



RESEARCH ARTICLE

THE RIGHT TO PROTECT DEFECTS IN THE LEGAL RULES OF PROCEDURE

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ABSTRACT

Writing for the defender and his position during the criminal process is as attractive and difficult. It is attractive because a good advocate must be a good acquaintance with the law, have professional skills and act within the boundaries of his profession ethics, be able to communicate, recognize logic and psychology. It is difficult because it is a great enterprise to define in a topic the procedural position of the defender and his defense techniques, ethics, professionalism, criticism, and wealthy court practice. With the adoption of the Criminal Procedure Code in 1995, the Albanian criminal procedural law was channeled into the accusatory system, respecting the equality of parties in the process and conducting a controversial adjudication. So the key basis for a judgment on these principles became obviously the figure of the defense lawyer. The defense counsel performs his duty as an assistant when the defendant he is defending is present and as a representative when the defendant is not present. The role of the defender is very important. He protects the rights and procedural safeguards of the defendant. The lawyer thus secures the real right of the defendant as one of the basic rights for a due legal process in the Constitutional and European sense. Problems in practice and not just have been made issues related to the presence and replacement of the defense counsel chosen by the defendant, the legitimization of the defender appointed or assigned mainly by the relatives of the defendant to appeal against the decision given in absentia defendants, guaranteeing effective protection by a defender designated by the proceeding body, lack of defense attorney's presence in some investigative actions and procedural inability to conduct investigations by the defender himself. But despite the great role played by the defender, his figure suffers from our criticism of the level of corruption and in a few cases of deliberate delays in court proceedings, making it a serious obstacle to these processes and to the judiciary, The Courts and the Prosecutor's Office.

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INTRODUCTION

The beginnings of the existence of law in Albania date back to the last century. Advocacy took shape formally at King Zog's time with the law dated 30.12.1922 and 18.07.1992. But even though it existed in this period, the defendants' right to defendants in the criminal proceedings was more formal and of declarative character, because the means of securing them were limited. The cultural level, the complicated procedure, the corrupt judiciary system, the bureaucracy, made it difficult to realize the right of defense. At this time, protection was a privilege of the rich layer, as only they had the economic means to cope with the expenses of the lawyer who were large.¹ By the end of 1946, advocacy was exercised on the basis of agreements between lawyers and their clients, which was controlled by the Ministry of Justice. By Decree No.354, dated 20.11.1946, found the regulation of the lawyer not completely. A Supervisory Council was established, consisting of the Minister of Justice, the President of the High Court and the Prosecutor General.

This council had the right to grant and revoke the permit to practice the profession of lawyer. By decree of the 1950s and 1961, the lawyer was organized in collectives and their participation was compulsory. The Ministry of Justice had organizational, management and control competences. By decree no. 4277, dated 20.06.1967, the advocacy groups were abolished and the Legal Aid Offices were established, which functioned on the same political principles as other social organizations. The right to protection continued to be foreseen for the mandatory protection of minors under the age of 18, for those who, because of physical or psychological flaws, could not realize protection for foreign citizens and in those cases where the court necessary due to the nature of the case or other circumstances. 2. The defense counsel could give his "help" only in the trial of the case and as defender could be the legal advisor, the defendant's spouse, his gender, and his close affiliation. such practices brought about damaging

1 M. Kushe ". Defendant's protection and defense attorney (lawyer) in criminal proceedings. Dissertation December 1990
2Neni 10 I KPr.Penale v.1979.

consequences by violating the principle of contradictory debate at the court hearing, which is indispensable for the detection of the truth. For those who, due to physical or psychological shortcomings, could not realize the protection of foreign citizens as well as those cases where the court deemed it necessary because of the character of the case or other circumstances. In this period there was the opinion that the defense in court was made by the court and the impartial prosecutor and the accused was left unprotected. Lawyers of Legal Offices were state employees. The employment of these legal counselors was faded. Advocacy was considered a damaging and unnecessary institution that did not help, but prevented the right and quick resolution of issues.⁴ But these arguments were ridiculous and scary. The prosecution and the court could not defend the interests of the defendant. The prosecution has and has everywhere and everywhere has the mission of raising and defending the indictment "on behalf of the state".

