty, it will be contacted the next advocate on the list. Refusal to take office shall be made by the advocate in writing, specifying the reasons for refusal.

26. If the advocate does not respond to the call/email, he/she is given a reasonable time, but in any case, not more than 24 hours, to respond. In case of non-return of the call/e-mail, the local chamber of advocacy shall immediately call the next advocate on the list.

27. Upon receiving confirmation from the advocate according to the above procedure, the local chamber of advocacy shall decide on the appointment of an advocate. The format of the decision for the appointment of an advocate shall be made according to appendix no. 1, attached and an integral part of this instruction.

28. For the documentation of each phase of the notification procedure of the appointed advocate, according to the order on the list, pursuant to the provisions of this instruction, minutes shall be kept. The minutes shall be signed by the Chairperson of the Local Chamber of Advocacy and the employee of the respective Chamber for notifying the appointed advocates.

29. The local chamber of advocacy shall forward the decision of the competent court, together with its decision on the appointment of an advocate and the person, whose request for secondary legal aid had been accepted.

30. If the advocate appointed to provide legal aid has legal obstacles according to the provisions of article 9, of Law no. 55/2018 "On the Profession of Advocate in the Republic of Albania", he/she shall address a reasoned request to the local chamber of advocacy.

31. If the local chamber of advocacy deems that the request contains reasonable grounds, it will replace the advocate who has given up representation by immediately notifying the Free Legal Aid Directorate. The substitute advocate shall be appointed referring to the first vacant number in the list of advocates.

32. When the local chamber of advocacy assesses the request as unfounded, it will refuse to replace the advocate. In case the advocate again refuses to attend the hearing, the local chamber of advocacy will start the replacement procedure and notify the Albanian Chamber of Advocacy for the initiation of disciplinary proceedings.

33. The advocate will continue to stay in office until he/she is replaced by another advocate from the local chamber of advocacy.

CHAPTER III

TRANSITORY AND LAST PROVISIONS

34. The Albanian Chamber of Advocacy shall oversee the implementation of the rotation principle by local chambers of advocacy.

35. The local chambers of advocacy shall keep a register with data on the provision of secondary legal aid according to the formats approved by the Minister of Justice.

36. The Albanian Chamber of Advocacy, local chambers of advocacy and the Free Legal Aid Directorate shall be responsible for the implementation of this Instruction.

This instruction shall enter into force after the publication in the Official Journal.

MINISTER OF JUSTICE

Etilda Gjonaj (Saliu)

(signature) (seal)

**CHAIRPERSON OF THE
ALBANIAN CHAMBER
OF ADVOCACY**

Maksim Haxhia

(signature)

APPENDIX NO. 1
(Format of the decision on the appointment of an advocate)

LOCAL CHAMBER OF ADVOCACY _____

DECISION NO. _____

DATE __. __. _____

DECISION

In _____ today, as of date __. __. 20____, I, a representative for legal aid at the Chamber of Advocacy _____, after being presented with the decision no. ____ of the Judicial District Court of _____, dated _____, ascertained that the applicant _____ based on the decision is a beneficiary of the secondary legal aid.

Pursuant to Law no. 111/2017 *“On legal aid guaranteed by the state”* and based on Instruction no. _____, dated _____, *“On the rules for the application of the rotation principle in the appointment of advocates who will provide legal aid”*:

I DECIDED

- The appointment of the advocate _____, with license _____ no. ____ to provide legal aid for the applicant _____, according to the court decision, attached to the present decision.
- A copy of the decision shall be delivered to the appointed advocate and a copy to the ____ applicant.

Representative

Annex 15

Joint Instruction of the Minister of Justice and the Minister of Finance and Economy no. 18, dated 5.8.2020 for the approval of the criteria for the benefit of payments and the remuneration fees by advocates who provide secondary legal aid.

JOINT INSTRUCTION

No 18, dated 5.8.2020.

ON THE APPROVAL OF THE CRITERIA FOR OBTAINING PAYMENTS AND REMUNERATION FEES FOR LAWYERS PROVIDING SECONDARY LEGAL AID

In reliance on Article 102, par 4, of the Constitution and Article 7, letter 'g' of the Law no 111/2017, dated 14.12.2017, "On legal aid guaranteed by the state", the Minister of Justice and the Minister of Finance and Economy

INSTRUCT:

I. Scope

This instruction sets out the criteria for obtaining payments and the remuneration fee for advocates providing secondary legal aid, in accordance with Law no. 111/2017 "On State-guaranteed Legal Aid".

