

Agreement of Understanding



Memorandum of Understanding

between the

Kosovo Bar Association

Kosovo Judicial Council

Kosovo Prosecutorial Council

and

Kosovo Police

**On the establishment and co-ordination mechanism for free legal representation in
criminal matters**

Agreement of Understanding

In order to implement the right to free legal representation in line with applicable legislation in Kosovo and recognized international instruments, the Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Police, and the Kosovo Bar Association (Signatory Parties) agree as follows:

Part 1 Parties

- I. Kosovo Judicial Council (hereinafter “KJC”) address: Rr. “Luan Haradinaj” Prishtinë/Priština, represented by Mr. Nehat IDRIZI, Chairman of the Kosovo Judicial Council;
- II. Kosovo Prosecutorial Council (here in after “KPC”) address: Rr. “Luan Haradinaj” Prishtinë/Priština, represented by Mr. Blerim Isufaj, Chairman of the Kosovo Prosecutorial Council;
- III. Kosovo Police (hereinafter “KP”) address: Rr. “Luan Haradinaj” nr. 101. Prishtinë/Priština, represented by Mr. Shpend MAXHUNI, General Director of the Kosovo Police; and
- IV. Kosovo Bar Association (hereinafter “KBA”) address: Rr. “Qamil HOXHA” nr 10/3, Prishtinë/Priština, represented by Mr. Osman HAVOLLI, President of the Kosovo Bar Association.

Article 2 Purpose

1. This Memorandum of Understanding (“MOU”) establishes a functional mechanism for free legal representation in criminal matters among Signatory Parties to provide an effective and professional services of the free legal representation/assistance in line with the obligations deriving by the applicable legislation in Kosovo and international standards and practices applicable in Kosovo.
2. Signatory Parties will proactively promote and protect the right of a defendant to be provided with effective and professional legal representation/assistance at public expense, if required by the interests of justice at all stages of proceedings, from preliminary police investigation to final judgment.

Article 3 Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Police

1. Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Police agree that:

Agreement of Understanding

- (a) The appointment of defence lawyers pursuant to Article 57 and 58 of the Criminal Procedure Code will be co-ordinated through the KBA unit for coordination of free criminal defence services (KBA Unit);
- (b) Upon decision that a defence lawyer should be appointed pursuant to Article 57 and 58 of the Criminal Procedure Code in a case, the KBA Unit will be contacted to appoint the actual lawyer who will provide the free criminal defence services in that case;
- (c) Proceedings will be adjourned pending the notification by the KBA Unit of the appointment of defence counsel under sub-paragraph (b);
- (d) No other lawyer other than the lawyer appointed by the KBA Unit pursuant to sub-paragraph (b) will be able to provide free criminal defence services pursuant to Article 57 and 58 of the Criminal Procedure Code in the case unless the KBA Unit provides a notice of substitution to the Kosovo Judicial Council, Kosovo Prosecutorial Council or Kosovo Police, as appropriate;
- (e) Appearance forms will continue to be signed by the relevant police officer, prosecutor or judge at the conclusion of the relevant appearance by the defence lawyer attesting that the lawyer was present and performed the required duties;
- (f) Lawyers appointed to provide free criminal defence services pursuant to Articles 57 and 58 of the Criminal Procedure Code will be paid monthly and not after each relevant appearance in a case;
- (g) Payment will be made only upon receipt by the relevant administrative office of an invoice signed by the KBA unit verifying that the lawyer was appointed to provide free criminal defence services in the relevant case or cases and only if the invoice is accompanied by the relevant appearance forms provided pursuant to sub-paragraph (b);
- (h) A percentage of the payment due to the lawyers each month – as determined by the KBA in the regulation will be withheld and transferred to the KBA on a monthly basis for the purposes of administering the co-ordination of free criminal defence services pursuant to Articles 57 and 58 of the Criminal Procedure Code.

