**Albania’s Response to the questionnaire from the Special Rapporteur on the independence of judges and lawyers regarding the upcoming thematic report “on the protection of lawyers in the free and independent exercise of the legal profession”, to be presented in the 50th session of the Human Rights Council, June 2022.**

Regarding the first question for the consitutional and legal measures taken based on the principles 16-22 of the Basic Principles on the Role of Lawyers, please find below the relevant provisions for each principle.

**16. Governments shall ensure that lawyers**

*(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;*

According to letters "a" and "dh", of article 11, of law no. 55/2018 "On the profession of advocate in the Republic of Albania", the lawyer has the right to provide the advocacy service in line with the requirements of the legislation in force in a free, independent and autonomous manner, without restrictions on any client, local or foreign, that exercises their activity within the country or abroad, as well to exercise the profession in an independent and autonomous matter.

Meanwhile, in article 52, of law no. 7905 dated 21.3.1995 "Code of Criminal Procedure of the Republic of Albania", as amended, provides the necessary guarantees for the free and independent practice of the profession of lawyer by providing for cases when examinations and searches in the office of a defense lawyer are allowed in the lawyer's office, and procedures for performing them.

Specifically, examinations and searches in the office of a defense lawyer are allowed only:

a) when he or other persons who constantly carry out their activity in the same office, are defendants and only for the purpose of proving the criminal offence attributed to them;

b) to discover traces or material evidence of the criminal offence or to search for items or persons specifically defined.

c) in cases when the defence lawyer is in the conditions of flagrante delicti or pursue of escaping, pursuant to paragraph 1 of article 298 of this Code

Prior to conducting an examination, search or a sequestration in the defense lawyer’s office, the proceeding authority notifies the Directing Board of the Bar Association so that one of its members may have the possibility to be present in these activities. Except for cases of flagrante delicto, the proceeding authority shall postpone the examination, search or sequestration until the arrival of the assigned member, but no longer than two hours after the Bar Association has been informed. In any case, a copy of the act shall be sent to the Directing Board of the Bar Association. 3. Searches, examinations and sequestrations in the defense lawyers’ offices, for the first two cases, are performed by the judge in person, whereas during the preliminary investigations they are performed by the prosecutor, based on an authorizing decision of the court.

*(b) are able to travel and to consult with their clients freely both within their own country and abroad; and*

According to article 6, of law no. 55/2018, the advocate practices his/her profession all over the territory of the Republic of Albania, independent of the local chamber of advocacy to which he/she belongs. The profession of advocate may be practiced before every court, prosecutor’s office, arbitration court, or public body, individually, or in cooperation with other advocates organised in legal studio. The advocate also practices his/her profession outside the territory of the Republic of Albania, in accordance with the laws of the state where this profession is practiced or based on international acts of which the Republic of Albania is party.

*(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.*

Despite the fact that there are no provisions that explicitly provide for this principle, we emphasize that this principle is applicable given the special provisions of law no. 55/2018 and the procedural laws which regulate the violations for which measures can be taken against lawyers in the exercise of their profession.

Specifically the law no. 55/2018 provides the reasons on the basis of which disciplinary proceedings may be initiated against lawyers as well as the measures that may be taken against them.

Specifically, the basis for initiating disciplinary proceedings are:

1. "advocate’s professional misconduct", which includes actions contrary to legal provisions or regulations, bylaws, statute and the Advocate’s Code of Ethics;
2. "inappropriate professional services", which includes actions or omissions toward the client, which are significantly below the level of service expected by the advocate;
3. "non-provision of state guaranteed legal aid service", including the inappropriate non-provision of legal aid services to beneficiaries of secondary legal aid according to the legislation in force on state guaranteed legal aid.

In each case, the examination in the disciplinary proceeding shall refer to the abuse of the right to practice the advocate’s profession breaching the provisions of the law on advocacy, the Statute and Advocate’s Code of Ethics. It cannot treat the complaint petitions in relation to civil disputes between the parties, whose adjudication is carried out in accordance to the provisions of the civil procedural legislation in force.

As for disciplinary measures, they are given based on the nature and gravity of the offence. The decision may provide for a measure consisting of two or more types of disciplinary measures, if this is appropriate and in proportion to the violation.

As regards the violations classified as non-professional behaviours and which do not constitute a ground to be subject to the revocation of the title and suspension of the permit to practice the profession, the Disciplinary Committee shall take one of the following disciplinary measures:

a) fine in the amount from 10 000 up to 1 000 000 ALL;

b) restitution of the payment benefitted, in accordance with the share of unrealized service to the client;

c) ordering the advocate to be subject to the exam in relation to professional ethics, within a specific period, in accordance with the rules set out in the Statute of the Chamber of Advocacy of Albania;

ç) ordering the advocate to conduct additional continuous training, including also training in a special field of law;

d) written reprimand;

dh) counselling about proper behaviour in the future;

e) obligation to apologize in writing to the complainant.

