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**ACCESSIBLE JUSTICE SYSTEM FOR
ALL: THE CASE OF THE ROMA
MINORITY IN ALBANIA**

Merita Meçe

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Accessible Justice System for All: The Case of the Roma Minority in Albania

Traditionally, access to the justice system has been more focused on access to justice per se rather than on the quality of justice itself. It mainly referred to those institutional arrangements which aimed to assure that people who lack resources to protect their legal rights and solve their law-related problems have access to the justice system¹. From the rights-based approach, access to the justice system is important to protect people's rights and promote their social inclusion while barriers to access reinforce poverty and social exclusion². Thus, access to the justice system should be seen from a holistic point of view. Being aware of cultural diversity, it should target new ways of achieving justice by directing attention to the real problems faced by people who experience legal events and reinforcing access to information by supporting cultural change³. The Roma population in Albania is recognized as ethno-linguistic minority in the Constitution of 1998 which guarantees people who belong to minorities exercise in full equality before the law, human rights and freedoms (Article 20)⁴. Moreover, since 1999, Albania has ratified the Framework Convention for the Protection of National Minorities and it is committed to effectively protect them from discrimination providing equal opportunity and the possibility to exercise their rights as well as equality before law and equal protection by law⁵.

Using a bottom-up approach and a set of primary and secondary data, this paper aims to assess the accessibility of the justice system in Albania based on the perceptions of the Roma minority. It highlights its main strengths, barriers, challenges and difficulties and addresses some key issues to be taken into consideration to make the justice system in Albania accessible for all.

This paper is composed of four parts. Following the first part which covers introduction and literature review on access to justice with a special emphasis on the evolution of this concept over time and barriers faced by socially excluded and minority groups to access it, the second part provides a general overview of Roma minority in Albania including legislative framework and institutional framework to protect minority rights. Analysis of the results of data collected during field work about Roma minority's perceptions on access to justice system has been provided in the third part. Finally, some conclusions and recommendations are drawn in the fourth part.

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I. INTRODUCTION AND LITERATURE REVIEW

Justice is viewed as an ideal of accountability and fairness, implying that absence of access to justice for all citizens undermines democratic governance⁶. Thus, access to justice is crucial for both the rule of law and democracy⁷ because an equally accessible justice system for all can produce tangible results that are individually and socially just⁸. As a constitutional right⁹, it not only enables people to access justice and substantively protect their rights with relation to other citizens in society¹⁰ but also ensures that both the demand and supply sides of the justice system consistently harmonize their efforts not losing relevance to citizens' interests. From this standpoint, the justice system can be accessible in all its parts when the outcomes of justice seekers are just and equitable¹¹ while their accessibility to justice system will be equally important and trusted through cooperation between the services offered¹².

1.1 The concept of 'access to justice'

The term 'access to justice' can mean different things to different people¹³. Its traditional and narrow view focuses on access to the courts or the availability of legal assistance¹⁴ through a range of institutional arrangements aiming to assure that people can exercise their rights within the existing justice system¹⁵. Thus, it centralizes the issues of

overcoming procedural barriers and delays within the court system itself¹⁶.

The evolution of the concept 'access to justice' over time is interlinked with three waves of change respectively, a) *the emergence of legal support* (aiming to provide access to legal representation in the court for disadvantaged people), b) *collective rights to address systemic inequality*; c) *a range of alternatives and reforms to facilitate greater accessibility to resolve justice problems*¹⁷. All these steps undertaken indicate that access to justice has nothing to do with some mere formal procedural issues which bring cases to official justice. On the contrary, it consists of the protection of fundamental rights through building links between the people and the courts by having a familiar counterpart to advise them¹⁸. The main principles of access to justice include *accessibility* (initiating a less net complex justice system), *efficiency* (delivering efficiently fair outcomes), *appropriateness* (encouraging people to appropriately resolve their disputes focusing on the real causes of the problems), *effectiveness* (delivering best outcomes for justice users from a system-wide perspective rather than on an institutional basis), and *equity* (meaning a fair and equally accessible justice system even for those who are marginalized)¹⁹.

Moreover, holistic approaches to access to justice propose new ways of achieving justice implying participatory roles of all affected



parties in the process using problem-solving and negotiation mechanisms. Focusing on enhancing the justice quality in both, relations and transactions where people are engaged²⁰, they employ various mechanisms to seek justice and legal assistance based on three key elements respectively, a) *equality of access to legal services* (aiming to ensure that all persons have access to high quality legal services to protect their rights despite their means); b) *national equity* (aiming to ensure that all persons enjoy equal access to legal services); c) *equality before the law* (aiming to ensure that all persons are entitled to equal opportunities to access services despite their race, ethnicity, gender and disability)²¹.

However, ‘access to justice’ is a basic human right²² and a goal of human development which is about people and their rights. According to the Human Rights based Approach, ‘access to justice’ refers to people’s ability to seek justice remedies respectful of basic human rights through formal or traditional justice systems²³. In this context, ‘access to justice’ is seen as a process where the justice seeker is taken from the ranks of the ‘disadvantaged’ to look at the options they may follow in the legal repertoire in order to attain the justice desired²⁴.

This paper will view ‘access to justice’ from a rights-based perspective, assessing it from a bottom-up approach prioritizing the voice of right holders in order to have a better understanding of the diverse barriers and

difficulties faced to safeguard their rights and achieve justice. Targeting the Roma community instead of institutional service providers, its purpose is twofold because this population represents an ethno-linguistic minority who, at one time, is subject to vulnerability, social exclusion and marginalization. Based on various studies and documents, it will combine a desk review of literature and research with analysis of the primary data collected through face-to-face interviews conducted with members of this community to highlight how it perceives ‘access to justice’, what problems it faces and what suggestions it makes to improve it.

1.2 Barriers to ‘access to justice’

To ensure that the justice system is accessible for all justice seekers leading to full realization of their rights, it is important to identify the barriers they face when they pursue it. Research indicates that knowledge, capacity, understanding and capability are crucial for access to justice²⁵ while national discriminatory legal frameworks, institutional barriers, social obstacles and lack of economic resources prevent them from dealing with their problems or filing a claim. Martin Abregu differentiates between operational obstacles (those linked with the efficiency and effectiveness of the administration of the justice system to properly coordinate efforts avoiding overlaps) and structural ones (those related to the very basic forms of societal organization)²⁶.



Moreover, Antoine Donne points out that poor knowledge of the law does not guarantee concrete access to justice²⁷. Since legal structures, procedures, rights and obligations can be complex and difficult to understand for all²⁸, their ability to interact with the justice system will be hampered. Coupled with the corruption and structural biases in the legal system²⁹, people might be reluctant to approach the court system or involve others when face a conflict. Their unwillingness becomes more evident in issues related to domestic violence³⁰.

On the other hand, social and economic disadvantage can negatively affect access to justice because lack of communication skills, direct exclusion from access to law, direct or indirect discrimination, geographical disadvantage, poor literacy skills and lack of support services worsen people's situation and ill-equip them to deal with complex avenues for seeking a remedy³¹. But legal issues might appear at every step of an individual's lifecycle showing different barriers to access to justice for various age-groups³².

However, research indicates that psychological barriers are also evident in many cases when people in need of help from the justice system steer clear of it because they do not believe it will solve their problems³³. This can develop into a vicious fatalistic circle, instead of learning to deal with their problems³⁴. The scenario is very complicated for those who are marginalized

and pushed to the margin of society, facing multi-level social exclusion. Usually their problems are cumulative and they are not able to prioritize what they can deal with. Being unaware that their problem might be of a legal nature, their legal needs might first be revealed when they have escalated due to neglect³⁵.