While the court has been and remains the arbitrator placed on the parties in the process and never and in no case can defend the interests of the defendant.⁵ In some cases the procedural guarantees of the defendant are considered as obstacles to the detection of the truth, a means of escape from criminal responsibility, it is true that there are also cases when the real culprit attempts to exploit these guarantees to rescue criminal responsibility, to delay the process and to hack the evidence. But this risk can not be removed by violating or limiting the procedural guarantees, but by conducting the investigation, by carefully analyzing all the circumstances of the case and by stopping the defendant's unlawful actions without losing its legal rights.⁶ By law No. 7541, dated 18.12.1991, for the first time was the participation of the lawyer in the process of investigating the criminal case in custody of the defendant. The defender finally found a real position in defending the defendant and judging by the adoption of a completely democratic legislation that was reflected in the Criminal Procedure Code, approved by Law No. 7905, dated 21.03.1995. This procedural legislation guarantees the real and effective protection of the interests and procedural guarantees of the defendant. It is foreseen the presence of the defense attorney at the moment of the detention of a person for protection against ill-treatment, torture, assertions and other abuses.⁷ The right to choose a lawyer, to have a lawyer when the financial means are not available, the presence of a lawyer during the investigation, trial and execution of the decision. The rights of defendants in practice are generally effectively guaranteed and protected, and every day the professional level, with all the problems, of the defense lawyers is growing and is achieving a fair criminal process and equality between the parties in this process.

Constitution

Defining the Defender according to the Constitution

The Constitution of Albania states in its Article 28: "Everyone who is deprived of liberty has the right to be notified in the language that he understands for the reasons of this measure as well as for the charge he or she has done. The person who has been deprived of liberty must be notified that there is no obligation to make any statement and has the right to

immediately communicate with the lawyer and to be given the opportunity to exercise his rights. "This section of the Constitution of the Republic of Albania, which is part of its Chapter II, is related to the human rights and freedoms of man. The Constitution of the Republic of Albania, foreseeing the foregoing, states in its Article 28 that the existence of the defense institute, as defined by the term "lawyer", is indispensable. So, on the one hand, the Constitution requires the regulation of this profession and on the other hand the help of the person who has been deprived of liberty. According to this Article, the person deprived of liberty is given the right to communicate with his lawyer. The Albanian constitution adopted by a popular referendum in 1998 broadly foresaw fundamental human rights and freedoms, where Article 31 enjoys a special right of defense during the criminal process which provides that during the criminal proceedings everyone has the right:

- *To be informed immediately and specifically about his accusation, about his rights, and to have the opportunity to inform his family and relatives.*
- *Have enough time and facilities to prepare your defense.*
- *To be protected either with the assistance of a legal counsel chosen by him, and to be provided with free protection when there are insufficient funds.*
- *Ask the witnesses to attend, and ask for the call of witnesses, experts, and other persons who can clarify the facts.*

The Sanction of the Law "On the profession of lawyer in the Republic of Albania" No. 9109, dated 17.07.2003

This law defines advocacy as a free, independent, self-regulated and self-directed profession. Based on the legal regulation provided by this law, the profession of lawyer achieved contemporary perfection and perfection. Also the approval by the National Chamber of Advocates and the Code of Ethics of the Advocate was an achievement in developing the profession of lawyer at the level of their peers of the most advanced Western countries. According to Article 2 of Law no. 9109, "On the profession of lawyer in the Republic of Albania", the lawyer provides legal aid in criminal, civil and administrative matters in court, prosecution, arbitration and other public administration bodies, as well as other auxiliary actions legal remedies provided by law⁸. In the criminal field, the lawyer provides legal aid through respecting the rules of professional ethics and the use of the rights and interests of persons who are protected or represented by him. While the Steering Council of the Chamber of Advocates exercises many competences among others: 1. Appoints a lawyer to pursue court cases when asked by the court. 2. Appoints a lawyer to take over issues that have been abandoned and the client could not find another.

