



Address: Bulevardi: "Zhan D'Ark" No.2
Tirana, Albania



REPUBLIC OF ALBANIA
PEOPLE'S ADVOCATE
Special Section

Tel/Fax: [+355 4 2380 300/315](tel:+35542380300315)
E-mail: ap@avokatipopullit.gov.al
www.avokatipopullit.gov.al

No. **Prot.** **Tirana** ___/___/2023

**Subject: Information on the questionnaire to the Special Rapporteur
on the independence of judges and lawyers**

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Dear Ms. Satterthwaite,

According to the Constitution of the Republic of Albania, the Ombudsman defends the rights, freedoms, and legitimate interests of individuals against illegal and irregular actions or inactions of public administration bodies, meanwhile, according to the law on the "Ombudsman", as amended: The Ombudsman receives complaints, requests, or reports of violations of human rights arising from the judiciary and the execution of court decisions. The investigation and requests of the Ombudsman does not affect judicial independence in decision making.

In this context, the scope of our ongoing work has been the monitoring and handling of citizens' complaints/requests regarding the respect of the right to a fair legal process by the judiciary, with a focus on access to justice and free legal aid.

The Ombudsman, for the purpose of guaranteeing and protecting human rights and freedoms, has closely monitored the implementation of law no. 111/2017 "On legal aid guaranteed by the state". This law was approved on 14.12.2017, but entered into force on 1 June 2018.

From our institution it has been carried out an administrative investigation and has been following all the steps taken by the responsible institutions for

the approval of the by-laws and the establishment of the structures provided by the law.

Law no. 111/2017 sanctions the procedures for accessing free legal aid guaranteed by the state, in the form of primary legal aid (providing information and legal advice), or secondary legal aid (providing legal aid and representation in court).

This law provides for the establishment of the Free Legal Aid Directorate, a public legal entity under the jurisdiction of the Minister of Justice.

The failure to set up on time and within the legal deadlines the Free Legal Aid Directorate by the Ministry of Justice, as well as the delays in drafting and approving the necessary sub-legal acts, resulted in a vacuum for providing free legal aid for more than a year.

As a result, the provision of access to justice for the people in need (vulnerable categories) was eventually delayed, and there were shortages in representation through a free lawyer in specific cases for these groups.

In our institution, we have continuously received many complaints/requests for free legal aid, mainly from low-income or inadequate income categories, individuals who could not afford access to a private lawyer in court. The issues for which free legal aid was requested mainly focused on family matters (such as divorce, custody, alimony obligations, etc.), civil matters (such as damages, property disputes, etc.), administrative matters, but there were also criminal cases.

In this context, in 2020, the Ombudsman addressed to the Minister of Justice with a recommendation to take measures to ensure access to justice through the legal aid system implemented by law.

Furthermore, the recommendation emphasized that individuals with low or insufficient income have a low level of knowledge regarding access to legal aid and the right to seek exemption from court fees and expenses. Also, citizens do not have the necessary information regarding the advantages of legal aid, the procedure they need to follow in order to obtain it, and the documentation they need to complete.

Therefore, the Ministry of Justice has been asked to take measures for informing and raising awareness among citizens regarding the existence and content of the law on state-guaranteed legal aid, aiming to create opportunities for accessing different forms of free legal aid and the structures that provide it according to the law.

Access to justice is a right recognized by paragraph 10 of the Universal Declaration of Human Rights ¹, Article 14, paragraph 1 of the International Covenant on Civil and Political Rights ², Article 6, point 1 of ECHR³ and Article 42 of the Constitution of the Republic of Albania ⁴ which further confirm this right.

The right of access to justice is a constitutional principle by which the exercise of fundamental rights and freedoms of the human being is guaranteed, an essential condition for the existence of the rule of law, which guides the organization and functioning of justice in the country. With free access to the court, it is understood a public right, which gives its holder the legal guarantee to address to seek the protection of the state, forcing the competent judicial authorities to pronounce on his claims.

Access to justice is considered an essential element of the rule of law for a proper legal process. The rule of law cannot be conceptualized without recognizing individuals' right and opportunity to access the courts. This right implies not only an individual's right to access the courts, but also the obligation of the state to guarantee this opportunity to them.