1.3 Research methodology and tools

An accessible justice system does not mean close geographical proximity to the court or getting legal support only. It also implies a better understanding of justice seekers' context, how they experience various justice problems and access the justice system to redress them or negotiate with it to get sustainable outcomes. This is very important for specific groups such as the Roma minority. That is why the main objective of this paper is to find out how accessible the justice system is from the perspective of Roma minority, highlighting challenges, barriers and difficulties it faces as well as making suggestions to improve it. Targeting the Roma population aged 19 years and above, the methodology of this paper is composed of two steps: a) desk review and b) fieldwork. The desk review served to collect secondary data provided in various reports, studies, strategies and policy papers on both the Roma minority and access to justice. Fieldwork conducted in nine districts of Albania respectively, in Tirana, Durrës, Vlora, Fier, Elbasan, Korça, Pogradec, Gjirokastra



and Saranda during May – July 2013 served to collect primary data through face-to-face interviews with Roma community members.

Being aware of the spread of this minority all over the country, fieldwork was conducted in these nine districts due to the high concentration of the Roma minority in these areas. To draw the sample of 360 Roma respondents located in rural and urban areas, it used data provided by the UNICEF study on “Mapping Roma children in Albania” published in 2011³⁶ which provides information about geographical distribution of this community³⁷. The sole tool of data collection was a questionnaire composed of open-ended and close-ended questions. The questionnaire was divided into three parts: *the first part* provided general data about the profile of the respondents; *the second part* provided information about the respondents’ level of knowledge about the law, rights before the law and justice system; *the third part* provided information about respondents’ perceptions on access to justice (Annex 1).

The questionnaires were administered by a mixed team of Roma and non-Roma interviewers who were selected taking into consideration three criteria: a) their level of access to the community; b) their experience in data collection; c) their communication and negotiation skills. Initially, the design of the questionnaire was pre-tested to check its understanding by the respondents making sure

that language used to interview them was simple and clear.

Interviews were conducted in informal settings in mornings and afternoons depending on respondents’ availability due to their family and personal engagements. On average, each interview lasted 15 – 20 minutes. Ethical issues were also taken into consideration to ensure smooth progress of interview. Data collected were processed for analysis and to draw conclusions.

1.3.1 The demography of the respondents and their geographical distribution

The main characteristics of respondents presented below illustrate their diversity in terms of age-groups, sex, education, place of residence and employment status.

Figure 1: Respondents (N=360), by sex

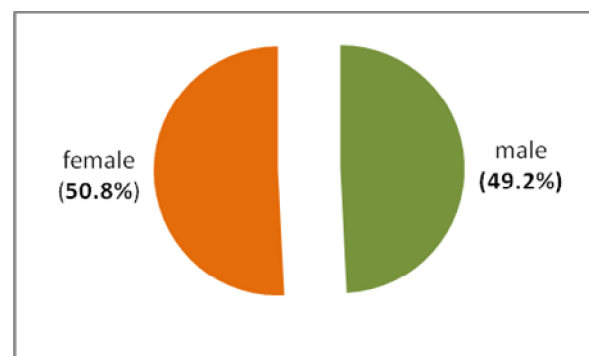




Figure 2: Respondents (N=360), by place of residence

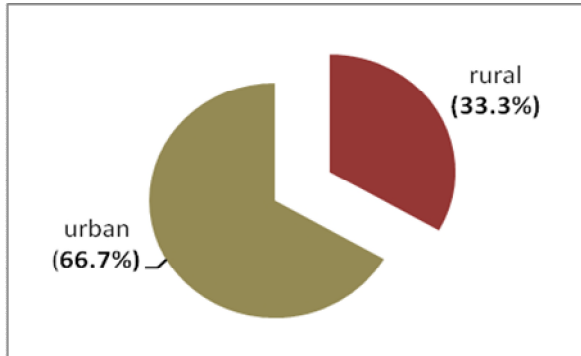


Figure 5: Respondents (N=360), by employment status

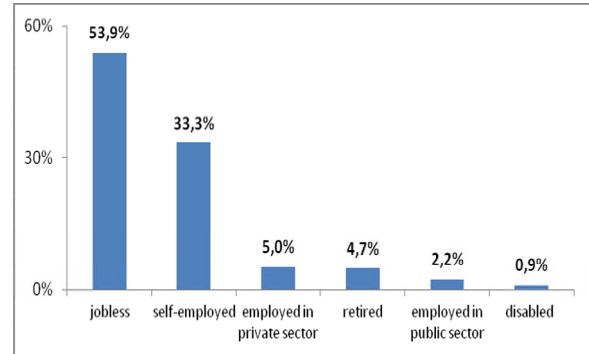


Figure 3: Respondents (N=360), by age group

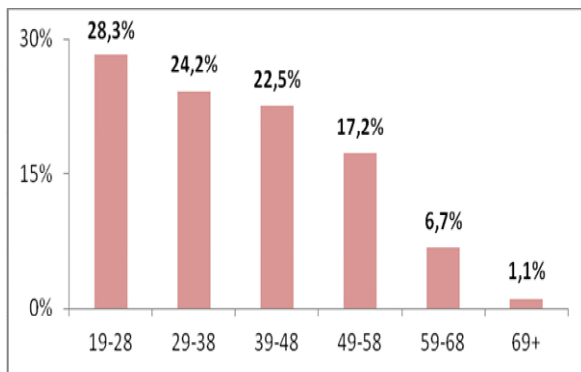
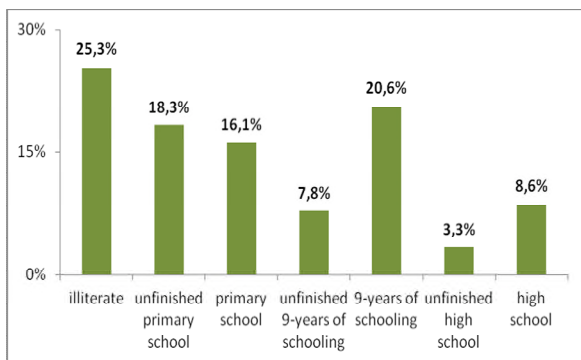


Figure 4: Respondents (N=360), by education level



II. COUNTRY'S BACKGROUND AND CONTEXT

The Republic of Albania populated by 2.8 million inhabitants³⁸ is situated in the Western part of the Balkan Peninsula bordering with Montenegro on the North, with Kosovo on the Northeast, with Macedonia on East, with Greece on South and Southeast with the Adriatic and Ionian seas on the West. It has three officially recognized national minorities respectively, Greeks, Macedonians, Serb-Montenegrins, and two 'ethno-linguistic' minorities respectively, Vlach and Roma³⁹. The essential difference between these two concepts of minorities relies on the existence of a 'kin-State' which is necessary to enjoy the status of a 'national minority' compared to an 'ethno-linguistic minority'⁴⁰. Despite good inter-ethnic relations observed over years, Albanian legislation lacks a clear definition of minorities which would help abolish any ground of differentiated treatment between these two categories of minority groups



towards full realization of their rights in practice⁴¹. During the years of post-socialist system⁴², the situation of minorities changed in Albania creating some problems that other European countries in transition are also facing⁴³. The Roma minority represents one of them.