The Guardian's Role in the Preliminary Investigation Proceedings

Protector's assistance since the investigation stage

Attorney's assistance, especially to the person deprived of liberty, is indispensable at the stage of the investigation. This includes all actions for the evidence, for the examination of the defendant, various requests for refusal of temporary arrest or requests for release from custody, etc. Article 6/3, c states the choice of the mode of guarantee of this right.

³Article 9 of the Criminal Procedure Code v.1979

⁴Command I Pr.Penale (H.Islami etc) Tirane2003

⁵Vladimir Kristo note.

⁶Koco Nova "Defense Techniques ~ Triane 1964.

⁷Adnor Shameti "The principles of fair trial in the criminal process" Tirana 2000

⁸Full material on Bill of Rights Inteenet;http://avalon.law.yale.edu/17th_century/england.asp

The court must only determine whether the chosen method is compatible with the requirements of a fair trial. The way of implementing this article during the investigation depends on the particular characteristics and circumstances of the case. The Court has found that Article 6 usually requires that the defendant have the opportunity to obtain the assistance of the lawyer from the beginning of the interrogation by the police. This right, which is not expressly written in the Convention, may be subject to restrictions, but only for justified reasons. This is because the whole process is to be discussed, and if such a restriction has effectively removed the defendant's opportunity for a regular trial. The accused person, who does not wish to defend himself, has the right and the possibility of benefiting from a lawyer chosen by himself. If there are not enough funds, this aid can be given free of charge when the interest of justice is required. But the court can not stop the accused from defending himself. The interest of justice is assessed by taking into consideration the burden of the type of case, the type and extent of the threat that it is threatening, the degree of complication of the matter in the matter of the facts and the legal problems that are committed. In assessing whether the interest of justice requires the provision of free legal aid for the purpose of preparing and supporting the recourse, the accused not possessing sufficient financial means must take into account, among other things, the complicated procedural character of the proceedings before the cassation court. Preparation of the recourse requires strong knowledge and experience and, above all, knowledge of the basics of its rise.

Selection of defenders

The accused has the right to elect his lawyer but can not be considered that there is a complete freedom in this regard. Thus specific states define in detail who may be a lawyer in criminal matters, formal conditions, professional and moral qualification requirements that need to be met. The limitation of the number of lawyers of an accused is permissible provided that the defense is not found as a result of this in an unfavorable situation with the charge. The accused should not be deprived of his consent by the lawyer he has chosen and if the lawyer can not continue the representation, the defendant must take into consideration his or her wish, even when the lawyer is elected by the court, the accused has the right of choice. But this opportunity is not guaranteed by Article 6/3, c of the Convention. After the lawyer has been appointed by the court, the accused can not ask, unless there are reasonable grounds, to change it. The court is obliged not only to appoint an advocate to protect the rights and interests of the accused, but also to make this defense aid practical and effective and not just theoretical and illusory. The Court found that there had been a violation of the Convention where the authorities remained inactive and did not intervene to replace the lawyer or to request him to make a real defense for the accused. Efficient advocate protection in a criminal trial is one of the basic elements for a fair trial. The accused may also not appear in the court, but this can not lead to the loss of the right to be protected and his lawyer to submit arguments to facilitate or justify the defendant he defends⁹.

Scope of Protection Rights

“The defense counsel has the rights that the law recognizes the defendant, except those personally reserved for the latter”¹⁰ .

This statement once again points to the importance of the defense fugue during the criminal process by giving him the

many rights that the defendant belongs to. If the defendant is aware that the criminal offense has been committed and that it is committed by the defendant he is defending, he cannot claim this. This contradicts and defends the confidentiality of the confidentiality of the confidential data and notifications made by the defendant Article 358 of the Criminal Procedure Act which deals with the declarations of the defendant at any time during the main trial are Another right that concerns only the defendants The shortened trial as a special judgment by the Criminal Procedure Code is another right which belongs only to the defendant. Only as his will may be to make a request for the development of this judgment. But his request may be delegated to his defense counsel with a special proxy to express his will to conduct a shortened trial. According to Article 50/2 of the Code of Criminal Procedure,

“the defense counsel has the right to communicate freely and only for the detainee or the detained or the convicted person to be notified in advance for the conduct of investigative actions where the defendant is present and take part in them, address questions to the defendants, witnesses and experts, to get acquainted with all the material of the case at the conclusion of the investigation”.

