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REPUBLIC OF ALBANIA
MINISTRY OF JUSTICE
THE MINISTER

Prot. No. 1650/3 Tirana, on 25/03/2019

INSTRUCTION

No. 2, Dated 25/03/2019

ON THE PROCEDURES, PERIODICITY AND RULES FOR THE VERIFICATION OF THE CIRCUMSTANCES FORTHE 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)