The state must guarantee the right to free legal aid in order for everyone to have the opportunity, regardless of their economic status, to access the courts to address their claims. This brings equality among individuals in the rights recognized to them. There is no access to justice if citizens are afraid of the state, do not approach it, it is unreliable, when individuals do not have lawyers, when they do not receive the necessary information and knowledge about their rights.

In the context of the implementation of the law on state-guaranteed legal aid, we have addressed the issue of citizens who have benefited from free legal aid and exemption from payment of court fees and expenses by court decision. However, there have been cases where these court decisions have remained on paper and unimplemented by local associations, failing to fulfill the legal obligation to assign the corresponding lawyer.

¹ Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

² All persons shall be equal before the courts and tribunals.

³ In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

⁴ 1. The freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process. Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.

Furthermore, in order to exercise its constitutional and legal competencies, the Institution of the Ombudsman has closely monitored the public discussions and debates on the proposed new judicial map by the High Judicial Council and the Ministry of Justice. Given the particular sensitivity of this issue, the complaints submitted by citizens to the institution, especially those belonging to vulnerable groups, regarding access to justice, we have initiated an investigation of a case with our own initiative, at the conclusion of which, in June 2022, the Ombudsman also addressed a recommendation for the review of the proposed new judicial map, ensuring access to justice for citizens within the framework of the right to a fair legal process. Unfortunately, we note that this recommendation was not accepted by the Ministry of Justice, while the High Judicial Council did not respond.

In accordance with the provisions of Law no. 98/2016 "On the organization of the judicial system in the Republic of Albania", the reorganization of the judicial districts is a process that must be carried out every 5 years. The competent institutions for this process are the High Judicial Council and the Ministry of Justice. Then, the draft proposal must be approved by the Council of Ministers, which must also provide solutions for other issues such as financial costs related to buildings, construction costs, planning, support services, etc.

According to the aforementioned law, it is required that the process of re-evaluating the distribution of courts is based on 3 criteria: ensuring access to justice, which is linked to the proximity of the individual to the court; reducing costs, in order to use public resources effectively; and improving the quality and suitability of the services offered.

Meanwhile, in July 2022, the Council of Ministers approved the decision on the reorganization of the judicial districts and territorial jurisdiction of the courts, foreseeing:

- The first-instance courts of general jurisdiction are being reorganized into 13 district courts, down from 22 that existed before. This reorganization will take effect on 01.05.2023.
- The appeal courts of general jurisdiction are being reorganized into a single Appellate Court of General Jurisdiction, which is organized and functions throughout the entire territory of the country, down from 6 that existed before. This reorganization comes into force on 01.02.2023.
- First instance administrative courts are reorganized into 2 administrative courts, from 6 that existed before. This reorganization comes into force on 01.07.2023.

According to the proposers of this plan, it has been mentioned that for the implementation of this project it will be helpful, improved road infrastructure and better use of communication technology, such as the use of teleconferencing.

Although the inclusion of an indicator for the necessary travel time for citizens to reach the court using public transportation was crucial, it was found that there were no available data for this purpose in the Proposal Report on the Assessment of the new judicial map. The means and types of public transportation in Albania are not sufficiently developed as in other European countries, and this, coupled with the high cost of travel, will significantly impact the ability of citizens to bear the expenses associated with legal proceedings.

Although it is believed that conducting court sessions via video is another factor that could affect the need for physical proximity to courts and thus reduce the need to transport prisoners to and from court, it is necessary to mention how unprepared we were in 2020 and beyond, during the pandemic, to use information technology in all institutions. Not to mention the real impossibility for other citizens to access this technology due to economic difficulties, such as marginalized groups, pensioners, etc.

Also, the implementation of this map by closing a significant number of courts (the most profound change in these 30 years in the entire region) increases the distance between the courts and the citizen.

According to comparative data published by the European Commission for the Efficiency of Justice (CEPEJ) regarding the judicial systems of the member states of the Council of Europe, the number of courts per 100,000 inhabitants is already below the European average. According to the Progress Report for Albania for the year 2022, the data shows the number of judges per 100,000 inhabitants. This number is approximately 11, significantly lower than the European average of 21 judges per 100,000 inhabitants.⁵ Therefore, closing these courts only reduces the number of courts and judges per 100,000 inhabitants.