The role of the defense counsel at the stage of investigation and criminal proceedings

In full compliance with the provisions of the Constitution of the Republic of Albania in its Article 28, according to which "The person to whom the deprivation has been deprived shall be notified that there is no obligation to make any statement and have the right to immediately communicate with the lawyer, as well as to be given the opportunity for the realization of his right, was built the part of the CP of the Republic of Albania which provides for the arrest in flagrante or the prohibition of a person.

Assignment of security measure and defender position

In addition to assessing the amount of detention in flagrante or detention, the Criminal Procedure Code also provides for the assignment of the personal security measure. In cases when this measure is required in the session of the assessment of the amount of arrest or detention, it is considered once again with their validation and whenever in the presence of the parties, the prosecutor, the defendant and his or her defense counsel¹¹. But personal security measures can be developed and separated from the validation session. This session is conducted by the court without the indispensable presence of the defense. In many cases the imposition of security measures is a secret and the hearing takes place only with the presence of the prosecutor. In the Code of Criminal Procedure, no obligation has been foreseen for the court that in the hearing that determines the security measure of the person against whom the measure or defender is appointed and this attitude has been maintained and the judicial practice¹². Investigative actions are secret until the defendant has no knowledge of them¹³. The right of the defense for recognition with the personal security measure is provided in articles 246, 247 and 248 of the Code of Criminal Procedure. Thus Article 246 of this code charges the officer or judicial police agent to submit to the person to whom the copy of the

⁹Short Commentary Nivicki.

¹⁰K.Pr. Criminal, Article 50.

decision is taken and the right to choose the defendant, immediately notifies the defendant chosen by the defendant or appointed predominantly. Article 247 provides that when a person is not found, the judicial police officer or agent maintains a verbal process and the court decides that the search is complete, declares the person's escape. With this act, the court assigns a defendant to a defendant. In this way it is achieved during the investigation of the case to guarantee the rights of the declared person escaped by performing any act other than those that the law recognizes personally to the defendant and the law that the law agrees with. If the measure is applied then Article 248 of the Criminal Procedure Code provides for a court hearing. The prosecutor and the defense attorney participate in this question. We emphasize that even in this case the defense attorney participates only when the arrested person asks the defender to be present for the protection of his interests during the interrogation. The way of developing this procedure by the court, the questioning of the person against whom the security measure is applied, I think it is not a trial and will not be before the opening of a fair hearing, but this procedure is part of a due process. The court in this proceeding maintains a person's interrogation record by verifying through these questions the terms of the security measure implementation and the insurance needs.

This procedure guarantees a due legal process by filling the vacuum created at the session of the determination of the security measure without the presence of the defendant and his protector. The role of the defender during the interrogation of the arrested person is very important. He helps the defendant to evidence before the court those circumstances that may help revoke or replace the security measure. The arrested person is not obligated to answer questions to the court. Another point is that this procedure is done in the court session, respecting all rules of the session. The arrested person, the prosecutor, the defense counsel of the defendant, who is elected or appointed, and the cases required by the parties¹⁴ are considered. I think that this procedure is part of a fair legal process that begins with setting the security measure and continues with its implementation. For all court decisions, there is the right of parties or of one of them as provided for in the law, the right to appeal against this decision. Article 248 of the Code of Criminal Procedure does not provide for such a right against this procedure. This procedure is conducted no later than three days from the implementation of the insurance measure. Article 249 of the Code of Criminal Procedure provides for the right of appeal within 10 days from the day of application of the security measure.

Thus, the arrested defendant can not sue himself or with the help of his defense counsel the questioning procedure or the court's stand to not be told about the extent of the insurance beforehand. If the court decides during the interrogation that the conditions and the security needs are not in place, then this procedure will serve to the court to primarily decide to revoke or replace the security measure through a court hearing hereafter with the presence of the parties and by applying to the all the rules of such a hearing¹⁵. The defense counsel of the defendant should move to the prosecution and the court, since every two months from the implementation of the arrest warrant, the court that issued the decision must be informed by the prosecutor for the arrested person¹⁶.