2.1 Profile of Roma minority in Albania

The Roma population has been living in Albania since the 14th century, migrating from Northwestern India⁴⁴. Grouped in four main tribes respectively, Meckars, Kurtofs, Kabuzis and Cergars⁴⁵, they preserved their culture and language keeping their distinctive tradition of particular professions⁴⁶ which, in a way, served to keep them apart. Estimated by various sources, due to the lack of exact data, the Roma population ranges from 1,300 to 120,000 people. This significant discrepancy relates to the fact that until 2011, no official census in Albania mentioned this group, while the results of the 2011 census (despite its limitations and contestations) indicated that it represented 0,3 percent of the total population (approximately 8,500 persons)⁴⁷.

During the years of the socialist system, the Roma population enjoyed a level of relative well-being due to some measures taken by the government to ensure their integration with the mainstream population. But after its collapse in 1991, the post-socialist transition period highly exposed it to extreme poverty,

marginalization and exclusion due to massive and long-term unemployment the Roma sought short-term solutions to the informal market by performing low-paid unskilled jobs which did not meet labor market requirements. This deteriorated their level of well-being⁴⁸. The Roma population is spread almost all over the country due to high level of internal migratory movement caused by diverse socio-economic factors⁴⁹. Studies indicate that 78 percent of Roma families are categorized as ‘very poor’ (comparing data of two surveys conducted in 2003 and 2011)⁵⁰, where 95.9 percent of employed Roma do not have employment contracts, and nearly 93.1 percent of them do not pay social security contributions⁵¹. Having a very low level of education in which 40 percent of them are illiterate⁵², they are not aware of various social protection and health programs, being unable to access them. This highlights the social welfare paradigm: although social assistance for the poor is available, they do not benefit from it⁵³.

2.2 Legislative framework for minority rights and international instruments

Albania’s internal legislation takes into consideration minority rights and addresses them in various legal acts and laws. The Constitution of 1998 clearly states that the basis of the Albanian state relies on respect and protection of fundamental human rights including minority rights (Article 3) because



the fundamental human rights and freedoms are inviolable, inalienable and indivisible (Article 15) where all are equal before the law and no one may be discriminated for reasons such as ethnicity, language, race, gender (Article 18)⁵⁴. Besides this, persons who belong to national minorities exercise in full equality before the law on human rights and freedoms and have the right to freely express their ethnic, cultural, religious and linguistic belonging as well as preserve and develop it (Article 20)⁵⁵. Moreover, a new law on Protection from Discrimination was adopted in 2010 followed by the amendment of the Criminal Code to make discrimination “relating to language, religion, nationality, political and social beliefs an aggravating circumstance of any offence”⁵⁶.

Furthermore, Albania has ratified various international treaties regarding the protection of minority rights such as: the United Nations International Covenant on Civil and Political Rights (ICCPR) in 1991 which internationally recognizes the protection of minorities; the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1991 which provides provisions based on the principles of equality and non-discrimination⁵⁷; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1994; the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms in 1996 which emphasizes the respect of minority rights on an individual basis⁵⁸; the

European Union Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment in 1996; the Framework Convention for the Protection of National Minorities in 1999.

At present, Albania aspires to join the European Union and it is expected to fulfill certain political criteria including the improvement of the rights of Roma minority⁵⁹. Following obligations set out by the Stabilization and Association Agreement with the European Union where the necessity of institutional and legal reforms to guarantee and achieve higher levels of human rights and freedoms, in general, and of minority rights, in particular, have been strongly emphasized⁶⁰, the Albanian government drafted the socio-economic strategy for integration of Roma minority and joined the Decade of Roma Inclusion (2005-2015)⁶¹.

2.3 Institutional framework for minority rights protection

The legal grounds on minority rights protection have been translated into concrete institutional instruments to make sure that they are properly implemented into practice. Article 42 of Albania’s Constitution articulates the right of all to a fair and public trial to protect his constitutional and legal rights, freedoms and interests. Addressing their complaints to the court they are able to enjoy full and equal capacity of their civil rights and obligations as per limits defined by



the law (Article 1)⁶². In addition, Article 43 of the Constitution entitles all to appeal a judicial decision to a higher court by clearly stating that “everyone has the right to be rehabilitated and/or indemnified in compliance with the law if he or she is damaged because of an unlawful act, action or failure to act of the state organs” (Article 44)⁶³.

Furthermore, the Institution of People’s Advocate⁶⁴ represents another guarantee for minority rights protection in Albania whose mandate is to safeguard people’s rights, freedoms and lawful interests against unlawful or abusive actions of public administration or third parties acting on their behalf (Article 2). It is responsible for investigating claims on violated rights addressed by individuals or groups and for providing concrete recommendations for specific measures to restore them⁶⁵.

Besides this, the State Committee on Minorities established by the Decision of the Council of Ministers No. 127 dated 11/03/2004⁶⁶ serves as a promoter of minority groups’ participation in public life providing suggestions/recommendations to improve the protection of their rights and freedoms as well as to foster their socio-economic and cultural development⁶⁷.

Finally, guided by the principles of anti-discrimination, equality and respect of human rights, the Institution of the Commissioner for the Protection from Discrimination⁶⁸ aims to ensure protection from any type of

discriminatory behavior which incites discrimination on the grounds of race, color, ethnicity, language, gender, sexual orientation etc⁶⁹.

But, it is worthy to mention that the institutional framework for addressing minority issues in Albania remains inadequate for several reasons. The State Committee on Minorities lacks independence⁷⁰, the roles of the Institution of People’s Advocate and of the office of Anti-Discrimination Commissioner are not fully clarified to make them more effective in this regard⁷¹ while the breakdown of institutional communication aggravates problem solving.

III. ANALYSIS OF THE RESULTS OF DATA COLLECTION

Research indicates that despite the complexity of the justice system, people benefit from it in case they have sufficient knowledge and financial resources⁷². But, this is hard to be said for the Roma minority who lives in a different context and is not fully aware of how effectively it can exercise its rights within the justice system. Studies show that the justice system is perceived as being discriminatory from the point of view of minority groups, leading to lack of its sensitivity about their specific circumstances, low level of access and support-seeking for their justice problems⁷³. Moreover, knowledge gaps about the law, the justice system and its institutions negatively impact action rates increasing the



probability of failed attempts to choose appropriate advice-seeking strategies and close confidence gaps⁷⁴.

3.1 Knowledge about the law, rights before the law and justice system

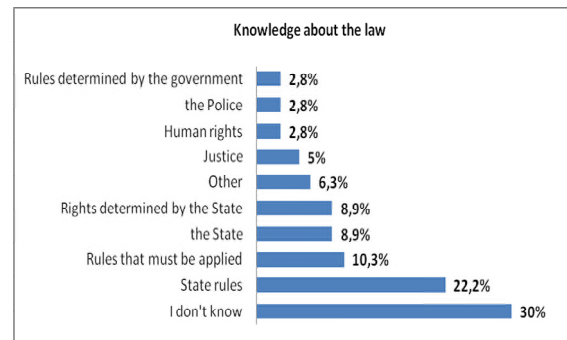
3.1.1 Knowledge about the law

The traditional definition of law focuses on its static view declaring it as a body of rules that must be obeyed to avoid the imposition of legal penalties⁷⁵. Taking into consideration the dynamics of our life, laws continuously change responding to its demands and evolving societal values. Bound in legal force, being “about people and the limitations and protections on and of their choices”⁷⁶, the law provides an opportunity for them to improve their lives and solve their everyday conflicts from a right-based approach⁷⁷. Since recognition before the law is the right of everyone, informing people about the law and their rights help them shape their decisions⁷⁸ and make possible early referrals to relevant services speeding up resolution to appropriately meet their needs from the justice system⁷⁹.

