



## Research Article

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### Access to justice in Albania and EU policies

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#### Abstract

Access to justice is a fundamental element of the rule of law and a cornerstone of justice. Access to justice is the constitutional guarantee that enables individuals to have their violated rights protected. Governments must guarantee the right of every individual to address the court or other bodies of public administration. The right of access to the court in order to oppose an act of the public administration bodies is an autonomous fundamental right and an element of due process. This principle closely relates to another principle guaranteeing justice and democracy in society, which is the principle of the rule of law. Albania has not yet adopted a law that provides for the vital minimum; calculation of financial insufficiency threshold by considering only the income of a person rather than the necessary and obligatory living costs that really need free legal aid. National and international acts provide for Access to Justice, and the onus remains on the government to provide this right to its citizens. In 2022, the number of courts in Albania dropped significantly with the new judicial map, which significantly reduced the access of citizens. Why reduce the number of courts? This led to the increase in the stock of court files and the failure of judges to try cases within the legal deadlines. Albania should reflect without further delay and increase the number of courts, taking an example from other developed European countries, so that citizens may easily go to the courts

**Keywords:** access, justice, courts, conventions, principles.

#### 1. Introduction

Access to justice is a fundamental element of the rule of law and a cornerstone of justice. Access to justice in Albania is provided for by the Constitution of the Republic of Albania; due to its significant importance, access to justice is provided for by national and international acts. Access to justice is the constitutional guarantee that enables individuals to have their violated rights protected. Governments must guarantee the right of every individual to address the court or other bodies of public administration. There is no set definition for "access to justice". Some people may think of access to

justice in a narrow legal sense (Boyle, 2023). The right of access to the court in order to oppose an act of the public administration bodies is an autonomous fundamental right and an element of due process. The right of access to the court is a fundamental human right and implies the possibility of an individual to judicially oppose an act as well as the existence of an independent and impartial body established by law for reviewing the appeal.

As noted by Lima and Gomez (2022) “access to justice guarantees that people can go before the courts to demand their rights be protected, regardless of their economic, social, political, migratory, racial, or ethnic status or their religious affiliation, gender identity, or sexual orientation” (Gutterman, 2022).

Furthermore, the right of access to court, seen from the perspective of Article 42 of the Albanian Constitution, which ensures the effective implementation of a due process, aims to guarantee the parties thereto the right to be heard and to be placed on an equal footing before the court (Gutterman, 2022). Justice administration by the court, which is based on the person’s right to have an independent and impartial arbitrator, means reviewing a case that has been prepared before and giving a final decision on such case. During the review, the court, in the exercise of its functions, must investigate all the circumstances in a complete, thorough and objective manner and resolve the case on its merits (Vorpsi, 2011).

The principle of access to justice closely relates to another principle guaranteeing justice and democracy in society (Vanamo, 2005). Requirements for effective access to justice include legal framework, legal protection, legal awareness and knowledge, legal aid and representation, access to justice institutions, fair procedure and adjudication, enforceable solutions and civil society and parliamentary oversight (Gutterman, 2022).

Access to justice is a core fundamental right and a central concept in the broader field of justice.<sup>1</sup> However, it is a right that faces a number of challenges throughout the EU. While access to justice typically means having a case heard in a court of law, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as the European Ombudsman at EU level.

Drawing on its research findings, the Agency seeks to provide evidence-based advice to policy makers at EU and national level in order to improve awareness of and access to justice. This includes the provision of information about how to remove existing obstacles that hinder people’s ability to access justice, including groups such as children and migrants.

## **2. Methodology**

Throughout the research work, qualitative and quantitative method as well as the interpretive method is used to compare between access to justice in Albania and that of some other foreign countries. The research focuses on the national and international literature, referring to the Constitution, international conventions, audit reports of

the Albanian Supreme Audit Institution, reports of the Albanian Helsinki Committee, scientific articles, national strategies and strategies of the European Union, Action Plans, laws, European Union literature on access to justice, Recommendation of the Ombudsman in Albania.

### **3. Albanian access to court as an unlimited right**

In Albania in 2022, a new judicial map was established, significantly reducing the number of courts, which is now affecting access to justice. Some individuals find it challenging to go to the court because they have to travel for hours to get there (Mucollari, Korsi and Resnja, 2024). Furthermore, the number of files for the courts to try has augmented, which renders a trial difficult to be held within a reasonable time. Although there has been a recommendation of the Ombudsman not to implement the new judicial map, it has been disregarded, and the consequences are suffered by the individuals who have to go to the courts. The Recommendation of the Ombudsman, among other things reads: "Infringement of access to justice and the distance of the courts: The state must guarantee every individual access to justice, time and financial resources to be heard and represented."<sup>2</sup> Referring to such proposal, 9 Albanian first instance courts (of general jurisdiction) were closed, the most drastic change over the last 30 years in the entire region. Analyzing the comparative data published by the European Commission of the Council of Europe for the Efficiency of Justice (CEPEJ), in comparison with the judicial systems of the Council of Europe member states, the number of courts for 100,000 inhabitants in Albania is already below the European average. In 2018, there were approximately 1.3 courts per 100,000 habitants in Albania, while the European average is approximately 1.5. If the proposal is approved, this indicator would worsen. Referring to the Albania 2021 Progress Report, in 2020, data show the same situation when it comes to 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. Therefore, closing these courts within the framework of this proposed judicial map only reduces the number of courts and judges."<sup>3</sup>

