Funded by the European Union

EURALIUS Consolidation of the Justice System in Albania

**Disclaimer**

Please note that this document is an unofficial translation and is provided for information purposes only. It confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published in the Albanian language. EURALIUS makes no guarantee of accuracy and waives responsibility for the use that might be made of the following information.

**REPUBLIC OF ALBANIA**
**HIGH PROSECUTORIAL COUNCIL**

**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)

**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 replaces 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._____** |