Respondents provided very diverse answers to the question “*What do you mean by law?*” showing highly skewed levels of understanding about it ranging from “nothing”, “punishment if you make a mistake”, “imprisonment” or “fear” to

“Police” or “State rules”. Unfortunately, 30 percent of the respondents were not able to provide any simple articulation about it except “I do not know what it means” followed by 8.9 percent who mentioned “the State” and 6.3 percent who mentioned various things such as “the government”, “politics”, etcetera (Figure 6).

Figure 6: Respondents (N=360), by knowledge about the law



This indicates that Roma people are not fully aware of their crucial role on capitalizing the transformative power of the law into safeguarding of their rights and the quality of their democratic life.

3.1.2 Knowledge about rights before the law

The Universal Declaration of Human Rights frames equality before the law and non-discrimination (Article 7)⁸⁰ as key elements to achieve equal and impartial application of the law to everyone in the society whatever the law may be positively contributing to enhancement of people’s opportunity to take advantage of their strengths and equally

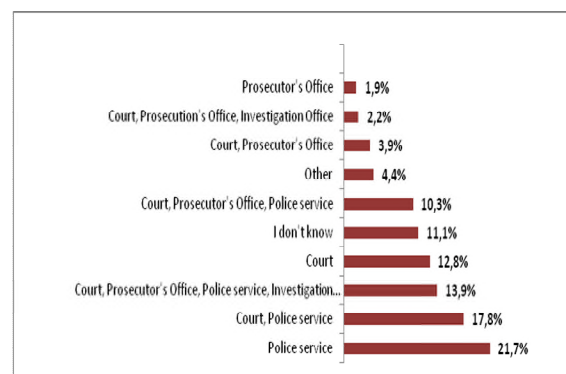


compete for the benefits of society's outcomes. Besides this, knowledge of rights before the law is significant for right-holders to achieve proper implementation of the principle of 'equality of arms' meaning that all actors involved will have a watchdog effect on each other making sure that "swift reactions against any tendency towards maladministration of justice, whether intentional or not"⁸¹. Thus, in contrast with the low level of knowledge about the law, participants are more aware of their rights before it because when asked "*What are your rights before the law?*" 99.4 percent answered "all are equal before the law and are entitled without any discrimination to equal protection", 25.3 percent answered "no one shall be arbitrary arrested or sentenced", 23.9 percent answered "everyone has the right to be legally protected in the court in case of violation of his fundamental rights granted by law", 21.7 percent answered "everyone is entitled to be judged by an impartial tribunal for any charge against him", 32.8 percent answered "no one shall be subject to denial of his right to public hearing before he is sentenced" and 4.4 percent answered "I don't know".

3.1.3 Knowledge about justice system

The justice system in Albania aims to protect human rights, freedoms and their interests to effectively and fairly settle disputes. At present, it is very complex including several institutions and organizations which act within the framework of constitutional and legal rules to render and enforce justice⁸². Like other vulnerable societies in transition, Albania's justice system has undergone radical changes to be in line with European standards aiming to build a trustful and integrated system where parties can easily claim their civil and criminal problems to be solved in a just and transparent way⁸³. When asked "*What do you mean by justice system?*" respondents provided various partial and unclear answers ranging from "I don't know" (11.1 percent), "Court" (12.8 percent), "Investigation Office" (13.9 percent) to "Police service" (21.7 percent) (Figure 7).

Figure 7: Respondents (N=360), by knowledge about justice system





It is worth mentioning that the majority of the respondents from the rural areas answered “Police service” and “I don’t know” indicating a low level of information about justice system institutions compared to answers provided by urban areas’ respondents. On the other hand, elderly people and housewives mentioned “Investigation Office” showing lack of updated information about the changing name and function of this old structure. But, generally speaking, answers provided show that the speed of the change of justice system in Albania has not been properly absorbed and digested by this community. Coupled with significant lack of information about the law it leads to negative expectations about this system or hampers this community’s approach to it.

3.1.4 Sources of information

Getting information about the law enables rights-holders to better set their priorities and appropriately claim their rights improving their capability to enforce them⁸⁴. Thus, when asked “*In your opinion, is it important to get information about the law in your daily life?*” 87.2 percent of the respondents answered “yes” versus 6.9 percent of the respondents who answered “no” and 5.9 percent of the respondents who said “I don’t know”. Among those who answered “yes”, 43.9 percent said “important” followed by 39.4 percent who said “very important” and 3.9 percent who answered “somewhat” (Figure 8).

Figure 8: Respondents, by importance of getting information about the law

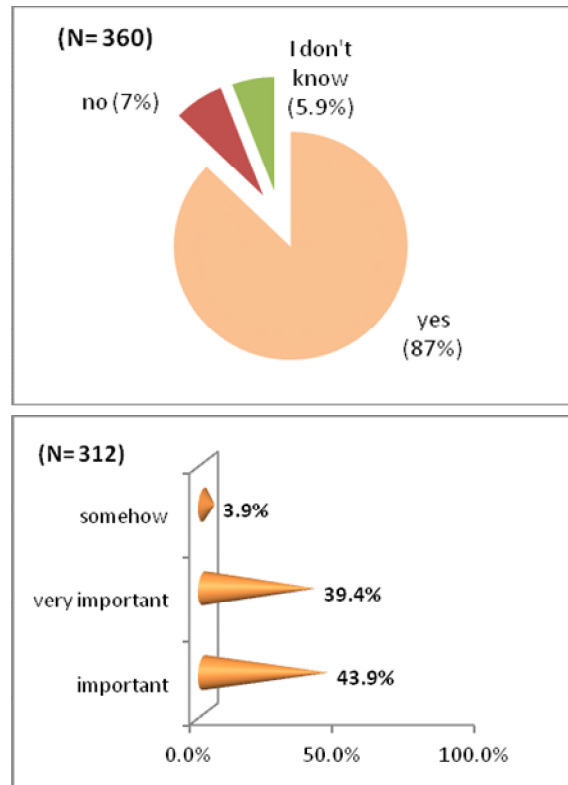
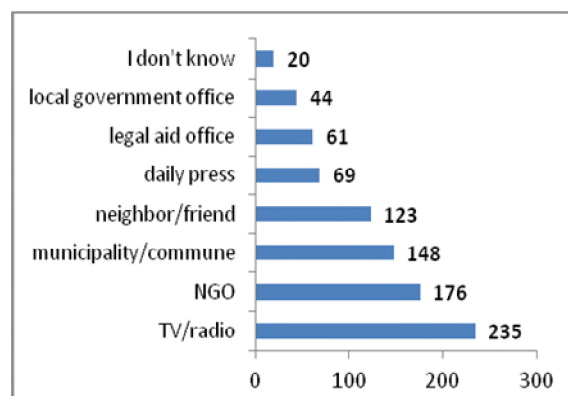
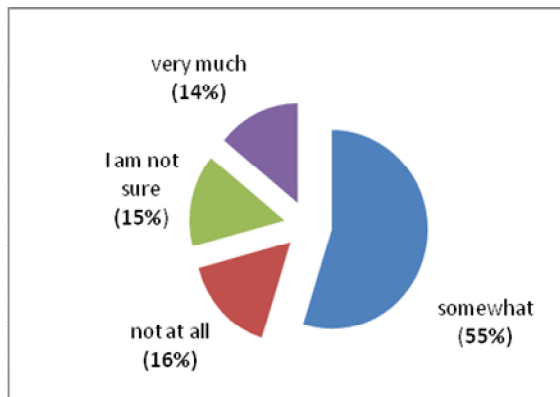


Figure 9: Respondents (N=312), by sources of information and their impact of knowledge change about justice system





Data provided in Figure 9 indicate that information delivered by electronic and written media has been highly appreciated by respondents as an important source of information followed by information taken during community outreach work and awareness raising activities conducted by local NGOs and other community-based organizations. But when comparing information delivered by various sources of information with its impact on knowledge change about justice system, 55 percent of the respondents said that it was improved “a little bit” followed by 16 percent of the respondents who said “not at all” and 15 percent of them answered “I am not sure”. Only 14 percent of the respondents answered that it helped them improve their knowledge “very much”. These results highlight that information delivered by various state, local and private sources has not been tailored to meet the needs and demands of this target group because their knowledge gap has not been significantly improved.