3. As regards the violations classified as improper professional service, the Disciplinary Committee shall adopt one of the following disciplinary measures:

a) obligation to apologize in writing to the complainant;

b) restitution of the payment benefitted, in accordance with the share of unrealized service to the client;

c) ordering the advocate to conduct supplementary continuous training, including also training in a special field of law.

The Disciplinary Committee of the Chamber of Advocacy of Albania, ex officio or upon the proposal of the local chamber of advocacy, courts, prosecutors’ office, Ministry of Justice or concerned parties, in accordance with this law, shall be entitled to revoke the professional title of advocate, if one of the following cases is proven:

a) the title of advocate was acquired in contravention to the requirements provided for in this law;

b) the advocate has used falsified documents to acquire the professional title of advocate;

c) the advocate has seriously and repeatedly violated the legal obligations for practicing the profession of advocate foreseen in the procedural legislation in force, this law and the bylaws issued in its effectuation;

ç) the advocate has been convicted by a final court decision:

(i) for a criminal offence committed intentionally, for which he/she is not expunged;

(ii) for a criminal offence committed by negligence, for which he/she has not been expunged and which impinges on the figure and integrity of the profession of advocate, as defined in the Statute of the Chamber of Advocacy of Albania;

(iii) for a criminal offence committed intentionally, for which he/she is expunged, when the criminal offence impinges on the figure and integrity of the profession of advocate, as defined in the Statute of the Chamber of Advocacy of Albania.

The Disciplinary Committee of the Chamber of Advocacy of Albania, ex officio or upon the proposal of the local chamber of advocacy, courts, prosecutor’s office, Ministry of Justice or concerned parties in accordance with this law, is entitled to suspend the permit to practice the profession for a time period from two months up to two years, when it is proven one of the following instances:

a) the advocate has violated the legal obligations for practicing the profession of advocate foreseen in the legislation in force, this law and the bylaws issued in its effectuation;

b) a criminal proceeding has been instituted against the advocate, evaluated in accordance with offences mentioned above;

c) the advocate has not paid the membership contribution imposed by the Chamber of Advocacy of Albania;

ç) the advocate suffers from mental or physical diseases, which render impossible the normal practice of the profession;

d) the advocate is declared bankrupt, as long as the bankruptcy situation lasts.

The Disciplinary Committee, in addition to the disciplinary measures provided for in this law, may order the advocate to undertake the necessary measures to remedy the situation emerged due to inadequacy of actions carried out by him/her, which constituted disciplinary infringements. In the event of the carrying out of additional actions for the purposes of the disciplinary proceeding which incur financial costs, the Disciplinary Committee may order the advocate to afford, by his/her own means, the amount of the costs incurred.

Meanwhile, in the article 52 of the Code of Criminal Procedure are provided the guarantees for the lawyer mentioned above, the cases of his responsibility when he leaves or refuses the defense of the defendant[[1]](#footnote-1), the measures that are taken do not observe the court orders to maintain order and silence, offend the dignity of the court or act in a way that threatens the solemnity of adjudication[[2]](#footnote-2), or when When a duly summoned defence lawyer fails to appear in the hearing and there exist no impediments exempting him from the responsibility to appear, or if the defence lawyer leaves the hearing without any permission[[3]](#footnote-3).

On the other hand, the Code of Civil Procedure also provides for measures related to the abuse of rights in the process[[4]](#footnote-4) and measures taken against a lawyer if he / she has caused delays in the trial of the case without reasonable reasons[[5]](#footnote-5). In both cases, a financial measure is given which aims to regulate the irregular behavior of the lawyer during the exercise of his profession.

**17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.**

**18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.**

Even regarding this principle, although there are no definitions explicitly provided in the legislation, it is applied by reading and interpreting articles 4, 8 and 11 of law no. 55/2018 which provide for the manner of exercising the activity of a lawyer, as well as point 2, article 6 of the Code of Criminal Procedure, according to which The lawyer shall assist the defendant to have his procedural rights guaranteed and his legitimate interests protected. So, in any case, the actions performed by the lawyer, in fulfillment of his function, are directly related to his client and the actions don’t lead to the identification of the lawyer with the client.

**19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.**

This principle is also sanctioned in law no. 55/2018 which determines the way an advocate performs his activity[[6]](#footnote-6), which also provides the unauthorized practice of the proffesion of advocate by Any natural or legal person that has not gained the title of advocate in accordance to the provisions of this law. Also, this principle is applied in accordance with article 6 of this law, which provides for the scope of activity of a lawyer. Meanwhile, Article 11 provides for the rights of a lawyer, which guarantees the exercise of the profession of lawyer at any court or administrative body.

Also, article 50 of the Code of Criminal Procedure has provided that the defense lawyer enjoys the rights the law recognizes to the defendant, except those preserved to the latter in person.

