



REPUBLIC OF ALBANIA
MINISTRY OF JUSTICE
MINISTER



No. 7002 Prot.
(In reply please refer to this number)

Tirana, on 9.11. 2012

Subject: On access to justice in the Republic of Albania

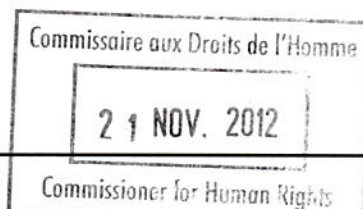
To: Mr. Nils Muiznieks
Commissioner for Human Rights
Council of Europe

Dear Nils,

Following the joint meeting conducted on 5 September 2012 and in reply to your letter, I would like to inform you of the position of the Ministry of Justice regarding the access to justice. The access to justice constitutes one of central issues in the reforms launched by the Ministry of Justice as one of the key components of the fundamental right of due legal process. Provision of such a right stems as an obligation not only from the Constitution of the Republic of Albania but also from the European Convention of Human Rights, which, in respect of human rights in the Albania system, has an equal status with the Constitution.

The reforms undertaken by the Ministry of Justice are already established at strategic level, with well-defined vision and priorities toward standards of the rule of law setting as a prerequisite the consolidation of judicial power in order to be independent, accountable and effective. Such a judicial power deserves the trust of citizens and should be open to them.

A substantial part of reforms of the Ministry of Justice was and remains the access to justice, with focus on vulnerable groups. To safeguard that matter, the Assembly of Albania, upon the initiative of the Albanian Government, approved Law No. 10 039, dated 22.12.2008 "On legal aid", which is currently completed with necessary bylaws. I find it relevant to underline that drafting this piece of legislation is based on the vast contribution of the civil society in Albania, active in the field of access to justice for vulnerable groups, and the assistance of international experts. With the approval of that law and establishment of the State Commission for Legal Aid, the state undertakes to assist the vulnerable groups in any type of judicial, criminal or civil process, and during each stage when the individual needs help (prior, during or after the trial of a case).



For the purpose of accuracy of information received, allow me to inform that the number of cases approved by the State Commission for Legal Aid, until May 2012, amounted to 36 (thirty six). Further, the number of cases approved for the provision of primary and secondary legal aid, is significantly increased, thus representing 39 cases approved in total until August 2012. This Commission has approved 33 cases submitted by the non-profit organization TLAS, of which the majority belongs to Roma and Egyptian community as follows:

Number of cases:	Cases	Vulnerable groups
Registration of birth	10 (ten)	Roma
Taking custody	10 (ten)	Roma
Registration of birth	3 (three)	Egyptian
Taking custody	2 (two)	Egyptian

Regarding the disabled persons, pursuant to the Decision of the State Commission for Legal Aid No. 3 dated 25.06.2011 "On approval of application form for benefitting legal aid and documents to be attached to the standard application form", clause 3, the applicant who benefits from special protection programs shall submit the document certifying the inclusive category. In this way, the non-complicated procedure for the vulnerable groups ensures their access to justice.

As far as the selection of lawyers, legal offices and non-profit organizations is concerned, I would like to inform that the procedure is carried out in full compliance with the Decision No.2, dated 25.06.2011 "On rules for appointment of lawyers, legal offices and non-profit organizations to provide legal aid". The Commission has conducted a competition process for the appointment of lawyers, legal offices and non-profit organizations on 7, 8 and 9 May 2012 respectively. It is announced in three national newspapers with the largest circulation for three consecutive days and in the website of the National Chamber of Lawyers and the Ministry of Justice. Following the examination of documentation, the Commission has specified the respective items for the applicants, evaluating the experience for the exercise of lawyer's profession, training sessions and absence of other disciplinary measures. Further, verbal interviews were conducted during which the professional and communication skills of the applicant were assessed. As a result of that transparent, efficient and objective procedure, it was taken Decision No. 90 dated 15.6.2012 of the State Commission for Legal Aid "On appointment of lawyers, legal offices and non-profit organizations to provide legal aid", on the basis of which, service contracts were signed with 7 (seven) lawyers and 4 (four) non-profit organizations .

In the light of strengthening inter-institutional and regional cooperation there have been signed 3 memoranda, Cooperation with Commissioner for Protection from Discrimination, with the Ombudsman and the counterpart structure of the Commission in the Republic of Kosovo. In order to foster increase of the number of applications, the State Commission for Legal Aid has planned to undertake an advertising campaign, which aims at sensitizing needy groups requesting assistance by native stakeholders and international partners.

As to the issue of judicial fees, their latest change dates back to 2009. In determining the national tax on the type of service fee by the judicial administration, there are several public inherent

interests, such as the identification of adequate means to increase the judicial budget. This need also addresses one of the identified problems for Albania during the evaluation process of political criterion in the process of European integration. Therefore, the progress reports of the European Commission for Albania in 2010 and 2011, establish that “the courts have a special budget, which they propose in compliance with the law and administer it by themselves. Nevertheless, the budget for the judiciary generally remains insufficient.

The second interest is related to the workload at courts. According to the same progress reports, “the management of courts remains poor due to lack of financial and human resources, especially at first instance courts. The backlog cases and huge number of cases referred to courts since 3 years are yet a problem. There is a risk that continuous and unjustifiable delays of judicial processes impede the principle of fair trial, which is provided by the Albanian constitution”.

In this context of interests, Albanian public authorities are facing the situation of having to settle the difficult task of balancing opposite interests at first look, between protection and guarantee of individual rights and at the same time, limiting their exercise for major purposes of the entire community interests to strengthen public funding. There is no doubt that these interests must be well-balanced, considering that limitation of certain rights for some categories of individuals brings about protection and guarantee of fundamental rights and freedoms for a broader category of persons. It is undisputable that limitation of these rights undergoes general conditions provided for in article 11 and 17 of the constitution of Albania through instruments imposed by the tax legislation in respect of rules provided by law, for an inherent proportionate public interest.

The amendment of tax legislation is an ongoing process aimed at carrying out state policy in the field of taxes, protecting both state and taxpayers’ interests. The preliminary payment of tax on acts, as a service fee, is necessary due to the nature of the judicial process, which contains costs in human and financial resources. In parallel to this need, there is the fact of showing civil interest in the filing of lawsuit, as stipulated by the Code of Civil Procedure. The extreme lack of this interest authorized the court to proceed with punishment by penalty of the person who abuses the right to file a lawsuit.

The argument that judicial fees have harmed access to courts finds no support even in official statistics. Referring to number of civil cases at national level, it appears that 70 309 cases have been recorded in 2009, 66 645 civil cases in 2010 and 78 168 cases in 2011. Even labor lawsuits are bound to increase, after the approval of the new fees. 1536 labor lawsuits have been recorded in 2009, 2501 in 2010, whereas 2532 ones in 2011. The statistics speak for themselves in terms of dynamic respect of the access to court and every further comment is unnecessary.

Our Code of Civil Procedure provided for in articles 105 et seq and 158/a, authorizes the court to exclude parties from payment of judicial fee in the event of failure to make these payments effective.

Finally, I would like to inform you that we are awaiting findings of Constitutional Court on the issue of judicial fees and access to court. The stakeholders have partly objected the legislation on the assignment of judicial fees, in terms of their prepayment in court. I wish to express my belief

that Constitutional Court decision will render not only necessary results for the respect of human rights, but will also properly guide the reforms to be undertaken in this regard.

I thank you kindly for your understanding and cooperation.

Yours sincerely,

Eduard