But 6.9 percent of the respondents answered “no” when asked “*In your opinion, is it*

important to get information about the law in your daily life?” listing various reasons such as “we have never seen any good thing from this State”, “nobody counts us”, “nobody solves our problems”, “law is not implemented”, etc.

3.2 Respondents’ perception about access to justice

Access to the justice system is better understood looking at both, its demand and supply side. Research indicates that the demand side is weak as a result of limited capacity of marginalized groups who rarely appear in the courts to express demand for any good or service implying that justice should not be excluded⁸⁵. On the other hand, the supply side provides inadequate support especially in fragile democratic societies like Albania where corruption in the justice system is high⁸⁶, court capacities are low, law implementation procedure is asymmetric, court fees are high⁸⁷ and judicial procedure takes unreasonable term⁸⁸.

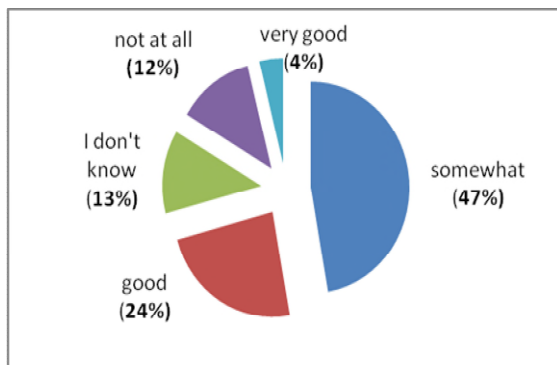
3.2.1 Respondents’ perception of access to justice system institutions

In a well-balanced and functioning justice system, beneficial outcomes delivered increase citizens interest on reaping opportunities that flow from that⁸⁹. If people are not able to properly use the law and the power of justice system to advance their rights, they will be victims of informal



channels of justice seeking, eroding the legitimacy of justice system institutions and increasing their level of dissatisfaction about their service delivery quality⁹⁰. Thus, when asked “How much do you know the functions of the Court/Prosecutor’s Office/Police?” 47 percent of the respondents answered “somewhat” followed by 24 percent of the respondents who said “good”, 13 percent of the respondents who answered “I don’t know” and 12 percent of the respondents who said “not at all”. Only 4 percent of the respondents said “very good” (Figure 10).

Figure 10: Respondents (N=360), by knowledge of functions of justice system institutions



But, poor knowledge about the functions of some key formal justice system institutions has negatively impacted Roma minority’s access to them. Studies show that in the case of homogenous communities, informal justice system institutions work better to resolve conflicts at community level, while in heterogeneous communities they fail to meet the requirements of the rule of law to effectively resolve conflicts between individuals and state institutions⁹¹. Moreover,

being gender-biased due to high male domination, they are far from meeting human rights standards, leaving room for producing poor justice for the poor⁹². Thus, when asked “Did you ever need help from the Court/Prosecutor’s Office/Police?” 63.3 percent of Roma respondents answered “no” versus 32.8 percent who answered “yes” followed by 3.9 percent who said “I don’t know” (Figure 11). Among those respondents who said that they needed help from justice system institutions, 85.6 percent approached them to solve their problems versus 14.4 percent who did not approach them at all (Figure 12).

Figure 11: Respondents (N=360), by need for justice system institutions

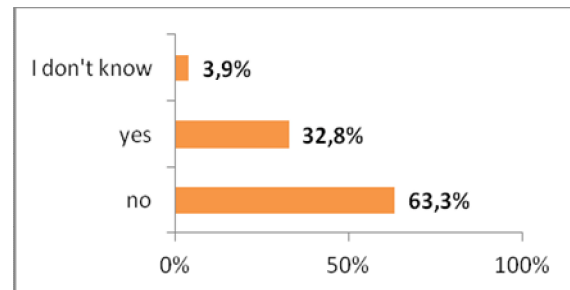
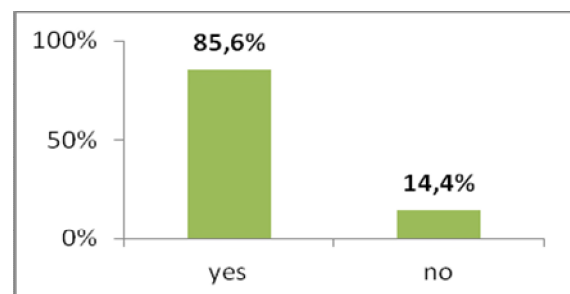


Figure 12: Respondents (N=112), by approach to Justice System institutions



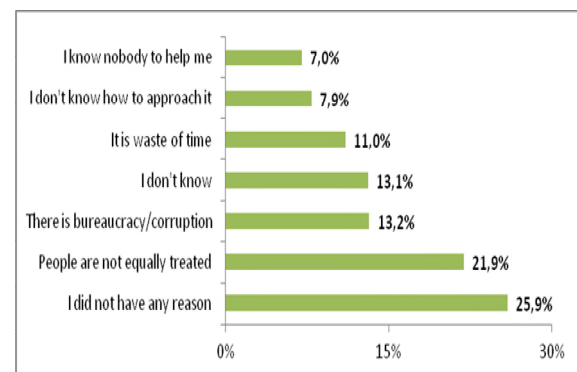


Besides this, courts established by the State and vested with power serve as a powerful tool for accountability. Symbolizing beneficent neutrality, they are driven by social forces where litigation's pattern intersects two factors: legal rights and procedures created by the law, and complaints brought by individuals or institutions⁹³. According to the Albanian Constitution, "the person whose liberty has been taken away shall be informed that he has no obligation to make any declaration and has the right to communicate immediately with his attorney and he shall be given the possibility to exercise his rights" (Article 28). When asked "If you approached the Court, did you have any attorney to defend you despite your charge?" 23 percent of the respondents said "yes" versus 77 percent who answered "no". A different scenario appears in the case of approach to Police and assistance provided by this institution because when asked "If you approached the Police, did it assist you in due time?" 50.5 percent of the respondents answered "yes" versus 49.5 percent who said "no".

But, it is very interesting to see the reasons of Roma minority's reluctance towards access to justice system institutions because when asked "If you did not approach them, what was the cause?" respondents provided very diverse answers ranging from "I know nobody to help me", "I don't know how to approach it" to "It is a waste of time", "There is bureaucracy/corruption" or "People are not equally treated" (Figure 13). These results

show that justice system institutions do not operate in isolation, but they inevitably reflect the characteristics of the society which uses them⁹⁴. In a fragile democratic society like Albania, constitutionally guaranteed rights of Roma minority have not been enhanced despite various ongoing state-led reforms to bring the justice system close to people.