Meanwhile, the second paragraph of Article 96 of the Code of Civil Procedure stipulates that representatives of the parties can not be lawyers whose practice has been suspended for as long as this suspension lasts. Also, the article 97 provides that when parties are represented in court by a representative, the representative may perform and acquire in the interest of the party, all actions necessary to the process that are not prohibited by law. In any event, a representative may not perform actions resulting in the disposal of rights, unless he has explicitly obtained the right to do so.

**20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.**

The first paragraph of Article 159 of the Code of Criminal Procedure provides for the protection of professional secrecy for lawyers. They shall not be obliged to testify on information they know because of their profession, except in cases where they have a duty to report to proceeding authorities. The court, when there is reason to suspect that the allegation made by these persons to avoid the evidence is unfounded, orders the necessary verifications. When it turns out to be unfounded, the court orders the witness to testify.

**21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.**

Letter "b" of Article 11 of Law no. 55/2018 provides the right of a lawyer in the exercise of his profession to request data, explanations or documents related to the case or clients represented or defended by him/her, from any institution of the public administration, the courts, the prosecutor’s offices, arbitration courts, notaries, bailiffs and State Police bodies, or other public entity or private subject, in compliance with the rules and the time limits foreseen in the legislation in force. Also the article 12 of this law provides that any public administration body, the courts, the prosecutors’ offices, arbitration courts, notaries, bailiffs, state police bodies or other public entity or private subject are obliged to meet the legitimate requests of the advocate in relation to:

a) the provision to the advocate, within a reasonable time limit, of information requested by him/her, except for instances when foreseen otherwise by special law;

b) fulfilment of the legal requests of the advocate in compliance with the legal competences and procedures that regulate that organ’s activity; Law No 55/2018 6

c) to guarantee the confidential meeting of the advocate with his client, before the client being questioned for the first time and at any phase of criminal proceedings, without a specific authorisation of the proceeding bodies and the approval of the client or his/her next of kin as well as to provide access to the acts, evidence and grounds for the arrest or detention of his client, in compliance with the rules foreseen by the Criminal Procedure Code;

ç) immediate provision to the advocate, of the documentation available in the investigation and trial file, as well as creation of the conditions for the study and use of documentation, in full compliance with the requirements and time limits foreseen in the Criminal Procedure Code.

In case of the non-fulfilment of obligations by the subjects mentioned above, the advocate shall be entitled to submit a statement of claim with the competent court, in compliance with the rules foreseen by the procedural legislation in force.

Also in the Code of Criminal Procedure provides the means of implementing this principle.

Point 2 of Article 50 provides for the right of the defense lawyer has the right to communicate freely and in private with the detained, arrested or convicted person, to have prior notice of the investigative actions conducted in the presence of the defendant and to participate to them, to ask questions to the defendant, witnesses and experts, to have access to all the materials of the case at the conclusion of the investigations. According to article 335, up to the date set for trial hearing, the parties, the victim, their defence lawyers and representatives have the right to view the sequestered items, to examine at the secretary all acts and documents collected contained in the trial file and also to make copies thereof.

Regarding deadlines, in addition to the obligations from law no. 55/2018, in a series of provisions in the Code of Criminal Procedure are also provided notifications made to the lawyer in order to provide legal protection effectively. For example, under section 309, the lawyer is informed, at least twenty-four hours in advance, when proceeding with questioning, examination or confrontation. If the delay may compromise investigations, the lawyer shall be promptly informed. The minutes of the activities performed by the prosecutor and the judicial police, in which the defense lawyer has the right to intervene, shall be submitted with the secretary of the prosecution office within three days of the date of execution of the activity, with the right of the lawyer to review them and make copies.

Meanwhile, according to the Code of Civil Procedure, the lawyer can perform and receive in the interest of his party all the acts needed for the process, which the law does not prohibit, but can not perform acts that bring a disposition of law, except when there is gain tager explicitly.

**22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.**

This principle is sanctioned in the Constitution of the Republic of Albania, which in Article 31 provides that during the criminal proceedings, everyone has the right to communicate freely and privately with a lawyer.

This principle also applies to the Code of Criminal Procedure through several provisions. Specifically, Article 34 / a and 34 / b provide for a private meeting and communication of the person under investigation, the defendant, the arrested and the detained person with the lawyer.

Article 52, on the other hand, provides for the prohibition of Interceptions of conversations or communications between defense lawyers and their assistants, or between defense lawyers and the persons they defend, and prohibits any form of inspection of the mail between the defendant and his defense lawyer is prohibited, except when they constitute material evidence of the criminal offence object of investigations. . Inspections, searches, sequestrations, or interceptions of conversations or communications carried out in violation of the provisions above mentioned may not be used. Article 235 of the Code of Civil Procedure provides that a party's lawyer may not be questioned as a witness about circumstances of which they have been informed by their representatives due to their duty.

1. Article 56 [↑](#footnote-ref-1)
2. Article 341 [↑](#footnote-ref-2)
3. Article 350 [↑](#footnote-ref-3)
4. Article 34 [↑](#footnote-ref-4)
5. Article 107 [↑](#footnote-ref-5)
6. Article 8 [↑](#footnote-ref-6)