Article 4 **Kosovo Bar Association**

1. The KBA will:

- (a) Adopt a regulation to the satisfaction of the signatory parties that details the functioning of the co-ordination mechanism for the provision of free criminal defence services pursuant to Articles 57 and 58 of the Criminal Procedure Code and the functioning of the KBA Unit;

Agreement of Understanding

- (b) Establish and functionalize the KBA Unit, ensuring that it is adequately staffed, fully funded, and able to be contacted 24-hours each day of every year;
- (c) Establish and maintain three lists of defence lawyers who will represent clients pursuant to this MOU:
 - i. A list of lawyers willing to be contacted by the Kosovo Police to provide immediate advice to those in detention after arrest;
 - ii. A list of lawyers willing and able to represent clients in matters before the General Departments of the Basic Courts;
 - iii. A list of lawyers willing and able to represent clients in the Specialized Departments of the Basic Courts (i.e. the Juvenile and Serious Crimes Department).
- (d) Promptly select defence lawyers after receiving a request from the relevant authority pursuant to Article 2, sub-paragraph (b) and provide written notice, in electronic format, with information on the lawyer selected, the case for which the lawyer was selected, and the lawyers' contact details;
- (e) Appoint lawyers from the relevant list in sequential order, with lawyers who have been selected placed at the bottom of the relevant list after the selection;
- (f) Ensure that only lawyers with three (3) years of experience or more as a practicing lawyer, prosecutor or judge are able to be placed on the list to represent clients in the Specialized Departments of the Basic Courts (i.e. the Juvenile and Serious Crimes Department);
- (g) Avoid any conflicts of the interest while assigning defence lawyers ex-officio from the list;
- (h) Promptly appoint replacement lawyers in the event of conflicts of interests or if the initially-appointed lawyer is no longer able to provide services;
- (i) Ensure that lawyers will continue to provide services in the cases to which they are assigned irrespective of whether they have met their monthly maximum payments;
- (j) Proactively monitor the performance of lawyers assigned pursuant to this Agreement, including through client surveys, to ensure that they are performing to an acceptable standard and in accordance with their ethical obligations;
- (k) Ensure that lawyers who do not perform to the standards in subparagraph (h) are taken off the list of lawyers in sub-paragraph (c) and that cases of misconduct are promptly forwarded to the KBA Office of Disciplinary Prosecutor;

Agreement of Understanding

- (1) Submit an annual report to the Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Police regarding the performance of the KBA Unit and the lawyers appointed pursuant to this Agreement.

Article 5 Eventual misunderstandings

Kosovo Judicial Council, Kosovo Prosecutorial Council, Kosovo Police and Kosovo Bar Association agree that for any misunderstanding or misinterpretation regarding the scope and aiming of this Agreement will solve through good faith mutual understanding.

Article 6 Implementation

Parties agree to take care of the implementation of the agreement with dedication and in line with the provisions agreed.

Article 7 Applicability of the Agreement

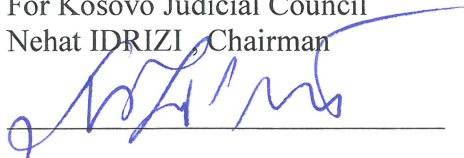
Signatory Parties agree that the applicability of this agreement to be infinitive, while the amendment and termination of the agreement is eligible at any time through a written request submitted by the signatory parties.

Article 8 Signature and entry into force

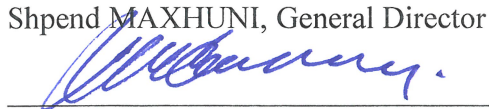
The Agreement is signed in four (4) identical original copies, in Albanian, Serbian and English language, a copy for each signatory party and the same Agreement will enter into force thirty (30) days after the approval of the Regulation stipulated in this Agreement.

Signed and sealed in Prishtinë/Priština, On 26 April 2016

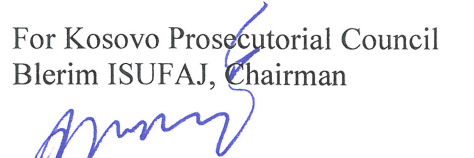
For Kosovo Judicial Council
Nehat IDRIZI, Chairman



For Kosovo Police
Shpend MAXHUNI, General Director



For Kosovo Prosecutorial Council
Blerim ISUFAJ, Chairman



For Kosovo Bar Association
Osman HAVOLLI, President