Figure 13: Respondents (N=285), by cause of not approaching the justice system institutions



3.2.2 Respondents' perception about legal aid

Legal aid aims to support people in need to efficiently exercise their rights granted by the Albanian Constitution and recognized by the law. From this standpoint, the law "On legal aid"⁹⁵ expected to bring significant changes in terms of state's responsibilities and public agencies' obligations to free legal aid provision. But, implementation of this law has been very slow due to the delay of entering into force of its sub-legal acts⁹⁶, insufficient



budget allocated to set up local offices in short term⁹⁷, submission of a high number of documents from various state institutions by vulnerable people in need of free legal aid and lack of clarification on how they should address them⁹⁸.

However, proper implementation of the free legal aid scheme in Albania suffers from lack of communication and coordination among justice system institutions. According to the law, the State Commission of Legal Aid is responsible for provision of legal aid in both civil and penal cases. Due to the old procedure where defense attorneys were appointed by the Court and Prosecutor's Office, there is an ongoing overlapping of legal aid delivery in penal cases, while a high number of civil cases are not covered by this service⁹⁹. Thus, so far, most of free legal aid services in Albania for marginalized people have been provided by civil society¹⁰⁰. That is why when asked "Have you ever heard about free legal aid provided to people in need?" 33.3 percent of the respondents answered "yes" followed by 40.8 percent of them who said "no" and 25.9 percent who answered "I don't know" (Figure 14). Lack of information about this service has been followed by a low level of access to its support because when asked "If yes, have you ever benefited from free legal aid?" 39 percent of the respondents answered "yes" versus 61 percent who said "no" (Figure 15). This shows that the majority of them have been exposed to high legal fees applied by the justice system in Albania which during the

period 2008-2010 increased 2-4 times without making any exception for minority groups such as the vulnerable Roma population¹⁰¹. Moreover, among 33.3 percent of the respondents who were aware of free legal service, 39 percent of them had benefited from this service while the rest did not benefit because they did not know how to approach it (61.6 percent of the respondents), they had heard that this service had a low quality (27.4 percent of the respondents) or they could not contact it (11 percent of the respondents) (Figure 16).

Figure 14: Respondents (N=360), by information about free legal aid

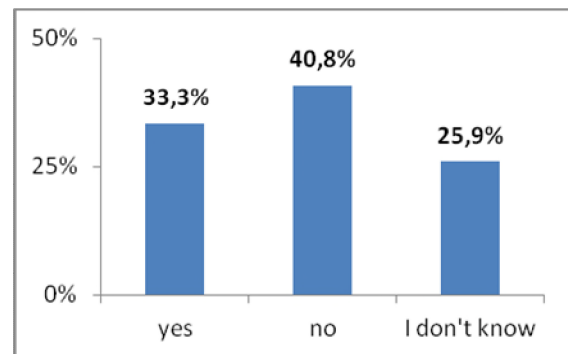


Figure 15: Respondents (N=120), by approach to free legal aid

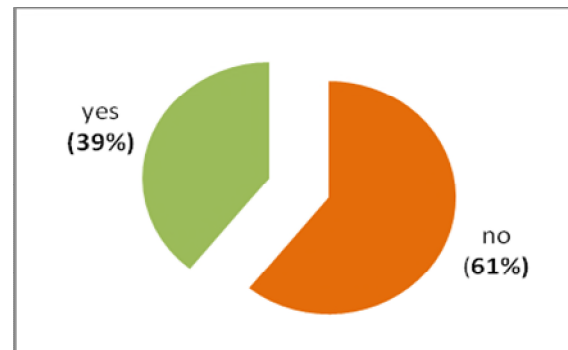
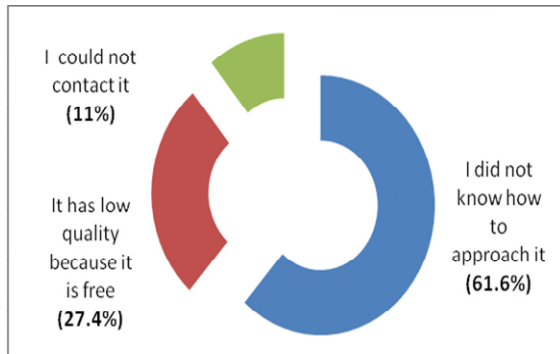


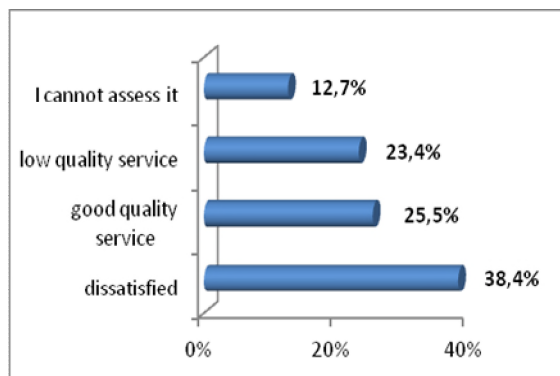


Figure 16: Respondents (N=120), by the cause of not approaching free legal aid



On the other hand, insufficient funds allocated to this service critically hampered its quality making people lose their trust and increase their dissatisfaction. Thus, when asked “*If yes, how would you assess the quality of this service?*” 38.4 percent of the respondents said “dissatisfied”, 25.5 percent of them answered “good quality service”, followed by 23.4 percent of them who said “low quality service” and 12.7 percent of the respondents who said “I cannot assess it” (Figure 17).

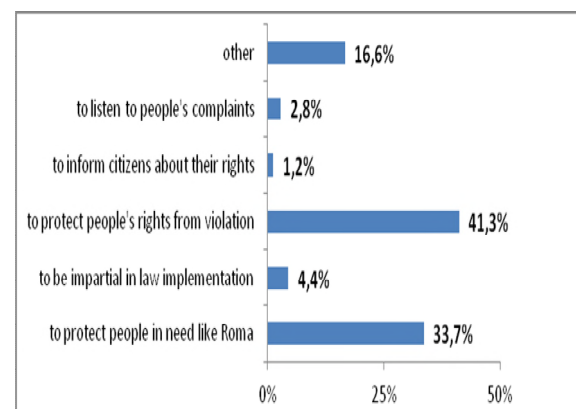
Figure 17: Respondents (N=120), by assessment of the quality of free legal aid



3.2.3 Respondents’ perception about the Institution of People’s Advocate

The outreach of the Institution of People’s Advocate by vulnerable groups such as Roma minority is important to foster the culture of human rights respect within the country as well as institutionally reflect their concerns to policy frameworks. Thus, when asked “*Have you ever heard about the Institution of People’s Advocate?*”, 50.3 percent of the respondents answered “yes” versus 35.8 percent of them who said “no” and 13.9 percent who said “I don’t know”. But, good information about this institution is closely related with good knowledge about its responsibilities. When asked “*If yes, what are its responsibilities?*” the majority of the respondents answered “to protect people’s rights from violation” followed by “to protect people in need like Roma” (Figure 18).

Figure 18: Respondents (N=181), by knowledge about responsibilities of People’s Advocate





3.3 Respondents' suggestions about a more accessible justice system

To have an accessible justice system for all irrespective of people's ethnic and socio-economic status, it is important to know their needs from their point of view. Acknowledging its barriers and obstacles to support those who are disproportionately represented and marginalized, the system can react to deliver timely sustainable benefits for them. When asked "*In your opinion, what can you suggest to have better access to the justice system?*" the majority of the respondents answered "more information about justice system institutions and their functions" followed by "no discrimination of people's rights", "more justice and equality", "more qualified services", "just implementation of the law", "more support of Roma minority", "more collaboration among justice system institutions, community and civil society organizations", etc.