The only benefit is the decrease of the number of individuals who want to turn to the courts. Some individuals do not have the financial resources to go to Tirana; whereas, some may be elderly and unable to travel. Fewer courts lead to reduced access to the courts, overloading of judges, overlapping of files and trials not held on due time. To make this decision, the principle of proportionality should have been applied, the means should have been proportional to the goals, and the state should have considered the balance between costs and benefits. Apart from Kosovo, which has a much smaller surface area and population than Albania, no European country has only one Appeal Court (Stasa and Dedej, 2023). In this sense, North Macedonia

<sup>2</sup> Recommendation of the Ombudsman, Doc. no.202101727/4 "On the revision of the proposal for the new judicial map, to guarantee citizens access to justice within the right to a due process 2022" Tirana, Albania.

<sup>3</sup> Recommendation of the Ombudsman, Doc. no.202101727/4 "On the revision of the proposal for the new judicial map, to guarantee citizens access to justice within the right to a due process 2022" Tirana, Albania.

has 4 appeal courts; Slovenia has 4 appeal courts; The Federation of Bosnia and Herzegovina has 16 cantonal courts; Croatia has 15 county courts; Lithuania has 5 appeal courts; Slovakia has a three-degree court system with 8 appeal courts; and even Denmark itself, as a developed country, has a three-degree court system with 2 appeal courts. On 21.07.2022, the Council of Ministers adopted the Decision no. 495, "On the reorganization of judicial districts and judicial powers of courts." This decision, based on the proposal of the Minister of Justice, reorganizes the first instance and appeal courts, drastically reducing the number of some courts in the country as follows:

- First instance courts of general jurisdiction are reorganized into 13 judicial district courts, from 22 first instance courts that existed before, thus, resulting in the merger of 9 courts.
- Appeal courts of general jurisdiction are reorganized into Appeal Court of General Jurisdiction, from 6 appeal courts that existed before at the national level, thus, resulting in the merger of 5 courts.
- First instance administrative courts are reorganized into 2 first instance administrative courts with territorial powers, from 6 first instance administrative courts that existed before, thus, resulting in the merger of 4 courts.

In total, with the new judicial reorganization or otherwise known as the new judicial map, 18 courts are merged, creating an extraordinary and unprecedented situation over the last 32 years of democracy. In the specific circumstances of a case, the ECHR notes that the practical and effective nature of the right of access to the court may be impaired, inter alia, by the cost of procedures that prevent an individual from turning to the court, in terms of their financial resources (Nela, 2024).

Access to justice is related not only to the right to go to court, but also to have access to files, minutes, legal aid guaranteed by the state when individuals are financially unable. In Albania, there is law no. 111/2017 "On legal aid guaranteed by the state". The purpose of this law is to provide equal access to all citizens so that justice is achieved. The provision of legal aid is based on such principles as equal access to legal aid, equality and non-discrimination of all people, professionalism, quality, efficiency, cost reduction for legal aid, confidentiality, prevention of conflict of interest and protection of personal data of vulnerable persons. Access to legal aid is an important part of the right to a fair trial under Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights. The right to legal aid ensures effective access to justice for those who have insufficient financial resources to cover the costs of court cases, such as court fees or costs of legal representation. (European Union Agency for Fundamental Rights and Council of Europe, 2016). The United Nations system also supports the provision of legal aid by strengthening capacities of rights holders, enhancing legal aid programmes empowering rights holders, particularly the poor and marginalized groups, and supporting legal awareness and legal aid

clinics and public outreach campaigns.<sup>4</sup>

Recalling also the Salvador Declaration on comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>7</sup> especially paragraph 52 thereof, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms.<sup>5</sup>

Not being able to receive free legal aid, guaranteed by the state, constitutes a violation of access to the court, and hence a constitutional and conventional violation for all those individuals who do not have the financial/economic resources to pay court fees and costs, as well as fees of elected lawyers, and who seek to exercise and enjoy their civil, political, socio-economic, and cultural rights through the implementation of judicial procedures provided for in the Albanian legislation. The Albanian Helsinki Committee, as always, has preserved the consolidated tradition of monitoring and performing study reports also in this context of human rights, as it has deemed necessary to scan the *de jure* and *de facto* problems of recognition and implementation of law no. 111/2017, not as an end in itself, but in order to guarantee the effective access to justice of categories with little or insufficient income. This selective approach, at this very moment, is in sync with the findings of the 2018 Progress Report of the European Commission, according to which, although the new law has expanded the range of beneficiary categories, and developed the concept of primary and secondary aid, however, the free legal aid scheme still needs to develop an accessible functional mechanism, as well as access to services. Most of the issues involving vulnerable groups are still covered by civil society with the support of donors.