Furthermore, the Ombudsman believes that the implementation of the new court map does not improve access to justice at all, but on the contrary, undermines this principle, leading to an increase in costs for citizens and a decrease in the quality of services provided.

⁵ According to the Progress Report for Albania for 2022, in 2021, Albania had 307 full-time judges (10.8 per 100,000 inhabitants) and 300 full-time prosecutors (10.5 per 100,000 inhabitants). According to the European Commission for the Efficiency of Justice (CEPEJ), the European averages are 21 judges/12 prosecutors per 100,000 inhabitants.

For more, please see the link:

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

In our judgment, the drastic changes in the map of the judicial system will increase the costs for victims of gender-based violence/family violence, including children, victims of gender-based violence, families in need/residential centers for victims of domestic violence, and persons with disabilities. Additionally, costs will also increase for NGOs that work and protect victims of domestic violence, which are mainly financed by international donors to achieve their goals, as they have a well-defined budget for every expenditure.

What remains highly concerning and in particular consideration for the Ombudsman are the low-income layers, which constitute a considerable number of the Albanian population (The data shows that although relative poverty has decreased slightly from 23.7 (in the years 2017-2018) to 23.4 in 2018, the percentage of the population at risk of poverty or living with very low income is 49%, meaning almost half of the population lives in very difficult economic conditions⁶).

At the same time, while monitoring the implementation of the law on state-guaranteed legal aid, which has often faced difficulties in accessing secondary legal aid, as a result of non-enforcement of court decisions by local bar association chambers, we believe that with a new judicial map, these problems will deepen, undermining justice for these categories.

In addition, the right to a timely trial is one of the fundamental rights of citizens. For this reason, the right to a timely trial is not and should not remain a declarative right or guarantee, but is a constitutional standard, guaranteed and sanctioned in international acts (Article 6 of the European Convention on Human Rights), as well as in domestic law (Article 42 of the Constitution of the Republic of Albania).

In our assessment, the process of implementing the judicial map should have been done transparently, while taking into account the consultations held with the parties based on the established legal principles. Careful analysis and reflection of the suggestions given by all parties, citizens, interest groups, independent institutions, and non-profit organizations, is important to find a balance and make the justice system functional. The new court map has not taken into account and addressed the needs of citizens, specifically vulnerable groups such as detained individuals, to ensure their access to justice and respect for their right to a fair legal process.

The closure of first instance and especially appeal courts, leaving only one such court in the country, will further erode the trust of Albanian citizens in the justice system, particularly in the cities where they will be closed. It

⁶ UN Country Report for Albania, 2020.
<https://www.avokatipopullit.gov.al/media/manager/ëebbsite/reports/Minimumi%20jetik%20ok.pdf>

should be noted that trust in the justice reform itself has been declining year after year, due to the overly slow pace at which it is progressing, even though the sixth year of the Justice Reform approval has been completed.

According to the Balkan Barometer, the annual survey of assessments and judgments by citizens in Western Balkans, the main concerns of Albanian citizens are insecurity and socio-economic impossibilities issues. Their dissatisfaction with life increased significantly during 2020, while the level of pessimism for the future reached record highs. Their dissatisfaction with life fell sharply during 2020, while the level of pessimism about the future reached record highs.⁷

In March 2023, the Ombudsman Institution was invited to give its opinion by the Constitutional Court, which is considering the case presented by the applicant, the National Chamber of Advocates of Albania with subject "Abolition as incompatible with the Constitution of Decision no. 495, dated 21.07 .2022 of the Council of Ministers "On the reorganization of the judicial districts and the powers of the courts".

In the opinion sent to the Constitutional Court, our institution maintains the point of view that the approved judicial map violates access to justice in the interpretation of Article 42 of the Constitution of the Republic of Albania, so it should be revised, being evaluated from the perspective of guaranteeing citizens access to justice both in the courts of first instance (of general jurisdiction and administrative ones) and in the courts of appeal.

The review of the judicial map should be in line with the distribution of courts, based on the geographical spread across the territory, taking into account the real distances, as well as the number of inhabitants. Additionally, it should fully support and implement the law on the organization of the judicial power in Albania.

While hoping on your understanding,

PEOPLE'S ADVOCATE

Erinda BALLANCA

⁷ <https://www.rcc.int/balkanbarometer/publications/1/>