IV. CONCLUSIONS AND RECOMMENDATIONS

To have an accessible justice system for all, synchronization of both, demand and supply side is needed to ensure that they act in a timely manner and positively respond towards achievement of sustainable outcomes. This requires a thorough and participatory examination of the current functionality, methodology and approach of this system through the lens of institutional service

providers and justice seekers. This paper shows that despite a good will to support people in need such as the Roma minority, the justice system in Albania is weak and far from understanding of the Roma community's context, needs and problems. Its accessibility is hampered by multi-level procedural, economic and conceptual barriers leading to denied justice or delivery of poor justice for them. A low level of information and a knowledge gap about the law and justice system combined with unclear legal procedures and insufficient funds available for the proper functioning of legal aid service have negatively influenced their ability to fully exercise their rights granted by the Constitution and recognized by law. Having a low level of legal emancipation they remain victims of a vicious circle which in many cases does not help them get justice done.

Moreover, lack of consistent coordination, collaboration and communication among various justice system institutions and public agencies hampers the quality of service delivery. It leaves room for service overlapping, low coverage service, corruption, long bureaucratic procedures and bribery. The private solution provided for a public concern such as legal aid service has pushed aside many vulnerable and disempowered Roma citizens highly exposing them to exorbitant legal fees increasing their dilemma and reluctance to approach justice system.



As a result, to improve access to justice, policymakers should take into consideration the diversity of justice seekers especially those who come from ethnic groups such as the Roma community and sensitively address it. This requires a multi-level and multi-dimensional intervention capitalizing on good practices achieved and lessons learnt to systemically establish a new balance between the justice system and justice seekers leaving

room for flexibility and innovation removed from a prejudiced and patronizing way of seeking redress and problem solving. Finally, it is of great worth to keep in mind that improved access to justice invites all parties to properly recognize their rights and fulfil their duties and obligations to achieve a more just society where citizens trust institutions which provide early support and protection to them.



Endnotes

¹ Currie, Albert, *Riding the third wave: Rethinking Criminal Legal Aid within an Access to Justice Framework*, (Research and Statistics Division, Department of Justice, Canada, 2004).

² A Strategic Framework for Access to Justice in the Federal Civil Justice System: A Guide for Future Action Access to Justice Taskforce, Attorney-General's Department, (September 2009), at: < www.ag.gov.au/a2j > (Accessed: 15 October 2013).

³ *Ibid.*

⁴ Constitution of Republic of Albania, 1999.

⁵ Law 10221/2010 on Protection from Discrimination, Official Gazette, dated 15/25 February 2010.

⁶ UNDP, Access to justice: Report on the UNDP access to justice survey in Europe and the Commonwealth of Independent States, 2009, 9.

⁷ Commonwealth Act, A strategic framework for access to justice in the Federal Civil Justice System, A guide for future action, 2009.a.

⁸ Cappelletti Mauro and Bryant Garth, "Access to justice: The worldwide movement to make rights effective: A general report", in Mauro Cappelletti and Bryant Garth (eds.), *Access to justice* (1), (Milan, 1978).

⁹ Smith, Roger, "*Justice: Redressing the balance*", (Legal Action Group, London, 1997).

¹⁰ Commonwealth Act, *ibid.*

¹¹ UNDP, 2009, *ibid.*

¹² Buck, Alexy and Liz Curran, "Delivery of advice to marginalized and vulnerable groups: The need for innovative approaches", 3(7) *The Journal of Law and Social Justice* (2009), 1-29.

¹³ Schetzer Louis, Joanna Mullins and Roberto Buonamano, *Access to justice and legal needs: A project to identify legal needs, pathways and barriers for disadvantaged people in NSW* (Law and Justice Foundation of New South Wales, 2002).

¹⁴ Commonwealth Act, *ibid.*

¹⁵ Currie, Albert, *Riding the third wave: rethinking criminal legal aid within an access to justice framework*, (Research and Statistics Division, Department of Justice, Canada, 2004).

¹⁶ Schetzer, Louis, Joanna Mullins and Roberto Buonamano, *ibid.*

¹⁷ Cappelletti, Mauro and Bryant Garth, *ibid.*

¹⁸ Abregu, Martin, 2001, "Barricades or obstacles: The challenges of access to justice", in Rudolf V. Van Puymbroeck (eds.), *Comprehensive legal and judicial development: Toward an agenda for a just and equitable society in the 21st century* (the World Bank, 2001), at 67-69.

¹⁹ Commonwealth Act, *ibid.*

²⁰ *Ibid.*

²¹ Schetzer, Louis, Joanna Mullins and Roberto Buonamano, *ibid.*

²² UNDP, 2009, *ibid.*

²³ UNDP, Lessons learnt on applying a human rights-based approach to development programming: Case study from the UNDP Asia Pacific Rights and Justice Initiative, 2004.

²⁴ Bedner, Adriaan and Jacqueline A.C. Vel, 2010, "An analytical framework for empirical research on Access to Justice", *Law, Social Justice & Global Development Journal*, (2010(1)), 9, at <http://www.go.warwick.ac.uk/elj/lgd/2010_1/bedner_vel> (Accessed: 20 September 2013).

²⁵ Curran, Liz and Mary Anne Noone, "The challenge of defining unmet legal need", 21(4) *Journal of Law and Social Policy* (2007), at 63-64.

²⁶ Abregu, Martin, *ibid.*, 59.

²⁷ Donne, Antoine, "Improve access to justice for vulnerable groups in Central Asia on the basis of international conventions", *Equal before the Law* (2012), 8, at <www.equalbeforethelaw.org> (Accessed: 25 September 2013).