II. Remuneration criteria for the service provided by the advocate

1. Upon completion of the legal aid procedures, the advocate must submit to the Directorate of Free Legal Aid the form for the remuneration, for the assistance provided, in accordance with the annual contract concluded between the advocate and this directorate.
2. The legal aid reward form shall be associated by:
 - a) the tax invoice for the service having been provided;
 - b) copies of the decision of the courts having been rendered for the case or copies of other acts, compiled according to appendix 1;
 - c) the report on the completion of work, according to the format approved by the Ministry of Justice.
3. Payment for the service is made through a bank account and according to the conditions set out in the approved model contract, as defined in Law no. 111/2017 "On State-guaranteed Legal Aid".
4. Where the advocate waives the provision of secondary legal aid, he

shall not be entitled to compensation for the service provided, according to the annual service contract concluded with the Directorate of Free Legal Aid, defined in Article 24, par 1, letter “b”, of Law no. 111/2017 “On State-guaranteed Legal Aid”. The local chamber shall always immediately notify the Directorate of Free Legal Aid.

5. In cases of waiver for cases other than those provided for in par 4, the Directorate of Free Legal Aid notifies the Chamber of Advocates of Albania for considering the initiation of a disciplinary proceedings.

Address: Rruga “Nikolla Jorga”, Tiranë: Tel/fax +355 4 24 27 004 Tel +355 4 24 27 006

III. Remuneration fees

The amount of remuneration for the secondary legal aid provided by the advocate is defined in appendix 1, attached to this instruction.

IV. Reimbursement of expenses

The advocate has the right to have the costs for the legal service performed covered. The reimbursement of expenses is done in accordance with the legislation in force, “On the financial treatment of employees who are sent with service outside the employment centre, within the country.”

V. The Legal Aid Directorate under the Ministry of Justice, as well as the General Budget Directorate in the Ministry of Finance and Economy are in charge of implementing this instruction.

This instruction shall enter into effect after being published in Official Journal.

MINISTER OF JUSTICE

Etilda Gjonaj (Saliu)

MINISTER OF FINANCE AND ECONOMY

Anila Dena

ANNEX 1

FEES OF LEGAL SERVICES FOR ADVOCATES OF LEGAL AID

Type of service

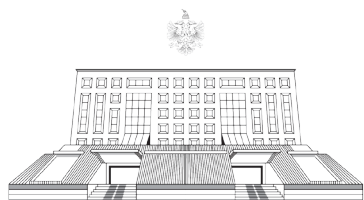
Fee in ALL

	1. LEGAL AID IN CRIMINAL MATTERS	Fees
1	<u>Representation in criminal matters</u>	
	Service regarding detention and arrests up to the amendment of the security measure	15 000
2	<u>Legal aid for the preliminary investigation up tot sending the case to court</u>	
	For criminal contraventions	20 000
	For crimes sentenced up to 10 years imprisonment at judicial district court	50 000
	For crimes sentenced to more than 10 years imprisonment at the Special Court of First instance for corruption and organized crime	60 000
3	<u>Legal and for trials at first instance</u>	
	For criminal contraventions	20 000
	For crimes sentenced up to 10 years imprisonment at judicial district court	30 000
	For crimes sentenced to more than 10 years imprisonment at the Judicial District Court	80 000
	For crimes tried at the Special Court of First instance for corruption and organized crime	96 000
4	<u>Legal aid for trials at the courts of appeal, high court and constitutional court</u>	
	For trials at appeal courts	40 000
	II. LEGAL AID IN CIVIL AND ADMINISTRATIVE FIELD	
1	<u>Representation at the first instance</u>	

	Representation at the first instance, non-contentious	15 000
	Representation at the first instance, contentious	40 000
2	<u>Representation at the court of appeal, high court and constitutional Court</u>	
	Representation at the court of appeal	45 000
	Representation at the high court and constitutional court	60 000
3	<u>Extra-judicial legal services</u>	
	Preparation of the complaint	15 000
	Recourse to the High Court and Request to the Constitutional Court	25 000
	Providing legal aid in form of advice	500 – 15 000 ALL/hour
	<i>III. OTHER LEGAL SERVICES</i>	
	Other legal services which are not included in the items above	



FINANCUAR
NGA BASHKIMI EVROPIAN



REPUBLIKA E SHQIPËRISE
MINISTRIA E DREJTËSISË
DREJTORIA E NDIHMËS JURIDIKE FALAS



Directorate of Free Legal Aid
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