In the Intersectoral Justice Strategy, among other things, efficient access to justice provided through legal aid, alternative dispute resolution and appropriate court fees are set as targets. Free legal aid operators are available throughout Albania and free legal aid is fully provided by institutional and capacity development. Mechanisms for alternative dispute resolution (ADR) are improved by shifting the relevant powers from the courts to other state bodies (legal amendments, institutional development, personnel and capacity development, and facilities).<sup>6</sup>

Access to free legal aid should be construed as an essential part of Article 6 of the ECHR, the right to due process. It is precisely the right to free legal aid that guarantees quality access to justice through exemption of court fees and costs, as well as through appointment of public defenders. The ECHR has emphasized that, in order to avoid arbitrariness, states must provide a mechanism that selects which cases may receive free legal aid. It is up to the respective state to create such a system of legal aid guaranteed by the state, which is in line with the requirements and standards of the ECtHR. The CEPEJ is today a unique body for all European States, made up of qualified experts from the 47 Council of Europe member states, to assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public.

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<sup>4</sup> United Nations and the Rule of Law, Access to Justice; <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/#> accessed on 13.6.2024.

#### **4. Results from the EU**

The primary aim of the EU's justice policy is to create an EU-wide area of justice based on mutual cooperation in both civil and criminal law. This means building up mutual trust among EU Member States' courts and national administrations and their mutual recognition of judicial decisions. In the area of civil law, the EU has introduced a wide range of measures which aim to give citizens greater legal certainty and easy and effective access to justice when they are involved in issues of a cross-border nature such as disputes. In the EU, where people and goods can move around freely, it has been a high priority to establish an EU-wide area of justice. To address the challenges posed by crime, the EU has introduced laws that aim to safeguard the rights of victims, suspects and prisoners cross-border cases (such as on mutual legal assistance, the mutual recognition of decisions in criminal cases and the European arrest warrant. In both criminal and civil law, measures have been adopted to simplify procedures enabling national courts to cooperate with their equivalents in other Member States; train professionals involved in cross-border cases; develop information and communication technologies (such as videoconferencing) in the EU's justice system (e-Justice).<sup>7</sup>

The European Commission will manage 2 funding programmes over the 2021-2027 period: the Citizenship, Equality, Rights and Values (CERV) programme for projects fostering European values at the local, national and transnational levels, with an allocation of 1.6 billion Euro from the EU's multiannual financial framework for the 2021-2027 period. It has 4 aims: promoting equality and rights; promoting citizens' commitment and participation in the EU's democratic life; fighting violence; communicating and disseminating EU values among civil society organisations; the Justice programme, with an allocation of €305 million.<sup>8</sup>

European e-Justice aims at improving access to justice in a pan-European context and is developing and integrating information and communication technologies into access to legal information and the workings of judicial systems.<sup>9</sup> Procedures carried out in a digitised manner and electronic communication between those involved in judicial proceedings have become an essential component in the efficient functioning of the judiciary in the Member States. 2. The European Union's commitment to European e-Justice now dates back more than a decade.

#### **5. Conclusion**

Access to justice is a fundamental element of the rule of law and a cornerstone of

<sup>7</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/eu-justice-policy.html>; accessed on 13.6.2024.

<sup>8</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/eu-justice-policy.html>; accessed on 13.6.2024.

<sup>9</sup> Strategy on e-Justice 2019/C 96/04) Notices from EU institutions, bodies, offices and agencies council (2019/C 96/04).

justice. The state should take measures to provide such right to its citizens. Albania has not yet adopted a law that provides for the vital minimum; calculation of financial insufficiency threshold by considering only the income of a person rather than the necessary and obligatory living costs. In Albania, the need for justice is great and it has generally remained unfulfilled. I have concluded that almost half of the population has dealt with legal matters over the last five years and that such matters have remained unsettled due to the lack of legal awareness of the society and the low performance of institutions in the justice sector. Albania should reflect without further delay and increase the number of courts, taking an example from other developed European countries, so that citizens may have easy access to courts. The Albanian population has reason to hope that, in the future, access to justice will increase and respond to their need for justice.

The Albanian Constitutional court has assessed that constitutional norms and principles, including the right to equal access to the court, are basic for justice. At the same time, the European Court of Human Rights has consistently enshrined that this right is essential and prevailing in a democratic society due to its effects on the legitimate interests of the individual.

The primary aim of the EU's justice policy is to create an EU-wide area of justice based on mutual cooperation in both civil and criminal law.<sup>10</sup> This means building up mutual trust among EU Member States' courts and national administrations and their mutual recognition of judicial decisions.

European e-Justice aims at improving access to justice in a pan-European context. Procedures carried out in a digitised manner and electronic communication between those involved in judicial proceedings have become an essential component in the efficient functioning of the judiciary in the Member States.

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<sup>10</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/eu-justice-policy.html>; accessed on 13.6.2024.

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