The information is provided in writing and contains information on the state of the proceedings, the question of the defendant and other persons, for the description of the data received and is accompanied by copies of the acts of the case. When this is the case, the court may revoke or replace the security measure. Guarantee by the guardian of this right of the arrested person is one of his duties. In this way, he protects his client and gives his own task a maximum effectiveness. The defense counsel should not be satisfied with the right of appeal provided by Article 249 of the Code of Criminal Procedure. But the role of the defender in the effective and real assistance of the defendant is very important. It is and should be the advocate who must address the court to extinguish the amount of insurance. Detention ordered during preliminary investigations loses power if the court does not proceed to the interrogation within the deadline (not later than three days from the implementation of the measure) provided for in Article 248 of the Code of Criminal Procedure.

This Referral is addressed to the Court based on Articles 261/2 and 262/1 of the Code of Criminal Procedure. In practice, there has often been a hesitation on the part of the court when the final deadline for extraditing the prison security measure has been reached on holiday days. Article 261 / c of the Code of Criminal Procedure provides for one of the cases of termination of security measures when the duration of the pre-trial detention is greater than the measure of the punishment. It has happened that the court that issued the decision refuses to consider the issue that has already given a decision and the file is not being examined by it. A similar reasoning is made by the judge who has been made aware of the parties' requests during the preliminary investigation. The defense counsel in such a case should be very active in the protection of human rights and fundamental freedoms. No person should be deprived of his freedom in violation of the law. In these cases, each judge must make a decision to ascertain the termination of the security measure in prison and to impose the immediate release of the detained person. I hereby declare that in the event of the hearing session for determining the amount of insurance, there is no need for the presence of the person or his or her defense.

Provision of proof and presence of the protector

An important procedural role of the defense attorney during preliminary investigations in the performance of the proof provided in Articles 316 to 322 of the Code of Criminal Procedure. Our procedural system foresees and is based on the formation and obtaining the power of evidence during the debates of the parties in the main trial. All preliminary investigation actions are subject to screening and verification of the parties in the process. Given that the evidence taken during the probationary hearing is referred to as a trial, then this evidence is obtained by respecting the principles of equality of arms, contradictoriness and providing the defendant with the right to defense with a lawyer. The participation of the defense attorney during the performance of the evidence is compulsory and the violation of this obligation makes the provision of evidence an absolutely invalid act. The hearing session takes place with the indispensable attendance of the prosecutor and defense counsel of the defendant. It is forbidden to receive evidence on facts relating to persons who are not represented by the defense counsel at the hearing¹⁷.

¹¹Decision of Gj. High No. 73, dated 03.07.2003

¹²The Decision of the Gj. High No. 68, dated 18.06.2003

¹³K.Pr.Penale, Article 279.

¹⁴Commentary of the Code of Criminal Procedure, Tirana 2003 (H.Islami etc)

¹⁵Criminal Procedure Code, Article 260/3.

¹⁶Criminal Procedure Code, Article 246/6.

Defenders have the right to view the minutes, items and documents obtained and to issue copies of them. If the defendants have not chosen the defendant but request such a certificate or are not present in the provision of the evidence, the court is obliged to appoint those defendants mainly. The absence of a defender invalidates the provision of evidence. Thus Article 322 of the Code of Criminal Procedure provides that these evidence may be used in the main trial only against defendants whose defense assistants have been assisted in obtaining them. The High Court reasoned on the basis of Article 321/1 of the Code of Criminal Procedure. The hearing session takes place with the indispensable participation of the prosecutor and defense counsel of the defendant, while the hearing of 17 July 1998 for the proof of the allegations of the defendant A.Gj was conducted without the presence of her defense counsel. Attorney A.K, assigned primarily by the court, turns out to have defended other defendants, but not A.Gj, for whose claims the evidence was required. In these circumstances when it is foreseen that the participation of the defense attorney is compulsory and it has not been respected, under Article 128 / c of the Code of Criminal Procedure and the procedural act is absolutely null and void. Also, in this decision, the question of AR witnesses has been made without the participation of the defendants and the lawyer CA has defended only two defendants leaving the other defendants defenseless, which makes the provision of evidence an invalid procedural act under the article 128 / c and K.Pr.Penale "18.