- ²⁸ Mason, Paul, Nathan Hughes, Rachel Hek, Basia Spalek, Nicola Ward and Allan Norman, “Access to justice: A review of existing evidence of the experiences of minority groups based on ethnicity, identity and sexuality” (2009), 2, at <www.justice.gov.uk/publications/research.htm> (Accessed: 10 February, 2014).
- ²⁹ Donne, Antoine, *ibid*, 10.
- ³⁰ “Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan”, Euroasia Foundation and the Caucasus Research Resource Center (2011), at 7-8, at <http://equalbeforethelaw.org/sites/default/files/library/access_to_Justice_in_CA_Report.pdf> (Accessed: January 15, 2014).
- ³¹ Schetzer, Louis, Joanna Mullins and Roberto Buonamano, *ibid*, 16-37.
- ³² *Ibid*, 30.
- ³³ Making the law work for everyone, 1, Commission on Legal Empowerment of the Poor and UNDP, 2008, 34.
- ³⁴ Genn, Hazel, Pascoe Pleasence, Alexy Buck, Nigel J. Balmer, Alexy Buck and Aoife O’Grady, *Understanding advice seeking: Further findings from the LSRC Survey of Justiciable Problems* (Legal Services Research Center, UK, 2004), 36.
- ³⁵ Curran, Liz, “Ensuring justice and enhancing human rights: A report on improving legal aid service delivery to reach vulnerable and disadvantaged people”, Victoria Law Foundation and La Trobe Law (2007), 76.
- ³⁶ In total, 14,564 Roma inhabitants spread in 26 districts. Thus, this sample represents about 2.8 percent of Roma population in Albania.
- ³⁷ Results of 2011 Census were not used because they were not officially released during the field work period;
- ³⁸ Albanian Census of 2011, at <www.instat.gov.al> (Accessed: 14 February 2013).
- ³⁹ Musaraj, Joniada and Edison Jonuzi, “Minorities education, a condition for Albania integration to the European Union”, 2(4) *Academic Journal of Interdisciplinary Studies* (2013), at 181.
- ⁴⁰ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities: Third Opinion on Albania of 23 November 2011 (2012), 9, at <hub.coe.int> (Accessed: at 12 December 2013).
- ⁴¹ European Commission, Albania 2013 progress report – Enlargement strategy and main challenges 2013-2014 (2013), 46, at <ec.europa.eu> (Accessed: 12 January 2014).
- ⁴² After its fall in 1991.
- ⁴³ Cace, Sorin and Cristian Lazar, “Discrimination against Roma in Criminal Justice and Prison Systems in Romania: Comparative Perspective of the Countries in Eastern and Central Europe”, *Penal Reform International* (2003), at 2.
- ⁴⁴ Gedeshi, Ilir and Elira Jorgoni, *Mapping Roma children in Albania* (UNICEF, 2011), at 5.
- ⁴⁵ Çabiri, Ylli, Adriatik Hasantari, Ilvia Bajrami, Latif Kazanxhiu, Renart Koçi, Enver Mustafaj, Laver Myrteli, Albana Nuredini, Hafize Peqini, Lindita Rama, Selvie Rushiti, Gerta Xega and Dritan Ziu, “Civil society monitoring report on the implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Albania” (Decade of Roma Inclusion Secretariat Foundation, Open Society Foundation, Hungary, 2013), at 19.
- ⁴⁶ Gedeshi, Ilir and Elira Jorgoni, *ibid*.
- ⁴⁷ Çabiri, Ylli, Adriatik Hasantari, Ilvia Bajrami, and others, *ibid*, at 27.
- ⁴⁸ Gedeshi, Ilir, “Roma Employment”, *Roma Decade and the Situation of Roma community in Albania*, (Open Society Foundation for Albania, 2013), at 46.
- ⁴⁹ Gedeshi, Ilir and Elira Jorgoni, *ibid*, 20.
- ⁵⁰ *Ibid*, 22.
- ⁵¹ UNDP, A needs assessment study on Roma and Egyptian communities in Albania, 2012, 41.
- ⁵² Gedeshi, Ilir and Elira Jorgoni, *ibid*, 6.



- ⁵³ UNDP, 2012, *ibid*, 39.
- ⁵⁴ Constitution of Republic of Albania, 1999.
- ⁵⁵ *Ibid*.
- ⁵⁶ Council of Europe, *ibid*, 1.
- ⁵⁷ Lacaj, Lidia, The respect and protection of minority rights in Albania (the first International Conference on Research and Education – Challenges toward the future, 24-25 May 2013, 2013), Shkodra, Albania, 6.
- ⁵⁸ Çabiri, Ylli, Adriatik Hasantari, Ilvia Bajrami, and others, *ibid*, 19.
- ⁵⁹ Gedeshi, Ilir and Elira Jorgoni, *ibid*, 12.
- ⁶⁰ Lacaj, Lidia, *ibid*, 5.
- ⁶¹ UNDP, 2012, *ibid*, 16;
- ⁶² Civil Code of the Republic of Albania, 2009, at <http://www.asp.gov.al/images/pdf/Kodi_Proc_Civile_2009.pdf> (Accessed: 30 September 2013).
- ⁶³ *Ibid*.
- ⁶⁴ Law No. 8454/1999 “On the People’s Advocate” amended with the Law No. 8600/2000 and Law No. 9398/2005, at <<http://www.avokatipopullit.gov.al/>> (Accessed: 10 January 2014).
- ⁶⁵ *Ibid*.
- ⁶⁶ Council of Ministers, Decision No. 127/2004 on “Establishing the State Committee of Minorities”, at <www.kshm.gov.al> (Accessed: 10 January 2014).
- ⁶⁷ *Ibid*.
- ⁶⁸ Established by the Law No. 10 221 “For the protection against discrimination” of 04 February 2010.
- ⁶⁹ Commissioner for Protection from Discrimination, at <www.kmd.al> (Accessed: January 20, 2014).
- ⁷⁰ Council of Europe, *ibid*.
- ⁷¹ European Commission, *ibid*, 44.
- ⁷² Fleming, Don, “Legal aid and human rights”, International Legal Aid Group Conference, Antwerp, 2007.
- ⁷³ Mason, Paul, Nathan Hughes, Rachel Hek, Basia Spalek, Nicola Ward and Allan Norman, *ibid*, 55.
- ⁷⁴ Buck, Alexy and Liz Curran, *ibid*, 26;
- ⁷⁵ Carper, Donald L. and John A. McKinsey, *Understanding the law* (South-Western, Cengage Learning, sixth edition, 2011), 2.
- ⁷⁶ *Ibid*, 21.
- ⁷⁷ Abregu, Martin, *ibid*, 63.
- ⁷⁸ Commission on Legal Empowerment of the Poor and UNDP, Making the law work for everyone, Vol 1, 2008, 28.
- ⁷⁹ Sheen, Robyn and Penny Gregory, Civil justice system framework and literature review report (for the Australian Government’s Attorney-General’s Department), SHINA Consulting, 2012, 12, at <www.ag.gov.au> (Accessed: 20 December 2013).
- ⁸⁰ Universal Declaration of Human Rights, at <www.un.org> (Accessed: 30 November 2013).
- ⁸¹ OSCE, Analysis of the criminal justice system of Albania, Report by the Fair Trial Development Project, Tirana, 2006, 67, at <www.osce.org> (Accessed: 25 November 2013).
- ⁸² These institutions and organizations are: Courts, High Council of Justice, Office for Administration of Judicial Budget, National Judicial Conference, Magistrates School, Prosecutor’s Office and judicial police services, Ministry of Justice, General Directorate of Prisons, Probation Service, Judicial Enforcement System, Center of Official Publications, Albanian Child Adoptions Committee, State Advocacy, Forensic Institute, Free professions (Justice Inter-Sector Strategy, Decision of Council of Ministers No. 519/2011);
- ⁸³ OSCE, *ibid*, 190.
- ⁸⁴ Curran, Liz, *ibid*, 51.
- ⁸⁵ Anderson Michael R. “Access to justice and legal process: making legal institutions responsive to poor people in LDCs’, *IDS Working Paper* 178, Sussex (2003), 9, at <<https://www.ids.ac.uk>> (Accessed: 30 November 2013).



⁸⁶ OSCE, *ibid*, 169.

⁸⁷ European Commission, *ibid*, 40.

⁸⁸ TLAS, Report on legal aid in Albania, 2013, at <www.tlas.org.al> (Accessed: 31 January 2014).

⁸⁹ Commission on Legal Empowerment, *ibid*, 33.

⁹⁰ *Ibid*.

⁹¹ Kötter, Mathias, “Non-State Justice Institutions: A Matter of Fact and a Matter of Legislation”, Working Paper Series No.43, *SFB-Governance*, German Research Foundation (2012), at <www.sfb-governance.de> (Accessed: 15 January 2014).

⁹² *Ibid*.

⁹³ Anderson, Michael R., *ibid*.

⁹⁴ *Ibid*.

⁹⁵ Law 10039/2008 on Legal Aid, at <www.tlas.org.al> (Accessed: 15 January 2014).

⁹⁶ TLAS, *ibid*, 12.

⁹⁷ European Commission, *ibid*, 40.

⁹⁸ TLAS, *ibid*, 14.

⁹⁹ *Ibid*, 29.

¹⁰⁰ European Commission, *ibid*.

¹⁰¹ TLAS, *ibid*, 41-42.



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