



Ref: CommHR/ EB/sf 107-2012

Mr Eduard HALIMI
Minister of Justice of Albania

Strasbourg, 15 October 2012

Dear Minister,

Further to our meeting in Tirana last September, I should like to take this opportunity to follow up on the constructive dialogue we had with regard to the administration of justice.

In this letter I should like to focus on certain issues relating to access to justice which were brought to my attention during my visit in Albania.

The right of access to justice and to a fair hearing, as guaranteed under Article 6 of the European Convention on Human Rights, is an essential feature of democratic societies. Recalling the Council of Europe Committee of Ministers Resolution (78) 8 on legal aid and advice, I wish to underline that effective access to justice particularly by persons who are in an economically weak situation cannot be achieved without an efficient system of legal aid and legal advice.

I have noted with satisfaction that in 2008 the Parliament adopted a comprehensive Law on Free Legal Aid, and that in 2010 the State Commission for Legal Aid was established. The adoption and subsequent publication in December 2011 and January 2012 by the Ministry of Justice of relevant by-laws was another positive step aimed at improving access to free legal aid. These measures are welcome indications of the Albanian government's commitment to fully align the legal aid system with the European standards in this field.

Notwithstanding these positive developments, certain shortcomings in the functioning of the legal aid system appear to remain. I am concerned by information indicating that until May 2012 the State Commission for Legal Aid had granted legal aid in three out of the 25 requests lodged by then. Lack of public awareness of the availability of legal aid appears to be one of the reasons for the low number of applications. I was encouraged by the information that the State Commission for Legal Aid planned to carry out awareness-raising activities. Given that, as I understand, there is a risk that these activities will be financed from the already limited budget for legal aid, I would like to urge you to ensure that adequate financial resources are allocated to the Commission.

I have noted with interest that the procedure of applying for legal aid is not complicated as regards persons who are social aid beneficiaries as they are not obliged to submit supporting documents when applying for legal aid. The State Commission for Legal Aid has the authority to obtain from the competent institutions all relevant documents pertinent to the financial situation of applicants. However, reportedly this authority is not exercised as regards applicants who are not social aid beneficiaries. They still have to submit a number of documents in support of their application for legal aid. Some of the civil society representatives that I met in Tirana stressed that this is a serious obstacle hampering access to justice by most vulnerable groups, in particular Roma and persons with disabilities.

Another issue that I have noted relates to the reportedly complicated process of selection of legal aid lawyers. Some of the interlocutors I met stressed that due to the very restrictive selection criteria a limited number of lawyers have so far been designated. According to one of my interlocutors only eight lawyers currently provide legal aid. The lack of transparency in the selection process, as well as the excessive lawyers' fees have been reported as issues that require serious consideration by the authorities.

In this context, I recall that by the Recommendation R (93) 1 on effective access to the law and to justice for the very poor the Council of Europe Committee of Ministers recommended that all member states facilitate effective access to courts for the very poor, including by simplifying the procedure for granting legal aid, and considering immediate granting of provisional legal aid wherever possible. Particular attention should be given to the question of lawyers and experts' fees in so far as they hinder access to justice. Some form of control of the amount of these fees should be ensured.

Furthermore, I would like to share with you some concerns relating to the current system of court fees in civil proceedings. I noted that the court fee for most civil disputes before the Albanian courts is 3% of the value of the claim and that it has to be paid up front. In enforcement proceedings the plaintiff is obliged to pay 3% of the value adjudicated by the court, in order to have the court judgement in his favour enforced. Moreover, I understand that courts have no discretion to grant an exemption or reduce these court fees. I am concerned that due to this system some persons have been prevented from pursuing their rights in civil proceedings because of economic difficulties. I was also made aware of the case of a victim of human trafficking who had not been able to have the judgement granting her monetary compensation enforced because she could not pay the costs of the enforcement proceedings.

Under the case-law of the European Court of Human Rights the right of access to a court is not absolute and some limitations of this right may be imposed. These limitations, however, have to be legitimate and proportional to the goal they aim to achieve. In addition, I would like to draw your authorities' attention to the Council of Europe Committee of Ministers Recommendation R (81) 7 on measures facilitating access to justice, which stresses that no sum of money should be required of a party on behalf of the state as a condition for commencing proceedings, should the sum of money be unreasonable having regard to the matters at issue.

I therefore call on the Albanian authorities to review and further enhance the national legal aid system in compliance with the Council of Europe standards.

I look forward to receiving your reply and to continuing our constructive dialogue and co-operation.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Nils Muižnieks', with a long horizontal flourish extending to the right.

Nils Muižnieks