Completion of investigations and defense duties

At the conclusion of the investigation, the prosecutor, pursuant to Article 327 of the Criminal Procedure Code, after reviewing the acts and ensuring that the defendant or his or her defense counsel is familiar with them, decides, as the case may be, the termination of the case or its adjournment in court. The defense counsel must be acquainted with all acts and pronounce for them for the objections he has to them regarding the possible claims for their invalidity for the manner of the completion of the investigation, for possible requests for the receipt of other evidence of documents necessary etc. The defense counsel has the right to request the dismissal of the case when he thinks that the conditions of article 328 of the Criminal Procedure Code are met. All of these attorneys' attitudes must be expressed in writing and be part of the record for recognition with the acts. Defense counsel should develop memories and reports and requests that should be part of the trial file that the prosecutor will engage in. The prosecutor when he sees an education and a lawyer must take into consideration the requirements of the protector. Upon completion of the investigation, the prosecutor, when he has full evidence of the defendant's guilty plea, submits the request for trial together with the acts constituting the trial file.

The ethical attitude of the defense lawyer

The main duty of the defense lawyer in a criminal trial is to protect the interests of the defendant. The lawyer has no obligation to prove the truth, he has a different mission, to make it impossible to help his client. The defender aims to undermine the version of the indictment and the witnesses that the charge brings to prove the defendant's guilt that the lawyer protects. This duty is exercised by the defender as independent of all other organs. But the fundamental thing is that the interests being protected must be legitimate and it is unethical and illegal to carry out the actions for the destruction of

evidence, the threat of witnesses, These interests are such as to guarantee the legal protection of the defense by the lawyer, so that they do not have abuses and violations of them and the fundamental freedoms and rights of the person to guarantee a due legal process. Exit outside of this defense, obviously contradicts the breakup of the defender's duty and ethics. The ethical or unethical attitude of the protector is treated in two ways. The first and most important aspect is the ethical attitude towards the person that the counselor assists or represents. The second aspect is related to the ethical attitude towards the judiciary, the prosecution and the judiciary. Importance is the same for both aspects. The breach of the protector's ethics against the person he protects violates the latter's right to be protected and the violation of ethics before the prosecutor and the court is violated, there are cases and the smooth running of a regular process and is a cause for delays and not rarely deformation of the fact. In addition to defending the ethics of a lawyer, it is the Code of Ethics for Advocates to be applied by him in the pursuit of a profession that goes beyond a free and independent profession and takes on the dimensions of a profession of public character of great importance. Article 3 of the Code of Ethics of the Ombudsman stipulates that the duty of the lawyer begins and ends with the loyal fulfillment of legal obligations and observance of the norms of the Code. The lawyer's role sets before him moral and legal obligations against the client, courts and other participants in the process, the profession of lawyer and colleagues in the profession, and the law "On the profession of lawyer in R.Sh" stipulates that the lawyer has the duty to exercise his profession to respect the rules of professional ethics and to use all legitimate means of loyal protection of the rights and interests of persons protected or represented by him.

The lawyer during the exercise of his profession must avoid any requirement not to compromise the ethical professional rules even when the request comes from his client. Defenders are required to protect the trust relations that characterize the relationship between him and his guardian, to be honest and faithful in the exercise of the duty and not to release the professional secrecy protected and legally. The Protector has the duty to consciously defend the interests of the defendant and to keep as secret all that he has heard from the defendant. The Protector also has the duty to present only true facts about the facts, while it has the right to remain silent and not present the facts that go to the defendant.

Protective Professionalism

Much interest is the handling of a section of the Code of Ethics of the Ombudsman. It is precisely Article 17 of this Code that provides that "The lawyer deals with a matter when he / she evaluates that he or she fulfills the conditions of representation. Representation and protection of property requires legal recognition, skills, and necessary logic." To practice a lawyer's profession, according to Law no.9109, dated 17.07.2003 "On the profession of lawyer in R.Sh", is sufficient to complete a one-year internship as an assistant with a lawyer and receive more than 50% of the points in the exam of the qualification for the pursuit of the profession of lawyer. In reality just this, I think it's not enough to be a good lawyer. But even though it is not enough, new cases are often noticed when young and inexperienced lawyers, with the rationale for considering this profession as free, private and independent, take on difficult, complicated issues with a considerable volume, by not realizing in reality an effective and realistic professional protection for their defenders.

This is noticeably cumbersome and worrying in those cases when the proceeding body primarily defines a defense for cases provided for by law. The lists of defense attorneys are mostly filled with young lawyers without proper experience and the legal framework necessary for the effective protection of their protection. For this, a solution is required as soon as possible and in solving this problem I have expressed my opinion in the treatment of the provisions of the Code of Criminal Procedure for the assignment of defenders, mainly according to the requirements of Article 49 of the Code of Criminal Procedure. I think it is very honest and in full compliance with the advocate's ethics to refrain from a criminal case on the grounds that it can not provide effective and real protection in accordance with the knowledge that is needed in the matter in question. After this reasoning, the proceeding authority must consider this request and proceed to the replacement of the lawyer. It is true that many young lawyers are very easy in practice to get the assurance that they have been practicing as a lawyer assistant, which is, of course, not fictitious. The qualifying exam is not really a real indicator of this lawyer's knowledge.

Conclusion

As a conclusion, for the treatment of this topic, I can say that the defense lawyer is one of the most important figures of the criminal process. The principle of equality of arms, based on the accusatory procedural system, has become part of the Albanian criminal procedural law and therefore requires a defended, capable and responsive protector in front of his client and the law. Defenders should not be the cause of intentional push to court hearings. If defenders abuse, they should be held responsible for not preventing the normal development of criminal proceedings. In these conclusions we are presenting those parts of the topic which in my opinion are of great importance and posing problems during the practice. It is very necessary for the lawyer to undergo on-going trainings on specific topics and different branches of law.

The School of Magistrates develops professionally and efficiently the continuous training for prosecutors and judges throughout the calendar year. These trainings are very important. Continuing training should also extend to defense lawyers, especially for defense attorneys, which will inevitably count on the increase of professionalism and their preparation for the realization of effective and real protection of legal rights and guarantees for their protection. It is worth pointing out that the faculties of justice in our country do little to say nothing in the field of teaching regarding the profession of lawyer and the preparation of new lawyers. The Law "On the profession of lawyer in the Republic of Albania" should be studied in faculties together with the lawyer's ethics. It is very important to study the techniques of this profession closely related to logic and psychology. In Albanian judicial practice, the assignment of defenders mainly by the court has caused problems, which, for the most part, are related to the level of experience and professionalism when these defenders are faced with complicated criminal cases. In this way, effective and real protection is not achieved, leading to a disparity between the parties in the process.

I think a good solution to this small problem would be

- **Firstly**, inclusion in the lists of lawyers mainly to as many experienced defenders,
- **Secondly**, the payment for the defense attorney should mainly increase and
- **Thirdly**, these lists should include the names of lawyers include data on professional age, correctness, lack of disciplinary measures, specialty issues etc.

After that I think even though it is a defender called "assigned", it should be the defendant who must make the selection based on this list with the respective data of each defender. Only in this way will be better achieved the equality of arms in the criminal process, a better protection of the rights and legal and procedural guarantees of the defendant. In this way, the unresolved suspicions that the procedural body in defining the defendants for the defendant acts on the basis of our basic knowledge of the law and the lists of the Chamber of Advocates. The figure of the protector in the criminal process, provides contradictory, is closely related to the regular exercise of the judiciary and is profiled as a public function more than a private profession. If the attorney would become a hindrance to the progress of the process, justice and its organs would be obstructed.

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¹⁸ Supreme Court Decision No. 236, dated 23.06.1999.

¹⁹ The Criminal Procedure Law of Kosovo (Sahiti) 1984.fq.104.